

**CITY OF ANNA MARIA
REGULAR COMMISSION MEETING
MAY 25, 2006
7:00 P.M.**

CALL TO ORDER (7: 00 p.m.)

PLEDGE TO THE FLAG

ROLL CALL: Mayor SueLynn, Commissioner Christine Tollette, Commissioner Dale Woodland, Commission Chair John Quam, Deputy Commission Chair Linda Cramer, Commissioner Duke Miller

Also present: Greg Rohr, Executive Director, Meals on Wheels; Sgt. John Kenney, Manatee County Sheriff's Department; City Attorney Jim Dye, City Clerk Alice Baird

Press: Sun, Islander

Commissioner Quam called the meeting to order and noted that two items were to be added to the Agenda, one being Consent Agenda Item 'i.', Special Event: May 27th 2006, Historical Society 'Escape from Jail' 10:00 a.m. to 4:00 p.m., and the other being Agenda Item 10. Line Item Transfer for the City Hall Roof Replacement. He further indicated that he wished to pull Consent Agenda Item 'h', Sandbar July 4th Fireworks, for discussion.

1. **CONSENT AGENDA**

a. Approval of Minutes: Regular Commission Meeting 4/27/06

b. Appointment of Carol Lewis to the Code Enforcement Board

c. Proclamation: 6th Annual Island Blood Drive

Mayor SueLynn read the Proclamation aloud. She announced to those present that the locations for the Blood Drive would be at The Islander, the Holmes Beach Publix store, and the Beach House Restaurant.

d. Proclamation: Older Americans Month

Mayor SueLynn read the Proclamation aloud, and introduced Greg Rohr, Executive Director, Manatee Meals on Wheels who accepted the Proclamation with gratitude.

e. Purchase of Satellite Phone

f. AMI Community Center Fishing Tournament – June 16, 17 & 18, 2006

g. AMI Privateers 4th of July Parade – July 4th, 2006 at 10:00 a.m.

h. Sandbar 4th of July Fireworks – July 4th, 2006 at 9:00 p.m.

*i. Special Event – Historical Society – Escape from City Jail, May 27, 2006
(10:00 a.m. – 4:00 p.m.)*

MOTION: Commissioner Linda Cramer moved to approve the Consent Agenda with the exception of Item ‘h’, seconded by Commissioner Duke Miller.

Vote: All Ayes. Motion carried.

Relative to Item ‘h’, Commissioner John Quam noted that the Fire Department had not yet signed off on the Sandbar’s Special Event Application.

MOTION: Commissioner John Quam moved to approve the Sandbar’s Special Event Application for 4th of July Fireworks, contingent upon approval by the West Manatee Fire District, seconded by Commissioner Linda Cramer.

Vote: All Ayes. Motion carried.

2. REPORTS AND UPDATES

Commissioner Woodland said his son had found a magazine, covering Anna Maria Island, Longboat Key, and Siesta Key, dating from 1959, and that he had marked a couple of articles to share. He read, under ‘City of Anna Maria’: “In an unpublicized meeting, the Mayor and all Commissioners, except Mr. Clay, met in Anna Maria last week to discuss the new budget. It is indicated that tax will be raised to 7 mills from the present 5 mills. One citizen who was said to have been present, suggested raising it to 8 mills for two years to make up for the loss incurred by the reduction made by the prior administration. Considerable money will be needed to repair and pave roads and drainage.” Commissioner Woodland went on to read that Holmes Beach had been successful with its drainage improvements, and that the next election would deal with whether or not to incorporate the entire Island into one community.

Commissioner Christine Tollette reported that she had attended an Anna Maria Island Community Center meeting on May 10, 2006, during which there had been discussion of the success of the Affair to Remember. Relative to progress in the renovations, Commissioner Tollette observed that the Center had moved various services to elsewhere on the Island.

Mayor’s Report

Mayor SueLynn noted that construction work would begin on the North Shore / Gladiolus Drainage Project on May 31st, 2006. She said that some test pits would be dug on June 1st to locate any potential conflicts with other utilities. The Mayor said that a City Engineer (Baskerville-Donovan, Inc. – [BDI]) inspector would be onsite as needed, and that when the underground work begins, there would be an inspector onsite most of the time. She noted that all affected residents had been noticed.

