



City of Anna Maria

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MINUTES CITY COMMISSION SPECIAL MEETING CITY OF ANNA MARIA COMMISSION CHAMBERS THURSDAY, NOVEMBER 3, 2011 – 6:00 P.M.

Pledge of Conduct: We may disagree, but we will be respectful of one another. We will direct all comments to the issues. We will avoid personal attacks.

CALL TO ORDER

Chair Webb called the meeting to order at 6:00 p.m.

PLEDGE TO THE FLAG

ROLL CALL

Present: Mayor Michael Selby, Vice-Chair Jo Ann Mattick, Commissioner Dale Woodland, Chair Chuck Webb, Commissioner John Quam, Commissioner Eugene Aubry.

Also Present: City Clerk Alice Baird, Building Official Bob Welch, City Attorney Jim Dye, City Planner Alan Garrett, and Minutes Clerk Stacey Johnston.

Press: Sun and Islander.

1. Second Reading and Public Hearing Ordinance 11-723 – Chapter 74.



City Clerk Baird read the Ordinance title.



Building Official Welch said he hoped the Ordinance would be adopted that evening. Explanation followed.

The Commission reviewed the Ordinance page by page. It was the consensus that the following changes be made to the Ordinance language:

- *Chair Webb* stated that in the event of a civil commotion strike, the Building Code would not be enforceable. A Building Permit is subject to a certain time period; however, in that event it would be no fault of the applicant that they were unable to follow through with the work. As a result, it was agreed that the following language changes are made: “Section 74-1 – Scope. The provisions of this chapter shall supplement Chapter One of the Florida Building Code as allowed by State Statute 553 Part IV. The provisions time periods contained in this Chapter shall not be applicable in case of civil commotion or strike, ~~when the building work is halted due directly to judicial injunction, order or similar process.~~”
- *Building Official Welch* explained why “local development permit” versus “building permit” was used throughout the Ordinance.

- *Chair Webb* felt the language in Section 74-2. Violations; penalty was limiting and that the City may want to go after a person for a criminal violation. He provided examples and alternate language.

City Attorney Dye suggested removing “code enforcement violation” and replace with “as provided for in this code.” and remove “Any penalties assessed will be in accordance with section 2-46 et seq.” It was also consensus that “shall constitute a noncriminal infraction,” be changed to “shall constitute an infraction.”

- Miscellaneous typographical changes.

- *Chair Webb* discussed changing where a Section was referenced as “deleted” to reference it as “amended.” Explanation followed.

Building Official Welch informed that the sections being deleting are no longer in the Code and have not been for several years.

It was agreed there would be no change made to the Ordinance.

- *Chair Webb* asked for clarification of Section 74-3.

Building Official Welch informed that the language is to refer a person to Chapter 102 for the requirements. Building Official Welch is in the process of rewriting Chapter 102 and hopes to bring the Ordinance draft to the Commission at an upcoming Work Session.



- *Building Official Welch* asked that the following language be added to Section 74-3 (a). “a. No pool or pool deck may be elevated more than eight (8) inches above the grade existing prior to construction of the pool when installed in the ground outside the footprint of the primary structure.”

- *Chair Webb* suggested “in tort” is removed in Section 74-32. Code remedial (b) *Warrant and Liability*. Explanation followed relating to case law including that a property owner cannot sue the City if a Building Official misses a violation.

- Discussion held regarding Section 74-34 Definitions. *Authorized Agent*.

City Attorney Dye informed that an authorized agent is the only person who can pull the local development permit.

Building Official Welch informed that the intent is that the homeowner is put on notice as the authorized agent that they must appear in person to get the permit – and not the contractor.



Chair Webb informed that the homeowner exemption in the Florida Statutes was referenced in Subsection (7). It was consensus to add (7) - Chapter 489.103 (7) FL Statutes.

- *Building Official Welch* and *City Attorney Dye* provided explanation relating to “Temporary certificate of occupancy”.



- *Chair Webb* questioned if apartments and condominiums were included within the definition of *Commercial building*.

Building Official Welch informed that the definition as stated in the proposed Ordinance was from the Florida Building Code.

