

**CITY OF ANNA MARIA  
CITY COMMISSION  
AUGUST 26, 2004  
7:00 P.M.**

**CALL TO ORDER**

**PLEDGE TO THE FLAG**

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

Absent: Deputy Commission Chair Linda Cramer

**Also present:** Matt Taylor, attorney; Building Official Kevin Donohue, Public Works Director George McKay, Sgt. Kenney, Sheriff's Department Supervisor; Mayor SueLynn, City Attorney Jim Dye, Minutes Clerk Sylvie Reichmann

**Press:** Sun, Islander

**CONSENT AGENDA**

1. **APPROVAL OF MEETING MINUTES: City Commission Meeting 7/28/04; Special City Commission Meeting 7/29/04; Special City Commission Meeting 8/2/04.**

**MOTION: Commissioner Duke Miller moved to approve the Consent Agenda, seconded by Commissioner Dale Woodland.**

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

2. **REPORTS & UPDATES**

Commission Chair John Quam confirmed that there were no questions or comments relative to the written reports.

**MAYOR'S REPORT**

Mayor SueLynn said that she had nothing to report at this time.

3. **CITIZEN RECOGNITION COMMITTEE - ONE APPOINTMENT PER COMMISSIONER**

Commissioner Carol Ann Magill nominated Georgia Van Cleef. Commissioner Dale Woodland nominated Sandy Rich. Commissioner Duke Miller nominated Don Schmitzerle, and Commission Chair John Quam nominated Milt or Jean Cross. Mayor SueLynn asked that any Commissioners who did not submit a name to indicate their nomination to her office.

4. **APPLICATION FOR SPECIAL USE PERMIT -- 9903 GULF DRIVE, CONTINUED FROM JULY 8, 2004 WORK SESSION**

The minutes Clerk swore in those wishing to speak.

Matt Taylor introduced himself on behalf of the Matticks and the Bouchards, owners of Tropical Treats and Eats, LLC, to ask the Commission to approve his clients' application for a special use permit to sell beer and wine for on-site

consumption at their restaurant, located at 9903 Gulf Drive. He reviewed the evidence before the Commission relative to their discussion at the previous Commission Meeting. Commissioner Duke Miller noted that the Commissioners did not have the attachments to the meeting packet referred to by the applicants' attorney. Matt Taylor distributed the copies he had on hand. He referred to support received from the community in the form of a three-page petition, in addition to approvals from county and state agencies.

Matt Taylor said that Sec. 114-507 of the City Code related to onsite consumption of alcohol and the 2,500 ft. rule, and reviewed the criteria for the granting of a special exception for sales of beer and wine. Matt Taylor said that the restaurant now unquestionably met the criteria for service of a full-course meal. Commissioner Dale Woodland noted that the modifications of the menu had now satisfied any concerns he had previously expressed.

Commissioner Carol Ann Magill commented relative to a memo received by the City in May 2004, that it had not been her intent to compare the restaurant with the Sign of the Mermaid or any other establishment, and added that she was now satisfied with the modifications to the menu.

Matt Taylor referred to Sec. 114-508, relative to the application process. He noted that the applicants had submitted the City's form. Commission Chair John Quam asked if the 5564-02 application included both on-site consumption as well as off-sales. Matt Taylor responded that this provision would be limited by the City's code, thus allowing only on-site consumption. The attorney noted that in sub-part (C.) that the city was required to review the application in a timely manner, as well as to comply with other requirements relative to the Special Use Permit Application review.

Commissioner Carol Ann Magill said that she looked at the original application, and inquired about the number of seats with the Building Official, who indicated that nothing had been supplied with the application in this regard. She noted that the limitation currently was documented as 32 seats. Matt Taylor said that this had been approved by the state.

