

**CITY OF ANNA MARIA
CITY COMMISSION REGULAR MEETING
MEETING HELD AT ANNA MARIA COUNCIL CHAMBERS
10005 GULF DRIVE – ANNA MARIA, FL
THURSDAY, APRIL 28, 2011
6:15 P.M. Scheduled
Actual Start: 6:30 P.M.**

CALL TO ORDER

Chair Webb called the Regular Meeting to order.

PLEDGE TO THE FLAG

ROLL CALL: Mayor Michael Selby, Vice-Chair Jo Ann Mattick, Chair Chuck Webb, Commissioner Dale Woodland, Commissioner John Quam, and Commissioner Eugene Aubry.

Staff Present: Finance Director/Deputy City Clerk Diane Percycoe, City Attorney Jim Dye, Building Official Bob Welch, and City Planner Alan Garrett.

Press: Sun and Islander.

1. a. Resolution R11-676 – Regarding Nally vs. City of Anna Maria.

City Attorney Dye recommended approval of the Resolution.

MOTION: Commissioner Woodland moved that Resolution R11-676 is approved for adoption. Commissioner Aubry seconded the motion. On Roll Call Vote the motion carried unanimously.

1. Public Hearing to consider a Preliminary/Final Site Plan for a two-lot subdivision located at 109 and 111 Sycamore Avenue, Lots 9, 10, 11, and 12, Anna Maria Beach First Addition as recorded in Plat Book 1, Page 237, in a Residential Zone District.

Applicants: David A. and Candace Ridley

City Planner Garrett confirmed that the Public Hearing had been properly advertised and noticed. The P&Z Board held an advertised Public Hearing on April 5, 2011 and recommended approval. The existing platted lots of record are being reconfigured to combine them into only two platted lots.

Finance Director/Deputy City Clerk Percycoe swore-in all persons wishing to speak on any item that evening.

Applicant Presentation

Attorney **Racinda Perry** addressed the Commission on behalf of the applicants. She informed that the request is for the existing four lots to be reconfigured into two platted lots. The construction has already been completed on the property and all necessary State and local permits have been pulled. Attorney Perry asked for the Commission's approval.

Commissioner Quam questioned the 50-ft frontage for each lot. Planner Garrett explained that the plat still shows enough of Sycamore Ave. in front of the property to qualify for the 50-ft frontages.

MOTION: Commissioner Mattick moved to approve the Preliminary/Final Site Plan for a two-lot subdivision located at 109 and 111 Sycamore Avenue, Lots 9, 10, 11, and 12, Anna Maria Beach First Addition. Commissioner Aubry seconded the motion. Motion carried – All Aye.

Attorney Perry asked if the property owner would need to come back to the Commission for any final approval.

Planner Garrett explained that the City's Engineer will now review and sign-off on the Site Plan. The Commission has the option of recommending approval to authorize the Chair's signature once signed off by the other parties – or the Commission can take final action by holding an additional Public Hearing once signed.

ACTION: It was Commission consensus to authorize the Chair's signature once the final document has been received and that no further action would be needed by the City Commission.

Chair Webb officially opened the Public Hearing for public comment.

Hearing no public comment, Chair Webb officially closed the public comment portion of the Hearing.

2. Public Hearing to consider a Variance request for a residential boat dock for 517 Blue Heron Drive, Lot 12, Bay Harbor Subdivision as recorded in Plat Book 18, Pages 35 and 36 as follows:

Property Owner - Hasler

Applicant Agent: Jeff Hostetler

- **Section 110.95(4) and Section 110.96(2) requires that boats shall be moored parallel to the length of the waterway. The request is to allow the boat mooring to be perpendicular to the waterway;**
- **Section 110.96(3) limits a walkway to the docking facility to be no more than 10-ft in length. The request is for a 66-ft variance to the maximum of 10-ft for a walkway totaling 76-ft in length; and**
- **Section 110.96(4) requires that mooring pilings be no more than 35-ft from the waterway boundary. The request is for a 27-ft variance so as to locate the mooring pilings a total of 62-ft from the waterway boundary.**

Planner Garrett informed that on April 5, 2011, the P&Z Board held a Public Hearing and recommended denial of the variance request based on the findings. The Applicant has since provided information for his justification of the variance. The Public Hearing that evening has been duly advertised and posted.