Relative to road and maintenance work, Mayor SueLynn said that BDI had conducted the surveying, and had begun design drawings. She said that progress was being made in putting the data and design together for the RFP, which should be sent out within the next two to three weeks. The Mayor said that it would be the end of July or August before the City would know who the successful bidder would be and what the cost of the project would be.

The Mayor indicated that the bridge sealing contractor had been identified, and that contract was being prepared by Len Hazen Painters, Inc. for the contractors to sign.

Relative to drainage at Pine / Crescent and North Shore / Willow, Mayor SueLynn reported that BDI's field survey work had been completed and that the road improvement design work was underway. She said the design of the drainage improvement would follow.

Regarding inspection of the City Pier, Mayor SueLynn reported that BDI had coordinated with Bolt Underwater Services, Inc. of Pinellas Park to undertake the inspection 193 underwater timber pilings on the pier. She said that this work was complete and a written report was being forwarded to the City, to include photographs and / or sketches identifying suspect areas, and that would provide a relative condition rating for the timber piles and an opinion of the need to repair any piles.

Mayor SueLynn noted that the contractor selected for the City Hall roof project was Roofs USA, and reported that the materials approved by the Commission to be ordered directly from Tremco were ordered in time to save the City a 9% price increase.

3. Request for an Extension of the Preliminary Site Plan – Weld, Inc. d/b/a Sandbar Restaurant, and Set Date for Hearing on Final Site Plan.

Commissioner Quam noted that the Commission had continued the hearing to May 26th, 2006 at its last Regular Meeting in April. He asked the City Attorney if everything was in order to set the date certain for the Final Site Plan hearing. City Attorney Dye said that he had received by Email, earlier the day of this evening's meeting, a draft agreement from the Applicant regarding the improvements in the right-of-way. He said that he saw no reason that a date for the Final Site Plan hearing could not be set at this evening's meeting.

MOTION: Commissioner John Quam moved to extend the Sandbar Restaurant Preliminary Site Plan to June 30th, 2006, seconded by Commissioner Dale Woodland.

Vote: All Ayes. Motion carried.

Public Comment

Sandbar Restaurant owner Ed Chiles noted that the Applicant was ready to continue to work on the right-of-way maintenance agreement.

Carmen Menali verified that the Commission had received the letter she had addressed to them.

There was consensus to set the date certain for the Sandbar Final Site Plan hearing for a Special Meeting on June 29th, 2006 at 6:15 p.m., with the Regular City Commission Meeting to follow at 7:00 p.m.

4. **Second Reading of Ordinance No. 06-658 – Amending the Traffic Regulation Ordinance (05-630, 05-646) namely,**
- a. **Return Cedar Avenue to Open Parking, both sides, with only restriction – no parking at westerly end, amending Schedule B.**
 - b. **Add Odd / Even Parking on Jacaranda Road, from North Bay Boulevard to Rose Street, on westerly side (inadvertently not included in Ordinance No. 05-646), amending Schedule B.**
 - c. **Remove One-Way Traffic on Spruce Avenue, Tuna Street, and Cypress Avenue (Return to Two-Way). Apply No Parking regulations on both sides of Spruce Avenue and Cypress Avenue, amending Schedule B.**
 - d. **Add Angular Parking on Alamanda Road, Easterly of the North Shore Drive Intersection.**

Commissioner Linda Cramer read the Ordinance by title.

MOTION: Commissioner Linda Cramer moved to adopt Ordinance No. 06-658 – Amending the Traffic Regulation Ordinance (05-630, 05-646), seconded by Commissioner John Quam.

Roll Call Vote: Commissioner Christine Tollette: Aye; Commissioner Dale Woodland: Aye; Commissioner John Quam: Aye; Commissioner Linda Cramer: Aye; Commissioner Duke Miller: Aye. Motion carried unanimously.

Commissioner Woodland drew the Commissioners' attention to Item C. and said that it appeared to him that there was some option to have parking in some places on these streets. He said that granting exceptions to any street would bring the Commission back to where it was twenty years ago.

Commissioner Cramer shared a card, sent in thanks for her work to improve safety, which she had received from the Fisher family, residents who had children who played in the area.

Public Comment

Gina Duvall of Cedar Avenue thanked the City for working with the local residents.

Mayor SueLynn reiterated her concerns for safety in the area.

