

**CITY OF ANNA MARIA
CITY COMMISSION WORK SESSION
MEETING HELD AT ANNA MARIA COUNCIL CHAMBERS
10005 GULF DRIVE – ANNA MARIA, FL
THURSDAY, SEPTEMBER 10, 2009
7:15 P.M.**

CALL TO ORDER

Chair Quam called the Work Session to order at 7:15 p.m.

PLEDGE TO THE FLAG

ROLL CALL: Mayor Fran Barford, Commissioner Jo Ann Mattick, Commissioner Dale Woodland, Chair John Quam, Deputy Chair Christine Tollette, and Commissioner Chuck Webb.

Staff Present: City Clerk Alice Baird, City Attorney Jim Dye, Planner Alan Garrett, Public Works Director George McKay, and Minutes Clerk Stacey Johnston.

Press: Sun and Islander

1. Two Family Dwellings – Limited Expansion – Ordinance 09-703.

Chair Quam stated that the Commission had spent a lot of time discussing this issue and felt a decision was needed that evening to either move the Ordinance on or take no further action.

Chair Quam said as a result of the past Work Sessions, the Commission should consider either:

- Not allowing any expansion.
- Non-conforming duplex, as permitted uses, be allowed limited expansion to one time, increase of 350 sq. ft. on a 5,000 sq. ft lot or 375 sq. ft. on 7,500 sq. ft. lots – retaining 35% building coverage.
- Duplexes as permitted uses – legal, conforming – unlimited expansion within the 35% building coverage.

City Planner Alan Garrett provided an update of the two family dwellings/duplex history. He pointed out that though a 375 sq. ft. expansion may be allowed, Pre-FIRM (Flood Insurance Rate Map) homes replacement costs might not be allowed that amount of expansion without elevating the structure.

He informed there were approximately 60 non-conforming duplexes that were originally in the R-2 district that did not conform to the lot size. Only 4 or 5 in the R-2 did comply with the lot size as legal conforming uses. Discussion followed relating to the Pre-FIRM structures.

Planner Garrett reminded that the consensus of the P&Z Board was to give some ability for the duplexes to expand in order for them to maintain viability of the uses.

In response to *Commissioner Woodland's* request, Planner Garrett confirmed that language could be written allowing the duplexes originally in conformance to be exempted. Those structures would have the ability to expand, as they want.

Commissioner Webb stated that many people have had duplexes and not realized they are non-conforming uses. He suggested the Commission determine if they did or did not want duplexes to continue their existence in Anna Maria. If they wished to do away with duplexes, they would need to remain as non-conforming uses. If the Commission agreed to keep duplexes in order to not encourage larges homes to be built in place of the duplexes, then all duplexes should be treated the same.

Commissioner Webb said he had reviewed the City's code. He stated he would like to see the City stay as it is and give encouragement to those with duplexes. He felt except for some additional traffic, a larger home would be a greater impact in the community

than a smaller duplex. It was Commissioner Webb's opinion that the Ordinance should remain as written on March 26, 2009. He reminded that expansion still would be limited by FEMA regulations.

Commissioner Mattick felt it was a mistake to eliminate the R-2 District. However, since it has been eliminated and the duplexes are now R-1, it was her opinion they should have the same rights as all others in R-1. If a duplex has room based on setbacks to expand, she felt they should be allowed to do so up to the 35%.

Chair Quam asked for a straw vote on two proposals. The results were as follows:

- **Allow limited expansion to a one-time 350 sq. ft. on a 5,000 sq. ft. lot and 375 sq. ft. on a 7,500 sq. ft. lot and retain a 35% building coverage.**

ACTION: The straw vote was 2 to 3 with Commissioner Woodland and Chair Quam voting in favor.

- **Leave the Ordinance as it is currently written. Allow duplexes to remain as a permitted use as written by Ordinance adopted March 26, 2009 – not regulating any expansion on duplexes.**

ACTION: The straw vote was 3 to 2 with Commissioners Mattick, Tollette, and Webb voting in favor.

As a result of the straw vote, *Chair Quam* announced that discussions' relating to the Two Family Dwellings was closed.

Public Comment – None.

2. Re-work of Chapter 75.

No discussion. This item was withdrawn from the Agenda prior to the meeting.

