

# **CITY OF ST. AUGUSTINE, FLORIDA**

## **Aggregation Ordinance Task Force**

**October 23, 2003**

The Aggregation Ordinance Task Force met in formal session at 3:00 p.m., Thursday, October 23, 2003 in The Alcazar Conference Room at City Hall. The meeting was called to order by Commissioner Donald Crichlow and the following were present:

### **1. ROLL CALL**

Members: Donald Crichlow, Commissioner Irene Arriola, Realtor Gerald Dixon, PZB member

Geoffrey Dobson, Zoning Attorney

Philip McDaniel, Affected member

Excused: Ronald Stafford, Non-affected member

City Staff: Mark Knight, Director, Planning and Building Dept.

Pam Halterman, Recording Secretary

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### **2. DISCUSSION REGARDING THE ORDINANCE FOR THE AGGREGATION OF NON-CONFORMING LOTS**

Commissioner Crichlow stated that he would like to have all members up to speed on the reason for the creation of the Aggregation Task Force.

Mr. Dixon stated that the ordinance had previously been before the PZB for recommendation, which the PZB had unanimously approved and forwarded to the City Commission. However, he noted that the City Commission had remanded the ordinance to the PZB in order for the board to conduct a public hearing. He said that much community input was received during the meeting. He affirmed that the PZB recommended that a task force be created to review the ordinance and to make a recommendation of their determination to the City Commission. He noted that the PZB asked that the task force consist of the following individuals:

- Commissioner
- PZB member
- Zoning attorney
- Realtor
- Affected homeowner
- Non-affected homeowner

Mr. Dobson advised that the committee was subject to Florida Sunshine Laws, which meant that members could not discuss issues between themselves outside of the meeting that might come before the committee. He noted that it did not preclude a member from discussing an issue with another member of a different board or committee. He advised that a member should disclose a conflict of interest with any discussion which might affect a member on the Committee in a pecuniary way. He stated that his firm would not represent any person regarding aggregation of lots due to his position on the committee.

Commissioner Crichlow questioned whether Mr. Stafford, as an affected homeowner and a member of the committee, would be required to disclose a conflict or could be in violation of the Florida Sunshine Laws.

Mr. Dobson advised that the committee would not make final decisions, but would make recommendations to the City Commission; therefore, one would only need to disclose a conflict of interest. He noted that they were an advisory committee only.

Mr. McDaniel submitted a document regarding the Sunshine Laws to each member and said it had been obtained through the State's website. He noted that the document indicated that the City was allowed to adopt reasonable rules and regulations regarding public comment. He acknowledged that several citizens were in attendance that day, which might desire to voice their comments.

Commissioner Crichlow stated that the committee had the option of whether or not to allow public comments; however, he said if a member had a question for one of the attending citizens, they could ask it, otherwise, he suggested that the public refrain from offering comment.

Mr. Dobson advised that it was not required that the public be allowed to speak; however, they had the right to listen and observe. He noted that it was a matter of policy regarding public comments.

Commissioner Crichlow stated that the City had a situation that could potentially increase its density and force a change to the character and negatively impact neighborhoods. He explained that it involved the ability for people to develop non-conforming lots. He stated that ninety-percent of lots in the City were non-conforming. He suggested that a pattern had developed whereas one house had been built on more than one lot. He noted that the ability was present for someone to purchase that property, demolish the structure and construct a new house on each of those lots.

Commissioner Crichlow directed attention to a document titled "worse case scenario", and noted that the area marked in blue was a study area located on the north side of Davis Shores. Directing attention to a display, he explained that the purple marked area had been zoned RS-2 and the green marked area had been zoned RS-1. He noted the following regulations for each zoning district:

- RS-1 — seventy-five foot maximum frontage consisting of 10,890 square feet with 25% maximum lot coverage
- RS-2 — fifty foot maximum frontage consisting of 5,454 square feet with 30% maximum lot coverage

Commissioner Crichlow noted that the green marked area consisted of individual non-conforming lots, which were unbuildable and involved lots of thirty-feet or less width and one-hundred feet or less depth. He explained that each lot marked in green had an existing house constructed on it. He said due to the non-conforming size of the lot it would not allow one to rebuild a single-family house if the existing structure was demolished. He stated that the yellow marked area consisted of two lots with one house existing on the parcel; however, he suggested that the existing house could be demolished and two houses constructed in its place. He stated that the orange marked area consisted of three lots with one house; however, he suggested that the existing house could be demolished in order to construct three houses on the same property. He noted that the red marked area would allow three or more houses to be built. He suggested that twenty-four homes in the orange area could be developed into seventy-two homes. He added that 362 homes were involved in the study area, but that amount could change to 582 homes, which was a sixty-one percent increase over the existing density.

