

**CITY OF ANNA MARIA
REGULAR COMMISSION MEETING
OCTOBER 19, 2006
7:00 P.M.**

CALL TO ORDER

PLEDGE TO THE FLAG

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

Also present: Craig Colburn and Mr. Owen from Norton, Hammersley, Lopez & Skokos, P.A. (for the Olesons at 504 S. Bay Blvd.); Building Official Kevin Donohue, City Attorney Jim Dye, City Clerk Alice Baird

Press: Sun, Islander (7:00 p.m. to 9:00 p.m.)

1. **CONSENT AGENDA**

- a. **Proclamation: Farm City Week – November 12th – 18th, 2006**
Mayor SueLynn read the Proclamation aloud. The Proclamation was accepted by Ed Flowers.
- b. **Minutes: Final Budget Hearing 9/20/06; City Commission Meeting 9/28/06; Special Commission Meeting – Comp Plan EAR 10/3/06; Special Commission Meeting – Sign Ordinance 10/3/06**
- c. **Reappointment of Carl Pearman to Code Enforcement Board (Term to expire 7/09)**

MOTION: Commissioner John Quam moved to approve the Consent Agenda, seconded by Commissioner Dale Woodland.

Vote: All Ayes. Motion carried.

2. **REPORTS AND UPDATES**

Commissioner Christine Tollette reported that she attended the Anna Maria Island Community Center meeting held at the Holmes Beach Fire Station. She said the meeting was focused on fundraising and developing new ways to attract donations. The Commissioner reported that the golf tournament fundraiser was considered successful, with a total of \$38,000 raised as a result of that effort.

Mayor's Report

Mayor SueLynn indicated that she wished to clarify the facts (contrary to how they had been reported in a local paper) relative to the current situation involving Villa Rosa. She recalled that at a recent Commission meeting, she had mentioned that City staff had been concerned about the intention, according to the article, of GSR, Inc. to sell lots in the Villa Rosa subdivision. The Mayor said that the City had subsequently met with Villa Rosa representatives, but explained that meeting had not been arranged to address the selling of lots, but rather, the final site plan's unapproved status. She listed those present at the meeting as City Attorney

Jim Dye, City Engineer Tom Wilcox, Building Official Kevin Donohue, Public Works Director George McKay, two attorneys representing GSR, Inc., two engineers from George F. Young, Inc., as well as a court-appointed workout specialist. Mayor SueLynn reported that the meeting had been successful, and that all the corrections to the site plan had been made. She said that the engineers from George F. Young, Inc. were currently in the process of obtaining the necessary signatures for the site plan, and that the plan would subsequently be forwarded to the City for signing by City officials. The Mayor said that once this had been accomplished, GSR, Inc. would be authorized to sell the lots.

With reference to the condition of the Villa Rosa property, Mayor SueLynn said that she had been informed, after a site visit by the Building Official and the Public Works Director, that it had not been maintained well, and that certain repairs would be necessary. She said that the required removal of debris had also not been completed, and that this had been brought to the GSR, Inc. representatives at the above-mentioned meeting. The Mayor reported also that the representatives had been requested to make the model home secure, and to put up barricades and a large 'no trespassing' sign at the entrance to the property, as well as in front of the model home. She noted that GSR, Inc. had also been directed to demarcate the sidewalk with sand or some other method, so that the boundary between City property and Villa Rosa property would be clear. The Mayor said that the workout specialist, Bill Maloney, had been very cooperative, and had assured the City staff that all the outstanding items mentioned would be taken care of.

City Attorney Dye reported that the anticipated timetable provided for the sale of the Villa Rosa lots to begin in the first week of December. He indicated that the representatives of GSR, Inc. would most likely be requesting an extension to that deadline, in order to achieve the best possible spectrum of advertising.

Mayor SueLynn noted that road repairs had begun in the city on Monday, September 19th, 2006. She reported that the representative of BDI, Inc. (the City Engineer) responsible for supervision had been at the work site every day since work began, arriving before 9:30 a.m. and leaving each day between 3:00 p.m. and 3:30 p.m., with one exception, when he arrived at noon. The Mayor said that the supervisor would continue to be at the site of work daily, until the work is complete. She noted that Florida Highway Products, Inc. was responsible for doing the full-depth reclamation and the micro-surfacing. Mayor SueLynn said that a total of five streets would be resurfaced, noting that on some of them, the resurfacing would only be done on certain sections, instead of the entire length. The Mayor informed those present that a total of fifty-two sections of the City of Anna Maria's streets would receive micro-surfacing.

