

CITY OF ST. AUGUSTINE, FLORIDA

Aggregation Task Force Meeting

March 4, 2004

The Aggregation Task Force met in formal session on Wednesday, March 4, 2004 at 3:18 p.m., in the de Aviles 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 Gerald Dixon, PZB member

Irene Arriola, Realtor

Philip McDaniel, Affected member

Geoffrey Dobson, Zoning Attorney

Absent: Ronald Stafford, Non-affected member

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

Karen Rogers, Recording Secretary

2. Approval of Aggregation Task Force Minutes of February 5, 2004

The minutes of February 5, 2004 Aggregation Task Force meeting were approved as presented.

Mr. Dixon stated that the minutes were fine, but during the previous City Commission meeting he had heard Commissioner Crichlow state two times that the Aggregation Task Force had recommended hiring a consultant, but the members of the task force had never discussed the issue.

Commissioner Crichlow stated that he had brought the matter to the task force from the Commissioners, and he had discussed the matter of a consultant with the City Manager at length. He said that when he brought the matter to the task force the response had been that the members did not want to take the matter on. He said that he had made an assumption which he should not have, but if the task force did not want to handle the

matter there was only one other alternative.

Mr. Dixon stated that his response had been that if the neighborhoods wanted the restrictions he would be willing to address the subject. He said that he did not

believe that regulation should be developed first and then brought to the neighborhoods; therefore, he did not see a need for a consultant until the community got to the point of wanting to develop a policy.

Commissioner Crichlow stated that if Mr. Dixon wanted they could talk about the matter again. He explained to Ms. Arriola that bringing the matter of the architectural overlay to the task force for discussion... He said the Commission had talked about a consultant and suggested that he inquire as to whether the task force would be interested in looking at the matter. He said that the task force had not been receptive to the matter, and he had gone to the Commission and said that the task force was not interested and had recommended a consultant; however, the task force had never really talked about a consultant; it had been an assumption on his part that was their intent. He said that his thought had been that a consultant could put together things that could be implemented in neighborhoods, such as style, height and setback etc. to take to the neighborhoods to see whether it appealed to the citizens.

Ms. Arriola said that would be relatively simple for a consultant with neighborhoods that had an association, but she questioned what would happen with neighborhoods that did not have associations.

Commissioner Crichlow replied that the citizens would have to be notified for special meetings, and there had been eleven neighborhoods identified.

Mr. Dixon stated that he could not see spending money again for a consultant. He suggested developing an outline to bring to the neighborhoods for a response first.

Commissioner Crichlow questioned who would develop an outline.

Mr. McDaniel questioned whether the Commissioner thought that might be something the task force would do. He said that it could parallel some of the work they were doing.

Ms. Arriola stated that the task force did not want to be the ones to say grace over the matter.

Mr. Dixon stated that he had not heard any neighborhoods jumping up and down saying that they needed regulation; therefore, he would like to know their response first.

Commissioner Crichlow agreed that would be the process.

Mr. McDaniel stated that it was Mr. Dixon's point that the neighborhoods had not expressed a need, and Commissioner Crichlow's approach was to provide the neighborhoods with an outline to see whether they felt there was a need.

Mr. Dixon objected to hiring a consultant to develop an outline.

Mr. Arriola stated that the task force's immediate reaction had been to bring the suggestion to the respective neighborhoods, but she was certain that would open a huge can of worms.

Commissioner Dixon referred to the aggregation ordinance and said they would have the same problem with it. He questioned how they were going to get to neighborhoods that had no association.

Mr. Dixon suggested that the aggregation proposal was getting less difficult.

Commissioner Crichlow said that people had asked him why go to the neighborhoods at all, as some places did not do so when they changed zoning.

Mr. Dixon said the aggregation matter was getting simple, and it amounted to a small tweak.

Commissioner Crichlow suggested that they were going back and forth between the two different issues.

Ms. Arriola said that the task force as well as people in the community were leaning more toward mass and scale, which was a positive indication that profit was not the only motivation. She said that it was also more likely that the person who built next door would be a neighbor and not a developer.

Mr. McDaniel suggested that the answer might be a combination of mass, scale and architecture.

Commissioner Crichlow said the neighborhoods might want restrictions by style or styles. He said that if the task force was willing to take on the architectural styles they might want to add another person, such as David Nolan or Paul Weaver with historic architectural input to add to the task force.

Mr. Dixon said that he had no problem generating something simple for the neighborhoods to consider, but to develop a full fledged outline to bring to them made no sense.

