

**CITY OF ANNA MARIA
CITY COMMISSION WORK SESSION
MEETING HELD AT ANNA MARIA COUNCIL CHAMBERS
10005 GULF DRIVE – ANNA MARIA, FL
THURSDAY, JUNE 12, 2008
7:00 P.M.**

CALL TO ORDER

Chair Quam called the Work Session to order at 7:00 p.m.

ROLL CALL: Mayor Fran Barford, Commissioner Dale Woodland, Chair John Quam, Deputy Chair Christine Tollette, and Commissioner Duke Miller.

Absent w/excuse: Commissioner Jo Ann Mattick.

Staff present: City Clerk Alice Baird, Deputy City Clerk/Director of Finance Diane Percycoe, Public Works Director George McKay, City Attorney Jim Dye, Building Official Bob Welch, City Planner Alan Garrett, and Minutes Clerk Stacey Johnston.

Press present: Sun, Islander.

1. Update on Status of Phase I Stormwater.

Mayor Barford announced that the City received the permit from SWFWMD for the Phase I Drainage Improvement Project.

Deputy City Clerk/Finance Director Percycoe reviewed the written responses she received from City Engineer Wilcox, HDR, relating to the Phase I Drainage Improvements.

Ms. Percycoe informed that \$64,000 has been adjusted in the line-item budget towards engineering fees and there will be \$64,000 less in construction costs. According to Engineer Wilcox, there may be some additional costs depending on inspection time. The \$64,000 will all be covered with the grant monies.

HDR has written off over \$30,000 of labor for meetings, rework and modeling efforts, and thousands of pages of printing.

The SWFWMD permit requires an advertisement and 21-day time period for any objections prior to finalization of the permit.

Commissioner Tollette asked if an oversight committee could be formed.

Mayor Barford informed that the City's control team consists of she, Deputy City Clerk/Finance Director Percycoe, Public Works Director McKay, and Commissioner Woodland. Residents could be utilized when getting into the inspection phase. She informed there are willing and knowledgeable citizens that are interested in assisting.

In answer to *Chair Quam's* question, Ms. Percycoe explained that the City has requested a grant modification specifically for the City Hall parking lot area. If approved, she did not anticipate any costs to go above the 50% grant match.

2. Discussion Regarding the Future Land Use Map versus Existing Zoning.

Chair Quam said he asked that this item be discussed due to confusion expressed by the residents after the six lots at N. Bay Blvd. and Pine Ave. were changed in the Future Land Use Map (FLUM) to ROR versus its zoning of Commercial. *Chair Quam* made reference to Section 2.1 of the Comprehensive Plan; Section 1.3.1; Mr. Arrant's comments referenced in the 9-27-06 Commission Meeting minutes; and Section 114-191.

Chair Quam asked if the six lots, for example, should be rezoned to ROR now that the lots are shown as ROR on the FLUM.

City Planner Garrett gave a detailed explanation of the three layers of Planning. He informed that:

- The Comprehensive Plan (CP) does override other regulations. The CP & FLUM is a roadmap indicating where the future of the community will go. The CP & FLUM can range from 5 to 20 years in the future.
- Zoning implements the Comprehensive Plan.
- Land Development Regulations (LDR's), specifically with zoning, tells 1) "what can go in the box", and 2) "how big the box can be" (setbacks, building coverage, lot coverage).

Planner Garrett said it was a policy decision as to whether the lots should be rezoned to be consistent with the CP. He informed that the State does not mandate they be rezoned, only that the LDR's / zoning ordinance, be consistent with the CP within one year.

The LDR's currently spell out each of the zoned districts and where the zoned districts should be found according to the FLUM. *Planner Garrett* explained that Government does not normally rezone land because it may change the value of the property. Instead, some jurisdictions allow the property owner to come in at his or her own time to rezone the land to be consistent with the CP.

Explanation followed relating to the differences between the ROR and C-1 districts. *Planner Garrett* stated that the only difference in the commercial aspect is that a veterinarian with a boarding kennel is allowed in C-1 versus ROR only allowing a veterinarian. C-1 does not allow residential, whereas ROR allows single-family and upper story residential over retail.