Commissioner Crichlow stated that he was concerned over the possibilities of a total change in character of a neighborhood from what it was intended to be. He noted that the subject neighborhood received an RS-1 zoning designation, because that zoning had the lowest possible density. He directed attention to the letters in the packet he submitted to the members and noted that forty-five other municipalities had created and adopted an aggregation ordinance that limited the possibilities of building on non-conforming lots. He clarified that the proposed ordinance would not affect a person who owned a single non-conforming lot.

Commissioner Crichlow suggested that to protect the neighborhoods, decisions to prevent the worse case scenario needed to be made. He stated that if the committee decided to create an ordinance it should not involve the entire RS-1 and RS-2 neighborhoods. He explained that he had presented the proposed ordinance to the City Commission and it was determined that a committee should be formed in order to address everyone's concerns. He stated that the number of people adversely affected by the new ordinance should be minimized.

Mr. Dixon stated that it appeared that approximately fifty percent of the houses were marked in green, which involved single-family houses on non-conforming lots. He noted that the PZB faced that issue many times, which resulted in a smaller house being constructed. He suggested that smaller non-conforming lots would govern what could be built; therefore, it would only allow construction of smaller houses. He noted that the market for smaller houses did not exist. He voiced that a legal issue of "taking" was involved with the proposed ordinance. He suggested that much hardship would involve the government attempting to save the world, which would create other problems.

Commissioner Crichlow stated that the government was allowed public regulations of private land for the betterment of the community.

Mr. Dixon stated that the City's communities had been created, formed and consisted of smaller homes.

Mr. Dobson advised that property under existing common ownership and use did not require aggregation and did not constitute a taking. He explained that if one person had two non-conforming lots under common ownership and use, it could be legally

treated as one lot with regard to setbacks, taxation and a number of factual scenarios that would come into play. He suggested that an ordinance that precluded subdivisions would be legally valid, but would involve a policy issue from the legislative body under those circumstances. He explained that an issue of intent could be addressed and tested. He suggested that intent was difficult to prove and disprove. He described to the committee members several court cases that included numerous scenarios that involved taking of property and eminent domain issues.

Mr. Dixon noted that a property appraisers' office recognized lots individually. He suggested that in the future two smaller houses could be demolished in order to construct one large house, which was the opposite of what was being proposed. He commented that if one had a real concern about community appearance, they had the option to move to a gated community.

Commissioner Crichlow stated that the potential remained.

Mr. Dixon stated that if a person had a non-conforming buildable lot, they should not be allowed to obtain a setback variance.

Ms. Arriola stated that if the proposed ordinance was not adopted, lighthearted variances and exceptions should cease to be granted.

Mr. Dobson explained that the reason for setbacks and variances was to preclude taking. He noted that St. Johns County had overlapping setbacks regulations, which resulted in one building anything they desired on their property as long as it involved a negative eleven foot setback, which would constitute a taking.

Mr. Dixon suggested that pressures were elevated regarding waterfront properties.

It was questioned whether public input would be heard.

Commissioner Crichlow advised that the committee would not allow public comment that day; however, the committee would conduct a public meeting at a later date.

Mr. Dixon noted that the proposed ordinance would affect all properties, but would be more apparent in the RS-1 and RS-2 zoning districts.

Commissioner Crichlow stated that the proposed ordinance would not eliminate change in neighborhoods, but would help manage and control those changes. He suggested that the ordinance would save money for a developer and the property would sell faster because of increased value.

Mr. Dixon suggested that larger lots allowed the construction of larger homes, which changed the community appearance.

Commissioner Crichlow stated that many elderly people lived in the study area and had voiced their concerns about what might be constructed across the street from them. He noted that increased density would increase traffic. He reiterated that he desired to prevent the worse case scenario from becoming reality in the City. He said he disagreed with Mr. Dixon and suggested that increased density would happen first

with waterfront properties. He noted that it had already been proven in south Florida.

