

**CITY OF ANNA MARIA  
SPECIAL COMMISSION MEETING  
AND JOINT MEETING OF THE  
PLANNING & ZONING BOARD WITH THE CITY COMMISSION  
MAY 17, 2003  
1:00 P.M.**

**CALL TO ORDER**

**PLEDGE TO THE FLAG**

**ROLL CALL:** Ellen Trudelle, Margaret Jenkins, Charles Canniff, Doug Copeland (1:30 p.m.), Dale Woodland, Jim Conoly (1:25 p.m.), Mayor SueLynn, Commissioner Linda Cramer, Commissioner Chuck Webb, Commissioner Tom Aposporos, Commission Chair John Quam

**Absent with excuse:** Gary Deffenbaugh, Commissioner Duke Miller

**Also present:** Ted Kreines - Kreines & Kreines, City Attorney Jim Dye, Minutes Clerk Sylvie Reichmann

Press: Sun, Islander, Herald

Chair John Quam welcomed Mr. Ted Kreines back to Anna Maria.

**1. SECOND READING AND FINAL PUBLIC HEARING – ORDINANCE 03-606 PERSONAL WIRELESS SERVICE FACILITIES MORATORIUM EXTENSION – City Commission**

Chair John Quam declared the hearing open. Commissioner Chuck Webb read the ordinance by title.

**Public Comment**

A resident said he had a question relative to the expiry of the moratorium on Oct. 26th, and the City Attorney said the actual expiration date was Nov. 14<sup>th</sup>. City Attorney Jim Dye said the date could be changed during the Public Hearing. The resident asked, assuming the date was Oct. 26th, if a wireless facilities ordinance were adopted prior to that date, if applications could be accepted before Oct. 26. The City Attorney said if the City passes a regulatory ordinance, it would most likely include a cancellation of the moratorium.

**MOTION: Commissioner Chuck Webb moved to accept Ordinance 03-606 and to amend the date for expiration of the ordinance to November 14<sup>th</sup>, 2003. Commissioner Tom Aposporos made the second.**

**Commission Vote: All Ayes. Motion carried.**

**2. REVIEW WIRELESS SERVICE FACILITIES ORDINANCE – AND FIRST READING AND PUBLIC HEARING – Joint Planning & Zoning Board and City Commission**

Chair John Quam declared the Public Hearing open. Minutes Clerk Sylvie Reichmann read the ordinance by title.

### **Public Comment**

A resident confirmed with Chair Quam that this was the ordinance prepared by Ted Kreines, and the one which would be discussed at this meeting. Chair Quam explained that the vote was for acceptance of the ordinance by title only. Commissioner Chuck Webb added that there would also be a second reading scheduled for the ordinance.

Chair Quam asked Mr. Ted Kreines to begin his presentation of the new ordinance. Mr. Kreines distributed copies of his newsletters. Dec. / Jan. 02/03 – discussed findings in Alachua County hearing; Aug. / Sept. 02 – discussed Miami Dade case; Feb. / Mar. 03 – discussed governments receiving revenue; Oct. / Nov. 02 – discussed wi-fi; Apr. / May 03 – discussed new Florida State law regulating wireless facilities. He mentioned a very informative summary of this new law written by City Attorney Dye.

Mr. Kreines cited an article in St. Petersburg Times on the Wireless / 911 bill just passed, which reported that 50 cents per subscriber would be going to Tallahassee for the Wireless / 911 Board.

Ted Kreines said wireless facilities will have one of the biggest effects on planning. He noted that 'towers' can house multiple personal wireless service facilities (PWSF's), under different licenses from the FCC, and said that each PWSF should be required to have two permits from the City. He said PWSF's consist of an antenna, a mount, and an equipment cabinet. He said the ordinance he has drafted does not deal with the question of service. He said for good service, towers are not necessary. Ted Kreines explained that wireless calls are not direct handset-to-handset, but rather, they go through PWSF's, then through land lines, and back through PWSF's to the final handset. He noted that in the future, it is inevitable that small PWSF's will be installed in residential areas. Mr. Kreines said spacing will be roughly 250 ft. apart. He showed a photo of PWSF's located on power poles in California.