Applicant Presentation

Jeff Hostetler, Agent for the Applicant, informed that the testimony given at the P&Z meeting that there were current DEP permits for dredging in front of the home may have been false. Mr. Hostetler contacted the DEP who informed the only permits they have is for construction of the house and the dock that currently exists. He explained that the dock as it exists today has the boatlift on top of the grass-bed, and the depth of the water is less than 1-ft deep in mean-low water. The mean-low water is the data that DEP uses for permitting docks. He said it would be almost impossible to obtain a dredge permit in front of the home.

Mr. Hostetler explained how the applicant was trying to meet all State and local requirements. Noting that the boat mooring location shall not be over submerged grass-beds, coral communities, or wetlands, he pointed out that where the current dock exists, the water is not deep enough and that it does set over grass-beds.

In order for the dock to comply, the dock must be removed in its entirety and he explained how a new dock can be built within the Riparian Rights.

Building Official Welch informed that the variance request is due to the 10-ft walkway provision in the Code. The variance request is to lengthen the walkway to get to deeper water.

Mr. Hostetler referred to the other docks that had been approved and stamped by City officials. The examples and explanation followed as to why *Mr. Hostetler* did not feel that a variance was even needed. He asked that the Commission either approve the variance or declare that his interpretation of the Code was correct and that the dock be permitted without requiring a variance. *Mr. Hostetler* provided a history of how the dock was originally permitted by DEP and then that the water area was later annexed by the City.

Mr. Hostetler explained the navigable water as determined by the State.

Commissioner Quam asked for clarification relating to the City permitted docks that had been referenced by *Mr. Hostetler*.

Building Official Welch said he had not had an opportunity to research the City's records. He suggested that the Code may have been interpreted differently by the Building Official on staff at the time they were permitted. He noted that the City has no way to determine where the 10-ft starting point is – and that it is not the mean-high water line. In order to extend more than 10-ft, a variance is required. He reminded that the dock currently exists as a non-conforming dock and that it cannot be extended or replaced in the same configuration as it is now. It can only be repaired and maintained.

Planner Garrett stated that for the last five years he had been reviewing all dock permits and everyone has complied.

Mr. Hostetler said he had designed the proposed dock as small as possible in order to place it in deep water.

Commissioner Woodland stated he had agreed with the P&Z's concerns. It was his opinion, however, that a variance was not the way to address the issue and that an Ordinance change may be needed. Explanation and discussion followed.

Commissioner Aubry did not feel there was a hardship due to the house being built where it was. *Mr. Hostetler* responded referring again to the Riparian Rights that have been allocated giving the lot the rights to deep waters. Discussion followed.

Chair Webb asked for clarification on the diagram provided by *Mr. Hostetler*. *Mr. Hostetler* responded in detail.

Lengthy discussion followed relating to options available and issues relating to the walkway.

Public Comment

Chair Webb opened the public comments portion of the Public Hearing.

Jenna Victor, 514 Blue Heron Dr, stated that having a waterfront home does not guarantee boat access. She felt that moving the dock over 40-ft would provide the property owner the water access he would need for the boat. She noted that the water was low in front of her home and as a result they own a canoe, four kayaks, and a powerboat - rather than a boat. She said one of her neighbors cannot even utilize a kayak and questioned since that is the case should her neighbor be given a variance also.

Ms. Victor asked that the Commission review the standards as required by the Code and understand that many people will be unhappy if the variance is approved.