Commission Chair John Quam asked if the consumption would be allowed on the outdoor deck of the restaurant. He referred to the definition of "restaurant" in the City Code, which refers to a permanent roof and walls. Matt Taylor confirmed that if the local code called for consumption indoors only, the restaurant would comply with the code. He added that the definition contained in 144-501 did not include the indoor requirement, and that was why the application had been written the way it was. Commission Chair John Quam confirmed with City Attorney Jim Dye that alcohol consumption would need to occur inside the permanent walls.

### **Public Comment**

Resident Jim Conoly said he did not think there should be another establishment serving beer and wine in the city. He asked if the grease trap and parking had been addressed. Commission Chair John Quam noted that these topics were not part of the application review and would not be discussed.

Joe White of 111 Spring Avenue asked how the beer and wine permit was a requirement for a viable business, as alleged by the applicants. He said that he would not take his kids for a burger and ice cream to a place that served alcohol. The resident expressed concern that the city's corridor would be filled with establishments selling alcohol.

Christopher Collins of 113 Willow also expressed concern about the number of alcohol serving establishments along Gulf Drive.

Matt Taylor said that the applicants would conform and abide by any law the City had in place.

City Attorney Jim Dye commented that in hearings where decisions were being made based on evidence before the Commission, the petitions and letters of support should not be given much weight in deliberations unless they supplied facts.

**MOTION: Commissioner Dale Woodland moved to approve the application for a Special Use Permit, seconded by Commissioner Duke Miller.**

**Roll call vote: All Ayes. Motion carried.**

### **5. REPAIR & REHABILITATION OF BRIDGES -- APPROVE INSPECTION SERVICES, \$11,000 - Line item transfer**

Commission Chair John Quam noted that City Engineer Tom Wilcox was present to answer any questions. City Engineer Tom Wilcox confirmed that the estimate was for a full-time inspector for this project. Mayor SueLynn confirmed with City Engineer Tom Wilcox that this inspector would cover hours not included in the periodic inspections included in other BDI scopes of services.

**MOTION: Commissioner Carol Ann Magill moved to accept the repair & rehabilitation of bridges full time inspection services, at a cost of \$11,000. Transfer \$11,000 from line item 551.00-56 - Capital Improvement Contingency Fund to line item 551.03-56 - Bridge Inspections. Motion seconded by Commissioner Duke Miller.**

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

### **6. OAK AVENUE - REPLACE FIRST 90 FEET OF ASPHALT - \$3,000 Line Item Transfer**

Commissioner John Quam confirmed with City Engineer Tom Wilcox that one-inch asphalt coverage would be replaced with two inches. The City Engineer described

improvements to the grade of the first 90 ft. that the city would benefit from relative to standing water.

Mayor SueLynn said it had been brought to her attention that the City already had a contract. City Engineer Tom Wilcox confirmed that a change order would be made to the contract. Commission Chair John Quam confirmed with City Attorney Dye that the Commission should really have the change order before it voted. Commissioner Carol Ann Magill asked if more than \$3,000 would be added to the contract, and City Engineer Tom Wilcox responded that there would be no additional cost.

Commission Chair John Quam recommended a Special Meeting on September 9<sup>th</sup>, and Tom Wilcox confirmed that he and City Attorney Jim Dye could probably have the change order by that time.

Commissioner Carol Ann Magill asked if APAC would be paid the 90% of the \$30,000 contract. City Engineer Tom Wilcox confirmed that this amount would be put in an escrow account until this work is complete. Commissioner Dale Woodland said that he had read the agreement several times, and asked about the remaining 10% to be paid when the job is complete. He asked what 'job completion' the 10% referred to. City Engineer Tom Wilcox said that if the \$3,000 is approved, APAC would do all the work, and the day it is completed, BDI would turn over the 90% check, and after 90 days the remaining 10% would be paid.

Commissioner Duke Miller confirmed that Steve Ayers had signed a document guaranteeing the three year warranty, effective after completion. Commission Chair John Quam recommended that this be restated in the change order. Commissioner Duke Miller agreed and asked City Engineer Tom Wilcox to make sure this is done. Commissioner Carol Ann Magill confirmed that Tarpon would be done at APAC's cost.