Relative to the ordinance, Ted Kreines said he gratefully borrowed much of City Attorney Dye's language for the title, making additions relating to towers and standards. He recalled that from his Master Plan, a Zoning Ordinance could be passed, and subsequently Use Permits could be issued. Mr. Kreines said the process is Comprehensive Plan, Zoning Ordinance, Use Permit. He noted that the Comprehensive Plan rules.

Relative to his ordinance, Ted Kreines said it is based on the Federal Act. He recalled his Draft Master Plan presented originally on Aug. 19<sup>th</sup>, 2002. He said health, safety, and general welfare are important, noting that traditional structures housing PWSF's can and do collapse. Mr. Kreines said standards are the foundation upon which findings of fact are based. He said those findings become the substantial evidence required by the Federal Act.

Ted Kreines noted that two permits should be required: the zoning permit and the building permit, which should be posted at the site. He said there are hundreds of 'spec' built monopoles in Florida: structures in place ready to support PWSF's, should the carriers choose to lease the space and install them. Mr. Kreines reviewed the definition of "Applicant" as having to be a carrier licensed by the FCC. He stressed that ordinances need to be based on standards.

Relative to antennas, Mr. Kreines showed examples of whip and panel styles. He said panels are more efficient because their energy is focused. Mr. Kreines said in addition, there are cross-polarized facilities, some in Radom enclosures. He said antennas are arrayed. He noted that the height of the PWSF's have an AGL higher than the monopole that supports them.

Ted Kreines said personal wireless services include Commercial Mobile Radio Service, Unlicensed Wireless Service, and Common Carrier Wireless Exchange. Commercial Mobile Radio Services include Cellular, PCS, Enhanced Specialized Mobile Radio, Specialized Mobile Radio, and Paging.

Mr. Kreines explained that Wi-Fi stands for Wireless Fidelity, which is used by laptops, and it threatens the world of cellular and PCS. He said ISP antennas are not covered by the ordinance he has written, as they are not licensed by the FCC. He said broadband, broadcast and ham radio facilities are also not covered.

Ted Kreines discussed the differences between camouflage, disguise, and concealment and said that these distinctions would be important.

Mr. Kreines said the fall zone is not a setback. He said that the zone is based on the radius of the height of the ground mounted PWSF.

Modification of PWSF's, Ted Kreines said, would be the bane of communities. He said under the ordinance, the same type of permit procedure would be required for modifications as for original applications. Mr. Kreines said two permits would be needed. He said every time a PWSF is modified, revenue is doubled. Ted Kreines said communities need to be aware of changes in PWSF's within their jurisdiction. This is a way for communities to bring in revenue. He said traditionally, bootlegging has been smiled at, but it actually costs somebody money.

Ted Kreines noted that utility poles can be located on easements as well as right-of-ways, and the category of utility poles can include poles not necessarily carrying power or telephone lines, such as street light poles. He said that new utility poles should be dedicated to the City. Mr. Kreines observed that many bootlegged locations are on utility poles.

Ted Kreines said if a carrier has un-permitted equipment already in place in the community, that equipment will need to be permitted before any new applications will be considered. Mr. Kreines said the support structure and the carrier are both affected. He said additional or new amplifiers are an example of a modification needing a permit.

Mr. Kreines said relative to Section 5. Specification of Land Use Classifications., he said this had nothing to do with zoning districts. He said he had recommended tiering based on the characteristics of location, siting, and design.

Mr. Kreines reviewed standards. Location standards: opportunity sites and avoidance areas. He showed a transparency map of flood prone areas in Alachua, and stressed the need to use maps with the application.

Ted Kreines said Anna Maria is in a flood prone area and other federal government designations could make it entirely an avoidance area.

### **Public Comment**

A resident confirmed that the Comprehensive Plan Mr. Kreines referred to is the one for the City. He said there should be continuity between the Comprehensive Plan and the ordinance being adopted. Ted Kreines said it would not hurt to amend the Comprehensive Plan to incorporate aspects of the ordinance and effectively become the basis for it. The resident pointed out that the Master Wireless Plan was changed since August, and Mr. Kreines agreed that the Plan and the ordinance should be made consistent.

