

**CITY OF ANNA MARIA
REGULAR COMMISSION MEETING
JUNE 29, 2006
7:00 P.M.**

CALL TO ORDER (9:28 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: Consulting City Attorney Mike Connolly, City Planner Alan Garrett, Craig Colburn, of Norton, Hammersley, Lopez & Skokos, P.A. (counsel for Tom and Patricia Oleson); City Attorney Jim Dye, Minutes Clerk Sylvie Reichmann

Press: Sun, Islander

1. CONSENT AGENDA

- a. **Approval of May 26th, 2006 Regular Commission Meeting Minutes; May 22nd, 2006 Special Commission Meeting Minutes, 6:00 p.m.; May 22nd, 2006 Special Commission Meeting Minutes 6:15 p.m.**
- b. **Appointment of Citizen Recognition Committee Members**
- c. **P&Z Board Appointments: Jim Conoly, Randall Stover and Margaret Jenkins (all to July 2009 term)**
- d. **Proclamation: Jim Taylor Day, July 4th, 2006**
Mayor SueLynn read the Proclamation celebrating the life of the late Jim Taylor, and recognizing his civic contributions to the Island of Anna Maria and the enjoyment of the public at large.

MOTION: Commissioner Cramer moved to approve the Consent Agenda, seconded by Commissioner Tollette.

Vote: All Ayes. Motion carried.

2. REPORTS AND UPDATES

Addressed in writing.

3. Recap of how the 2006 Legislative Session Affects Manatee County – State Representative Bill Galvano

Commissioner John Quam indicated that the State Representative would be addressing the Commission in July.

4. Second Reading and Public Hearing of Ordinance No. 06-659, Amending Section 114-135 – Non-conforming Lots and Parcels

Commissioner John Quam opened the Public Hearing and continued it to Thursday, July 27th at 7:00 p.m.

MOTION: Commissioner Duke Miller moved to continue the Public Hearing to July 27th, 2006 at 7:00 p.m., seconded by Commissioner Linda Cramer.

Vote: All Ayes. Motion carried unanimously.

5. First Reading of Ordinance No. 06-655, Amending Sign Regulations

Commissioner Linda Cramer read the Ordinance by title. City Planner Alan Garret, AICP took the floor and indicated that the packet before the Commission was the culmination of their review and consensus from the workshops, and told the Commissioners he was prepared to answer any questions regarding amendments to Ch. 98, shown in redline strikethrough format. Commissioner John Quam inquired if any additional information or wording had been suggested regarding, existing non-conforming signs, historical ones in particular. City Planner Alan Garrett responded that the recommended language was stated at the bottom of Page 13 and the top of Page 14. *He added that the Commission may want to add the words "other than signs that have been deemed to be historic by the City Commission". There was consensus among the Commissioners for this suggested revision.*

Commissioner Dale Woodland said he had not yet made up his mind relative to this Ordinance, since the original idea had been to reduce streetscape clutter, primarily caused by real estate sales and rental signage. He said, noting that the Consulting City Attorney had informed the Commission that rules they adopted relative to signs could not be content based, that he was not interested in putting a burden on citizens. He pointed out that the business community had initiated review of the Ordinance by submitting its recommendations to the City.

Commissioner John Quam said agreed, and indicated, however, that in his opinion, the City should move ahead with the Ordinance. Commissioner Duke Miller agreed also, noting that the commercial entities in the city had brought the Ordinance to the attention of the Commission. He added that he did not feel that the size of the sign should be related to the activity or size of the company it was publicizing.

Commissioner Linda Cramer said she felt that the Ordinance had originated with a problem with the size and number of signs the Code allowed an entity such as the Historical Society, noting also safety and public welfare issues concerning setback requirements and vehicular traffic.

Commissioner Christine Tollette asked, relative to Page 11, Section 98.62 On-site Business Signs, Item #1, and the limit of a single sign for each commercial activity, if Mama Lo's and other businesses that have two entrances, would only be allowed one sign. *City Planner Alan Garrett confirmed that the wording of the language could be changed so that two signs would be allowed, only each could be no larger than 1.5 sq. ft., since businesses with two public entrances to their*

premises could not be allowed more signage area than other businesses in the city.

