

**CITY OF ANNA MARIA  
PLANNING & ZONING BOARD  
REGULAR MEETING HELD AT ANNA MARIA COMMISSION CHAMBERS  
10005 GULF DRIVE – ANNA MARIA, FL  
TUESDAY, SEPTEMBER 2, 2008  
7:00 P.M.**

**CALL TO ORDER**

Planning and Zoning Chair Doug Copeland called the meeting to order at 7:00 p.m.

**PLEDGE TO THE FLAG**

**ROLL CALL:** Boardmembers Margaret Jenkins, Sandra Mattick, Mike Yetter, Chair Doug Copeland, Randall Stover, and Jim Conoly.

**Absent w/excuse:** Boardmember Frank Pytel.

**Staff present:** City Clerk Alice Baird, City Planner Alan Garrett, Public Works Director George McKay, Building Official Bob Welch, City Commission Chair John Quam, and Minutes Clerk Stacey Johnston.

**Press:** Sun.

**1. A Request to Vacate a Platted Portion of Palm Avenue Intersecting South Bay Boulevard Between Lots 86 and 87, of Wells Bay Harbor, Section "A", In Plat Book 7, Page 78, Public Record of Manatee County, Florida.**

*Attorney Phil Perrey*, Hamrick, Perrey, Quinlan & Smith, P.A., representing the applicant Horizon Bank, addressed the Board. Mr. Perrey introduced Mr. Charles Conoley, Horizon Bank President.

*City Clerk Baird* officially swore-in all persons wishing to speak.

*Attorney Perrey* addressed the Well's Bay Harbor plat filed in 1950 that created platted Palm Ave. He informed that platted Palm Ave. has never been constructed as a roadway.

Mr. Perrey mentioned the Certificate of Title and the placement of the property owned by Horizon Bank along with the platted Palm Ave. *City Planner Garrett* informed that a copy of the Certificate of Title was filed in the City's master file.

Mr. Perrey then discussed the Horizon Bank's Position Statement by stating the following:

- The City has the power to vacate platted Palm Ave. based on the City's Charter, City's Code of Ordinances, and Florida case law.
- The requested vacation is consistent with the traffic circulation element of the City's Comprehensive Plan.
- Platted Palm Ave. does not provide the sole access to any property in the City. He pointed out that the parcels on each side of platted Palm Ave. have access via Bay Blvd. Lot 1 of Villa Rosa Subdivision has road access via Bay Blvd. S and Villa Rosa Way shown on the plat of Villa Rosa Subdivision.
- The vacation would not jeopardize the current or future location of any utility. He informed that Horizon Bank will grant permanent utility and

drainage easements to the City in the front, rear, and side yards of the resulting parcel of land so long as they have no detrimental effect on the bank's ability to obtain a building permit for construction of a single family residence on the resulting parcel of land.

- The proposed vacation is not detrimental to the public interest. The bank intends to develop and improve the resulting parcel of land by constructing a single-family residence, which will generate property tax revenue for the City.
- Attorney Perrey stated that Palm Ave is not reasonably or materially beneficial to the surrounding properties abutting the platted street. All the surrounding properties have existing access by public roads. None of the surrounding properties abutting platted Palm Ave suffer any damage or detriment from the proposed vacation. It was his opinion that the market value of the surrounding property areas will be the same whether or not platted Palm Ave. is vacated or not.
- Attorney Perrey said it would be an abuse of discretion for the City to deny the proposed vacation and courts may review the City's decision to determine whether the City exercised its authority arbitrarily and without regard to the rights and necessities of the public.
- The City may place conditions on the vacation of platted Palm Ave. as authorized by City Ordinances and Florida case law.

Explanation followed relating to the property owned by the bank. It was noted there are bricks on the bank owned property that were there without the bank's permission. He informed that due to a foreclosure, the bank became owner of a portion of Lot 86 on December 18, 2007. He stated that the owner of Villa Rosa owns the portion of Lot 86 that is not owned by the bank. Attorney Perrey informed that Robert Byrne owns neighboring Lot 87.

Explanation followed by *Horizon Bank President Charles Conoley* as to the chain of events causing Lot 86 to be split. He stated that Lot 86 is now un-buildable. He said if the requested vacation is approved, the bank will approach the neighboring property owner to purchase the remaining land in order to allow for a buildable lot.

In answer to *Boardmember Stover's* question, *City Planner Garrett* confirmed that the City owns the platted land the bank is requesting to have vacated. He informed that when a municipality vacates a right-of-way it is 50/50 on both parcels – 50% given to one side / 50% given to the other side. He said he was unaware of the City being able to charge for a property vacation. However, the City could sell the property.