5. Decide to Proceed and Amend / or not to Amend Ordinance No. 03-610

Commissioner Miller said that for safety reasons, he felt that setbacks should not be compromised. He showed photographs to the Commissioners, depicting how new home owners were dealing with the setback requirements and complying with the clear zone.

Commissioner Tollette said that she felt that comparing air conditioners and pool pumps was like comparing apples and oranges. She said that she did not think the proposed 36" x 36" zone for equipment was unreasonable.

Commissioner Cramer indicated that she was not opposed to allowing pool or air conditioning equipment in the side setback clear zone.

Commissioner Quam stated that in his opinion, the Ordinance needed to go back before the Planning & Zoning Board for their recommendations for any changes. He noted that the City had already invested a great deal of taxpayers' money in the deliberations and revisions made to the Ordinance by the P&Z in 2003.

Commissioner Woodland said that he agreed with Commissioner Tollette that the safety factor is not significantly compromised by the proposal, however, he needed to look at why the City had setbacks in the first place. He said that he felt it desirable to have a buffer between buildings in the city, and said he would not support changing the Ordinance.

Commissioner Quam said he would be in favor of not amending the Ordinance at this time.

MOTION: Commissioner Linda Cramer moved to proceed to amend Ordinance No. 03-610 to allow a 3 ft. x 3 ft. for use for equipment in setbacks with a sound barrier. Commissioner Christine Tollette seconded the motion. Roll Call Vote: Commissioner Christine Tollette: Aye, Commissioner Dale Woodland: Nay, Commissioner John Quam: Nay, Commissioner Linda Cramer: Aye, Commissioner Duke Miller: Nay. Motion failed by a vote of three to two.

Public Comment

Drew Peloubet of 817 North Shore Drive noted that when his plans were signed and stamped, they indicated that the pool equipment would be located at the side of the house. He said that the home had been designed with this in mind, and now

a deck had been laid, and the plumbing had been installed. Mr. Peloubet said that if the Ordinance is not changed, it could cost him a great deal of money. He noted that his neighbors were not opposed to the proposed location of this pool equipment.

Tom Turner of 850 North Shore Drive indicated that he felt the Planning & Zoning Board had been bypassed in the deliberations at this evening's meeting. He expressed the opinion, in this case, that setbacks needed to be complied with.

Randall Stover of 815 North Shore Drive said he thought that setbacks were a good idea, but at the same time, if someone comes to the City and gets his plans signed, then the City should not turn around and tell him he cannot build what is on them.

Max Powers of 222 Oak Avenue noted that the reason Mr. Peloubet, and Mr. Colman's house on Pine Avenue, were in the situation they were in today was because the plans had been approved to place the pool equipment at the side of the house, and that this oversight had been later brought to his attention by the Building Official. Mr. Powers said that subsequently, the Building Official would not give him a final inspection on the pool at Mr. Colman's house, causing the need for holes to be punched in the wall and the equipment to be placed inside the home. He said that the Peloubet project had been held off for three months now in an attempt to get relief from the City.

City Attorney Dye said that the 2003 change to the Ordinance only dealt with the pool and the deck. He noted that the requirement that the equipment could not be in the setback already existed in 2003.

6. First Reading of Ordinance No. 06-659 – Amending Section 114-135 Non-Conforming Lots and Parcels

Commissioner Linda Cramer read the Ordinance by title.

Commissioner John Quam confirmed that the Second Reading of the Ordinance would take place at the June 29th, 2006 Regular Commission Meeting.

Public Comment

Tom Turner of 850 North Shore Drive indicated that he felt the City Attorney and City Staff should get all the issues regarding non-conforming lots together and review them with the Planning & Zoning Board.

7. Second Reading and Public Hearing on Ordinance No. 06-657 – Official Dispute Resolution Procedure for all City Contracts.

Commissioner Linda Cramer read the Ordinance by title.

MOTION: Commissioner Linda Cramer moved to adopt Ordinance No. 06-657, seconded by Commissioner Duke Miller.

Roll Call Vote: Commissioner Christine Tollette: Aye; Commissioner Dale Woodland: Aye; Commissioner John Quam: Aye; Commissioner Linda Cramer: Aye; Commissioner Duke Miller: Aye. Motion carried unanimously.