3. Review of Personal Wireless Service Facility (PWSF) Ordinance.

Ref: Sec. 114:551-577 of the City's Code.

Chair Quam provided a summary explanation why the PWSF Ordinance was originally written. He explained that a provider approached a local church to erect a cell tower. Residents were not in favor, however, the City Commission did discuss it. At that point, a 180-day cell tower moratorium went into effect while the City was working on the Ordinance.

A communications consultant was hired and several meetings were held relating to the issue. An Ordinance was then adopted in 2003.

Chair Quam then informed that a representative addressed the BIEO at a recent meeting. They were informed that the Federal Communications Law had changed and that the City's Ordinance may no longer be good. The City's Ordinance was placed on the Work Session agenda for discussion.

City Attorney Dye addressed the Commission. He had been asked to review the City's present Code language to review any areas of concern. He informed there are always cases in the Federal Court system and noted that the policy of Congress is that wireless telephones are encouraged. As a result, a great deal of regulatory oversight was given

to the Federal Communication Commission with the local governments allowed to maintain their land use and zoning powers. Reference was made to a case in California where a local government tried to regulate technology. It was determined that the regulating of technology was a Federal subject, that local governments can regulate where it is located, but can not determine what type of technology a company chooses to provide or not to provide.

City Attorney Dye informed there had been no changes to the actual Statute adopted by Congress.

In reference to the City's current Ordinance, Attorney Dye felt it was still a good Ordinance. He pointed out, however, that a real applicant had never tested the City's Ordinance.

After review, City Attorney Dye recommended that the following sections be amended in order to tighten up the language and avoid any possible future litigation:

- Sec. 114-552. Definitions - *Carrier* – Remove 2nd sentence of that definition - (A tower company, a tower management firm or a tower builder is not a carrier).
- Sec. 114-555. Standards. (1) b. *Avoidance areas*. – Need to define # 2. Historically and culturally significant resources; and # 5. Visual corridors.
- Use of “should” throughout the Ordinance needs changed to “shall”. Discussion followed as to why the Ordinance was originally adopted with the usage of “should”. Attorney Dye pointed out that the use of “should” implies it is not mandatory. *Commissioner Webb* agreed. Explanation followed relating to the three tiers of permitting outlined in the current code language.
- Sec. 114-555. (2) b. – Need to define average tree height. It was noted that the current Ordinance refers to two height limitations.
- Sec. 114-555. (2) b. – Need to define non-native trees. The separate Ordinance defining the non-native trees should be referenced in Chapter 114.
- Sec. 114-556. Fall zone and setback requirements. (a) 1. *Fall zone*. and (b) *Setback* - versus the “encouraged areas” referenced in Sec. 114.553. (a) (2). City Attorney Dye felt the language in these two separate sections were in conflict. He further explained what a Fall zone is.
- Sec. 114-556 (a) 1. – Need to define “where people congregate”.
- Sec. 114-556 (b) *Setback*. (2) – This subsection ends with the language “at the point of attachment”. City Attorney Dye felt that “at the point of attachment” refers to – attach to a pre-existing structure. However, the language is not clear and should be better defined.
- City Attorney Dye agreed that the Ordinance should be setup to encourage the Tier I – administrative application review.

Further Commission discussion included the presentation made at the BIEO meeting; if the applicant should be invited and asked to make a presentation to the City Commission; that there would be no monetary gain to the City unless the equipment were to be placed on City property or property leased by the City; and whether or not to place another moratorium on the Ordinance.

It was *Commissioner Webb's* opinion that the underlying focus of the original Ordinance was not for providing service to Anna Maria but to provide service in the Gulf of Mexico and Tampa Bay.

Chair Quam noted that the application fee was presently \$3,000.

After discussion, it was agreed that a cost projection for updating the current Code language would be prepared by staff and presented at the next Commission meeting. Cost projections will include the estimated cost of advertising, legal costs, etc. and the cost to include a communications consultant in the process as requested by *Commissioner Woodland*. It was also noted that the City of Bradenton Beach was also in the process of reviewing their Ordinance.

Public Comment on Agenda Items - None

Press Comment – None.

Adjournment

On motion made by Commissioner Webb and seconded by Commissioner Tollette, the meeting was adjourned at 8:15 p.m. The next regular meeting will be held on Thursday, September 22, 2009, 7:00 p.m.

Alice Baird, CMC, City Clerk