Mayor SueLynn reported that there had been some flooding experienced thus far, as a result of water lines being damaged. She explained that the County had not buried the lines deeply enough, noting that some had been found to be only four to five inches below the surface. The Mayor said that the contractor,

Florida Highway Products, Inc. was doing everything possible to allow traffic to pass through the street while work is ongoing.

Mayor SueLynn informed those present that the initial grinding process had been completed on Bayview, Blue Heron, Kumquat, Lakeview Place, and Spring Avenue, where full-depth reclamation is to be done. The Mayor said the contractor was expected to return in seven to ten days to apply the asphalt.

Mayor SueLynn reported that she had received a number of calls regarding Hardin Avenue. The Mayor informed those present that the supervisor for Florida Highway Products, Inc. had been running two teams, and had been working from a map showing work sites highlighted in yellow. She explained that the maps the teams worked from had been reproduced by hand, and someone mistakenly had highlighted Hardin Avenue instead of another street that was scheduled to be done. She explained that in preparation for making the road repairs, the contractor must cut out the grass along the street, and noted that the grass would have needed to be cut back when the [plain] resurfacing phase of the City's roadwork plan came about. Mayor SueLynn said the mistake was quickly noticed by Public Works Director George McKay, and the Florida Highway Products, Inc. supervisor, and that the City would not be charged any more money by Florida Highway Products, Inc. for having cut back the grass on a street prematurely.

Commissioner Linda Cramer noted that the mosquitoes, no-seeums, and swarms of small flies at the beach were becoming a growing nuisance, and asked if the County could have the city sprayed. Mayor SueLynn responded that she would ask the Public Works Director when the city was last scheduled to be sprayed, also to call Mosquito Control. She indicated that she had never known the pest control department to spray the beach, but would certainly inquire.

MOTION: Commissioner John Quam moved to address Agenda Item #7. as the next topic, seconded by Commissioner Duke Miller.

Vote: All Ayes. Motion carried.

7. Set Meeting Dates for November and December.

Commissioner John Quam observed that the Election would take place on November 7th, 2006, and that the normal Commission Work Session was scheduled for November 9th, 2006. **He asked for, and received consensus for the Regular Commission Meeting to be scheduled for November 16th, 2006, at 7:00 p.m., following the Organizational Meeting (slated for 6:45 p.m.) and the swearing in of the newly elected officials, set to begin at 6:15 p.m.**

There was further consensus among the Commissioners for only one December meeting to be held, on December 14th, 2006.

3. Second Reading and Public Hearing on Ordinance No. 06-662 – Lot split and Subdivision to Amend Sec. 114-426 and 114-427.

City Attorney Jim Dye explained that the title of the Ordinance needed to be expanded, and another first reading would be required. He informed Chair Quam that there would be no need to read the Ordinance aloud at this evening's meeting.

There was consensus to continue the Second Reading of Ordinance No. 06-662 to the Regular Commission Meeting scheduled for December 16th, 2006, at 7:00 p.m.

4. Second Reading of Ordinance No. 06-670 - Creating a Process for Installation of Fences in Public Utility Easements.

Commissioner Duke Miller read the Ordinance by title.

City Attorney Dye confirmed to Commissioner John Quam that the only change in the proposed language for the Ordinance was to Paragraph 8., Page 2, where the word 'only' needed to be inserted before 'utility easements'. He noted that this would be reflected again in Subparagraph 1.

Public Comment

City Attorney Dye explained, in response to a question from Carol Ann Magill of 111 Spring Avenue, that the Ordinance language dealt with utility easements only, and that the property owners who owned the easement would need to share it with a utility company. He said that the Ordinance did not, and had not been intended to, change the boundaries of anyone's property, and in no way affected ownership.

MOTION: Commissioner Duke Miller moved to adopt Ordinance 06-670, seconded by Commissioner Linda Cramer.

Roll Call Vote: Commissioner Christine Tollette – Aye; Commissioner Dale Woodland - Aye; Commissioner John Quam – Aye; Commissioner Linda Cramer – Aye.