8. Commissioner Comment(s) on Old / New Business Items.

Commissioner Dale Woodland said that he would like to make a few comments relative to Island city consolidation. He said that if someone is going to really look into the process of consolidation, nothing should be taken off the table, i.e., all aspects should be considered. The Commissioner indicated that simply looking at a certain part of consolidation, such as of services only or government only, could create divisiveness and encourage premature judgments. He congratulated Commissioner Quam in his polling efforts. Commissioner Woodland expressed encouragement for debate of all of the issues related to the consolidation of the Island cities and indicated that he felt it was important to create an atmosphere conducive to dialogue in the community.

Commissioner John Quam noted his survey had revealed that people were against the consolidation of the city governments, but were interested in looking into the consolidation of services. He agreed with Commissioner Woodland's reference to the best usage of the Commission's time, which would be to discuss what the people had expressed a desire to discuss.

At Commissioner Linda Cramer's suggestion, there was consensus for putting the Consolidation of Island Services on the next Commission Workshop Agenda.

Commissioner Duke Miller said, in response to Commissioner Dale Woodland's comments, that he was interested in discussing the consolidation of services only because he knew of no citizen on the Island who was interested in discussing the consolidation of the Island city governments. He said he was interested in seeing the City be realistic and the Commission take the initiative. The Commissioner suggested that since no one wished to consolidate governments, it could be expedient to discuss the consolidation of services and perhaps thereby save the City and taxpayers a great deal of money. He said that the issue was about being realistic, not taking things off the discussion table.

There was consensus for putting Island Consolidation on the next Commission Workshop Agenda.

Mayor SueLynn requested that F., K. and H. be removed from the New Business Items, as she would not be bringing them forward, if the Commission no longer wished to discuss them.

Commissioner Miller questioned the Mayor as to the status of Old Business Item No. 3 - Overlay District. Mayor SueLynn said that the City was waiting for consulting attorney Nancy Stroud to finish her work, which was contingent on obtaining the input from the appraiser who had been out to the property. She said that she would be happy to follow up with Ms. Stroud. Commissioner Miller expressed concern regarding expiry of the moratorium, which runs from October to October. City Attorney Dye suggested scheduling something by the end of June 2006 so that the City could begin working on the hearing process.

9. Hurricane Preparation and National Incident Management System (NIMS) and Required Certification.

Mayor SueLynn stressed the importance for everyone in the city to have a plan in place for survival off the Island for seven days, should a hurricane hit the area. She noted that a speaker at the recent hurricane conference, an expert in predicting hurricanes had said that he felt strongly that, concerns about global warming aside, this area was at the beginning of a natural cycle of twenty to thirty years of increased hurricane activity and intensity. The Mayor said that the difference between this active cycle, and the one that occurred between the 1940's and the 1960's is that millions more people have moved into the coastal hurricane zones.

Mayor SueLynn said that lessons learned from Katrina and other recently occurring hurricanes was that the local governments would need at least four days to mount their emergency operations. She indicated that a prerequisite for these operations would be for the cities to ensure the safety and housing of their staff members, families, and pets. The Mayor said that City of Anna Maria staff had been working for months on a Disaster Plan and had been developing an emergency operations manual, as well as looking at Shorewalk and back-up housing in other counties. She noted that pre-, during, and post-storm plans were being prepared by her staff.

The Mayor showed potential flooding areas in a Category 5 hurricane on a map, and indicated that the City of Bradenton would become an island for a period of time. She noted that with Hurricane Katrina, the storm surge lasted six to eight hours, while on Sanibel Island, a Category 2 hurricane with a five-foot storm surge virtually cut the island in half.

Mayor SueLynn noted that Emergency Operations Center (EOC) assignments needed to be made, and Commissioners' telephone and contact information needed to be verified. She said that she was planning to meet with the two local churches, the Anna Maria Island Community Center, and the business community to discuss their emergency plans and how the City could work together with them after the storm.

The Mayor stated that the City officials and staff could not be expected to handle post-storm operations alone. She also noted that if staff would be expected to work around the clock for the City, they would need to be paid, and that she would be putting this requirement before the Commission for its consideration. The Mayor went on to note that the Code needs to be revised to allow someone who returns to a severely property on the Island to move into a mobile home temporarily located on that property.

Mayor SueLynn noted that the Emergency Ordinance needed to be revised, and asked that this topic be put on the June 2006 Commission Work Session Agenda.