City Planner Garrett explained that the City did not create or make the lot owned by the bank a non-buildable lot – it was at the discretion of the property owners. He informed that to his knowledge the City had never vacated a piece of property.

*Boardmember Stover* pointed out that the property would be valued at \$650,000 to \$700,000 and it would be quite a windfall if the bank were to obtain the property.

*Chair Copeland* opened the Public Hearing for the purpose of hearing any public comment.

### **Public Comment**

**Attorney Thomas Fitzgibbons**, 2750 Ringling Blvd., Sarasota, addressed the Commission on behalf of his client Bono Enterprises, LLC. He informed that this client is presently involved in a lawsuit with Horizon Bank over the ownership of Lot 86. As part of the lawsuit, both Horizon Bank and Bono Enterprises, LLC believe they own the property.

According to Attorney Fitzgibbons, Bono Enterprises, LLC purchased the property and have a deed for the property. He stated that there had been errors in every transaction this far.

Attorney Fitzgibbons stated that when Bono Enterprises, LLC purchased the property, the mortgage company did not fund the mortgage – they have a clean title policy stating there was no mortgage – and now they are engaged in a complex litigation. He informed that the bank did not join his client in the lawsuit. He explained that the bank is now trying to distinguish Bono Enterprises, LLC's ownership right since they did not join them in the original lawsuit. The process will take approximately eight to twelve months to determine the issue of ownership.

Attorney Fitzgibbons informed that his client has the right to redeem the property and that eventually the Judge will rule on how much it will take to pay the mortgage - which will then be paid. Therefore, according to Attorney Fitzgibbons, Horizon Bank will never acquire clear title to the property.

Attorney Fitzgibbons explained that in a proceeding lawsuit – litigation between the two banks having mortgages on the property – the court ruled that the 20-foot strip has zero value. He stated that due to the missed mortgage, they've lost a substantial part of their entrance to the point where they are concerned of whether or not they are in compliance with their requirements for the Preliminary and Final Plats. He said the reason the bricks were on the property is because they felt they owned it.

He said if the bank were to succeed in getting clear title to the property, it could restrict his client's ability to access the proposed 15-unit subdivision. They are concerned about losing the public right-of-way. Attorney Fitzgibbons said, as the owner of the subdivision, he and his client does not believe it was in the public interest to approve the vacation request.

**Tom Turner**, N. Shore Dr., said that he did not believe the City should grant the requested vacation especially with two landowners fighting over a strip of land –

and that it should be settled between them. He further pointed out that it was a valuable piece of property.

**City Planner Garrett** acknowledged the issue of the ownership of land. He informed he had discussed the issue with City Attorney Dye who advised that this was an issue between the two entities. Anyone has the right to request a street vacation. He suggested that the P&Z Board consider that point separately and that their decision be determined on the merits of the presentation as to whether the City should or should not vacate the street.

**Attorney Perrey** confirmed that there was an issue between the legality of the Villa Rosa plat. When the property was platted, Horizon Bank had a mortgage on a portion of the property that was platted and according to State Law, the bank is suppose to join in for consent to a plat – which did not occur. There is now an issue relating to the legality of the Villa Rosa plat.

*Hearing no further public comment, Chair Copeland officially closed the public comments portion of the Public Hearing.*

#### **P&Z Board Discussion**

*Chair Copeland* reminded that approximately twenty years ago there was a lot of discussion about vacating the various alleys in Anna Maria. However, those alleys were never vacated and are now being used for the City's drainage project. He believed it would be neglect of the City to approve the vacation request that evening.

*Boardmember Mattick* agreed. She pointed out that vacating the property would not solve the problem between the two entities. The other parcel would still have to be purchased from the other owner. She agreed that it was a very valuable piece of land and that it would be detrimental to the public interest that someone else could profit from the City's property.

*Boardmember Conoly* stated that two attorneys had been heard that were giving conflicting opinions. However, the City had no attorney in attendance to give advice. He pointed out that Attorney Perrey had stated the City has no choice relating to the vacating of the property, however, the City's Planner had indicated the City did not have to vacate it, nor have to explain why.

*Boardmember Stover* agreed and said it was a big piece of land.

*Boardmember Jenkins* also agreed and said the City should sell the property before ever granting any vacation for it.

**MOTION:** Boardmember Yetter moved to deny the request to vacate the platted portion of Palm Avenue Intersecting South Bay Blvd. between Lots 86 and 87, of Wells Bay Harbor, Section “A”, in Plat Book 7, Page 78, Public Record of Manatee County, Florida, based on the testimony and following findings:

- The requested vacation is consistent with the traffic circulation element to the City’s Comprehensive Plan.
- The right-of-way or other property south to be vacation does not provide the sole access to any property.
- The vacation would jeopardize the current or future location of any utility.
- The proposed vacation is detrimental to the public interest.