Motion carried unanimously.

5. First Reading of the Following Ordinances:

a. Flood Damage Prevention – Ordinance No. 06-674

Commissioner Cramer read the Ordinance by title.

Building Official Kevin Donohue introduced himself to the Commission as their Flood Plain Administrator. He explained that the Ordinance had been generated by the Flood Management Plan, and that the language before the Commission in this draft was identical to the current model now posted on the State web site.

The Building Official referred to a recent letter from Hugh Holmes relative to the prohibition of glass doors in areas below base storm flood elevation. He indicated that his research had not revealed any connection between this more restrictive standard and the obtaining of additional CRS points. Building Official Donohue said he believed the regulation prohibiting glass doors had been intended to prevent people from partitioning off their ground floors. The Building Official observed that the original ordinance had appeared to have not been adhered to, as there were many existing structures in the City with glass doors on the first, or ground floor. He said that he had recommended removal of the glass door regulation, and that this was reflected in the draft Ordinance language.

Building Official Kevin Donohue informed the Commissioners that the Definitions section had been moved into the body of the Ordinance.

Building Official Donohue recalled that there had been some discussion relative to a discrepancy, and the term 'substantial improvement'. He explained that the City's codification in the 1990's had moved the Definitions to another location, in Chapter 7. The Building Official went on to say that since the Definitions were not found in Chapter 82, many people were not aware those were part of it.

Building Official Kevin Donohue indicated that two proposals had been included in the notations for this Ordinance. He said that the distinguishing differences between *Proposal 1.* and *Proposal 2.* were relative to specific construction standards. *Proposal 1.* on Page 12, stated that throughout the City of Anna Maria, the maximum permitted enclosed area below base flood elevation on ground floor would be 299 sq. ft., with the remaining area free to be enclosed with screens or other materials. The Building Official informed the Commissioners that the City could receive 100 CRS points for such legislation. He noted that *Proposal 2.* did not carry any limitations on the allowable amount of enclosed area on the ground floor. Building Official Donohue indicated that currently, the City only had the 299 sq. ft. enclosed area limitation on properties within the V-Zone, and received roughly 10 CRS points for that.

Building Official Donohue said that another distinguishing difference he wished the Commission to consider was the addition of a sentence to prohibit critical facilities on Anna Maria, such as hospitals, or entire police stations (not substations). He drew attention to the fact that including this sentence, which only

prohibited what already did not exist within the city, would bring the City 100 additional CRS points.

Relative to 'substantial improvement', the Building Official noted that the public had questioned why a property owner could tear down a house and rebuild it without elevating it. He said that the answer was related to the rule that says the cost of construction could not exceed 50% of the market value of the property. Building Official Donohue noted that hired appraisers were bringing in very high evaluations, and subsequently, the property owner can achieve very substantial improvements and remain below 50%. The Building Official said that in the proposal he had given the Commission, he was recommending using market value from only the Manatee County figures, whereas currently this was an option to obtaining the private appraisal. Building Official Kevin Donohue said that in addition, the City could earn 50 CRS points by lowering the value threshold for substantial improvement to 39% instead of 50%. He reminded the Commissioners that this was on a permit-by-permit basis. Lastly, Building Official Donohue said that the proposal had expanded variance section, and gave the applicant a better understanding as to how to go through the procedure.

The Building Official indicated that the proposed language delegated the City Commission as the appeals board. He explained that the document the City was dealing with in the CRS gave the federal government the ability to sell insurance in the City. Building Official Donohue went on to say that every time the City would be issuing a variance that related to CRS points, certain protocol needed to be followed, and this was really not a Planning & Zoning issue.

Commissioner John Quam suggested that all of the Commissioners study Exhibit A carefully, and the Building Official emphasized that this was a most important area of focus.

Commissioner Duke Miller confirmed and summarized the items the Building Official had presented to the Commission relative to this Ordinance. Commissioner Miller confirmed that the Ordinance would not be formally adopted until the Second Reading. City Attorney Dye clarified for Commissioner Miller that the Ordinance could possibly be made retroactive.