Mayor SueLynn asked who would be on hand during the repair work. City Engineer Tom Wilcox confirmed that a full-time inspector would be provided at BDI's expense. Mayor SueLynn clarified that if the motion passed, that she would be authorized to write a check for 90% of the contract owed.

**There was consensus to continue the topic to September 9<sup>th</sup>, 2004.** Mayor SueLynn confirmed that City Engineer Tom Wilcox would inform her of the contact person at BDI who would be responsible for writing the change order.

City Engineer Tom Wilcox reported as a post script that this week's pre-construction conference relative to the bridges had gone well with good discussion with the contractor and utility people. He said that work would most likely begin October 1, with completion estimated within two months from then.

**7. HURRICANE "CHARLEY" PROCEDURES/LESSONS UPDATE**

Mayor SueLynn expressed gratitude for the City's good fortune in the face of the danger now passed. She thanked all those who stepped forward during the emergency, including Roser Church, Rotten Ralph's, Waste Management, Jeff Murray, John Quam and Ed Spring, and those who had helped loading sandbags. She noted that Commission Chair John Quam had spent days around the clock at EOC, and that law enforcement had also been on hand round the clock. She noted that Commissioner Duke Miller had attended two important meetings that she could not be present at. She thanked everyone for their exemplary service and compassion for their neighbors and associates.

Mayor SueLynn said that her office had held two "lessons learned" sessions, which revealed that the operations had gone very smoothly. She noted that the temporary location of the City offices was a factor in the little time required to move items, since there was less to move. The Mayor said that the FEMA training had been very helpful. She noted that she would be signing up for the next session and would encourage any of the Commissioners, including the City Attorney to do the same. Mayor SueLynn noted that almost all of the cost would be covered by FEMA. She said that she and her staff were looking at areas needing improvement, including use of volunteers and sand bagging.

The Mayor noted that many forms had been used, including those required for the declaration of an emergency, and that she would be making arrangements to produce these with blanks to fill in during an emergency. She noted that a remote location would need to be designated for the issuance of hang tags, so that City Hall would not be the only place they could be obtained. The Mayor said she had been delayed but would continue working on a manual for staff. She said the video of City property had been helpful, but what was still needed was a video of the city's streets.

Commission Chair John Quam commended the Mayor for the smooth handling of the emergency. Commissioner Duke Miller asked if next time the city is evacuated, if should someone check stickers as soon as the evacuation order is lifted, so that only residents could return at first. Sgt. Kenney said that since there had been no damage, there had been no requirement to screen for possible looters. Commissioner Duke Miller noted that the risk of outsiders coming in while residents are away would be reduced by stopping them upon their entrance to the island itself, and Sgt. Kenney confirmed that if there are situations where there had been damage, there would be inspection of hang tags upon entry. Sgt. Kenney noted that there had been increased patrols in the neighborhoods during the emergency.

**8. FIRST READING ORDINANCE 04-622 - LEASE WITH WATERFRONT RESTAURANT FOR PARKING**

Commission Chair John Quam indicated that this referred to the lease with the Waterfront Restaurant owners for parking spaces across the street from it. Commissioner Duke Miller read the ordinance by title.

Commissioner Carol Ann Magill said she had reservations with the City entering into a lease in a waterfront area that could impede the public's ability to use the recreation space. She said she felt that the City should revisit the Code relative to parking spaces for restaurants and to address the problem with legislation, instead of entering into private leases with businesses. Commission Chair John Quam noted that there would be no restrictions to public parking in the proposed area. Commissioner Carol Ann Magill said she still thought the City should address the recreation and open space issue and deal with parking in a different way. She expressed concern that other businesses could allege that the City was giving special treatment to individuals. The Commissioner inquired whether the parking issue was affecting the use of Recreation and Open Space in general.