Michael Detioli, 520 Blue Heron, said when he selected his home many of the neighboring lots were still available. He chose his lot based on having access to 'sailboat water'. He felt the 520 Blue Heron buyers should have been aware of the situation when purchasing the home. He said there needs to be a really high-tide in order to operate a boat at that location and he was unaware of the deep water basin that exists. It was his opinion if the dock were to be built as proposed; it would devalue the other homes in the area, would change Bimini Bay, and would change the overall charm of the area.

Howard Payne, 519 Blue Heron, addressed the Commission on behalf of him and his wife who live next door to the 517 Blue Heron property. Mr. Payne also serves as legal counsel for Mr. Wendell Hildebrand who owns the property at 515 Blue Heron.

According to Mr. Payne, Mr. Hildebrand will be more directly affected by the proposed variance request due to his view that would have a boat lift in front of it. He submitted that it would adversely affect the value of Mr. Hildebrand's property if the variance is approved.

Mr. Payne noted that he purchased his property greatly based on the ability to have a sailboat. They currently have a sailboat but have make provisions in order to launch the boat.

Mr. Payne referred to the depth of the waters at high-tide. He then referenced the required findings noting that all docking facilities must be perpendicular to the shoreline – which the proposal would not be. It was his opinion that Mr. Hostetler's application violates Finding # 3 and that it should read as follows: "The variance request is **not** based exclusively upon a desire to reduce the cost of developing the site."

Mr. Payne felt if the variance is approved, then a variance should be available to anyone who wishes to extend their dock to reach water that's deep enough to use a boat at mean-low tide. Examples followed.

Marla Omer, 8213 Marina Ct, Holmes Beach, said she was in strong support of the recommendation by the P&Z Board to deny the request. All homes across the Bay would have a clear view of the new dock if approved. She said she and her neighbors were concerned that the ability to construct longer docks, and to bring more boats into the shallow side of the Bay, would be encouraged if the variance was approved. She voiced concern about any additional recreational activity that could occur. She encouraged the Commission to vote in opposition of the request.

Hearing no further public comment, Chair Webb officially closed the public comment portion of the Hearing.

Applicant Rebuttal

Applicant agent **Jeff Hostetler** confirmed he was a licensed surveyor and had surveyed the depths - and confirmed they exist. He acknowledged that the other option was to remove the dock and place it in another location that could affect the mangroves and have an impact on the resources. Comments followed relating to the neighboring docks that were examined and even measured by Mr. Hostetler.

Mr. Hostetler referred to the comments made by Mr. Payne that the proposed dock would devalue the adjacent properties. He stated that Mr. Payne was not a Property

Appraiser for making those type comments. Mr. Hostetler did not feel that a view of a dock would devalue a property.

Mr. Hostetler repeated that the least impacted method was being proposed in order to get to the deeper water and to protect the resources concerned by others.

Commission Discussion

Chair Webb felt the best solution would be to revise the Ordinance. He noted that the variance approval requires finding the hardship and he did not feel there was a hardship. He pointed out that the Code requires moving the dock to a new location.

MOTION: Commissioner Mattick moved that the Variance Request for a Residential Boat Dock for 517 Blue Heron Drive, Lot 12, Bay Harbor Subdivision be denied based on the Planning & Zoning Board's recommendation and on the City Commission's Public Hearing. Commissioner Woodland seconded the motion. On Roll Call Vote, the motion for denial carried unanimously.

3. Continued Public Hearing to Consider a Preliminary/Final Site Plan for a Two-lot Subdivision – 216 Archer Way – known as Lot 42, Laguna Maria Revised Plat as Recorded in Plat Book 8, Page 121, in a Residential Zone District.

