

**PUNTA GORDA ISLES
CANAL ADVISORY COMMITTEE
MEETING
OCTOBER 18, 2010**

MEMBERS PRESENT: Bill Dixon, Chairman
Nancy Dauster, Bill Folchi, Thomas McAlear,
David McBride, Charles Thomas, James Thompson

OTHERS PRESENT: Randy Brodersen, Canal Maintenance Supervisor
Teri Tubbs, Zoning Official
Rick Keeney, Public Works Director
Charles Kratz, Jack Basarab, John Dauster

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting - Monday, November 15, 2010 - 1:30 p.m.

APPROVAL OF MINUTES

- A. Regular Meeting of September 20, 2010
- Ms. Dauster MOVED, Mr. McBride SECONDED approval of the September 20, 2010 minutes. MOTION CARRIED UNANIMOUSLY.

REPORTS

Note: Item A was heard following Item A, New Business.

- A. Permits Authorized by City Staff for Installation of Docks, Lifts, Outpilings, etc.
- Mr. Randy Brodersen, Canal Maintenance Supervisor, reported 12 permits had been issued in September 2010.
- B. Budget Utilization Report
- C. Seawall & Seawall Cap Replacement Status Reports
- Mr. Brodersen drew members' attention to the subject reports, as delineated in the agenda material, stating the end of September 2010 report was preliminary as all invoices for the fiscal end of the year had not yet been submitted. He noted final figures should be near completion by the end of October 2010; however, all accounts must be closed out by December 2010.
- Mr. Thompson clarified the figures in the status reports were provided by Marine Contracting Group (MCG).

NEW BUSINESS

Note: Item A was heard following Approval of Minutes.

- A. V-06-10 - Request for a variance to the City of Punta Gorda Land Development Regulations pursuant to Chapter 26, Section 26-26.10, Code of Ordinances, City of

Punta Gorda, Florida, to allow an existing 4 foot wide paver sidewalk that is located parallel to and within 6 feet of the seawall to remain instead of requiring 6 feet of sod as required per Chapter 26, Section 26-3.13(e), Code of Ordinances, City of Punta Gorda, Florida.

Legal: Block 77, Lots 36, 37 and 38, Punta Gorda Isles Section 7 as recorded in Plat Book 7, pages 48A through 48F of the Public Records of Charlotte County, Florida, a/k/a 1323 Mediterranean Drive, Punta Gorda, Florida.

- Ms. Teri Tubbs, Zoning Official, explained a paver sidewalk was constructed along the seawall cap at the subject property, adding same appeared on the as-builts but was not discovered until after final inspection. She stated no immediate action had been taken, but subsequently, some research had been done and the property owners had been contacted, adding by that time, the property was in foreclosure. She stated the developer who installed the sidewalk could not be located and the property, which was vacant, had been taken back by the bank. She stated the property had been purchased out of foreclosure, adding the new owners assumed the sidewalk had been permitted. She stated the new owners had improved the property from its previous state of disrepair, adding she had conducted site visits and had spoken with the new owners who wished to maintain the sidewalk or replace it after the seawall had been replaced. She stated there was a slight slope off the back of the buildings, adding 25 feet did not provide much space when a difference in elevation existed; thus, a retaining wall might be required for the proper grade and to have a sidewalk set 6 feet back from the seawall. She stated due to the literal criteria of a variance request, staff must recommend denial; however, she expressed understanding of the applicant's position. She requested the Board make a recommendation to the Board of Zoning Appeals (BZA) who would hear V-06-10 the following week.
- Mr. Dixon clarified the Committee was not required to treat this as a quasi-judicial hearing.
- Mr. Rick Keeney, Public Works Director, stated he had asked that the Committee review this case, noting they had reviewed similar cases in the past.
- Mr. Charles Kratz, applicant, explained he had purchased the properties and was attempting to renovate the units, opining the sidewalk had been allowed at the time of construction due to the configuration of the units. He stated the unit owners only had street side access to their docks, asserting there was a legitimate reason to retain the sidewalk. He stated they had been working closely with City staff, adding he understood the sidewalk was not compliant with the City Code; however, he understood it could be approved if it was not detrimental to the bulkhead or the

seawall. He stated if there was erosion, the pavers would drop rather than crack like concrete, opining the pavers allowed better drainage and provided other benefits. He stated they wished to retain the walkway for access to the docks. He requested the Committee's recommendation for approval, offering to answer questions.