According to *Planner Garrett*, the main question is what type of permits can be issued for a partial that is zoned inconsistent with the CP. Examples followed. He stated it would be difficult to issue a permit that would be inconsistent with the designation.

Planner Garrett informed that the City has the right to rezone anyone's property. If the property were rezoned, the City would gain that the zoned district was consistent with the CP. However, as currently zoned, because the uses do not differ for retail, and the CP should be applied as far as retail limited to one level, he did not feel the City would gain much by rezoning it at the City level.

City Attorney Dye stated that though the Future Land Use category and zoning district are different, it does not necessarily make them inconsistent. He agreed that looking at the permitting process was the trigger point.

In answer to whether or not it should be rezoned, *City Attorney Dye* stated it might make it simpler to rezone, though generally the government does not rezone a property over the objection of a property owner. He said his experience has been to wait until the property owner approached the local government in order to decide when the conditions are right.

Planner Garrett handed out a copy of the procedures for rezoning noting there is a cost involved. Return receipt requested notifications to property owners within the radius of each rezoning are required. The mailing costs average \$500 per parcel and notification. Two separate mailings are required – One for the P&Z Board, and one for the City Commission. To rezone all ROR lots, a cost of approximately \$1,500 to \$2,000 for the mailings would be required and \$200 to \$300 in advertisements. The City would incur all costs unless the property owner was to request the rezoning themselves.

Planner Garrett explained the remedies for the opposition of any rezoning request.

Planner Garrett and *City Attorney Dye* agreed that the regulation goes beyond use – “usable floors” was used as an example.

Commissioner Miller stated the City’s legal bills would be much higher than the \$2,500 rezoning costs if someone were to see the FLUM map showing C-1, or if it were to be advertised for sale and they did not check the CP first. He felt the CP and zoning should be the same so that nobody will be confused.

Planner Garrett informed one rezone encompassing all the parcels of land could be performed in order that the zoned districts would be identical to the CP designation.

Chair Quam said in hindsight, he now feels that the six lots should have been left as C-1.

Commissioner Tollette asked why not leave the property as is until there is a request by the property owner to have it changed.

Planner Garrett pointed out that rezoning the property will put the owner and any future owners on notice especially if the CP had not be reviewed. He said it was ultimately a good idea to proceed with the rezoning. Another alternative is that the C-1 District could be crafted to have certain limitations.

Commissioner Woodland felt it might make more sense to complete the LDR’s to be consistent with the CP before changing the zoning.

Public Comment

Michael Coleman, Pine Ave., said he was in the process of acquiring the six lots at N. Bay & Pine Ave. and was looking at what could be done with it. He said he agreed that a good use would be for a hotel/motel.

Mr. Coleman stated there is a strong feeling that if there was a change to the LDR's to allow for a hotel/motel use it would be more likely to occur in C-1. He said Planner Garrett had indicated that once it was designated in the FLUM the applicant would still have to rezone the property. In other words, until a change for ROR has been applied for, it's still designated as commercial.

Mr. Coleman said if the strong sentiment is to allow for a hotel/motel at that location, they might as well leave the lots as Commercial. He suggested it be determined if a hotel/motel would be allowed in C-1. If determined that a hotel/motel was allowed in the ROR, Mr. Coleman said they would be happy to convert to ROR. They were concerned, however, if a hotel/motel were only allowed in C-1 and they were forced to rezone to ROR, they would not be able to have a hotel/motel at that location.

City Planner Garrett explained that the CP does not prohibit a hotel/motel – only the LDR's. He said if a hotel/motel were approved as a permitted use, and defined as a retail use in the C-1, then in looking at the ROR (overriding CP designation that allows retail uses), it would therefore not be inconsistent. He felt it makes more sense to put it in the zoned district as what is shown on the CP.

Mr. Coleman suggested the Commission determine if the best use for the six lots is a hotel/motel, then determine which zoning district would the Commission like it to be in.

Chair Quam pointed out that Policy 1.6.1 – Commercial development within the ROR – shall be limited to the first floor. Mr. Coleman then felt the Commission should change the LDR's to allow hotel/motels in the ROR.

Commissioner Miller suggested the City Planner and City Attorney research the following question and present their written determination to the Commission:

- Property designated as C-1 and changed to ROR by the CP – what can be built on that piece of property and what can the City Commission do to affect items on the property that is consistent with the CP.