Mr. McDaniel suggested that they approach the different issues in sequence and finish the aggregation first. He suggested that the Commissioner notify the Commission that they wanted to finish up the aggregation ordinance and then they would be willing to work on the architectural guidelines perhaps with one other person helping.

Commissioner Crichlow said that perhaps they could set some parameters and scope on the matter if not actually implementing it by going to the neighborhoods. He said that maybe staff would do that, which would save money also.

The task force members agreed.

3. Discussion regarding the emphasis of the proposed ordinance

Commissioner Crichlow referred to draft ordinances #2 and #3 and said that #2 encompassed Sue Campbell's suggestion regarding homesteading, which indicated that if property was not homesteaded that it would retain the development rights for nonconforming lots. He said that would mean that a property owner with four lots that were homesteaded with a house on three lots could not build on the fourth lot

and meet the minimum lots standards. He said that the #2 ordinance penalized the homesteader that should be allowed to build on their lot for a family member etc. He said the #3 ordinance said that if the property was homesteaded the property owner would be allowed to build on the nonconforming lot, but if the property was not homesteaded and intended for speculation or profit the property owner could build on one nonconforming lot, at which point the aggregate lots would have to be subdivided into conforming lots. He clarified that in the case of single nonconforming lots homesteaded or not, they could be built on in either of the proposed ordinances.

Commissioner Crichlow stated that Ms. Campbell's proposal was that in the case of a property owner with four nonconforming lots that were not homesteaded all four lots could be built on.

Mr. McDaniel questioned whether the system could be beat by selling four nonconforming aggregate lots to four separate people.

Mr. Dixon stated that four houses could be built. He said that Commissioner Crichlow's concern was that the density of the City would increase because people would build on the single nonconforming lots. He stated that he did not believe that was going to happen particularly if restrictions were put on nonconforming lots, which would make the houses quite small. He said that recently two landowners had subdivided large lots into two conforming lots.

Commissioner Crichlow stated that there was nothing wrong with that.

Mr. Dixon pointed out that density had just been doubled, which was the Commissioner's concern.

Commissioner Crichlow said that was the density allowed by Code.

Mr. Dixon noted that there would still be two houses instead of one on the property. He said that if size and height was restricted and there was no market for small houses the problem would be alleviated.

Commissioner Crichlow disagreed stating that the size of the house was not enough. He said that currently he was building a two story, 2,000 square foot house on a 21-foot wide lot.

Mr. Dixon suggested that from 40 to 50-foot lots houses could only be two stories high and anything below 40 to 50 feet could only be one story high; therefore, smaller lots indicated smaller houses.

Mr. McDaniel questioned whether that constituted taking.

Mr. Dobson said that as long as they allowed reasonable economic use of nonconforming lots current law would not consider that to be a regulatory taking. He said a regulatory taking was if it deprived the owner of substantial use of the property, which constituted leaving a value of less than 50%. He said that the most recent challenge he was aware of involved the county putting total square footage restrictions on the size of houses.

Mr. Dixon said that they were talking about nonconforming lots. He said that houses on 27-foot lots would be one story shotgun houses.

Mr. Dobson said that currently it was constitutional to restrict use of one of two contiguous lots of common ownership. He said the test was whether the lots were contiguous, common ownership and common use. He said that if they were not in common ownership the situation was different which indicated a way around the restrictions.

Commissioner Crichlow stated that he would not be surprised if property owners had put nonconforming lots into other names since the work had begun on the aggregation ordinance. He said that he did not want that to happen, but he did not know how to prevent it. He said that they could set a date limitation for restrictions, so that if the lots were not homesteaded by a certain date they would have to honor the restrictions or be subdivided into conforming lots.

Mr. Dobson stated that there were numerous aggregation ordinances, but the standard included contiguous lots with common ownership and common legal use. He suggested that the regulation might have to be based on use rather than homesteading; because otherwise people who were part-time residents could argue that they were being treated differently than residents that could homestead their property, which involved the due process clause of the constitution. He said that he would probably describe the situation as owner occupied structure or something of that nature. He said that if the task force were to describe what they wanted to accomplish they could draft an ordinance.

Commissioner Crichlow said that if they could be clear about what they wanted maybe Mr. Dobson could draft an ordinance. He questioned whether they should be more considerate to occupied property by making fewer restrictions or whether there should be fewer restrictions on unoccupied property owners.

