

**CITY OF ANNA MARIA
SPECIAL COMMISSION MEETING
JUNE 2, 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: Acting P&Z Chair Doug Copeland, Frank Pytel (P&Z Board Member), Mayor SueLynn, City Attorney Jim Dye, Minutes Clerk Sylvie Reichmann

Press: Sun, Islander, Herald

1. Review Sec. 114-135 as requested by the Planning & Zoning Board and Discuss Related Issues.

Doug Copeland said he believed his memo stood for itself and would reserve comment until the Chair called for public comment.

City Attorney Jim Dye took the floor and explained that his letter of February 18, 2005 to Building Official Kevin Donohue was relative to a meeting requested by the owners of Pine Avenue property. The City Attorney noted that the P&Z Board recently had an issue with his interpretation of Section 114-135 relative to Non-conforming Lots and Parcels, and his opinion that lots of 5,000 sq. ft. in area could have residences built on them without being combined. He said the issue had to do with the Comprehensive Plan calling for 0-5 units per gross acre in the ROR district.

City Attorney Jim Dye referred to his memo of June 2, 2005 (distributed earlier the day of this meeting). He confirmed that the City's Comprehensive Plan called for a lower residential density in the ROR district and noted that the P&Z Board found the interpretation in his letter of February 18th to be inconsistent with the Comprehensive Plan.

The City Attorney noted that the Commission must adopt LDR's that are consistent with the Plan, however this is not to say that lots of less than 7,500 sq. ft. in area need to be combined. He said that there were two factors to consider: Code treatment of non-conforming lots and the Comprehensive Plan's low density residential requirements in ROR which regulate policy for future ordinances and amendments governing the district.

City Attorney Dye noted that there is no current language in the City's Code that says an owner of a 5,000 sq. ft. lot needs to combine with adjoining property to come up to 7,500 sq. ft. before being able to build a residence, and that if this could not be done, the usage of the 5,000 sq. ft. lot would be limited to office and

retail uses. He said that the Code does say that dimensions for a residential lot in ROR must amount to 7,500 sq. ft. in area, and further on in the Code it says that if you have a non-conforming property, if you are grandfathered, you may go ahead and build if you get a variance from the Planning & Zoning Board.

City Attorney Jim Dye noted two exceptions mentioned in the Code: lots that can be combined to adjoining property must conform with the 7,500 sq. ft. requirements to construct a single-family structure; and in a section labeled 'Shoreacres Subdivision' where it says "Building lots platted and accepted by the City which lots are somewhat smaller than specifications established by this chapter are approved for R-1 construction, provided other regulations of the R-1 area are complied with. He noted that twenty lots in Shoreacres Subdivision which are platted 36 ft. wide are specified in the Code to require combination with adjoining property.

He explained that if one area of the Code requires the combination of lots, and another area of the Code does not, it must legally be assumed that the drafters of the Code had language relative to the combining of lots at their disposal, but chose not to put this in the area of the Code where it is not found.

City Attorney Jim Dye said that the rationale behind his February 18th letter was driven by what the Code says about building a residential structure in the ROR district, when he was speaking about a non-conforming lot governed by the rules for non-conformities.

The City Attorney said that he expressed, in both his December and February letters, that this was an area where the City may wish to discuss and set policy at the Commission level. He that he had suggested to the P&Z Board that the problem could be addressed by removing Sec. 114-135-2, relative to grandfathering. The City Attorney noted that this language only detracts from clarity, and noted that grandfathering is addressed relative to lots in more than one other location in the Code.

Referring to the recent memo from the P&Z Board, City Attorney Dye said he would advise against putting a value on 'somewhat' of 20%.

Commissioner Carol Ann Magill asked if this question was related to the discussion of a request for a variance relative to certain lots on Pine Avenue, and the P&Z recommendation for denial of the variance to build on lots that size. The City Attorney said he did not recall the details of the P&Z proceeding or whether or not it went on to the Commission for a final decision. He said that his letter in February pertained to a meeting that was requested by the attorney for a purchaser of property.

Commission Chair John Quam confirmed with the City Attorney that he stood by his letters of December and February of this year indicating that 5,000 sq. ft. lots

could be built upon. He asked him to explain how removal of Sec. 114-135-2 would affect the district. The City Attorney responded that in a facial manner it would limit the ability to build a residence in the commercial district. He said that the first paragraph would require any ROR lot to be used for residential construction would need the recommendation of the P&Z Board.

City Attorney Jim Dye said that the Commission might wish to make a special Code provision to address mixed uses in the ROR, indicating that language specific to residences and office use in the ROR district is not to be found.

City Attorney Jim Dye indicated that 'somewhat smaller' would not be legally defensible language, and recommended removing the entire section of language instead of trying to define 'somewhat'.