The Mayor said that the National Incident Management System (NIMS) training provides information about the process of organizing, coordinating, and responding to an event. She said that this was a national command system, developed in 2004, that would entail the taking by each Commissioner of a test, already completed by all City staff. The Mayor said that the staff would work with the Commissioners and provide them with information required for them to take the test online. *Mayor SueLynn stressed that verification that everyone has taken the test is one of the requirements for receipt of federal preparedness funds.*

Mayor SueLynn reported that the debris management contract with the County was now complete, and that Public Works Director George McKay and Deputy City Clerk Diane Percycoe had been representing the City at sessions with a local debris management company. She noted that the County had relieved the cities of a large burden relative to debris removal and the related reports to FEMA.

The Mayor noted that a great deal more consideration had been given to preparing for a hurricane, compared with recovering from one. She said that since Hurricane Katrina, the City staff had begun addressing these needs with a process called Continuity of Operation Planning (COOP). Mayor SueLynn said that she had invited Lauri Fegans, an experienced County official, to begin, along with her staff, to work with Anna Maria City staff on June 13th to put together such a plan for the City. The Mayor reported that storage units for important City files and historical documents had now been secured off-Island, so that removal of these materials will no longer need to be done during a storm event.

Mayor SueLynn acknowledged, with appreciation, the Commission's approval [on the Consent Agenda of this evening's meeting], of the satellite phone, for emergency communication purposes.

The Mayor next asked the Commissioners to review the list of contact information that she circulated among the Commissioners at this evening's meeting to verify that it was current and complete.

Mayor SueLynn noted that the Island Emergency Operations Center would cease to function at such time as a voluntary or mandatory evacuation is declared. She

said that recovery would then go through the Emergency Operations Center located in the center of Bradenton, assuming the situation is no more than a Category 2, at which point operations would need to be run from a back-up center. The Mayor expressed the hope that the new Center would be built before the area sustains a hard hit.

Mayor SueLynn noted that in the past, she and Commission Chair John Quam had carried this exhausting, 24-hour responsibility over the past several years. She said that the EOC is where the decisions are made in an emergency, and also where information is first received. The Mayor said that it would be very important that the City coordinate representation at the EOC at all times.

Mayor SueLynn determined the availability among the Commissioners for 24-hour shifts at the EOC as follows:

Commissioner Christine Tollette: as needed
Commissioner Dale Woodland: limited
Commissioner John Quam: as needed
Commissioner Linda Cramer: as needed
Commissioner Duke Miller: as needed

The Mayor noted that during the mandatory evacuation, there were 100 Anna Maria residents that did not leave their homes. She stressed that this is against the law, and also that after winds reach 45 mph, emergency staff are not allowed to attempt rescue assistance. Sgt. Kenney clarified for those present that during a mandatory evacuation, bridges remain down so as to be passable as long as this is possible, only in the easterly direction. No one who leaves the Island during a mandatory evacuation is allowed to return until the evacuation is lifted and authorization to return is formally announced.

Mayor SueLynn said that the possibility of Lakewood Ranch is being looked at for a back-up location.

10. Line Item Transfer for City Hall Roof Repair

Commissioner John Quam noted that at a Special Meeting held on Monday, May 22, 2006, the Commission had approved the contract for \$79,864, and that \$60,000 had been budgeted for this purpose.

MOTION: Commissioner John Quam moved to approve a Line Item Transfer totaling \$20,000 from Account Number 560.01-52 to Account Number 515.851-56 to cover the costs related to the contract for the City Hall Roof Replacement. Commissioner Linda Cramer seconded the motion.

Vote: All Ayes. Motion carried unanimously.

PUBLIC COMMENT

Larry Albert, of 711 Gladiolus, referred to a letter he had written to the City on May 8, 2006 and said it was unfair for him and thirty-two other people to apply for variances in order to put swimming pools in his back yard. He asked if this issue needed to go before the P&Z Board, or if the Commission needed to amend the City's ordinance, since prior to January 4th, 2004 he would have been allowed to put a swimming pool in his back yard as long as it was not over twelve inches high. Mr. Albert expressed concern that the variance process is expensive for property owners, and going before the P&Z Board would require that some sort of hardship be shown, which would not be the case in his, nor in that of a potential thirty-two other property owners.