Building Official Kevin Donohue explained for Commissioner Miller that if the Commission did not pass this Ordinance containing the recommended proposal, it was still likely to have a Class 6 CRS rating, however, if the Ordinance were adopted, the City would have the opportunity to qualify for a Class 5

rating. He noted that a Class 5 rating would be reflected as a 25% reduction in flood insurance premiums for City of Anna Maria property owners.

The Building Official elaborated, relative to the 299 sq. ft. enclosure rule, that this was called 'free obstruction'. He said that the language had been designed to eliminate large debris fields and damage to homes after storm events, caused by the destruction of ground floor storage areas.

Mayor SueLynn noted that once the breakaway walls were installed and the certificate of occupancy was given, many homeowners had begun to use the ground floor enclosures as additional rooms. She noted that, unless a complaint is received, the Building Official has no reason to return to a home once the certificate of occupancy is signed. The Mayor and the Building Official observed, however, that FEMA representatives were authorized to inspect properties that carried federal flood insurance. Mayor SueLynn noted that her home had been inspected prior to the issuance of a renewal to her flood insurance policy. She cautioned those present that once infractions, such as using a ground floor enclosure for anything other than storage and access, have been discovered by FEMA inspectors, the City as a whole would become subject to random inspections.

Building Official Kevin Donohue confirmed to Commissioner John Quam that he and City Attorney Jim Dye would be reviewing the Ordinance together and also would determine grandfathering provisions with clarity.

There was consensus for the Second Reading of the Ordinance to take place at the Commission Meeting on November 16th, 2006.

b. Stormwater Management – Ordinance No. 06-672.

Commissioner Dale Woodland read the Ordinance by title.

Building Official Kevin Donohue indicated that this had been another amendment suggested by the Flood Management Plan. He said that the text of the existing Ordinance had been reviewed and modernized to maximize the CRS points earned. The Building Official confirmed that no major change had been made within the document. He said that putting text into the Ordinance to say that stormwater runoff rates must not exceed those previous [to construction] would earn the City 90 CRS points. Building Official Donohue indicated that he had corrected the text of the Ordinance and had it reviewed by the City Engineer. As a result of these

amendments, the Building Official said that the City would earn 150 additional CRS points.

There was consensus to schedule the Second Reading of this Ordinance on November 16th, 2006.

c. Temporary Structures, Trailers and Recreational Vehicles Amendment – Ordinance No. 06-671

Commissioner Duke Miller read the Ordinance by title.

Building Official Donohue indicated that this amendment, a modification to Sec. 114-414, had been generated by a situation encountered by the construction contractors for the Community Center renovations relative to temporary buildings. He noted that the City of Anna Maria ordinance did not address language relative to exceptions from FEMA for temporary structures and vehicles. The Building Official observed that, in addition, the language proposed for the Ordinance would not allow RV's to be used as construction offices.

Commissioner John Quam confirmed that the Second Reading of this Ordinance would be held on November 16th, 2006.

d. Property Maintenance Code – Ordinance No. 06-673

Commissioner Duke Miller read the Ordinance by title.

Building Official Kevin Donohue said that the City's current housing and maintenance code was from 1997, and that he had modeled his standard after the 2000 Property and Maintenance Code. He indicated that in the next two weeks, he would be working with City Attorney Jim Dye to find the best way to incorporate the text and preserve the numbering system. The Building Official said the Ordinance was a stand-alone document that included a section explaining the text and how to enforce it. Building Official Donohue read comparative sections from the 1997 language and the 2000 language, relating to weeds.

There was consensus to hold the Second Reading of this Ordinance on December 14th, 2006.

Mayor SueLynn and Commission Chair Quam thanked Building Official Kevin Donohue for the considerable amount of work and research he had devoted to the preparing of this year's submittal for modification of the City's CRS class level.

Commissioner John Quam asked Building Official Kevin Donohue for an update on the Community Rating System (CRS). The Building Official said that the City currently was in Class 7, which gave the city property owners a total of \$188,000 of savings on flood insurance premiums. He indicated that an upgrade to a Class 6 would achieve a savings of \$251,000 between six months from now or later next year. Building Official Donohue noted that a modification to Class 5 would result in a \$300,000 savings.

Building Official Kevin Donohue explained, in response to a question from Commissioner Duke Miller that Class 10 received no discount; Class 9 receives a 5% discount; Class 8 gets a 10% discount; Class 7, a 15% discount; Class 6 will achieve a 20% discount, while Class 5 would receive a 25% discount. The Building Official said that each 5% represents \$62,786 in insurance premiums.