City Planner Alan Garrett said he would work on the issues raised by the Commissioners in preparation for the Second Reading of the Ordinance.

Michael Connolly, Consulting City Attorney for the drafting of this Ordinance, took the floor to indicated that he thought that if the Commission approved this Ordinance, it would legally be in a better position than it was currently in. He reminded the Commission that the attention sign ordinances had been receiving recently in the federal 11th Circuit Court of Appeals and the predatory pattern being observed relative to litigation about signage and constitutional rights are things the City should be aware of and concerned about for the future implications.

Public Comment

Kevin Van Ostenbridge of 216 69th Street in Holmes Beach commended the efforts of the Commission on this Ordinance and introduced himself as a representative of the real estate community. He said the only problem he saw was the 4 ft. height limitation, because of hedges and fences, and recommended instead a 6 ft. height limitation, along with permission to use post-style signs for the purpose of displaying the higher signs. He said in pre-storm situations, realtors would be able to remove the signs and leave the posts anchored in the ground. Mr. Van Ostenbridge said there was a possible problem with allowing only one sign per property. He pointed out that the 4 sq. ft. limitation was a problem, since the standard realty signs are 4 ft. in area to begin with. The realtor therefore requested that the Commission consider allowing an additional 4 sq. ft. for the rider and the box. He asked if members of the real estate community could meet, perhaps at a workshop, prior to the Second Reading of the Ordinance.

Donald Schroeder, Chairman of the Anna Maria Island Chamber of Commerce, referred to the revision of the Ordinance dated June 29th, 2006, and relative to Page 4, Section B, asked if this included magnetic signs on the sides of vehicles. Mr. Schroeder suggested this topic also be discussed at a workshop. Mr. Schroeder referred to language that would seem discriminatory, reading aloud "except for a barber pole". With reference to Page 5, paragraph 'B', relative to subdivisions and the stipulation for 15 days in a calendar year, he noted that subdivisions have different phases, and suggested that more days per year could be permitted. He next referred to paragraph 11 on Page 5, and asked for clarification of the exception it mentioned. Relative to exterior neon signs, he asked if interior neon signs would be allowable due to omission. With regard to Page 6, third paragraph, Mr. Schroeder, noted the requirement for coming into compliance when erecting a new sign to replace a non-conforming one that has been damaged, and suggested that special protection be given to historically long standing signs that have given character to the city, as well as consideration of the inclusion of a percentage of damage threshold, similar to the 50% rule used by

FEMA for structures. Referring to the bottom of Page 7, paragraph 8, Mr. Schroeder again observed that no time was specified for the permitting. Mr. Connolly noted that the time frame was mentioned in 98-37 (a). Moving on to the next page, top paragraph, Mr. Schroeder noted that this should be time certain, and also confirmed with Mr. Connolly that whether something is reasonable or unreasonable is something that would need to be determined by a judge. Mr. Schroeder also noted that two signs are sometimes necessary for residences, pointing out the need for signs on the water side of properties, as boating people also use the water when looking for property. Mr. Schroeder noted paragraph A, under Article III, Regulations, that flags are helpful to designate properties conducting open houses. Relative to off-site and directional signs, the realtor noted that two signs are sometimes needed, especially for open houses. He said it would not be a problem to keep signs out of the right-of-way, but recommended allowing two signs. Mr. Schroeder noted that realtors, by Statute, are required to do everything they can to sell houses.

Commissioner John Quam asked Consulting City Attorney Michael Connolly to take the floor to address some of the legal questions raised. He referred to Page 8 in Section 98-37 (a), which states that if no action has been taken on a sign permit within thirty (30) days, the Applicant is entitled to an appeal to the City Commission. Relative to the regulation of flags, he noted that under Section 98-41, flags of any type are now exempt.