- Mr. Jack Basarab, applicant, stated he resided at the property, asserting the pavers would require much labor to remove and reinstall. He stated the Homeowner's Association had agreed to bear the cost of same, adding after a site visit by staff earlier this date, it was determined that the water and electrical feeds to the docks might also be out of compliance. He stated it had been agreed that when any changes were made to the pavers, those issues would also be resolved.
- Mr. Thompson asked if this issue arose because of the need for seawall replacement at this location.
- Ms. Tubbs replied in the negative, adding the conditions were observed to be a Code violation.
- Mr. Brodersen explained when he met with Mr. Kratz in the spring, a landward inspection was done and everything looked fine with the seawall cap except for some minor repairs, adding a subsequent waterward assessment revealed the seawall was cracked at the water line almost the entire length of the property. He stated in order to be proactive, staff wanted to replace the seawall immediately rather than waiting until it collapsed, adding if a seawall collapsed, the docks and boatlifts could be damaged.
- Mr. Thompson commented he did not believe the subject property was unique, asserting many properties had plantings and vegetation along the seawall.
- Ms. Tubbs explained some instances were existing non-conformities, adding the ordinance related to the six foot green space was adopted in 1990, and many trees had been planted prior to the adoption of that ordinance. She stated ordinances were rarely adopted retroactively; however, if the properties were ever damaged to the extent they had to be rebuilt, they would be required to conform to the new regulations.
- Mr. Basarab stated an offer had been made to allow the pavers and proceed with the variance if the owners would accept responsibility for the seawall and its collapse during that period of time; however, that was beyond the scope of the Association.
- Mr. McAlear asked if the sidewalk's condition was related in any way to the seawall's condition.
- Mr. Brodersen replied it was not, adding it was due to the age of the seawall.

- Mr. McAlear inquired if similar sidewalks in other locations had caused problems with the seawalls, questioning if this sidewalk could cause problems in the future.
- Mr. Brodersen replied with uncertainty, adding there was no historical reference related to paver sidewalks. He stated it depended on whether the pavers were installed properly, adding if they were packed too close, there would be water runoff and possibly more water behind the seawall cap and seawall than sod would allow.
- Mr. McAlear opined staff was asking the Committee to approve something which may be detrimental to the seawall in the future, adding members did not have the engineering background to determine same.
- Mr. Brodersen stated maintenance was the biggest issue, adding the Association would be responsible for removing the pavers each time a sinkhole occurred. He stated if a sinkhole formed under the pavers, it could create a cavern which could then collapse when someone walked on the pavers. He opined it would be necessary to obtain a hold harmless agreement. He clarified the City would repair any sinkholes; however, the Association would be responsible for the cost of removing and replacing the pavers.
- Mr. McAlear opined the walkway should be moved back six feet to avoid future problems.
- Mr. Basarab stated if the pavers were allowed to remain, the Association would be responsible for removing and reinstalling them. He questioned if the Association's insurance would be responsible for personal injury as a result of the pavers.
- Mr. Dixon replied with uncertainty, asserting if someone fell through the pavers as a result of a sinkhole, they would likely sue the City.
- Ms. Tubbs stated someone could assert the City granted the variance for the paver sidewalk with unknown consequences of being too close to the seawall, adding as a criteria of granting the variance, it was common for the City to require a hold harmless agreement.
- Ms. Dauster stated there were 5,000 lots in Punta Gorda Isles and nobody else had a walkway near the seawall. She opined it was necessary to replace the sidewalk with stepping stones as other property owners had done.
- Ms. Tubbs stated there were ten units, explaining there were already seven sidewalks running from the building to the seawall. She stated there was 186 linear feet of seawall, adding some residents would have to walk farther to reach their dock; thus, they were looking to walk parallel to the seawall, adding one resident expressed concern if the sidewalk was moved back another six feet, people would be walking very close to their lanai area.