Commissioner Woodland said he would be opposed to the variance approach in Mr. Albert's case, and commented that his May 8th, 2006 letter was a very good one. He said he thought that Larry Albert had a valid point, and expressed the opinion that it should be correctly addressed through modification of the Ordinance, rather than through the variance process.

Commissioner John Quam received consensus from the Commissioners and the Mayor to send Larry Albert's letter to the Planning & Zoning Board for their review and comment.

Tom Turner of 850 North Shore Drive noted that he wrote a letter to the City on May 8th, 2006 concerning the City's Zoning Map, and re-confirmed his opinion that this 1991 zoning map for the City of Anna Maria should be on public display.

MOTION: Commissioner John Quam moved to extend the meeting past 9:00 p.m. until Public Comment is completed, seconded by Commissioner Dale Woodland.

Vote: All Ayes. Motion carried.

Craig Colburn, P.A. of the law firm of Norton, Hammersly, Lopez & Skokos, P.A. introduced himself as counsel for Terry and Pat Oleson, property owners at 504 North Shore Drive, as well as a five ft. strip of land immediately north of that property which they have owned since 1953. He continued, "I am asking you to decide today whether or not you want to participate in a lawsuit over that five ft. strip of land owned by the Olesons. Photos that you have now in front of you show a history of the Oleson's ownership of the property."

Commissioner John Quam asked City Attorney Dye if Mr. Colburn should be allowed to discuss this matter at this evening's meeting, and the City Attorney responded that the language could be heard as Public Comment.

Craig Colburn continued, "I can that we are here tonight because you would not speak to use directly about finding a solution to this problem. So, we want to do it in an open forum so there is no question about what's going on, giving you the opportunity to ask us questions, and give us the opportunity to respond, before we go into a session of conflict, which I believe is where we are headed. As you may know, my client is in the process of constructing an addition to their home, pursuant to permits issued by the City of Anna

Maria and approved by your Building Official, Kevin Donohue on October 10, 2005. You may also know that Mr. Donohue issued a stop work order on April 6, 2006, after deciding that the City, not the Olesons, controls this five foot strip of land lying to the north of the property.”

He said, “There is no question that Mr. Donohue has made a mistake in this case. The question is, whether Mr. Donohue made a mistake in issuing the permit for the construction of the addition, or whether he made a mistake in issuing the stop work order, and deciding that the City, not the Olesons, controls that five foot strip. And you may have read in the paper a quote from Mr. Donohue, saying, ‘There are two separate surveys included in the building permit application.’ I included a copy of this newspaper article in the materials I Emailed to you this morning.”

Mr. Colburn then verified that this Email had not been received by all concerned. He said that he had provided the City with the only survey that was included in the application, and had included a copy in the materials now before the Commissioners at this evening’s meeting.

Mr. Colburn continued, “If you look at it closely, you will see that there are no discrepancies, and that the surveyor clearly marked that the property included a five foot strip of land which was part of a ten foot platted walkway adjacent to Lot 13 in the Wells Bay Harbor Subdivision, which is the Oleson property. The suggestion that there is some discrepancy is nonsense. The newspaper article also talks about your City Attorney’s comment that there is no evidence the City ever intended to abandon the ten foot walkway and that the same property was addressed in the 1993 letter by then City Attorney Robert Hendrickson. Now, this is not entirely on point, because that 1993 letter addressed the owner of Lot 12’s claim to the five foot strip of land on which there is a public walkway and that there is no dispute about it, and that five foot public walkway is shown in the photos that I have given you. That 1993 letter does not deal with the five feet at issue in this case.”

“You probably don’t know,” said Mr. Colburn, “based on the records that we have found in the City Building Department, that at least on four occasions, the City has directly addressed the question as to whether the City maintains an easement on this five foot strip of land. The first was between May 20th, 1982, and June 16th, 1982, when there was an exchange of letters concerning the maintenance of the five-foot strip of land. This exchange was emailed to you this morning and is included in the materials that are before you now. Specifically, the Director Public Works, Mr. Kehm, requested that the Olesons remove some trimmings from the five-foot strip of land, which Mr. Kehm believed was a City easement. Mrs. Dale Oleson, Terry’s mother, responded, and while she tried to have the trimmings removed, ‘the property in question is not a City easement’. Mr. Kehm responded, ‘You are indeed correct about the area I thought was an easement, as our map indicates. The sign has been removed.’ “

“The second instance was when Mr. Kehm had the opportunity to review building plans for an addition to the property in 1986. You have some photos of that addition in your

packet. Mr. Kehm confirmed that the City did not maintain an easement over this area, and he mentioned the setbacks for the Oleson property, which correspond to the center line of what was then the platted easement. The addition was constructed, and again, you have those photos.”