A resident asked if satellite communication would be included in the ordinance. Mr. Kreines said no, since they are too expensive, because of the amount of infrastructure required up in space.

A resident asked for clarification of the definition of camouflage on Page 3. Mr. Kreines said the original structure is retained, but the PWSF is not put inside of it. The resident asked, relative to Page 5, why there was no definition of micro-cell included. Mr. Kreines said that no one had yet been able to come up with a definition of micro-cell. The resident asked, relative to Page 6, why there was no definition for separation. The resident said that the P&Z Board had discussed siting standards using distance as a way of controlling PWSF population. Mr. Kreines said that in the future 3G facilities would need to be closer together in order to work. The resident asked, relative to location standards, whether the Community Center light poles are included. Mr. Kreines said he considers those to be utility poles. He agreed with the resident that these poles could be moved to Tier Two because the poles are in close proximity to homes.

Commissioner Chuck Webb suggested prohibiting PWSF's from R-1 and R-2 zones. Mr. Kreines said this could possibly be done with this ordinance.

A resident asked why some structures, like broadband or satellite, are not included in the ordinance. Ted Kreines said that is because the visual aspect is not the only characteristic affecting the ordinance. He noted the federal government governs and regulates PWSF's with the Telecommunications Act and the ordinance is geared to this. Mr. Kreines said the other types of facilities would need to be governed by another ordinance.

A resident asked, relative to fees, for suggestions and clarification on how to audit PWSF's and recover costs. The resident asked if the City should formally adopt the Master Wireless Plan. Commissioner Webb said State Statute requires the City to have a Comprehensive Plan. He said that adopting the Master Wireless Plan and making it a part of the Comprehensive Plan would afford no additional protection, because the State says that wireless is governed by zoning regulations. City Attorney Dye said a Comprehensive Plan amendment that goes against State Law could not be accepted by the State. Commissioner Webb said that the fact that the City is studying the subject at length, means its ordinance is more likely to be upheld.

Discussion continued regarding whether the Master Wireless Plan had been adopted. There was agreement that the plan had been approved, and did not need formal adoption.

Mr. Kreines continued with his presentation. He said siting standards are different than location standards. He showed examples of concealment and camouflage. He said in the siting standards, the equipment cabinet is discussed. He recommended hiding them in shrubbery or burying them, if possible. Ted Kreines said, relative to height, that the prevailing environmental situation should be the governing factor. He pointed out that PWSF's can be located among trees. He said coverage is not the community's problem.

Ted Kreines reviewed rules for fall zones and for setbacks, as well as submittal requirements.

Relative to siting criteria, Mr. Kreines explained the importance of sight lines. He showed examples of three different elevation diagrams and detailed diagrams of all the equipment, such as those mandated by the ordinance, and stressed the importance of the requirement for drawings in the application. He said brochures and specifications from the manufacturer should also be supplied. He went over the requirement for copies of various FCC documents issued to the carrier, and also a copy of the draft Environmental Assessment sent by the carrier to the FCC. Relative to geographic information, Mr. Kreines said proposed service areas should be disclosed on maps.

Ted Kreines said fees need to be collected to cover the costs of expenditures by the City for research, legislation, and permitting. He explained the application fee, the special fee, and the general fee described in the ordinance. He said the

PWSF costs between \$100,000 and \$1,000,000 and revenues received monthly are from \$56,530 to \$536,000. He noted that name changes among carriers are common and should also be classified as modifications. Relative to property taxes, he noted that for most of the lease's life, the capitalized value of the lease is worth more than the cell site, and this is a good reason not to depreciate the property. Mr. Kreines noted that another way to generate revenue is to become the landlord.

Ted Kreines explained the requirement for alternative sites and its importance relative to upholding the City's decision on an application.

Relative to tiered applications, he said the ordinance puts the responsibility with the carrier for choosing which tier they want to apply for. He reviewed application procedures and review protocols, and the importance of documentation of communication with the applicant.

Ted Kreines explained Tier One review, the Administrative PWSF (Zoning) Permit and the Building Permit issued by the Building Department. He noted that the 90 day period for review had been reduced by State law to 20 days. Mr. Kreines explained Tier Two review and issuance of a Conditional Use Permit, and a Building Permit. Ted Kreines explained Tier Three review, and the issuing by the City of a Special Exception Use (Zoning) Permit and a Building Permit.