- Ms. Dauster stated even single family home owners had to store their boat gear in the garage or elsewhere in the front of the house, adding this was no different.
- Mr. John Dauster confirmed a pre-existing palm tree in the six foot green space could not be replanted in the same location if it fell down, questioning whether the Association would be held responsible if the seawall failed more frequently than was usually seen in this area. He opined staff would be putting the City in a precarious position by approving the paver sidewalk.
- Mr. McAlear voiced concern this would set a precedent as other condominium associations would want sidewalks as it was more convenient for people to access their docks.
- Mr. Folchi questioned if there was any evidence that sinkholes occurred more frequently due to the sidewalk and whether any sinkholes had been filled at this location.
- Mr. Brodersen replied there were a few low depressions but nothing serious, adding it could have been that way for some time. He confirmed no sinkholes had been filled at this location.
- Mr. McBride stated he had grass and had sinkholes almost every year.
- Mr. Thomas inquired if there were any other condominium developments with similar sidewalks.
- Ms. Tubbs replied not to her knowledge.
- Mr. Thomas stated if the pavers were removed, they should not be re-installed, adding stepping stones worked fine. He asserted there were many design issues with this complex, including a lack of parking.
- Mr. Kratz agreed there was a parking problem, adding eight units had garages and there was one reserved spot for each unit that did not have a garage. He stated the Association was willing to work with the City to address any legal concerns, reiterating the pavers were better than grass as the water flowed over the walkway and over the seawall into the canal rather than into the ground behind the seawall. He stated the walkway was very stable and very few pavers had dropped, explaining moving the walkway back would be difficult and expensive.
- Mr. Thomas inquired if most condominiums installed sidewalks that were like docks that ran linear to the seawall, such as Tarpon Cover, Isles Yacht Club and Banyon Point.
- Mr. Dixon opined the canal in this case was not wide enough.
- Mr. Folchi asked if the pavers had any impact on Canal Maintenance Division operations.

- Mr. Brodersen replied not if the Association removed and reinstalled the pavers when staff had to repair a sinkhole.
- Mr. McAlear reiterated this would be precedent setting and should not be permitted.
- Mr. McAlear MOVED, Ms. Dauster SECONDED to recommend denial of V-06-10.
- Mr. McBride agreed there was insufficient history to determine whether there was a potential problem, adding existing regulations directed members to deny the variance. He suggested the motion include a reference to the Committee's lack of expertise and the lack of engineering data, adding if engineering data became available, it could be reconsidered.
- Mr. Dixon stated staff was seeking a recommendation based on the information available, stressing the seawalls were 50 to 60 years old and 75% of them were original, which was likely due to the Code.
- Mr. McAlear voiced concern regarding future owners accepting responsibility.
- Ms. Tubbs interjected any Certificate of Variance was recorded with all imposed conditions and was attached to the title for the property.
- Mr. Kratz noted the Association had already submitted a letter to the Canal Maintenance Division agreeing to take responsibility for the removal and replacement of the pavers, pointing out new owners would have to abide by the Association's agreements.
- MOTION CARRIED UNANIMOUSLY.
- Ms. Dauster recalled a homeowner on Jamaica Way had installed a lengthy sidewalk, including stairs, out to the seawall, stating she believed the homeowner had been directed to remove same; however, the sidewalk remained in place.
- Ms. Tubbs explained a variance application had been submitted for a sidewalk approximately 14 feet wide to extend from the rear of the house to the seawall, specifically pavers on concrete, but was subsequently denied. She continued the homeowner was directed to remove the sidewalk; however, City Code provided the opportunity to apply for a special exception for these types of situations. She stated the special exception allowed the sidewalk to remain, albeit not quite as wide and with certain limitations.
- Mr. Folchi stated he believed the subject walkway was constructed prior to issuance of the Certificate of Occupancy (C.O.).
- Mr. Dixon then requested a discussion on whether or not items such as V-06-10 should be brought to the Committee on a routine basis.
- Mr. Keeney noted the section of City Code pertaining to variance applications did not currently include this Committee in the approval process; however, he felt the

Committee should be allowed to review similar applications which could affect the canal system.