Commissioner Dale Woodland said he was not inclined to approve the lease for parking space with the Waterfront Restaurant. He said he was also concerned about the City's leasing its property to private individuals. The Commissioner noted that originally, when he moved to approve the Waterfront's site development plan, he did not include a provision for the parking. He said that he had to this day never observed the rear parking lot at the Waterfront being full. Commissioner Dale Woodland said that relative to parking requirements overall, these appeared to be too restrictive, causing difficulties for most permit applicants. He noted that he had not observed a parking problem in the city in general. Commissioner Dale Woodland noted that the lease called for 'overflow' parking, but said that this would be the first place people park, as it was the most convenient.

Commission Chair John Quam agreed, saying that people are going to be parking where they do now, whenever they visit the Waterfront Restaurant.

Commission Chair John Quam said that since the Commission approval of the project was contingent upon the parking lease with the City, it was key to the approval overall. He said that the idea behind the lease was to satisfy the code requirement for parking. City Attorney Jim Dye said he did not think the Commission could waive requirements that are specifically stated in the Code. He said the Code could be explored and revised in the future, but in the meantime, the project required approval. Commissioner Carol Ann Magill recommended bringing the topic to the September 9<sup>th</sup> Commission Work Session, and that the lease include a sunset clause relative to pending legislation. She said she had strong reservations about the parking situation.

Commission Chair John Quam said the term of the lease could be set for any time desired. He said that the lease would be non-exclusive, therefore there would be no restrictions to the public, and noted that there would not even be signage indicating that parking was for the restaurant.

The City Attorney noted that the lease was simply a way for the applicant to satisfy the City's requirements for parking. He said that if subsequent legislation removed the requirement for the lease, the parties could agree to break it.

Commission Chair John Quam recommended adjusting the lease at this evening's meeting. He recommended striking the word 'overflow'. Commission Chair John Quam recommended, relative to paragraph 9 of the lease agreement, that 1 year be specified, with automatic annual renewal, and at least 90 days notice required for termination.

Commission Chair John Quam indicated that the second reading of the ordinance would be held on September 23<sup>rd</sup>, 2004. City Attorney Jim Dye confirmed that the lease would be for the amount of \$1 per year.

#### **9. FIRST READING ORDINANCE 04-623 - CODE ENFORCEMENT PROCEDURES**

Commissioner Dale Woodland read the Ordinance by title. Commissioner Carol Ann Magill noted that "reasonable time" was at the discretion of the Code Enforcement Officer. Commission Chair John Quam said that the language in the paragraph was quoted verbatim from statute and that it guided the Code Enforcement Officer on how to set a reasonable time. He said that the Commission had the authority to specify finite limits, and that this would be a policy issue. Mayor SueLynn said that the Code Enforcement Officer had read the draft ordinance and that she was satisfied with it. Commissioner Dale Woodland asked relative to fines, what the maximum was. City Attorney Jim Dye noted that they were up to \$250 per day for a first offense, and up to \$500 per day for repeat violations.

Commissioner Carol Ann Magill asked for the definition of a repeat violator. City Attorney Jim Dye confirmed that a repeat violator is someone who has previously been before the Board and judged to be in violation of the same section of the Code. Commissioner Carol Ann Magill asked if anything could be written into the Code to prevent people from repeatedly violating until they receive a second warning letter, and who never come before the Board. City Attorney Jim Dye said that this problem could be brought before the Board by the Code Enforcement Officer, and policy could be adjusted.

Commission Chair John Quam indicated that the second reading of this ordinance would be held on September 23<sup>rd</sup>, 2004

#### **PUBLIC COMMENT**

Jason Suzor, owner of the Waterfront Restaurant, asked what the duration of the lease would be. City Attorney Jim Dye said that the lease would automatically renew if notice to terminate was not received within 90 days.

**PRESS COMMENT**

None offered.

**ADJOURNMENT**

**MOTION: Commissioner Duke Miller moved to adjourn the meeting, seconded by Commissioner Carol Ann Magill.**

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

The meeting adjourned at 8:55 p.m.

Respectfully submitted,

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City Clerk

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Date