Mr. Dixon clarified that the PZB did not recommend the ordinance; however, the intent of the committee was to discuss and review the issue, not to draft an ordinance as suggested by Commissioner Crichlow.

Mr. McDaniel stated that part of the committee's charge was to talk to citizens and receive input from the affected property owners. He suggested that education and legal information should be created in order to provide citizens with answers. He stated that a list of pro's and con's should be created by the committee.

Mr. Dixon added that unaffected property owners should also be informed and offered information. He suggested that an informal poll be taken in order to gain insight on what the citizens desired.

In response to an inquiry, Mr. Knight advised that unrelated information had previously been included on the City's water bill in an effort to inform citizens on issues before the City.

Mr. McDaniel noted that much misinformation and misunderstanding had been rumored. He suggested that correct information needed to be provided to the public.

Ms. Arriola stated that the Lincolnville community was attempting to find a way to be designated as a protected community, because currently, Lincolnville was rich with vacant land and the citizens were afraid of what might happen in the future.

Commissioner Crichlow advised that the Lincolnville Neighborhood Association had contacted him regarding the regulations he had attempted to create for that area while serving on the PZB. He suggested that the committee create a method of education and find a way to receive feedback.

Mr. Dixon suggested that Commissioner Crichlow was jumping to a solution; however, it had not been determined whether the community believed that a problem existed.

Mr. McDaniel stated that part of the challenge of the committee was to get the information out to the public and those affected.

Ms. Arriola noted that some citizens had been in the City for sixty to seventy years and suggested that it would be interesting to hear what they thought of the proposal.

Commissioner Crichlow stated that the Bert J. Harris Act would be brought up, which involved the "taking" issue. He suggested that the process was costly and time consuming. He said the Act took away the right to be able to legally sue a City for taking of property.

Mr. Dobson advised that it did not relate to the issue of sovereign immunity of government. He noted that any suits that related to substantial economic loss of use of property would be handled as a traditional taking. He stated that three types of taking existed and had involved court cases:

- Governmental body appropriated the property and physically occupied the property
- Regulatory taking
- Facial taking where the ordinance specified that the property shall not be used

Mr. Dobson noted that both federal and Florida laws in their current situation required that before a taking case could be brought under a regulatory taking, it must first be a facial taking. He stated that one must exhaust administrative remedies and be refused in such a manner that no possibilities existed that would allow use of the property. He suggested that the first line of protection would be to have a system in place to apply changes. He explained that numerous cases that involved several different schemes had been determined in courts.

Commissioner Crichlow stated that the suggestions made by the committee regarding the proposed ordinance would not prevent one from re-platting their property to conforming lots. He said that it would be a reasonable increase in density and would prevent the worst case scenario.

Mr. Dixon suggested that current lifestyles were different than in the 1950's. He noted that number of rooms and size of rooms had increased since that time. He stated that before he could embrace the idea, he preferred to review citizen comments on the proposed aggregation ordinance.

Ms. Arriola agreed and suggested that the public be polled and educated prior to the committee making a determination.

Mr. McDaniel suggested that the committee's biggest challenge was to agree to certain language that would represent both sides of the issue. He stated that after that, it would be a simple matter of distributing, communicating, polling, summarizing and presenting their recommendation to the City Commission, which would allow the Commission to make an informed decision. He suggested that each member present a list of ways to inform and educate the public on the issue. He noted that it should also be user friendly for the public.

Mr. Dixon stated that historically, the City relied upon the local newspaper to convey messages and/or information, although, the newspaper had not offered the depth needed, which resulted in a City newsletter being published.

Commissioner Crichlow stated that he would check whether information could be placed on the City's water bill.

### **3. DISCUSSION OF TOPICS FOR THE FOLLOWING MEETING**

It was determined that the members would formulate several different ways to offer information and received feedback from the public.

It was affirmed that the committee would allow public comment at the following meeting.

### **4. ESTABLISHING THE NEXT MEETING DATE**

The committee agreed to hold the next meeting on November 6<sup>th</sup>, 2003 at 3:00 p.m.

**8. ADJOURNMENT**

The meeting adjourned at 4:28 p.m.