Mr. Dixon suggested that the restrictions had to be the same, and he added that he did not agree with using homesteading. He said that his position was to stop construction of large structures on small lots; therefore, he considered mass and scale as the main concern. He pointed out that legally a 50-foot lot could have a 35-foot high house, but lots less than 50-feet should have smaller houses.

Mr. McDaniel questioned whether the matter could be accomplished through setbacks.

Mr. Dixon agreed that there were setbacks and lot coverage restrictions but nothing for height.

Ms. Arriola said that in some neighborhoods height, mass and scale could be in keeping with the surrounding structures. She said that she was inclined to agree with Mr. Dixon.

Mr. Dixon said that it was a zoning issue with guidelines that a landowner could seek a variance for.

A brief discussion resulted regarding zoning and taking of the economic use of property.

Commissioner Crichlow questioned whether they would rather approach the matter by allowing construction on every nonconforming lot, but restricting what could be built.

Mr. McDaniel's said that otherwise they would be profiling and discriminating against property owners.

Ms. Arriola suggested that they could not distinguish the big time investor from the person who lived here all their life.

Commissioner Crichlow said that property owners would be able to build, but perhaps not what they wanted to build.

Ms. Arriola said that a perfectly lovely house could be built on a 30-foot lot in Lincolnville or Fullerwood with a healthy return. She said that once they made their recommendation to the Commission people looking at little lots would have to make an economic decision about their investment.

Mr. McDaniel said that it was essential not to reduce height so much that it amounted to a hardship; thereby, putting the City at risk.

Mr. Dobson said that with the variance the burden of proof could be put on the applicant to demonstrate true economic loss. He said that according to current law purchase of a nonconforming lot would have notice of restrictions on it.

Commissioner Crichlow said that other cities that instigated aggregation ordinances had not appeared to approach the issue the same way they currently were. He questioned the smartest way.

Mr. Dobson said that their approach was old fashioned through minimal standards for lot sizes. He said that the question was what percentage of the City had small lots. He said that other cities had based the restrictions on mass and scale regardless of lot size.

Ms. Arriola noted that they could never make everybody happy, but they could control through other means.

Commissioner Crichlow questioned whether the control she referred to was density.

Ms. Arriola stated that density would increase, as eventually all the lots in St. Augustine would be built on.

Mr. Dixon stated that he thought it would go the other way.

Commissioner Crichlow noted that there was no proof that either of those predictions would occur.

Mr. Dixon continued that they would probably see people combine two lots to construct larger houses.

Commissioner Crichlow stated that would be the task force's objective, but he was not totally convinced that everyone would jump on that band wagon. He said that there could be a proliferation of 1,400-foot two story homes, in which case the City could end up a trailer park.

Mr. Dixon stated that people could not recap their cost that way.

Ms. Arriola suggested that people would only do that on or directly across from the water.

Mr. Dixon said that would be where they wanted to control the height and volume, as people would want bigger houses on the water.

Ms. Arriola suggested that they were moving in the right direction, as they were looking at an overview of the City. She said that there were few cities in Florida with such diverse, eclectic architectural styles as St. Augustine; therefore, their intention was a better thing for the City. She said that if the City imposed a height and size restriction based on the size of the lot and introduced some architectural guidelines it would not constitute a major economic hardship to sellers or developers, and it would put everyone on notice about the rules.

Mr. Dixon stated that 50% of the cases the PZB heard were for variances to exceed lot coverage or setbacks for additions to existing homes, which indicated that homes were getting larger. He noted that a landowner could not create their own hardship to get a variance. He said that because there were ways around regulations, their intention could actually result in people building elephants.

Commissioner Crichlow acknowledged that no matter what the task force developed there would probably be a way around it.

A discussion ensued regarding different examples of architecture they wanted to avoid.

Mr. McDaniel questioned if they cut the height for lot size whether it would cut the value of the home in half and whether that would constitute a taking.

Mr. Dobson said that regarding economic use of the land they had to consider the value of the lot before and after regulations. He said that a great deal would depend on the date of the regulation.

Mr. Dixon said that if the ordinance would not allow a property owner to build on their property the situation would be worse.

Mr. McDaniel questioned whether they had a clear enough idea of what instructions they wanted to give Mr. Dobson.

Mr. Dixon suggested that there were two parts to the ordinance. He said that if a landowner had two nonconforming lots with a house sitting on one of the lots there should be a percentage of lot coverage determined before selling the lot.