6. 504 South Bay Boulevard – Walkway / Setback Violations – Discuss Course of Action.

City Attorney Jim Dye reported that the most recent development in the situation was that approximately five weeks prior to this evening's meeting, the property owners had sent the City several 'examples' they had found where the City had approved construction adjacent to beach accesses in violation of City setback regulations. He indicated that he had forwarded these to the Building Official, who had found no violations, except for one case, which was grandfathered as a non-conforming structure. The City Attorney noted that he had advised the property owners' attorney of these findings in his letter dated October 18th, 2006.

City Attorney Dye said there appeared to him to be very little interest on the part of the property owners to follow the suggestion, offered when the subject was discussed before the Commission, that they apply for a variance. He added that he did not believe that the parties were in a position where additional discussions would prove helpful. City Attorney Dye said, that if the City wished to take action, he would recommend that the Commission authorize the City administration to take steps necessary to have the wall cleared from the walkway, and to address the other violations on the property.

Commissioner Dale Woodland suggested requiring only the clearing of the walkway at this particular time, and reserving the other issues for a future, unspecified date. The City Attorney responded that the longer the violations remained, the more difficult it would be to remove them in the future.

City Attorney Dye clarified that there were two ways to address the situation: 1) through the City's Code Enforcement Board; or 2) go to Circuit Court and ask them for an order to remove the wall from the walkway. He said that two or three months would not look difficult, but if years went by, the court could say the City waited too long. The City Attorney explained that a defense is available for the raising, that when a government knows that there is a problem and it does not take

action to resolve the problem for a long time, they can lose the opportunity to address that problem.

Commissioner Linda Cramer asked for more information about the other violations on the property, and City Attorney Dye responded that in addition to the wall, there is a problem with the building being too close to the setback, and possibly violations on the other side of the building as well. The City Attorney indicated that one drawing showed the lot width as platted, while another showed the walkway as part of the lot width.

MOTION: Commissioner John Quam moved to authorize the City Administration to take the necessary steps to have the property owner remove the wall from the walkway and remedy other violations at 504 South Bay Boulevard within thirty days. Commissioner Duke Miller seconded the motion.

Vote: Four Ayes; One Nay. Motion carried.

Building Official Kevin Donohue explained for Commissioner Cramer that the site plan showed the property as being 67 ft. wide, and that this had been brought to his attention when he consulted the survey relative to the property owners plans to put in a walkway, and had found the lot to be 62 ft. wide on that document.

Public Comment

Craig Colburn, of Norton, Hammersley, Lopez & Skokos, P.A. took the floor and introduced himself and Mr. Owen as representatives for Pat and Terry Oleson, owners of the property at 504 South Bay Blvd. He indicated that Mr. Owen was in the process of distributing to the Commissioners drawings and photographs to assist them in considering the motion before them.

The Olesons' attorney described the lot as Lot 13, and the deed described the boundaries. He reminded the Commissioners that they had been aware of discussions between himself and City Attorney Dye relative to the legal status of the land between Lot 13 and Lot 12, as well as between Lot 13 and the road. Mr. Colburn noted that the City owns an easement over the walkway. He asserted that when a setback from an easement is being considered, one takes the measurement from the property line. Mr. Colburn pointed out that according to the copy of the deed before the Commission, the property line is the centerline of the easement.

Craig Colburn noted that the September 11th, 2006 packet that his firm had sent the Commission included color photographs and color renderings of the survey that had been marked up to show what was submitted with the building permit application. He indicated that the survey showed Lot 13 as 62 ft. wide, with the property being 67 ft. wide. Mr. Colburn said this is so, because the property includes the 5 ft. of platted walkway in addition to the 62 ft. of Lot 13.

The attorney for the Olesons indicated that the walkways are easements, and that the City's Zoning Code specified where the measurements were to be taken from.

Craig Colburn drew the Commission's attention to the following two-fold question: 1) will the pending site plan application be approved; or 2) does the City want to force the Olesons to demolish their house at 504 South Bay Blvd. The attorney noted that the site plan showed the wall as having been removed.