“The third was in 1993, when the owner of Lot 12 built his addition. At this time, the City placed a sign identifying the location of the five-foot easement, which you can see in the photos. In addition, the City placed some four-by-four wooden stakes identifying the extent of the City easement. These things were placed at the Oleson’s property line, adjacent to a concrete patio, which extended across the five-foot strip that is currently at issue.”

“The fourth time was in October 2005 when the Building Official reviewed the plans involving a 7 ft. 9 in. x 9 ft. 3 in. addition to the Oleson property that lies landward of the 1986 addition that you see in the photos. The side setbacks identified on the plan were identical to those used in the 1986 addition, and Mr. Donohue had every reason to approve these plans, based on the City’s longstanding position that it did not [unintelligible] with this five-foot strip of land. Now, presumably, Mr. Donohue relied on the same information as his predecessor, Mr. Kehm, and the Oleson surveyor relied upon, in determining the property line, according to their professional judgment. This determination is consistent with the documented history of this five-foot strip of land for the past fifty-three years, and we are here today, again, because you could not speak with use directly about finding a solution to this problem, based on the advice of your attorney. So, we are going to ask you now, in this open forum, to direct the Mayor and your staff to hold true to this historic interpretation that the five-foot strip of land owned by the Oleson family is not a City easement.”

Commissioner Linda Cramer asked, since this was Public Comment, if based on the City Attorney’s memo, that possibly the parties could appeal to the Commission in a quasi-judicial hearing, to present the facts. City Attorney Dye responded that he had suggested that there is a variance process that the Olesons could use to allow them to work within the setback, which he believed would cure some of their problems, but added that he did not know whether they wanted to apply for a variance.

Mr. Colburn said, “You need to understand that the variance would suggest that there is a variance required. Again, for fifty-three years, the City has held that it does not own an easement there, and then all of a sudden, in April 2006, the City decided, ‘Hey, we’ve got an easement here.’ And, not only are we going to stop the construction of this property, but possibly, we could make you tear down what you built in 1986.”

He continued, “So, I think that’s a little ... Again, I doubt if you all would make that happen – you would probably be able to reach some kind of accommodation, but the issue is, you don’t own that easement. The property line is the center line of the platted ten-foot walkway. There is no need for a variance. All you have to do is stick with the interpretation that your staff has maintained for fifty-three years. You don’t have to

vacate anything. Ordinance 503, which was adopted in 1989, well after these decisions were made, is not in play.”

Chair John Quam confirmed that the Commission was simply accepting Public Comment at this evening’s meeting, and would not act on the issue this evening. City Attorney Dye confirmed that this was the Commission’s policy.

Mr. Colburn responded, “It’s up to you. I mean, if you choose to do nothing today. Then you will have to decide that the decisions by the City in 1982, 1986, and 1993 were wrong, and that Mr. Donohue was wrong in issuing the permit in 2005. Now, you will have made the decision that you are willing to incur significant legal expenses.”

Commissioner John Quam replied that the issue was now in the City’s legal hands.

Mr. Colburn confirmed to the Mayor that he was not threatening the City. He said, “We are here seeking a solution. We can’t talk about this anywhere else. There is nowhere that we can discuss this. Mr. Dye has decided that he is willing to take this thing to court...[unintelligible] ...are you. You know, you will have made the decision to incur those legal expenses that fly in the face of fifty-three years of history. Now, you have to ask yourselves, are you willing to bet that the Court is going to allow you to ignore those fifty-three years of consistent history and action by the City relevant to this five-foot strip of land, on the chance that you might be able to obtain an additional five feet of easement between Bay Boulevard and Tampa Bay. You know, we hope that you would choose to honor the prior decisions of the City officials, and direct the Mayor to direct the staff to hold fast to those decisions. And doing so would not affect the public’s access to the water. The five-foot easement is still there. Perhaps you could take some of the money that you are going to spend on Mr. Dye’s pending lawsuit to improve that area. I think that would not only be a legally defensible, but a morally defensible decision. You could also direct the Mayor to work with us to find a solution. We would welcome having that, too.”