Property Owner: Janet F. Barnhart

Planner Garrett informed that at the March 24, 2011 Public Hearing, the City Commission approved the request for a two-lot subdivision located at the end of Archer Way. The Public Hearing was continued to the April 28, 2011 date in hopes that the City's Engineer would have an opportunity to review the Site Plan and all signatures would be obtained. He stated that Mr. Hostetler has been in touch with Engineer Burkholder to finalize the plat but due to not yet being completed, staff recommends continuing the Public Hearing until the May 26, 2011 meeting - or to close the Public Hearing and authorize Chair Webb's signature so it can be handled administratively.

MOTION: Chair Webb moved that based on no opposition to the 216 Archer Way Plat that it be signed by Chair Webb upon approval by the City's Engineer Mr. Burkholder. Commissioner Mattick seconded the motion. Motion carried – All Aye.

4. Possible Tax Incremental Funding (TIF) Opportunity.

Former Mayor **Fran Barford**, S. Bay Blvd, provided a history relating to her presentation on the Tax Incremental Funding (TIF) option available for Anna Maria. She noted that under a TIF concept by Manatee County, future incremental tax amounts for a property are earmarked for a specific project. She informed that while serving as Mayor for Anna Maria, many residents approached her to inquire about TIF options.

Mayor Barford said during her last year in office, the City had many pending issues that drained staff time and provided no time to bring information on the TIF opportunity forward.

The late Randall Stover, past P&Z Board Chair, met with Mayor Barford many times and had met with the County Administrator about opportunities for Anna Maria. Due to the

sudden death of Randall Stover, his friend Sherry Oehler asked Mayor Barford to follow up on Mr. Stover's pursuit. As a result, Mayor Barford met with County Administrator Hunzeker relating to TIF funding.

Administrator Hunzeker feels that creating a TIF agreement between the City and Manatee County – not under the Community Redevelopment Agency (CRA) structure – would be doable. The County has recently established an agreement involving the area around Port Manatee that includes TIF Funding - but does not include establishing a CRA.

Mayor Barford suggested that the Commission, if interested in pursuing TIF Funding, authorize the Mayor to work with a committee to research the potential opportunity that might exist between the City and the County for suitable projects, or project, in the City and to follow-through with the initial efforts by Randall Stover. Mayor Barford volunteered to assist and suggested that a potential project area might include the land along N. Bay Blvd. and the Waterfront area – N. Bay Blvd. and Pine Ave. Other projects could be included such as lighting, landscaping, etc. She explained that the TIF would be tax dollars generated by tax revenue and by joint agreement between the City and County whereas tax dollars would come back to the City for the project. Once agreed upon by the City, the proposal would then be presented to the County for their approval.

Explanation followed by Mayor Barford on the steps for creating a CRA and TIF program if the Commission chose to go the route of creating a CRA.

Commissioner Mattick said she had been researching the TIF opportunity and felt that it should be pursued quickly since it would be based on the new construction that has occurred.

Mayor Barford pointed out it should be put into place prior to the TRIM notices going out.

Commission discussion followed regarding the benefits of the TIF opportunity.

City Attorney Dye informed that the County's template documents can be customized for creating the program in the City of Anna Maria. He stated that guidelines would be needed as to how the money can be used and criteria would need to be established on how the money will be allocated. Examples followed.

Commissioner Quam suggested that the County Appraiser be contacted for obtaining the annual dollar amounts.

In referring to the lots at N. Bay Blvd. and Pine Ave, *Commissioner Mattick* suggested the three lots where Angler's Lodge sets should be purchased by the City.

Mayor Selby asked for Commission direction as far as the location to be pursuing in order to obtain the appropriate information from the County Appraiser as suggested by Commissioner Quam.

Chair Webb recommended bringing those recommendations back to the Commission for their consideration.

MOTION: Commissioner Mattick moved to authorize the Mayor and other interested parties to meet and determine the numbers of what could be generated by way of income based on the tax values, the broad scope for the future needs for the City, and to break down the needs in order to determine how the money would be best spent, to pursue the purchase of the three lots, and to bring the recommendations back to the City Commission for their consideration. Chair Webb seconded the motion.
Motion carried – All Aye.