Commissioner Dale Woodland asked Mr. Colburn upon what he based his belief that the Commission had the authority or ability to do what he was asking it to do. Craig Colburn said he and his clients did not think the City owned the 5 ft. under the easement. Mr. Colburn responded to Commissioner Woodland's reiteration of the question by pointing out that the Commissioners were the elected representatives of the people of the City of Anna Maria. He said they were being asked to initiate legal proceedings and discuss whether or not the City's current position is too harsh.

Commissioner Woodland expressed concern about perceived harshness, however, said that the Ordinances, procedures and policies are adopted by the Commission, and once adopted, are not to be ignored, even by those that drafted them. He noted that all Ordinances needed to be followed, or else amended, and that the Commission could not pick and choose between enforcing Ordinances that are in effect.

Craig Colburn said that all that needed to be done was to follow the City's zoning code and take the measurement of the setback from the centerline of the easement.

Commissioner Dale Woodland said that options available relative to the Olesons' situation included vacations and variance procedures. He said that if Mr. Colburn intended to deviate from addressing only these options, he would like to be informed what approach the Olesons suggested taking. The Commissioner indicated that if the discussion was to revert to where it stood in the Spring of this year, with both parties contending that they are in the right, a great deal more time could be wasted.

Craig Colburn said that value judgments are made all the time in dealing with the land use codes, and described the Olesons' problem as a land use issue, in that he and his clients maintained that measurement should be taken from the property line in the center of the easement. He said that if the Commission believes that the City owned the property under the easement, his hands would be tied. Mr. Colburn said there had not been a variance application, because nothing existed from which to request a variance. The attorney maintained that the property line, on the deed, is the centerline of the easement. He said that in order for the City to say that the measurement is to be taken from the edge of the easement, there would need to be a right-of-way, and there would need to be a fee simple interest in the City of Anna

Maria that could be defeatable if it is abandoned. The attorney indicated that the City, to his knowledge, had never put forth that premise.

Craig Colburn referred to a photograph from 1986 and asked the Commissioners to compare this permitted construction to the last picture that shows the site plan. He again asked the Commission if it wished to decide at this evening's meeting that the Olesons should be required to tear down the structure. The attorney said that the next photograph depicted the structure as it is today. He asked the Commissioners to ask themselves what the difference was between knocking down the structure, or accepting the site plan as presented which is a reasonable interpretation of the zoning code, which has the setback measured from the centerline of the easement.

Mr. Colburn said that his client wished to move on with construction, and had already been held up six months by the City. Referring to the site plan submitted to the City on September 11th, 2006, he said that they had agreed to deal with the main issue and remove the wall from the easement, so that access from the road to the walkway is addressed.

The Olesons' attorney indicated that another approach could be to require them to tear down the 72 sq. ft. that had been added pursuant to the permit that had been issued to them at roughly this time last year. He asked the Commissioners to evaluate such a decision. For instance, no more access would be created for the area of the easement or walkway. Mr. Colburn noted that the building line for the house would remain the same. He said the Olesons would most likely choose to defend themselves from such a decision in court, and if the City lost, it could amount to costs billed to it for takings and attorneys' fees. Mr. Colburn suggested that if the City won, it could still need to pay something to the Olesons.

Commissioner Linda Cramer confirmed that the deed showed the property included five feet of the walkway. The Commissioner suggested that a variance was not needed on the home, and recommended that the wall be removed in exchange for the City recognizing that the Olesons did own that portion of the walkway.

Commissioner John Quam indicated that the wall needed to be removed from the walkway. He said the Olesons would need to first go through the variance procedure, regarding the wall in the setback.

Commissioner Christine Tollette asked what the term "that certain walk shown on the plat of said subdivision" meant. City Attorney Dye responded that this meant nothing more than what anybody else who gets a platted lot gets. He explained that when someone buys a lot in a platted subdivision, the lot is usually facing onto a dedicated public road. The City Attorney further explained that a 'dedicated public road' does not mean that a government owns the road, it means that the local government has the right to control the road, and this is a form of an easement. He said the Olesons' attorney is correct in describing the walkway as an easement next to their property. City Attorney Dye says the deed means that the owners are

getting the lot, plus the interest the grantor has in half of the walkway, as well as half of the road in front of the lot, and half of South Bay Blvd. He said the law of Florida says that the property owners own this land subject to the public's right to come and go. The City Attorney said that if the government vacates this property, then the public no longer has a right to use it. He pointed out that private rights are separate to public rights. City Attorney Dye confirmed to Commissioner Tollette that if the City accepted Mr. Colburn's view of the walkway easement, then the front yard setbacks would have needed to be measured from the middle of South Bay Boulevard.