Relative to standards, Mr. Kreines said they are directory, not mandatory. He said the importance to the review is that they are all considered, that they must be clear, and that the applicant meets as many as possible. He said staff reports are important documentation.

Mr. Kreines said various types of modifications, including name changes, and title transfers, must go through the application process. He said modifications are common and frequent, and are often driven by developments in the technology.

Ted Kreines said PWSF's should be distributed instead of concentrated in one location. Relative to co-location, he said the ordinance discourages tall mounts. He said any co-location is discouraged, but not prohibited. He explained the tiering of co-locations. He showed diagrams of mounts with more than one type of antenna and explained that these are examples of co-location.

Relative to avoidance areas, Mr. Kreines suggested that Anna Maria formally obtain listing as a bird sanctuary, as its welcome sign denotes. He said that as a Anna Maria is a flood zone, PWSF's will be required to be elevated above the 100 year flood level.

Relative to RFR (Radio Frequency Radiation), Mr. Kreines said this becomes a factor when PWSF's are low in height. He said it is important to know what the guidelines are, and copies of 'A Local Government Official's Guide to

Transmitting (...) are available. Mr. Kreines said the guidelines say the RFR emitting device must be at least 10 meters away from exposure to people.

Mr. Kreines reviewed registry (annually updated), monitoring, periodical inspection, abandonment and obsolescence. Relative to hazardous materials, Mr. Kreines noted that Anna Maria, being in a flood zone, would have a serious concern about contamination.

Mr. Kreines reviewed recommended next steps for the City of Anna Maria. He said his firm also produces a manual for recovery of revenue.

### **Public Comment**

A resident asked if RFR could be blocked. Mr. Kreines said that there are guidelines for amounts of time for persons to be exposed.

Commission Chair John Quam noted the ordinance refers to City staff, whereas the Plan did not. Mr. Kreines said he used this term as a generalized term for anyone who works for the City.

Commissioner Tom Aposporos asked why the income approach had not been used by tax assessors relative to PWSF's. He also asked whether the City was considering any other revenue opportunities from the PWSF's, such as a franchise fee. Mr. Kreines said there is a standing Statute in Florida that precludes such a fee. He stressed that profits are not being sought or made, but rather recovery of expenditures.

Commissioner Linda Cramer asked, relative to next steps for the City of Anna Maria, if Mr. Kreines could help with the development of a fee structure and other financial aspects. He said he could offer a proposal for this service as early as the week following this meeting.

A resident asked relative to a provision for intrusion into the setback, if Mr. Kreines thought the City would be being too restrictive if it ignored his recommendation, and Mr. Kreines responded in the negative.

A resident asked if there was a reason why Australian pines were not listed as exceptions, relative to locating PWSF's in trees. Mr. Kreines said there are so many possible undesirable species that he did not enumerate them, but said that Australian pines could be added.

A resident asked, relative to geographic areas of service, if maps of the Gulf should be used. He said an option 'd.' should be added to F. 1. on Page 17 to require maps north and west. Mr. Kreines said this was a good recommendation. The resident asked, relative to recovering costs, if a time log should be used by employees. Mr. Kreines said this would not be the correct approach, but rather an across the board fee structure needs to be developed. City Attorney Dye said the

law says that the City can charge for the actual costs of processing the application, and questioned how to pro-rate the cost for writing an ordinance, when the number of applicants is unknown. Mr. Kreines said he would be able to show the City methods for estimating costs. He said the City could forward applications to him, for example, for preliminary review, and he could inform the City as to its completeness, and give an estimate as to how long he thought it would take him to review the complete application. He said the City could then advise the applicant how much it will cost. City Attorney Dye questioned how one would pro-rate the cost of writing the ordinance, for example, and Mr. Kreines said a carrier could submit information as to how many locations they eventually plan to install, and the number could be used for the pro-ration. Mr. Kreines said he has yet to see an objection to fees by a carrier, but acknowledged it is not impossible.