5. Discuss Cell Tower on City Property.

Commissioner *Mattick* had requested that the Cell Tower discussion be placed on the agenda and felt that if a cell tower is put in Anna Maria it should be for the benefit of the City as a whole. Noting that the City owned the Community Center property, she questioned who would benefit from the income if a cell tower were to be placed at that location.

City Attorney Dye recalled that the lease agreement states that it is leased to the Community Center for Community Center purposes. The lease would need reviewed but he felt placing a cell tower there would not be considered “Community Center purposes.” It would also be necessary to determine if the property would be appropriate for a tower.

Commissioner Mattick then reminded that the City owned the Bayfront Park area and asked where the City would stand with the County leasing the park area if a tower were to be placed there.

City Attorney Dye stated it would be similar to the Community Center property that it would need to be determined if a cell tower fits into the definition of “park purposes.” The Waterfront next to the City Pier would fall into the same category.

Commissioner Aubry recommended that a committee be established that would work with City Attorney Dye regarding placing a cell tower in Anna Maria.

Chair Webb expressed his concerns.

Mayor Selby announced he had received a call from Bradenton Beach who had informed they utilize a company – A Center for Municipal Solutions. Anyone pursuing an application to place a cell tower in the City would go through the company who in turn would obtain the required permits, etc. A fee is charged to the applicant by the Center for Municipal Solutions and there would be no cost at all to the City. The company has asked to meet with the Commission at a Work Session.

Commissioner Aubry said for years he had been working with Verizon who has indicated that the cell tower in Holmes Beach can be increased to allow Verizon to do what is necessary for Anna Maria to receive a signal. He suggested Verizon be contacted by the committee.

Commissioner Woodland asked that the following questions be answered:

- Why no one has submitted an application to place a cell tower in Anna Maria.
- Commissioner Woodland noted his cell phone works and questioned why some cell phones work and others do not. Discussion followed.
- What other technology would be available.

Public Comment

Jamie Walsted, Anna Maria, informed that the entire system would be going to long-term evolution due to the amount of information being handled through the cell phones. With the system, more facilities will be needed. Detailed explanation followed by Ms. Walsted. She noted that each cell system must have at least 8 hours of back-up power/generator.

Micheal Coleman, Pine Ave, felt it was clear that everyone in Anna Maria wanted to receive cell service. He encouraged the Commission to pursue the issue of a cell tower.

MOTION: **Commissioner Mattick recommended that the Mayor proceed with contacting A Center for Municipal Solutions for the purpose of making a presentation before the City Commission at an upcoming Commission Work Session. Commissioner Aubry seconded the motion. Motion carried – All Aye.**

6. Hunt's Request for Refund of Fees.

Nicky Hunt, 303 Pine Ave, informed that in January 2010 she and her husband pulled a Building Permit with the intention of constructing a building at 303 Pine Avenue. Shortly afterwards the parking issues on Pine Avenue became a major issue and their Site Plan/parking conflicted with the City's proposed parking plan. Ms. Hunt provided a detailed history relating to their Building Permit application and their refund request that has been denied by the City. Ms. Hunt noted they were charged \$10,437 in advance for the Building Permit. She stated that the City had only completed 10% of the review process and that none of the remaining work charged to them by the City has been done.

Ms. Hunt stated it was the City's decision not to extend their Building Permit. She asked that the City make a reasonable decision based on the facts of the case and asked that the Building Permit fee be returned to them - minus the amount for any work performed by the City.

Building Official Welch informed that the extensive review process had been completed and the Hunt's had been issued the Building Permit and had it in hand for six months. He said he had contacted the contractor to inquire about the status; however, no work had been performed.