- Changed title of the definition *Imminent danger* to *Imminent threat*.
Changed title of the definition *Habitual space* to *Habitable space*.
 - *Interior finish*. The preparation of interior spaces of a residential or commercial building for the first occupancy thereof.
 - *Licensed contractor*. A contractor certified by the State of Florida who has satisfied ~~the~~ all state requirements to be actively engaged in contracting.
 - Added “or” to end of Section 74-34 Definitions *Unsafe building or structure* (3).
 - Agreed to change Section 74-35 Establishment of Planning and Development Department to read as follows: “there is hereby established a department to be called the Planning and Development Department and the person in charge ~~shall be known as the building official~~ shall be designated by the Mayor.”
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- *Chair Webb* suggested adding a paragraph to Section 74-40 Powers and duties of the building official (c) Right of entry – that if a person is issued a building permit they are agreeing to access by the Building Official at all times.
Commissioner Aubry did not agree feeling it infringes on a person’s property rights.
City Attorney Dye informed that State law states that when a Building Official goes on a property they are restricted to inspect only what the active permit relates to. He clarified the intent of the section.
Building Official Welch explained the intent and when it would be utilized.
After discussion, *Chair Webb* agreed there should be no change in the language.
 - It was noted that the City gets a lot of inquiries relating to “Food permits” therefore the information was referenced in the proposed Ordinance.
 - *Chair Webb* referred to Sections 74-64 and 74-65. He questioned the difference between “dwelling” vs. “building”.
Building Official Welch and *City Attorney Dye* explained. *City Attorney Dye* suggested changing “dwelling” to “building” in those sections.
 - *Commissioner Aubry* referred to Section 74-72. Daily cleanup of construction sites and Section 74-73. Construction Site Noise abatement. He questioned if leaf blowers could be outlawed.
Building Official Welch informed that the noise abatement refers strictly to generators.
Commissioner Mattick questioned if there would be any penalties assessed and *Building Official Welch* informed there would be.
City Attorney Dye informed that the use of a generator is a violation of the code and would generate a stop work order.
Commissioner Aubry pointed out that a construction site was dangerous and that it was important to keep the job site clean to insure safety. 
It was agreed that Section 74-73. Construction Site Noise abatement is changed to read: Generators ~~may~~ shall not be used on construction sites without the authorization of the building official in writing.

Mayor Selby recommended determining what a construction site is. He gave the example of a new home where a temporary pole would be appropriate. However, a generator would be inappropriate in the event of a fence repair or new fence installation.

Building Official Welch stated he will allow the right to use a generator if it's a legitimate request. He noted that the section does not address roofing, a truck-mounted compressor, etc.

Chair Webb felt the only way to limit noise at a construction site was to limit the times when they can do the construction.

Chair Webb opened the Hearing for any public comment.

Hearing no public comment, Chair Webb closed the public comments portion of the Hearing.



Motion: Approve Ordinance 11-723 with the suggested changes for Second Reading and adoption.

Action: Approved. Moved by Commissioner Aubry, Seconded by Commissioner Woodland. 

Yes: Chair Webb, Commissioner Aubry, Commissioner Quam, Commissioner Woodland, Vice-Chair Mattick.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 5).

2. First Public Hearing for Transmittal for State Review Ordinance 11-727 – Nally 
City Clerk Baird read the Ordinance by title.

City Attorney Dye explained the Ordinance intent is to clarify that residential density is capped at six units per acre but that any existing platted lot or a parcel is considered grandfathered or non-conforming and is therefore available as a residential building site. The language came out of the Nally litigation process. He noted that the Nally's attorney Jeremy Anderson has filed a letter in support of the proposed Ordinance.

Miscellaneous typographical corrections were noted by Commissioner Mattick. It was also noted that Section Two. Density within the Residential/Office/Retail Future Land Use Category should be corrected to read as follows:

“Section 2.b., of the text accompanying the Future Land Use map of the Comprehensive Plan is hereby amended by adding all language shown as ~~strikethrough~~ underscoring and deleting all language shown as ~~underseored~~ strikethrough so as to read in its entirety as follows:”

Commissioner Woodland asked for clarification relating to the calculation of gross acreage of the parcel.

City Attorney Dye and *Planner Garrett* explained.

Chair Webb then opened the public comments portion of the Hearing.

Public Comment

Tom Turner, N. Shore Dr, announced the action taken by the P&Z Board at their November 1, 2011 meeting relating to the proposed Ordinance. He informed that the P&Z vote ended in a tie of 2 to 2. Referring to the City Attorney's November 3, 2011 memo, Mr. Turner felt if the P&Z Board would have had City Attorney Dye's memo at the P&Z meeting then all their questions would have been answered and the vote most likely would have been a 4-0 vote in favor of the Ordinance.

Hearing no further public comment, Chair Webb closed the public comments portion of the Hearing.