A resident noted on Page 20 that 'siting standards' are not mentioned in Tier One or Tier Two. Mr. Kreines explained that for example, if a location is on a utility pole, the fall zone does not apply.

A resident asked why the City could not charge the full amount for the development of the ordinance to Verizon, the company responsible for the City's involvement in the exercise, and then issue refunds if any subsequent applications are received. Mr. Kreines said such an approach would constitute discrimination between functionally equivalent services, and be a possible barrier to the applicant, which would fall under federal legal restrictions. He said the idea is not to penalize or discourage PWSF location in Anna Maria, but rather to control this activity and be properly compensated for the expenditure of doing so.

A resident noted that several tower companies had submitted applications, and they do try to give the impression that they fall under FCC protection.

Commissioner Linda Cramer said she would prefer to know the fee structure before voting to adopt the ordinance. Mr. Kreines said that the Commission would be receiving that information late next week.

A resident asked, relative to Page 22, whether 'approval of the Mayor' could be added to Tier One, and Mr. Kreines responded that the City could add this if they wished, but suggested that the Mayor is already very busy. He added that he did not think the City would get many Tier One applications.

A resident recommended finding forms and procedural documents from other cities that could be used by the City. He said all these pieces would need to be in place prior to passage of the ordinance. Mr. Kreines said that the City Commission would first need to decide whether or not he will be retained to do the work.

A resident confirmed with Mr. Kreines that City staff could be defined in the ordinance, if desired.

City Attorney Dye noted that the recent legislation passed in Tallahassee appeared to be fairly innocuous. He said the law applies time frames for application review, which are 90 days, within which 20 days are allowed before the applicant must be informed whether the application is complete. There is a 45-day window relative to co-location zoning review. He said there are opportunities for the applicant to waive the deadlines, but if deadlines are missed, the application will be automatically approved. He noted that if wireless companies are encountering resistance from communities, they are allowed to report this to a politically appointed board in Tallahassee. He said fees for 911 are now to be levied also on prepaid cards, and that some of these fees will pay for the board in Tallahassee. City Attorney Dye said that the DOT and another state agency would be entering into negotiations with wireless companies for making State lands available for location. Commission Chair Quam confirmed that City Attorney Dye could add the applicable State deadlines to the draft ordinance.

City Attorney Dye noted the tower company in Holmes Beach had been brought before the City on several occasions for modifications not applied for.

Chair John Quam confirmed that the next hearing needs to be advertised, however, City Attorney Dye confirmed that a date for the next hearing need not be decided at this meeting.

Commission Chuck Webb suggested continuing this meeting to a date certain for the final hearing. He recommended that the minutes from this meeting be expedited. Chair John Quam said the next work session is scheduled for June 12<sup>th</sup>. Mayor SueLynn suggested those present underline changes on the ordinance, once the minutes are received, for consideration at the next work session. She said the most expedient way to get the forms and supporting documents before the second hearing would be to go through Ted Kreines. City Attorney Dye said if the supporting documents are not available, the vote does not need to be taken at the second hearing. Ted Kreines said that if his proposal is accepted, he could have the fee structure and the supporting documents complete for the June 26<sup>th</sup> Commission meeting. Commissioner Cramer suggested putting the proposal for fee recovery on the May 22<sup>nd</sup> agenda.

**MOTION: Commissioner Chuck Webb moved to ask Ted Kreines to submit his proposal for providing a fee recovery strategy and supporting forms as soon as possible for a vote at a Special meeting before the June 12<sup>th</sup> work session. Commissioner Linda Cramer made the second.**

**Vote: All Ayes. Motion carried.**

**MOTION: Commissioner Chuck Webb moved to continue this meeting to the next public hearing, seconded by Commissioner Linda Cramer.**

**Vote: All Ayes. Motion carried.**

**PUBLIC COMMENT**

**PRESS COMMENT**

**ADJOURNMENT**

**MOTION:** Commissioner Chuck Webb moved to adjourn the meeting,  
seconded by Commissioner Linda Cramer.

**Vote: All Ayes. Motion carried.**

The meeting adjourned at 5:35 p.m.

Respectfully submitted,

Alice Baird  
City Clerk

Date Approved: 6/26/03