

**CITY OF ANNA MARIA
SPECIAL COMMISSION MEETING
APRIL 11, 2005
7:00 P.M.**

CALL TO ORDER

PLEDGE TO THE FLAG

ROLL CALL: Commissioner Dale Woodland, Commissioner Carol Ann Magill, Commission Chair John Quam, Deputy Commission Chair Linda Cramer, Commissioner Duke Miller

Also present: Ed Chiles (Sandbar Restaurant / WELD Inc.); Ricinda Perry (Counsel: Porges Hamlin Knowles & Prouty representing Sandbar Restaurant/WELD Inc.), Mike Gallagher (Petersen & Myers, Lake Wales – counsel for the Nalleys); Mayor SueLynn, City Building Official Kevin Donohue, Alan Garrett, AICP (City Planner, Anna Maria); To Wilcox (City Engineer: Baskerville Donovan Inc.); City Attorney Jim Dye, Minutes Clerk Sylvie Reichmann

Press: Sun, Islander

**1. PUBLIC HEARING ON VACATION OF AN ALLEY - Sandbar Restaurant
FIRST READING OF ORDINANCE NO. 05-637**

PLANNING & ZONING BOARD RECOMMENDATION

(NON-VOTING MEETING)

Chair John Quam opened the public hearing as the first of two public hearings required for vacation of an alley and noted that this would not be a voting meeting. He said this hearing would also be the first reading of Ordinance No. 05-637. The Chair went on to outline the procedure for conducting this evening's meeting.

The Minutes Clerk swore in all those present wishing to speak.

Commissioner Duke Miller read the Ordinance by title.

Chair John Quam introduced Alan Garrett, the City Planner, to present the City Staff overview. He said the first of two items requiring Commission discussion at this evening's meeting was vacation of the alleyway and described the proposal. He noted that the P&Z had approved the vacation contingent upon the site plan approval.

Chair John Quam invited the Applicants to make their presentation. Ricinda Perry introduced herself as counsel for Weld Inc. and confirmed that in addition to the vacation of the alleyway, her client would also be seeking the Commission's approval of the Sandbar Site Plan at this evening's meeting. She gave a brief history of the Sandbar as a structure, noting that current owner Ed

Chiles had transformed the property into an upscale, family restaurant. Ms. Perry recounted the outcome of an ADA lawsuit brought against the Applicant and described the necessity for the vacation of the alleyway. She introduced Ed Chiles to take the floor.

Ed Chiles recounted briefly his long personal history on the island and the colorful history of the Sandbar when it was a bar. He said that in 1911 the site was a bath house, and that the tradition of family recreation and entertainment was a long one at the Sandbar. He noted that the old entrance to the Sandbar was in the center of the alley, saying that he had been told for the first 15 years of his ownership, that the alleyway had been vacated. Mr. Chiles noted that the Sandbar withdrew its petition to vacate the alleyway in 1988, but now the ADA suit had necessitated it. He indicated that he felt the improvements would be an asset to the community as a whole.

Ricinda Perry took the floor and reviewed the exhibits with the Commissioners, beginning with photographs of the drainage problem, and moving on to address the present encroachments. She said that the photographs clearly indicate that the alleyway is not now serving its purpose. She quoted the definitions of “alley” and “street” from the City’s code.

She noted the four criteria outlined in Ch. 90 and Section 50 as the only criteria the Commission should use to make their decision at this evening’s meeting. The Applicant's counsel went on through the exhibits, asking for the same treatment as nearby fee simple owners who had applied for an received alleyway vacations. She noted that the Applicant, without any obligation, has offered to swap another piece of property and take care of it, removing the burden of liability and maintenance from the taxpayers. She asked the Applicant's Planner, Jim Farr to take the floor and address the plan as it applied to the City’s code.