Commissioner Duke Miller noted that at various meetings with experts and others, the Comprehensive Plan has been acknowledged to govern above ordinances. City Attorney Dye pointed out that the Comprehensive Plan directs the City to adopt ordinances and policies that are consistent with it. He said that he saw no conflict between current language in the Plan and City ordinances, since the Plan addresses lot size, land use, and grandfathering.

City Attorney Jim Dye explained that the subject of grandfathering had not come up the first time when he and the attorney for the purchaser of the lots on Pine had been consulted.

Commissioner Carol Ann Magill referred to City Attorney Jim Dye's December 17th 2004 letter to Kevin Donohue and confirmed it was relative to lots in Wells Terrace in Shoreacres, whereas his letter of February addressed a different area of the city.

City Attorney Dye said that if someone performs an act of reliance based upon something the City has done, the rules cannot be changed on them. He clarified that simply buying property is not automatically an act of reliance. Commissioner Duke Miller asked whether going by the Building Official's advice could be considered an act of reliance, or if the act of reliance would begin with the applicant drawing a permit. The City Attorney explained that the premise is that an individual cannot violate City Codes. City Attorney Jim Dye confirmed that simply obtaining advice from a City office would not be considered an act of reliance.

Deputy Commission Chair Linda Cramer questioned having a higher residential density in ROR than in R-1. City Attorney Jim Dye noted that mixed uses in ROR are encouraged in the Comprehensive Plan. He again noted the possibility that ROR as a district had not yet been thought through in the Plan and in the Code relative to policy.

Commissioner Dale Woodland asked if he had a non-conforming vacation lot in the C-1 district, he could build a residence. City Attorney Jim Dye said that he would need to further consult the Plan, and the answer would be dependent upon whether the language is prohibitive or directive in nature. He said that in considering any given question, he would need to address the Code as it stands, and if policy changes in the meantime, the Code must be amended to reflect that. He indicated that until such time that the language is changed, the interpretation must be of existing language only. Commissioner Dale Woodland questioned the intent of the last sentence dealing with platted or un-platted lots and Sec. 114-426.

Deputy Commission Chair Linda Cramer suggested having the City Planner step in and help define the City's objective relative to its ROR district. She expressed the opinion that this would be prudent action that could protect the City from lawsuits in the future.

Commission Chair John Quam asked how to address the parties and property owners that are currently directly involved with the questions. Deputy Commission Chair Linda Cramer recommended agreeing with City Attorney Jim Dye's interpretation and allowing the building of a residence on the lots in question.

Commissioner Carol Ann Magill agreed with Deputy Commission Chair Linda Cramer's recommendation to put these questions before the part-time City Planner.

Commissioner Duke Miller indicated that this situation, i.e., the City Attorney answering to the Commission at the request of the P&Z Board, appeared to be unprecedented, and that he could find no guidelines for it in the Charter. City Attorney Jim Dye said he felt this question was within the purview of the P&Z since it is involved with land use issues.

Public Comment

Doug Copeland said that he believed there are lots in the ROR district, on the eastern side of Pine Avenue, that total more than 7,500 sq. ft. He noted that that the ROR district is not mentioned in Sec. 114-135. Mr. Copeland recommended going back to the main text, since the subsections do not address ROR, and thereby require that a prospective builder on a non-conforming ROR lot go before the P&Z Board. Doug Copeland noted that the Pine Ave lots that are 52.5 ft. by 103 ft., and too small to build a residence on, should also be eligible to go before the P&Z Board with a variance application. Doug Copeland said City Attorney Jim Dye failed to mention in his comments addressing the Comprehensive Plan, that the original use of the property in question had been commercial, and now the purchasers were applying for a change to residential, and non-conforming use.

Relative to the February 18th letter City Attorney Jim Dye wrote to Building Official Kevin Donohue, Doug Copeland asked why the same relief had not been

offered to the previous owner. He said what bothered him was this change in City Attorney's interpretation between the two letters had also effectively changed the City's policy without consulting the P&Z Board, which had appointed and charged with the task of recommending LDR's for adoption by the Commission.

Frank Pytel of 832 South Bay Blvd., and also a P&Z Board member, said that he sat on the Board when an applicant had asked for a variance to build five residential properties on Pine Avenue. He recalled that the Board discussed the 7,500 sq. ft. requirement. FP said the problem was with the definition of 'somewhat'. He said a 30% reduction in size from 7,500 to 5,000 sq. ft. is not 'small or slight' [as per Webster's definition of 'somewhat']. He recalled that the P&Z Board had recommended denial of the variance based on the 7,500 sq. ft. requirement.

Commissioner Carol Ann Magill confirmed with Frank Pytel that City Attorney Jim Dye was present when the Board voted to deny the variance application.

Joanne Mattick of 876 North Shire read a written statement warning against the combining of lots and creating the 'canyon effect' so many people hope to avoid. She said that she would prefer to see two smaller houses rather than one large one.