Boardmember Mattick seconded the motion.

On roll call vote of the Board, the motion carried unanimously.

*Chair Copeland* informed that the P&Z Board’s recommendation will be forwarded to the City Commission for their final consideration to be heard Thursday, October 23, 2008, 7:00 p.m.

**2. A Request to Vacate a Platted Eight Foot Wide Drainage Easement Reserved on the Easterly Side of Lot “B” of Bimini Bay Estates, in Plat Book 8, Page 75, Public Record of Manatee County, Florida; and Re-Establishing an Eight Foot Wide Drainage Easement Reserved on the Northwesterly Side of Lot “B” of Bimini Bay Estates.**

*Public Works Director McKay* informed that the City had been working with the property owner relating to this vacation. He said he was in favor of the vacation request.

*Planner Garrett* explained the purpose for the vacation request. He informed that the request involves Lot B of the boat lots located on the Bay side of the Community Center. One of the boat lots, according to the Bimini Bay Estates plat, has an 8-foot wide drainage easement that’s reserved on the easterly side of Lot B. The vacation request asks that the present easement be vacated and that it be moved to the westerly side of Lot B. Doing so will save the City some piping relating to the drainage project. There is currently no infrastructure within the current easement and the City will be providing a drainage outfall into the canal.

In answer to *Boardmember Jenkin’s* question, *Planner Garrett* informed that moving the easement would not affect the owner of Lot 134.

Public Works Director McKay explained the drainage improvements that will occur.

*Chair Copeland opened the Public Hearing for the purpose of hearing any public comment.*

**Public Comment**

**Dolores Dunn**, owner of Lot 134, said she had received the Public Hearing notice and was in attendance for the purpose of obtaining information relating to the vacation request. She had no objection to its approval.

*Public Works Director* informed that he and Ms. Dunn had been working to preserve some of the Palm Trees in that area.

*Hearing no further public comment, Chair Copeland officially closed the public comments portion of the Public Hearing.*

*Planner Garrett* explained that the request serves as a vacation from the plat and rather than encumbering the plat the City would enter into a separate easement with the property owner that did not have to go before the P&Z Board for approval.

**MOTION:** Boardmember Stover moved to recommend approval of the request to vacate a platted eight foot wide drainage easement reserved on the easterly side of Lot "B" of Bimini Bay Estates, in Plat Book 8, page 75, public record of Manatee County, Florida; and re-establishing an eight foot wide drainage easement reserved on the northwesterly side of Lot "B" of Bimini Bay Estates based on the testimony heard and the following stipulations:

- The requested vacation is consistent with the traffic circulation element to the City's Comprehensive Plan.
- The right-of-way or other property sought to be vacated does not provide the sole access to any property.
- The vacation would not jeopardize the current or future location of any utility.
- The proposed vacation is not detrimental to the public interest, and
- With the condition that the City trade for an equivalent easement to the northwesterly side of Lot "B".

Boardmember Mattick seconded the motion. On roll call vote of the Board, the motion carried unanimously.

*Chair Copeland* informed that the P&Z Board's recommendation will be forwarded to the City Commission for their final consideration to be heard Thursday, September 25, 2008, 7:00 p.m.

**3. New Business**

*Chair Copeland* announced that Boardmember Yetter had confirmed he could be in attendance for the P&Z Board meetings by 6:30 p.m. After discussion, it was agreed to change all future P&Z meeting times from 7:00 p.m. to 6:30 p.m. (The October 7 meeting will remain at 7:00 p.m. due to the hearing being advertised for 7:00 p.m.)

The following upcoming P&Z Board meeting dates and times were announced.

- September - Tuesday, September 16, 2008, 6:30 p.m.
- October - Tuesday, October 7, 2008, 7:00 p.m.  
(Planner Garrett will inform if it will be 6:30 p.m.)  
Tuesday, October 21, 2008, 6:30 p.m.
- November - Wednesday, November 5, 2008, 6:30 p.m.  
Wednesday, November 18, 2008, 6:30 p.m.

**4. Old Business – None.**

**5. Approve Minutes of August 5, 2008.**

**MOTION: On motion made by Boardmember Conoly and seconded by Boardmember Jenkins, the August 5, 2008 minutes were approved as written. Motion carried – All Aye.**

**6. Adjournment.**

**On motion made by Boardmember Jenkins and seconded by Boardmember Stover the meeting was adjourned at 8:07 p.m. Motion carried – All Aye.**

**The next regular meeting is scheduled for Tuesday, September 16, 2008, 6:30 p.m.**

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Alice Baird, CMC, City Clerk

**MINUTES APPROVED:** \_\_\_\_\_