Jim Farr introduced himself as a certified planner working for George F. Young, Inc. on behalf of Weld Inc. He said that vacation is a common and normal process where an alley no longer suits its purpose. He noted that on the 1911 plat, alleyways were shown behind houses, in a largely northern tradition. He said because of the nature and location of the alley, it provided neither primary nor secondary access to the property. The planner noted that this was not beach access.

Mr. Farr read the City’s Vision Statement out loud. He said that the proposed 1450 sq. ft. vacation was in his opinion consistent with the Visioning Statement and the Comprehensive Plan. He outlined the four criteria the Code mandates for granting the vacation of an alleyway, and stated that the Application meets all the criteria.

- 1) If the subject vacation is consistent with the goals and objectives of the Traffic Circulation Element of the Comprehensive Plan;

- 2) If the subject vacation does not provide sole access to any property;
- 3) If the subject vacation does not jeopardize any utility; Mr. Farr indicated that the letters required from the utility companies had been received and submitted.
- 4) If the subject vacation is not detrimental to the public interest. Mr. Farr noted that there had been encumbrances in the alleyway for some time and that the City had not maintained it. He noted that the alley was not actually beach access.

Mr. Farr described the alleyway the Applicant offered to the City in return for the one it was petitioning to vacate, indicating that it was a clear, safe and functioning alleyway.

Chair John Quam asked the City Attorney to expand on the ownership of the alleyway. City Attorney Jim Dye said this was the Applicant's responsibility to determine. Ricinda Perry said that it had been determined that the Applicant held fee simple ownership, and that the City held the right to use the alleyway. City Attorney Jim Dye agreed and explained that a vacation was a function of the local government to formally abandon the public uses.

Anna Maria City Planner Alan Garrett clarified that P&Z voted four to two to vacate the alley.

PUBLIC COMMENT

Georgia van Cleave of 525 Magnolia showed those present a great deal of research she had done relative to alleyways in Anna Maria.

Sandy Oldham of 307 Pine spoke in favor of the project and handicapped accessibility.

Margaret Jenkins of 204 Chilson said that transfer of public ownership to a private entity was a violation of the public trust. She quoted from Florida Statute.

Dale Powers of 425 Pine Avenue said that he favored the vacation.

Marie White of 111 Spring said that she did not think it was the City's responsibility to make concessions to a business owner for installation of ADA bathrooms. She voiced a concern that vacation of the alleyway would give Mr. Chiles a very large buildable lot.

Judy Adams of 102 Magnolia voiced concern about whether the City would be getting legal possession of the alternate 'swapped' alleyway.

Robin Wall of 112 Palmetto said that she saw the alleyway vacation as tied in with the parking lot design, which would give Weld Inc. a different new alleyway to use for its purposes. She said the plan posed safety concerns. Ms. Wall presented an alternative plan. She asked that the Commission address the four questions she wrote in her letter.

Joe White of 111 Spring Avenue recommended the Commission decide relative to what is best for people overall in the community.

Mike Gallagher, counsel representing the Nalleys, who live immediately to the east of the Sandbar site, said he objected to the statement by the Applicant's counsel that the Commission was bound to grant approval of vacation of the alleyway as long as the four criteria in Ch. 90 and Section 50 were met. He said that vacation of this alleyway would remove part of the lay of the land, a naturally occurring definition that would prevent expansion. Mr. Gallagher pointed out that it might not be Weld Inc. that could request the expansion, but perhaps future owners.

Diane Canniff of 327 Tarpon noted that the City had collaborated with Weld Inc. in drawing up this proposal. She noted that the Mayor had been very concerned about flooding in the area. Ms. Canniff noted that to begin with, much of the flooding had been a result of the expansion of the parking lots. She requested that the City enforce Ch. 90-03.

Nikki Hunt of Pine Avenue noted that the Commission need not worry about expansion since if this were desired, since it would need to be brought before the Commission.

Ricinda Perry said, relative to a resident's statement that the City is not obligated to help the Sandbar with its ADA compliance, that case law indeed had proven that the City was obligated. She said that further expansion fears were unfounded, since the parking criterion could not be satisfied. Ricinda Perry objected to Diane Canniff not having been sworn to speak at this hearing.