Public Comment

John Cagnino, of 9807 Gulf Drive, referred to Page 5, relative to non-conforming signs, and said he felt this language was vague and recommended that existing signs be grandfathered. He said this relates to Page 14 in Section 9. Mr. Cagnino said he was concerned about the abandonment of signs when some exist as a part of a building, which, in commercial real estate, can sometimes sit unoccupied for months. Also, he commented relative to item #2 on Page 9 and replacement of plastic faces and the difficulty this poses for rental property when tenants change. Relative to the 16 sq. ft. allowed, he was not sure that this was equitable. Commissioner John Quam noted that Mr. Cagnino had expressed this particular concern at the last meeting.

Tom Aposporos of 208 Crescent Drive said he thought the premise behind the Ordinance was an improvement of the visual image of the city, and therefore that it might make sense to get back to why the Ordinance was considered to begin with. Relative to temporary signs, he said he felt that the Commission was being overly generous by allowing a 4 sq. ft. size for signs instead of 3 sq. ft. Mr. Aposporos noted that temporary signs were an improvement in the area of public safety, and applauded the Commission for their work in this direction. He agreed with the comment relative to increasing the allowable height, since he saw the problem involved with fences and hedges was a valid one. Regarding canals and beach / bay frontage, Mr. Aposporos suggested that these areas also be considered as front footage on properties bordering the water. He noted that one

reason given for drafting the Ordinance was to have less signs, and encouraged the Commissioners to continue to pursue that goal. He noted that the Commission may wish to continue in the direction of simplicity, and observed, however, that the appearance of Longboat Key and Bradenton Beach had improved as a result of the adoption of their sign ordinance. Mr. Aposporos indicated that he felt a community's general appearance was an important subject to consider and address.

There was consensus among the Commissioners not to hold an additional workshop on this topic, and to hold the Second Reading and Public Hearing on July 27th, 2006 at 7:00 p.m.

6. First Reading of Ordinance No. 06-663, Adopting the Manatee County Animal Ordinance No. 06-18, which was approved March 14, 2006 by the County

Commissioner John Quam indicated that this Agenda Item would be moved to July 27th, 2006.

7. Beach Access / Walkway between 502 and 504 South Bay Blvd.

Commissioner Linda Cramer recommended scheduling a Special Meeting on this topic to allow time for discussion, in detail, of the position the Oleson's attorney had already presented. Commissioner Tollette said that although she understood that perhaps decisions would not be made given the short time remaining for the meeting, but indicated that she would be interested in hearing what Craig Colburn, counsel for the Oleson's, had to say this evening.

Mr. Colburn thanked the Commissioners for allowing him the opportunity to take the floor. He began by saying that no one wanted to prolong the dispute unnecessarily and that no one wished to enter litigation. He said that he read and appreciated the City Attorney's memo of June 29th, 2006 and also being supplied with a survey. He indicated that the survey is on display at this evening's meeting, along with photographs showing the property both before and after construction began. Mr. Colburn said that he and his clients would like the opportunity to sit down with City staff and determine what could be done in this situation. He noted that there were different things that neither party wished to admit, in case the problem did go to litigation. Mr. Colburn said that the City did have another option. He asked the Commissioners to put themselves in the shoes of a family that has owned a property for fifty-three years, and ask themselves how they would like to be treated by their government, noting that the City is now telling you that you could be required to tear down parts of your house that have been there for over twenty years. Mr. Colburn noted that the Oleson's had used architects, done surveys, and received building permits for all of their work. He indicated that the City had told the Oleson's that no easement exists on that area, and contended that there was in fact a five (5) ft. easement there. He asked the Commissioners to examine the survey and expressed the opinion that a judge

would not ignore that survey. Mr. Colburn concluded by saying that he and his clients were open to meeting and discussing options with the City.

Commissioner John Quam asked City Attorney Jim Dye to give an overview of the topic. Mr. Dye noted that he had asked for this item to be addressed this evening because of a City policy has to keep within a thirty-day window. He said that the Olesons' choices appeared to be either to go to court to seek a resolution of the problem, probably relative to removal of the wall and setback violation, or to consider the vacation option he referred to in his E-mailed memo to the Olesons' attorney, with copies to the Mayor, Commission Chair John Quam, and Building Official Kevin Donohue.