P&Z Board Chair Doug Copeland, 708 N. Bay Blvd., felt a CP change would be required in order to allow a hotel/motel on the six lots. He stated it could be no more than one level over retail if allowed in the ROR without changing the CP.

Mr. Copeland suggested discussion also be held relating to the R-2 District that has been eliminated.

Chair Quam asked if the R-2 District should be rezoned to R-1.

Planner Garrett felt the answer was no it should not be. Explanation followed feeling if rezoned to R-1 numerous non-conformities would be created. However, an R District could be created. A determination would need to be made as to whether or not all the duplexes should be grandfathered and brought into conformity as a single-family when wanting to do any major renovations.

Commissioner Woodland referenced Mr. Arrant's statement in the 2006 minutes that the Statute allows no action inconsistent with the Comprehensive Plan and that a Public Hearing is considered an action. Mr. Arrant further recommended that at the initial stages of evaluating a development application, the reviewer should first determine whether it would consistent with the CP and if it is not the application should be denied before it even goes before the local planning agency. Commissioner Woodland asked if that was being done.

In response, both *City Attorney Dye* and *City Planner Garrett* disagreed stating that due process cannot be denied. *City Attorney Dye* informed that if an applicant pays the fee and files an application with the City to do something on their property, even if inconsistent with zoning code or CP, they are entitled to a hearing - even if denied.

Michael Coleman said he was not seeking to maintain C-1 on the six lots. He was only responding to the information he had gotten that it would be an ideal location for a hotel/motel. Mr. Coleman suggested that if the property should be rezoned, that the P&Z Board be requested to look at allowing hotel/motels in the ROR.

ACTION: City Attorney Dye and City Planner Garrett's response will be reviewed by the City Commission at the July 10, 2008 Work Session.

3. Discussion Regarding Sec. 74-351 Site Plan Approved Process.

Commissioner Woodland said he was confused when reviewing Sections 74-350 through 74-354 of the Code in relation to the recent P&Z Board Site Plan hearing for the Sandbar Amended Site Plan application. He asked that the following be addressed:

- Is it appropriate that Site # 2 (new request) be part of the amendment to the original site plan.
- Should the Commission review the language in the Code for any changes to the review process.

Planner Garrett agreed that the Code should be reviewed and the City should always try to find a more user-friendly process. He reminded that a tiered system had been created.

Planner Garrett explained that the Sandbar had significant changes to the extent that instead of considering it an amended Site Plan it was a new final Site Plan. He stated there were enough changes preventing an Administrative approval of

the Site Plan that it was forwarded to the P&Z Board. The Sandbar has every right to place anything they want to show on their Site Plan. The P&Z serve as the final authority unless appealed by the applicant.

Planner Garrett suggested if the Commission determined they should serve as the final authority for Site Plans, a consent agenda could be developed so as not to burden the Commission with straightforward type issues. The original intent of the P&Z Board having the final authority for the Site Plans was to relieve the burden off the City Commission.

Commissioner Woodland felt the City Commission is “left out of the loop” in regard to significant issues important to so many people.

Commissioner Woodland pointed out that the original conditions and stipulations agreed to by the City Commission on the Sandbar’s original Site Plan had never been met and they were now having additional requests.

Planner Garrett responded to the letter he had written to the Sandbar regarding their non-compliance with the original Site Plan. He informed that the Sandbar responded to his letter by submitting an amended Site Plan. If they had not responded they would have been brought before the Code Enforcement Board due to their non-compliance.

Lengthy discussion followed. It was suggested that the conditions and stipulations of the original Site Plan must be met prior to application of an amended plan; that if an amendment to a Site Plan is requested, only the original approving body would be authorized as the final authority on its amendment (whether it be the City Commission, P&Z, or Administrative approval); City Commission utilizing a consent agenda type system for routine applications; and looking at what would trigger an application going back before the City Commission.

City Attorney Dye informed there is no requirement that a Site Plan must be a Public Hearing, however, Anna Maria has always held one. He explained that if a Site Plan request is placed on a consent agenda (after recommendation by the P&Z Board) it can be asked if anyone has any comments on that specific application and if not the items are considered as a whole. Doing so meets the need for having public process.