Discussion followed, with Commissioner Miller confirming with City Attorney Dye that setbacks are measured from the edge of the right-of-way along the road. City Attorney Dye confirmed that the walkway and South Bay Boulevard were created at the same time as the plat was recorded, and are therefore of equal legal status.

Craig Colburn maintained that the walkway is not a road. He said that Section 95 F.S. did not apply to a walkway, and that this was a separate access not addressed in the definitions of the Statute. The attorney asserted that the walkway was never expressly dedicated to the public, although this may have been implied. He said that in Florida, if some form of access way that is not a road is dedicated by implication, based on its placement on the plat, the most that the local government gets is an easement. Mr. Colburn repeated that the City's code is explicit as to where the setback is measured from an easement. He recommended that the Commission move forward with the site plan that had been submitted to it on September 11, 2006, and suggested that a much more reasonable course of action existed as an alternative to requiring the Olesons to tear down their home.

Commissioner Dale Woodland indicated that prior to this evening's meeting, the Commission had not entertained the idea of the demolition of the Olesons' home, and had made it clear to everyone involved that this is the last thing they wished to see happen. Commissioner Woodland agreed with opinions expressed by other members of the Commission, as well as that of the City counsel. The Commissioner reiterated the three legal options that the City Attorney had presented as being the variance process, legal action, or vacation by the City. He indicated that if the Olesons and their counsel could come up with a fourth option, he would be happy to hear it.

Mayor SueLynn agreed with the comments of Commissioner Woodland, and maintained that the City had always wished to help the Olesons in any way possible. She expressed dismay at the way the Olesons' counsel had presented the idea of demolition of the home.

Commissioner Duke Miller also expressed agreement with Commissioner Woodland's comments. He said that over the past months, the City had gone out of its way to follow this issue and determine a solution. The Commissioner said he hoped the record would show how the City had tried to facilitate a satisfactory legal

solution and how it in no way ever had the intent to require the tearing down of the Olesons' property. He indicated that he backed the City Attorney's recommendation for a variance process, and the comments of Commissioner Woodland, and that if the Olesons' counsel wished to take an adversarial approach, it was entirely as a result of their own choice.

Commissioner Quam clarified with the City Attorney that the motion on the floor would include having the wall removed from the walkway, and would also give the Applicant the choice to make an application for a variance.

Mayor SueLynn received authorization from the Commission to instruct City Attorney Jim Dye to write the letter to the Olesons.

Commission Chair John Quam received consensus to move on to agenda Item 8.

8. Roof USA Settlement of Claim – Authorize Mayor to Sign Release.

Mayor SueLynn said she would present the history of this item prior to turning the floor over to City Attorney Jim Dye. She said since the water came through the ceiling of City Hall some months ago, all possible cleanup had been completed. The Mayor indicated that she had been negotiating with Roof USA, as well as with the insurance agencies. She said the initial offer of compensation to the City had been \$5,400, which she had refused, as she did the subsequent offer of \$9,100. Mayor SueLynn said that she wished to settle for \$10,486, which was the estimated actual cost of the repairs. She presented a list as follows:

- replacement of the ceiling at City Hall
- replacement of the carpeting
- replacement of chairs
- replacement of a table
- replacement of a laminating machine
- replacement of a chair in the Sheriff's office

The Mayor noted that the settlement was in the form of a contract, and as such, required the Commission's approval.

City Attorney Jim Dye again clarified that settlements were considered to be a form of contract, and therefore the Commission's approval is required for the Mayor to sign a settlement on behalf of the City.

The City Attorney indicated that he would ask for a change in the language to clarify that this does not affect the standard roofing warranties that come with the job. He pointed out that once the settlement is signed and a check is accepted, then anything that arises out of the water damage event is covered by this document, and is waived. City Attorney Dye noted that the building had been treated for mold, however, if a mold problem returned, there would be no additional compensation to be had.