Commissioner Crichlow stated that the way he had written the ordinance residential construction would not be allowed on a contiguous nonconforming lot that was next door to a house. He read further that if the existing home exceeded its allowable lot coverage by 33% or more and in RS-2 (40% lot coverage) the lot next door would have to be used to make up the coverage. He said that in RS-1 if a landowner exceeded 35% lot coverage on the property of an existing house they would have to keep the lot.

Mr. Dobson pointed out a related issue in which an owner of a nonconforming lot purchased 10-feet of his neighbor's lot to become conforming; thereby, rendering the neighbor's lot nonconforming.

Mr. Dixon questioned whether the 10-feet could be sold without going to the City for subdivision.

Mr. Knight said that it would be difficult to keep track of the possibilities involved with preventing that type of transaction.

A brief discussion took place regarding the potentials involved.

Commissioner Crichlow questioned whether the task force agreed that the ordinance would not allow multiple homes to be built on nonconforming lots currently occupied by a single resident, as the property would always be considered one lot.

Mr. Dobson stated that was a traditional aggregation philosophy.

Commissioner Crichlow said the exception was whether the existing home exceeded certain lot coverage, at which point the other lot would be necessary to be conforming. He said that regarding individual nonconforming lots, construction would be allowed with restrictions on the size of the structure that could be built according to the different size lots.

Mr. Knight said proportionately that would be 50% of the 50-foot minimum, which would allow 50% of the height.

Mr. McDaniel's said the height would be 17.5-feet, and the scale would be determined proportionately.

Mr. Dixon said that he liked that idea, plus there would be the setbacks and lot coverage, which would also make the footprint smaller.

Mr. McDaniel questioned how they could maintain compatibility with the neighborhood simultaneously.

Commissioner Crichlow stated that they were not dealing with the architectural aspects at that point.

Mr. Dobson stated that one distinction would be if one of the lots had a structure on the property it could not be subdivided in such a way as to render the existing structure nonconforming.

Commissioner Crichlow stated that an existing house on three nonconforming lots could be torn down and the property replatted to make two conforming lots.

A discussion resulted regarding Sea Colony at St. Augustine Beach, and it was determined that the same situation would not occur in the City due to the setback requirements.

Ms. Arriola said that if they arrived at an agreement regarding the ordinance they could arm the PZB with more power to say no. She questioned whether there was anything that they were missing.

Mr. Dobson said that he would do some further research and see what other cities like, Key West, had done about small lots.

Ms. Arriola questioned whether they could introduce parking into the equation.

Mr. Dobson replied that parking was a separate zoning issue. He noted that short term rentals were packing students into them along with their vehicles.

Mr. Knight said that the City had a parking problem; however, the Code needed to be rewritten to address the matter.

Mr. Dixon questioned whether the City could enforce the matter of parking in new constructions.

Mr. Knight replied that they could not, because requiring two parking spaces with maneuverability behind them would cut out every habitat house and single car garage etc. in the City.

Numerous conversations ensued simultaneously.

Commissioner Crichlow questioned whether their approach was wise and enforceable.

Mr. Dobson responded that he would examine the enforceability and potential liabilities for the City. He said that the object of the ordinance was to protect the neighborhoods from tall houses and the neighbors from looking at walls.

Commissioner Crichlow stated that the direction they were taking was protecting the neighborhood from huge tall houses, but not from the number of houses.

Mr. Dixon stated that they could not take people's property.

Mr. Dobson said that their direction would limit the size of houses and stop them from being crammed in.

Commissioner Crichlow stated that the ordinance was not affecting lot coverage or the footprint.

Mr. Dixon stated that the Code already addressed lot coverage and setbacks.

Commissioner Crichlow stated that whether the homes were 17.5 or 35-feet high there would still be two cars involved.

Ms. Arriola questioned the thinking about disincentives for parking on the street.

Mr. Knight replied that they generally looked for a place where they could pull the car off the street onto private property, but two full parking spaces were not required.

Ms. Arriola stated that could only be done with new construction.

Mr. Knight agreed.

Commissioner Crichlow suggested that they allow Mr. Dobson to develop a draft ordinance, and hopefully they would decide what they wanted during the subsequent meeting.

4. Discussion concerning how to reach the public regarding the proposed ordinance

Commissioner Crichlow asked what the next step would be when they agreed on an ordinance.

Mr. Dixon said that there would be two public hearings regarding the matter.

Commissioner Crichlow questioned whether it would be wise to start that process when citizens did not know about it. He questioned whether they could implement the ordinance without taking it to the neighborhoods.

Ms. Arriola stated that she did not see how they could implement it without going to the neighborhoods. She said that the matter would be incomplete without looking at compatibility and architectural guidelines.