Planner Garrett stated if a specific request is pulled off separately from the consent agenda, a Public Hearing can then immediately be held since it has already been advertised. Those applications that are felt should not be placed on the consent agenda can be advertised for a Public Hearing separately before the Commission.

Planner Garrett pointed out that the Sandbar’s approval was left open ended. He prefers that language be approved that any required conditions be met within a specific time frame. Therefore, if not in compliance, it can be forwarded to the

Code Enforcement and be fined. Once all items are in compliance, the City will issue a Notice of Compliance.

ACTION: It was agreed that the City Attorney and City Planner will draft a process for final approval of Site Plans and their consideration on the City Commission's Consent Agendas. Also, the process if the Commission removes an item from the Consent Agenda – what that process will be. This will be discussed at the July 10, 2008 Work Session.

Public Comment

Jeremy Anderson, Lobeck & Hanson, spoke in regard to the due process and Site Plan review and amendment process. He confirmed he was not recently denied due process.

Attorney Anderson pointed out that Anna Maria limits those persons opposed to a project to three minutes to speak. He then quoted case law relating to allowing more time to speak, whereas, the court looked at nine review criteria.

Attorney Anderson stated he had met with Planner Garrett approximately one month ago and was shown a checklist used with viewing a Site Plan that he believed included nearly 30+ criteria. He stated that as an opponent trying to speak on all those criteria, three minutes was not enough time.

Attorney Anderson then informed the law firm he works for won a case against the City of Venice for denial of due process. The case was won based on being prevented to cross-examine witnesses and rebutting testimony in favor of the project. He felt the P&Z should consider this issue and not violate the issue of due process. He stated his clients would like all opponents or proponents to be allowed sufficient time to state their case.

Attorney Anderson addressed the Commission's suggested changes to the Site Plan process. He said that even if the P&Z Board approves the changes for the Sandbar there would still be another hearing before the City Commission. He further asked for clarification from the City Attorney and City Planner relating to how to amend the Site Plan.

City Attorney Dye said limits are allowed as to how much time a speaker gets at the podium. However, if the limits begin to interfere with the person being able to address the issue, they should be given additional time. In any Quasi-Judicial Hearing, rebutting testimony and cross-examining witnesses is allowed – however, it is usually limited to the parties and not the witnesses or the neighbors, for example.

Michael Coleman, Pine Ave., felt along with due process comes the process of getting to the point.

Mr. Coleman agreed with the process of authorizing the P&Z Board to be the final authority for Site Plans. He voiced concern if the Site Plan then goes onto

the next level it may include the possibility of lawsuits. He stated the current process is working and the Staff knows what they are doing. To change it would create the opportunity for confusion.

**4. Discussion on Lawn/Swale Management:
Review LBK Ordinances: Fertilizer Management and Grass Clippings
Review Input from Local Lawn Care Company(s)**

ACTION: Continued for discussion at the July 10, 2008 Work Session.

5. Old/New Business Items

New Business

City Attorney Dye informed a letter had been received and Lobeck & Hanson threatened a lawsuit. He will be addressing the letter that was received.

Old Business

Commissioner Tollette asked for clarification relating to not having the July 4 Fireworks Display in Anna Maria this year.

Mayor Barford explained that serious injuries have continued to occur during the July 4 Fireworks displays throughout the County. She informed that the BIEO meeting / Mayor's met last fall and agreed it was a problem in Anna Maria.

Mayor Barford confirmed if persons do have fireworks on the beach, law enforcement would confiscate them. She reminded that Fireworks are illegal in Manatee County.

She explained they would like to try it for one year and all law enforcement and extra sheriff's for the three cities will be out in full force.

Mayor Barford said it was basically a matter of reeducating the public on illegal fireworks and how dangerous they can be. There will be street signs to notify the public, along with notifications in the County utility bills. An exit meeting will be held and then they would plan for next year. Mayor Barford commended Ed Chiles for working with the City relating to the Fireworks issue this year.

Public Comments on agenda items only – None.

Press Comment – None.

ADJOURNMENT

The meeting was adjourned at 8:58 p.m. on motion made by Chair Quam and seconded by Commissioner Miller. All Ayes.