Commissioner Linda Cramer said that she was not comfortable without language protecting the City from future mold issues. The Commissioner said that she would not like to see the City take on a situation that could, in the future, bring with it any type of liability. Commissioner Cramer expressed concern for the employees, and recommended that a provision for periodic inspections be included in the agreement.

Commissioner Christine Tollette agreed with Commissioner Cramer's comments and asked if a provision for inspections over the next five years could be included in the agreement. She indicated that she felt if no problems had been found after five years, the City staff could be comfortable that there would be no further problems. Relative to the ceiling replacement in the Commission meeting room, she inquired as to what had been involved. Mayor SueLynn indicated that the acoustic tile in the ceiling had been replaced, and that the wet insulation had been removed. She noted that the building had been tested for mold and that another test had been scheduled to last for three days, beginning the day after this evening's meeting. The Mayor indicated that as long as the building remains dry, there should be no concern about mold. Mayor SueLynn said that this type of test needed to be done periodically, a fact that was discovered as a result of remodeling.

MOTION: Commissioner Duke Miller moved to authorize the Mayor to sign the settlement. Motion failed for lack of a second.

MOTION: Commissioner John Quam moved to extend the meeting until the Agenda is completed. Commissioner Dale Woodland seconded the motion.

Vote: Four Ayes; One Nay. Motion carried.

Commissioner Tollette noted that there are dogs trained to find mold. She repeated her suggestion for mold inspections over the next five years, and to have the insulation behind the walls replaced. Mayor SueLynn said she did not think this was in the scope of the money offered by the settlement, although she felt that these types of inspections were valuable. She said that the City could assume the cost of replacing the insulation itself.

Commissioner Dale Woodland said that he agreed with the comments of Commissioners Cramer and Tollette, however, he did not wish to take action at this particular time. He noted that this was the first time he had been given the opportunity to consider the information submitted.

Commissioner Linda Cramer said that she felt the mold inspections were necessary and recommended that the insurance company be approached about this topic. She indicated that she would not be in favor of settling for the amount of money specified at this time.

Commissioner John Quam confirmed with the Mayor that she would consult the insurance company to see if inspections for mold for the next five years could be included in the settlement.

City Attorney Dye pointed out that agreeing to the inspections would not necessarily give the City anything more than a report one day that City Hall has mold.

Commissioner Duke Miller asked, if mold came up in the future, if the insurance company would address it. City Clerk Alice Baird responded that they probably would, however, if mold appeared anywhere where the roof water leak had occurred, they would probably not accept responsibility. Commissioner Miller suggested that the insurance company be requested to indemnify the City against mold for the next three years. He asked the Mayor to request that a line to that effect be added to the settlement contract.

Mayor SueLynn said that she would check into this.

Public Comment

7. Set Meeting Dates for November and December.

PUBLIC COMMENT

Tom Turner of 850 North Shore Drive asked if his pre-firm house, built in 1989 would be affected by the Flood Management Plan related ordinances, first read this evening. Mayor SueLynn confirmed that his home was grandfathered in. Mr. Turner indicated that he believed construction trailers should be removed. He said that he opposed the City's tendency to eliminate the role of the Code Enforcement and Planning & Zoning Boards. Tom Turner stated that the ordinances the City Planner, the Building Official and the City Attorney had been working on should have been first put before the Planning & Zoning Board.

Commissioner John Quam said that a citizen had written the City with questions about site plan procedure and major and minor development. He said that it appeared that the Ordinance could require amending to clarify major development and non-conforming use and non-conforming structures. City Attorney Dye indicated that he would like to review the language and the question further. **After brief discussion, there was consensus to put this topic on a future Work Session Agenda.**

PRESS COMMENT

A reporter from The Sun asked if the name of the company that performed the mold inspection was on file at the City. Mayor SueLynn said that the bill had been sent to

RoofUSA. Commissioner Cramer asked if the Commissioners could look at the bill, and Mayor SueLynn said that she would request a copy. City Attorney Dye indicated that this could be done, however, RoofUSA is not required to provide it.

ADJOURNMENT

MOTION: Commissioner John Quam moved to adjourn the meeting, seconded by Commissioner Duke Miller.

Vote: All Ayes. Motion carried.

The meeting adjourned at 9:19 p.m.

Respectfully submitted,

City Clerk Alice Baird

Date