Mr. Dixon stated that was another issue and not a part of the aggregation ordinance.

Ms. Arriola suggested that the matters should be more related.

Commissioner Crichlow agreed stating that they could take the aggregation ordinance to Lincolnville or some other neighborhoods. He questioned whether they wanted to give the neighborhoods the opportunity to accept or reject the ordinance.

Ms. Arriola suggested that he was thinking about the architectural guidelines.

Commissioner Crichlow disagreed.

Mr. Dixon pointed out that currently the aggregation ordinance was a zoning issue concerning building height according to the size of the lot.

Commissioner Crichlow stated that the major issue for him had been tearing down an existing house on four nonconforming lots and someone building four homes. He said that they had been in disagreement about the individual nonconforming lots. He said that if they took the ordinance to Lincolnville a common home could not be built, for example on a 40-foot lot.

Mr. Dixon disagreed and stated that a home could be built on a 40-foot lot under the ordinance.

Mr. McDaniel suggested that if there was a house at that level and the owners wanted to replace it they could.

Mr. Dobson suggested considering that matter in an overlay district or an opt-out overlay district.

Commissioner Crichlow questioned whether they had to take the ordinance to the neighborhoods.

Mr. McDaniel questioned whether they should take the aggregation ordinance to neighborhoods separate from the architectural guideline ordinance, or whether that be to confusing.

Ms. Arriola suggested giving a complete package to the neighborhoods and then bring the matter to the City Commission.

Mr. Dobson stated that one of the problems of adopting the ordinance was that they would not get a huge turnout from the public, but when citizens discovered that it would apply to them they would complain.

Commissioner Crichlow suggested that the two matters had to be dealt with separately, but presented simultaneously to the neighborhoods.

Ms. Arriola emphasized that the matters should be presented simultaneously, as they were both a part of preservation of the quality of life in the City.

Commissioner Crichlow said that it was complicated, as it would give the citizens more to think about. He suggested setting up some type of notification. He said that he was not certain how extensively they had to contact everyone.

Mr. Dobson suggested a quarter page advertisement in the newspaper. He noted that if they tied both ordinances together they would probably end up with a majority against both ordinances.

Commissioner Crichlow said a newspaper advertisement would not notify out of state land owners.

Ms. Arriola said that she had obtained the name and address of everyone that owned property in the City. She stated that both matters should be presented together

letting people know that the ordinances were the result of months of discussion. She stated that the aggregation ordinance had been greeted with antagonism from the beginning; therefore, they had to notify everyone and present a cohesive program.

Mr. Dixon said that the first reading of an ordinance had no public hearing, but he suggested that the press would advertise the matter.

Ms. Arriola stated that she was not impressed by people paying attention to what was going on.

Mr. Knight pointed out that the ordinance would also have to go to the PZB with a public hearing before being submitted to the Commission.

Ms. Arriola suggested that before they got it to the newspaper that they get the word out to the public to allow them to realize the direction the task force had taken.

Commissioner Crichlow suggested that the press advertise what the task force had agreed upon for an aggregation ordinance, but that it had not been agreed where the ordinance would apply, and then go to the neighborhoods. He questioned whether they wanted to bring the architectural overlay to the public at the same time, and whether it could work that way.

Ms. Arriola suggested that when they presented the aggregation ordinance they notify the people that they were working on the architectural overlay ordinance and allow them to bring it back to the neighborhoods for their consideration. She said that the public suspected the City of making up laws without consideration or notification. She pointed out that when the task force first began they had agreed that they had to do everything they could to notify as many citizens of the City as possible.

A discussion resulted regarding how difficult it would be to contact everyone.

Mr. Dixon pointed out that an ordinance had been addressed by both the PZB and HARB regarding modular homes, but the boards had unanimously rejected it, and what the task force was proposing was even more complex.

Ms. Arriola stated that they had not begun discussing the overlay ordinance.

A discussion followed regarding the architectural overlay ordinance.

Commissioner Crichlow expressed concern that they would have public meetings for the proposed ordinances and only the people who disagreed with them would show up; therefore, the ordinance would not pass although they might be good for the neighborhoods.

Ms. Arriola said the best that they could do was to educate people concerning their intention and the need.

5. Other Business

(None)

6. Discussion of Next Meeting Date

After discussion it was determined that Mr. Dobson would commence work on the aggregation ordinance and when he completed the work Mr. Knight would organize a meeting date.

7. Adjournment

The meeting adjourned at 4:57 p.m.