Commissioner Cramer asked if a procedure was not in place for the Applicant to have dialogue with the City officials. City Attorney Dye responded that the City had a process for appealing the determination of a Building Official to the P&Z Board, but that the time within which this to be done had already come and gone. He said that the notice went out in March 2006, and that there had been a thirty-day window within which to request an appeal, which has now expired. The City Attorney said that right now, the choice, as far as normal process would be concerned, would be either to request a variance to allow the property owner to build within the setback area, or for the property owners to file for a declaratory judgment to see whether their position is correct, or the City’s position is correct.

Mr. Colburn said, “I would suggest again that you have a third option, that you can direct your staff to stick with the decisions has made for the last fifty-three years, that there is no easement there. Then, there will be no lawsuit; there will be no declaratory action; and the house can be completed, and its construction will not be sitting there in a

hazardous condition, as it is now, with the roof incomplete. We just got done talking about the hurricane issue, which is very important.” He continued, “This is a serious issue, and this is not something that is not your problem. So, we would ask you to direct the Mayor to hold fast to those decisions of your prior City officials, which are documented. If you have any questions, I would be happy to answer them. We would really like to talk about this before we have to [unintelligible].”

Commissioner Tollette said that it appeared to her that a quasi-judicial hearing was needed. Commissioner Quam responded that the Commission’s decision on the point must be made with the advice of the City Attorney.

City Attorney Dye said that more than one process was involved. He said the first issue was that the platted access to the water had been platted back in 1950, and the rule is that, once platted, land is not given up unless there is a formal vacation of it or if there is abandonment of it. He said that Anna Maria’s position has always been that it does not give up its rights-of-way and its accesses easily. The City Attorney continued to say that, as far as he could tell, there was no formal vacation of the land in question on record. He noted that the property had not been able to provide any evidence of this except correspondence that discusses it. City Attorney Dye observed that there was a gap in the historic record as to whether there had been a vacation or not. He said that if the record was examined as it currently stands, that ten-foot wide public access is still a valid one, since no formal vacation document had been located, either through City staff research or the property owners’ research. The City Attorney concluded that right now, the City needed to respect that the 10-foot platted walkway still existed and operated in the same way as it did in 1950. He indicated that the only way to treat the situation, if the City did not want to be in the same position fifty years hence, was to request a formal vacation of the five feet in question. City Attorney Dye noted, however, that there was a Comprehensive Plan policy that obstructs this, since it states that the City will not give up its waterfront accesses. He said the property owners could ask for a variance to build within the setback as if the five feet had been vacated (thereby preserving the 10-foot walkway as well as the desired footprint for their home improvement), or they could go before a judge and state their grievance. The City Attorney noted that the public right-of-way was an important asset that could only be changed through formal processes.

Commissioner Woodland asked if there was an informal process that could provide some relief to the Oleson’s whose roof is not complete. City Attorney Dye said that, upon discussion with the Mayor and City staff, it had been decided that they would write the property owners a letter offering them the opportunity to make their home watertight until this issue is resolved, with the caveat that if it is not resolved in their favor, they would not retain rights to protect their most recent addition. He noted that he had not yet had time to produce this letter. Commissioner Woodland indicated that the earliest possible resolution of this problem would be most desirable. The Commissioner confirmed with the City Attorney that there was no informal process existing to deal with the issue, and that there existed only two formal processes available to the property owners at this point in time.

Commissioner Quam thanked Mr. Oleson for his presentation.

City Attorney Dye indicated to Commissioner John Quam that he would be out of town on the day of the June 9th, 2006 Commission Work Session, and that in his absence, Edward Conrad would be available to the City for the meeting, if needed. He asked the Commission to submit anything it could, prior to that meeting, so that he could review it with Mr. Conrad in preparation.

PRESS COMMENT

None offered.

ADJOURNMENT

MOTION: Commissioner John Quam moved to adjourn the meeting, seconded by Commissioner Linda Cramer.

Vote: All Ayes. Motion carried.

Commissioner John Quam adjourned the meeting at 9:21 p.m.

Respectfully submitted,

City Clerk Alice Baird

Date