Motion: Move that Ordinance 11-727 be approved for Transmittal to the State for their review.

Action: Approved. Moved by Commissioner Quam, Seconded by Commissioner Woodland. 

Vote: Motion carried by unanimous roll call vote (summary: Yes = 5).

Yes: Chair Webb, Commissioner Aubry, Commissioner Quam, Commissioner Woodland, Vice-Chair Mattick.

3. First Public Hearing for Transmittal for State Review Ordinance 11-729 – Residential Density

Planner Garrett explained that the proposed Ordinance dealt with housekeeping issues and bringing same definition for defining density.

City Attorney Dye noted neither Ordinance will bring or authorize any new development. The Ordinances were not to create any new development rights – only add precision to the Code language.

Miscellaneous typographical corrections were noted by Commissioner Mattick.



Commissioner Woodland referred to the passing of the Bennett bill. He suggested adding the 37-ft height restriction into the Comp Plan – or add it to the future Comp Plan amendments.

Chair Webb questioned if the advertised title would allow for it to be added that evening. *City Attorney Dye* reviewed the title and noted it would not be allowed.

Discussion followed. *Commissioner Aubry* agreed that the height should be very specific.

Since the Ordinance title notice did not include that specific topic, it was consensus that the administrative staff put language relating to the height restriction into a future Comp Plan amendment.

Section Three. Amendment to Policy 1.3.5. will be amended as follows:

“Policy 1.3.5 of the Future Land use Element of the Comprehensive Plan of the City of Anna Maria is hereby amended by deleting all language shown as strikethrough and

~~deleting~~ adding all language shown as underscored so as to read in its entirety as follows.”

Chair Webb opened the public comments portion of the Hearing.

Public Comment

Jim Farr, George F. Young, Inc., Lakewood Ranch, addressed the Commission representing his clients Rick and Pat Friday. Mr. Farr questioned why the specific language relating to the Residential (0 – 6 units / gross acre) was being added relative to the Residential Land-use Category.

City Attorney Dye explained that the reason it was being brought up at the same time as the change for the ROR is that the density cap in the ROR was the same as the density cap in the Residential. The issue coming out of the Nally case was whether development or redevelopment or construction on an existing lot is done on the existing lot or whether it has to go back and recalculate the density – as if the lot was never platted in the first place and just a piece of raw land. The issue in the Residential Land-use Category is that many of the lots were platted World War II or earlier and some were platted at 9 to 10 units per acre – thus being brought up during the Nally lawsuit discussions. Once at 6 units per acre the City would have to withhold building permits. Therefore, the idea is to protect the platted lots whether in the ROR or Residential Category. Anyone coming in with a raw piece of land will be capped at 6-units per acre. As a result, platted lots are being grandfathered.

Mr. Farr noted there is a section in the LDC – E-1 zoning category – that specifically limits development (Reference: Section 114.345). He stated that under certain limited criteria – all continuous lots owned by a particular owner on May 10, 1989 in the E-1 zoning category could only develop one living unit. As a result, he was concerned for his client and anyone that may be affected and wanted to make sure that the proposed Ordinance would not null and void Section 114-345.

City Attorney Dye responded noting that maps the City has relied on in the past – probably out of the County Appraiser or Tax Collector’s Office - has had numerous errors – especially at the Holmes Beach boundary line. The City has since been creating their own maps and looking into digitizing some of the older historic maps as a base.

Mr. Farr stated he was using the City’s Zoning and Future Land Use maps and not what the County has.

Chair Webb closed the public comments portion of the Hearing.

City Attorney Dye confirmed that 1. Residential (0 – 6 units/gross acre) should be corrected to read:

“~~An~~ a platted lot of record or parcel existing on the effective date of this Ordinance shall be entitled for use as a residential building site within the Residential land use category.”



Motion: Moved that Ordinance 11-729 be transmitted to the State for their review.

Action: Approved. Moved by Commissioner Aubry, Seconded by Vice-Chair Mattick. 

Yes: Chair Webb, Commissioner Aubry, Commissioner Quam, Commissioner Woodland, Vice-Chair Mattick.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 5).

City Attorney Dye informed that the City has ten days to transmit the Ordinance to the State. Once the State acknowledges the documents are complete, they have thirty days to provide any comment. It will then be sent back to the City for final adoption.

4. Adjournment.

The meeting was adjourned by Chair Webb at 7:50 p.m.

Alice Baird, CMC, City Clerk

MINUTES APPROVED: _____