Commissioner Mattick said it was her understanding that when the Hunts won the lawsuit against the City they were free to build according to their existing Site Plan regardless of any future changes that would be made to the parking. She felt that several times the City extended the Hunts the option to complete their project and that it was not an arbitrary decision made by the City. She noted that the project had been abandoned and that Building Official Welch had followed the policy as set out by the City.

City Attorney Dye acknowledged that the City did not prohibit the Hunt's from building and that they were free to proceed.

Commissioner Woodland recommended that the Commission negotiate an amount to be refunded to the Hunt's since it was the proper thing to do.

Chair Webb stated that the Applicant had made a choice not to complete the project.

Commissioner Aubry noted that staff was in attendance at all Public Hearings and had spent a lot of time on the application.

Building Official Welch explained what all costs the Building Permit fees cover. He noted that approximately 40 to 45 inspections had been made. Both the Building and Planning work was also involved. He estimated that 90% of the City's portion of the work had been completed. Commission discussion followed.

Public Comment

Micheal Coleman, Pine Ave, provided a history relating to the Hunt's project - and the issues relating to the parking plan discussions.

Mr. Coleman stated that the development order that had been issued was being used by the Hunt's as a marketing tool for the sale of their property.

Nicky Hunt readdressed the Commission discussing the request they had made that the Building Permit be extended. She discussed the work that the City had been involved with such as inspections, etc., and further stated that the property had never been listed on the open market.

MOTION: Commissioner Quam moved that based on the City stating that 90% of the work to be performed by the City had been completed, that the Hunt's be refunded 10% of their Building Permit Fee. Commissioner Woodland seconded the motion. Motion failed on a vote of 1 to 4 with Commissioners Aubry, Mattick, and Woodland, and Chair Webb voting No.

MOTION: Commissioner Mattick moved that the City reject the Hunt's request for a refund of their Building Permit fees paid to the City since 90% of the work had been completed and that the City should stick by their policy of not refunding fees and should not make an exception. Commissioner Aubry seconded the motion. Motion carried on a vote of 4 to 1 with Commissioner Quam voting No.

7. Mayor's Report.

Pier Centennial Celebration

The Pier Centennial Celebration will be held on May 13 and 14, 2011.

8. City Commission Reports – None.

9. Consent Agenda

a. Approve Minutes of:

City Commission Regular Meeting – March 24, 2011

City Commission Shade Meeting – April 14, 2011

City Commission Special Meeting – April 14, 2011

b. CIAC Annual Report

c. Proclamation – *Flood Awareness Week* – May 23, 2011

d. Authorize City Attorney Dye to Execute Stipulation for Dismissal - 210 Pine Certiorari Action.

- e. **Proclamation – *National Arbor Day* – April 29, 2011**
- f. **Resolution R11-675 – Resolution Opposing EPA Numeric Nutrient Criteria for Florida.**
- g. **Agreement of Dismissal on 308 Pine Certiorari Actions.**
- h. **Roser Church A/C Change-out Fee Waiver in the amount of \$745.41.**
- i. **Resolution R-11-674 – Amending Fee Schedules.**

MOTION: Commissioner Woodland moved to approve the Consent Agenda as presented. Commissioner Mattick seconded the motion.
Motion carried – All Aye.

- 10. Written Reports and Updates:**
- a. **Sheriff’s Report.**
 - b. **Building Department Report.**
 - c. **Public Works’ Department Report.**
 - d. **Code Enforcement Report.**
 - e. **City Pier Report.**
 - f. **Ordinance Update.**
 - g. **Financial Report/Line of Credit Report.**

Public Comment

Comments Regarding Agenda Item # 2 – Variance Request

Mike Pescitelli, Gladiolus, informed that the staff report indicated the P&Z Board held their Public Hearing on May 5, 2011. The correct date is April 5, 2011.

Press Comment – None.

Adjournment

On motion made by Commissioner Quam and seconded by Chair Webb, the meeting was adjourned at 8:57 p.m.

Alice Baird, CMC, City Clerk

MINUTES APPROVED: _____