Commissioner John Quam confirmed that the core issue was that the part of the walkway owned by the Olesons and that it had never been vacated by the City. City Attorney Jim Dye noted that the Oleson's did not feel it was their responsibility to apply for a variance since this would imply that they do not already own the property.

Commissioner Dale Woodland observed that this was frustrating situation and that all parties wished to have this issue resolved.

Commissioner Christine Tollette asked, if the Commission were to approve a vacation of the land in question, whether the owners of 502 South Bay who were denied their request in 1993 could then come back and object to the Oleson's receiving special treatment, or if there would be a possible problem with precedent. City Attorney Jim Dye said he did not feel there was a legal precedent, but rather that the precedent would be persuasive in nature.

Commissioner Duke Miller said he did not feel precedent should be considered a problem for the City. He noted that the Olesons would need to go to litigation if they did not wish to apply for a variance. Mayor SueLynn said that the issue was now one of time, since the house is just sitting there with the fence in the middle. She said the reason this was brought before the Commission was that she, the City Attorney, and the Building Official had not been able to resolve this during discussion at private meetings.

Commissioner Christine Tollette said she appreciated, as did Commissioner Duke Miller, that vacations were not a desirable approach, however, she said the City would benefit by getting its 10 ft. of access. Commissioner Christine Tollette said she could not imagine that anyone else in the City could replicate this unique situation.

Commissioner Dale Woodland noted that amending ordinances and also the Comprehensive Plan could be time consuming and expensive. He also agreed that this would not set a precedent, and that the City would not be flooded with vacation requests if the City went ahead and vacated this property. He expressed

sympathy for the property owners and indicated that he would like the Commission to do anything it could to resolve the situation to the benefit of both parties.

City Attorney Jim Dye reminded the Commissioners that to apply for a variance, the Applicant would need to address and satisfy all the criteria necessary for the granting of a variance.

Commissioner Linda Cramer noted that this discussion should be done carefully and given sufficient time. She again recommended that this topic be addressed at a Special Meeting.

Craig Colburn took the floor again and presented copies of the survey provided by City Attorney Dye for the Commission's consideration. He said that he appreciated the time taken by the Commission this evening, and also recommended discussing this topic at a future meeting. Mr. Colburn observed that no one wished to enter litigation. He presented two options to the Commission and asked that they try to put themselves in the Oleson's position. He said the survey was to establish the limits of the platted walkway. Mr. Colburn said that the City had the option of relying on the survey, and guaranteeing itself control of the situation. He said that there may be an opportunity, through negotiation, to come up with something that works. Mr. Colburn said that the wall is necessary because people come through the Oleson's property. He said a judge would not ignore the survey showing a platted, 10 ft. walkway, and noted that the Oleson's were the only ones in their subdivision granted the 5 ft. of the walkway. Mr. Colburn asked the Commissioners to think about this subject, and to consider instructing the Building Official to rely on the survey. He said that he and his clients were open to discussing the option of applying for a variance, but reminded the Commission that the property had already been in the Oleson family's possession for fifty-three years.

Commissioner Dale Woodland asked what, if anything, the Commissioners found disagreeable with the solution the Olesons and their counsel recommended. Commissioner Tollette confirmed with the City Attorney that he felt little could be achieved by sitting to further discuss the same options, however both sides could provide each other with additional persuasive evidence or precedent in case law.

8. Review Proposal for Property Appraisals of City Hall, Island Players Building, 402 Pine and the City Pier

Not addressed.

PUBLIC COMMENT

Taken throughout the meeting.

PRESS COMMENT

None offered.

ADJOURNMENT

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

Vote: All Ayes. Motion carried.

The meeting adjourned at 10:52 p.m.

Commissioner Christine Tollette confirmed there would be a Budget Meeting on July 6th at 6:00 p.m.

Respectfully submitted,

City Clerk Alice Baird

Date