John Agnelli of 7705 18th Avenue W., Palma Sola introduced himself as a contractor on the Island. He said that he purchased Lot 9 on Pine Avenue. He said that he had three meetings with Building Official Kevin Donohue prior to purchasing this property, and received the understanding that residential building permission had been grandfathered in. Mr. Agnelli said that he was concerned that any change in the City's policy would affect his considerable investment.

Dale Powers of 425 Pine Avenue, read a letter his wife had written, warning against changing the tradition of being able to build a home on a 5,000 sq. ft. lot.

John Mattick of 9901 Gulf Drive said his issue was with the taking away from owners' property values. He said large, costly lots would also require large, costly homes on them, and this would certainly change the character of the City.

Scott Rudacille, Esq., attorney with Kirk Pinkerton agreed with Deputy Commission Chair Linda Cramer's opinion that this interpretation issue would affect many more lots than just those on Pine Avenue. He also said that he thought there was a perceived injustice toward the owner of the marina. The attorney said that he thought the blame was the title of Subsection 2, which he believed was misleading. The Mr. Rudacille noted that the titling in the published ordinance had been done by Municode, and not the City.

Sandy Oldham of 307 Pine recommended changing any of the ordinances before the Comprehensive Plan is adopted.

Michael Comb of 311 Pine Avenue said it appeared that as the City seeks to find regulations to preserve the character of the City, it becomes more difficult to achieve the look and feel desired. He noted that the more the cost of doing business on Pine Avenue is driven up, the more this would be changing the way Pine Avenue would look.

Commission Comment

Deputy Commission Chair Linda Cramer said that she agreed it was time the City took a look at its goals and objectives relative to the ROR. The Commissioner recommended going with the planner after the Comprehensive Plan is adopted.

Commission Chair John Quam said that he now understood that affected property owners could proceed based on City Attorney Jim Dye's letter of February 18th, 2005.

Commissioner Carol Ann Magill agreed with Deputy Commission Chair Linda Cramer not to make any changes before the planner has reviewed the Codes.

Commissioner Dale Woodland said he did not think anyone from the City, including the City Attorney, should be making the interpretations on behalf of purchasers. Commissioner Duke Miller agreed. City Attorney Jim Dye clarified that the interpretations had been for the City, not the purchasers.

Deputy Commission Chair Linda Cramer confirmed that City Attorney Jim Dye explained his interpretation of non-conforming buildable lots, and agreed with his interpretation of their grandfathered status.

Mayor SueLynn said that this was not one of the issues that she had identified to be within the scope of the \$5,000 she received approval to spend with a city planner. **There was consensus among the Commissioners for the Mayor to have the planner address this issue.**

Deputy Commission Chair Linda Cramer recalled that at one time a moratorium had been called pending review of the LDR's, and that they still had not been reviewed and redefined. She said that to avoid liability, she would like to see this issue addressed as a priority. Deputy Commission Chair Linda Cramer noted hiring a planner would be less expensive than a lawsuit.

Mayor SueLynn said that currently the Planner is involved with the Comprehensive Plan, which is also a priority. She said that one also needed to be cognizant of the P&Z's current workload. Commission Chair John Quam agreed that the P&Z workload is at capacity already, and also with Commissioner Dale Woodland's suggestion that this should wait until the Comprehensive Plan is adopted.

Doug Copeland noted that he had worked on the Comp Plan Ad-Hoc Committee, and said that most of the elements would not take up a great deal of P&Z time. He noted however, there were other elements that could stir up a great deal of controversy in the City. He agreed that a planner like Alan Garrett could spot the possible ramifications of the Board's actions. He requested that funds be allocated to employ Mr. Garrett to help with the Land Use Element. Doug Copeland said that there would be a closed workshop of the P&Z to discuss parts of the Future Land Use Element, and following that, a public hearing would be held. He said that it would be a good idea to notify the planner of areas that may be controversial so that he could have time to prepare his recommendations.

Commissioner Duke Miller agreed that it was important to retain Mr. Garrett on these issues at this time, and said he would support the expenditure of additional funds, even if they come from the Contingency Line Item.

Mayor SueLynn agreed that Alan Garrett was an excellent choice. She recalled that Tony Arrant had been hired to work with the Ad-Hoc Committee and the P&Z Board relative to the Comprehensive Plan. She said that there had also been discussion relative to retaining him to work on the LDR's. She said that she would inquire with Tony Arrant whether it would be possible for him to do these tasks simultaneously, or possibly concurrently and interactively with Alan Garrett.

Commission Chair John Quam requested Mayor SueLynn to bring any requests for additional funds in this regard to the June 23rd Regular Commission Meeting. Mayor SueLynn noted that the Flood Plain Management Plan Alan Mr. Garrett is currently working on has turned out to be a larger than expected task.

MOTION: Deputy Commission Chair Linda Cramer moved to adjourn the meeting, seconded by Commissioner Duke Miller.

Vote: All Ayes. Motion carried.

The meeting adjourned at 8:30 p.m.

Respectfully submitted,

Alice Baird
City Clerk

June 24th, 2005
Date