Jim Farr took the floor to address Ms. Wall's and others' concerns. He confirmed that the vacation would not increase the possibility of overdevelopment of the site. Mr. Farr pointed out several problems with Ms. Wall's alternative proposal, some relative to ADA compliance.

Chair John Quam asked Building Official Kevin Donohue to take the floor and indicate where the current alleyway runs. He noted that the functional alleyway is not the platted alleyway in some instances.

City Attorney Jim Dye attempted to explain the City's current interest in the alleyway as an ownership of use. Commissioner Carol Ann Magill asked if City Attorney Jim Dye had reviewed Georgia van Cleave's ownership research, and he

responded that he had, briefly.

Commissioner Carol Ann Magill noted that some of the utility letters described a different alleyway. Ricinda Perry responded that she believed that this was due to typographical errors, and confirmed that she could bring the corrected letters to the next hearing.

MOTION: At 9:08 p.m., Deputy Commission Chair Linda Cramer moved to continue the hearing after a 7 minute recess, seconded by Commissioner Duke Miller.

Vote: All Ayes. Motion carried.

Chair John Quam called the meeting back to order at 9:15 p.m.

Commissioner Dale Woodland asked City Attorney Jim Dye relative to the fourth criterion pertaining to the public interest. City Attorney Jim Dye responded that he had not heard of anything that compelled the Commission to make the decision to grant the vacation based solely on the criteria. He said that he believed that this is a legislative decision, as opposed to the quasi-judicial site plan review, and that the three first criteria are well defined, however, the fourth criterion related to the public welfare, allows for a great deal of discretion in order to make a common sense decision.

Commissioner Dale Woodland noted that there was a major concern that the property could be expanded. He said he recommended in a memo in February that the alleyway just be moved far enough out to accommodate the restrooms. Alan Garrett took the floor to respond. He said that the alleyway could be moved slightly, but that this would alter parking. He said that when the site plan is reviewed, it would be shown how this was relevant. Mr. Farr said that if the easement were moved elsewhere than the proposed new alleyway, pedestrian safety concerns would be created, as would setback issues. Commissioner Dale Woodland said he had looked at this application and site plan as an opportunity for the City's residents, and saw potential for a win-win situation.

Commissioner Duke Miller confirmed with City Attorney Jim Dye that the new proposed alleyway would be dedicated to the City and City Attorney Jim Dye confirmed that the new alleyway would have all the same rights that currently belong to the City with the old alleyway. Commissioner Duke Miller asked if a stipulation could be put on the vacation so that the footprint of the original building could not be expanded. City Attorney Jim Dye said that this would already be covered by the Land Development Code, although a property restriction could be required of the Applicant. He agreed to look further into this possibility for the Commission.

Commissioner Duke Miller asked if this case could establish undesirable precedent. City Attorney Jim Dye responded that he did not think so, and that

each situation would need to be judged on its individual circumstances, noting that almost every property and alleyway in Anna Maria is unique.

Commissioner Carol Ann Magill noted that handicapped pedestrian safety would be better served if the pedestrian walkway and the handicapped walkway were combined. Planner Jim Farr said that this would create setback problems. Chair John Quam said he felt the current layout was more safe than moving it closer to the building.

Commissioner Carol Ann Magill said she recalled reading in the minutes of previous P&Z Board discussions that unisex ADA bathrooms could not be provided. Building Official Kevin Donohue clarified that this was due to the seating capacity and agreed to provide more information to the next meeting on this subject.

Chair John Quam closed the public hearing and announced that the second reading of the Ordinance would be on May 19th along with the Site Plan review .

ADJOURNMENT

Motion: Deputy Commission Chair Linda Cramer moved to adjourn the meeting, and Chair John Quam seconded the motion.

Vote: All Ayes. Motion carried.

Chair Quam adjourned the meeting at 9:49 p.m.

Respectfully submitted,

City Clerk

Date