- Consensus of the Committee was to request a review of the applicable ordinance by the Legal Department to ensure items such as V-06-10 were brought to the Committee's attention.

Note: Item B was heard following Reports.

B. Sea Levels - Mr. Dixon

- Mr. Dixon commented on global warming and then displayed graphs, as delineated in the agenda material, of mean sea level trends measured in Fort Myers over many years, stating the National Oceanic and Atmospheric Administration (NOAA) was firmly convinced the sea level at Fort Myers was rising. He pointed out the first graph depicted a four inch rise between 1960 and 2010.

Note: Unfinished Business was heard following Item C, Reports.

UNFINISHED BUSINESS

A. Condominium Assessment Methodology

- Mr. Thomas displayed an aerial view of the Tarpon Cove Condominiums (TCC), as depicted in the agenda material, stating units with deeded docks were assessed \$199.12 annually. He pointed out units without deeded docks were not assessed nor did they have dock access. He mentioned water access was available by finger docks, some with boat lifts. He summarized there were a total of 60 units, 31 of which had deeded docks, adding seawalls totaled 730 feet. He then displayed a comparison between TCC and Banyon Point Condominiums (BPC), as denoted within the agenda material, reminding members their discussion of the latter was detailed in the minutes of the Committee's September 20, 2010 meeting.
- Mr. Dixon thanked Mr. Thomas for his extensive research, stating he felt the data indicated the Committee should proceed with caution with regard to condominium assessment methodology.
- Mr. Thompson commented on a five story condominium on Marion Avenue near Bal Harbor Boulevard, asking if unit owners paid an annual assessment fee. He noted there was no dock access at that location.
- Mr. Brodersen replied he believed Mr. Thompson was referencing Champagne Estates, which was not currently part of the Canal Maintenance Assessment District (CMAD).
- Mr. Keeney mentioned certain areas inside the canal system as well as some facing Charlotte Harbor were not initially in the CMAD. He advised the City had approached the property owners to determine their interest, if any, in joining the CMAD,

acknowledging they would be required to bring any existing seawalls up to City standards.

- Mr. Dixon then asked the Committee how they wished to proceed on the topic of condominium assessment methodology.
 - Mr. McAlear reiterated his desire to identify an equitable methodology.
 - Mr. Dixon reminded members this issue had been studied countless times over the past several years; however, even the most dedicated individuals could not reach a satisfactory conclusion, citing former Councilmember David Phelen as an example.
 - Mr. McBride opined the only aspect with respect to methodology which could be easily changed was to base same on linear footage of seawall.
 - Mr. McAlear countered the linear footage of the PGI canal system would first have to be confirmed, adding he believed same would entail approximately \$2 million in surveying costs. He suggested finding a methodology which was not dependent upon an exact measurement of land but rather was based on usage per living unit.
 - Discussion ensued with regard to a table prepared by Mr. Steve Fabian in 2009 and delineated in the agenda material, of multi-family properties in PGI including number of units and assessment fee for each unit within same.
 - Mr. Dixon concluded the Committee would continue to study this issue.
- B. Update on Seawall Geographic Information System (GIS) and County GIS
- Mr. Brodersen reported some headway had been made, reminding members delays were experienced in the summer months due to high tides; however, lower tides with the cooler weather were making more inspections possible. He reported 44.7 miles of seawall had been inspected in PGI as of September 28, 2010, out of which 4,421 feet or 1.9% of seawall were designated to be replaced. He continued 3,426 feet or 1.5% of seawall cap had been designated for replacement. He noted he intended to re-start inspections the following morning, describing the areas scheduled for same.
 - Mr. McAlear clarified the seawalls in Bass Inlet were complete.
 - Mr. Dixon questioned the proposed timeframe for completion of inputting data.
 - Mr. Brodersen replied he hoped to have all seawalls inspected before December 2010.
 - Mr. Dixon clarified the data obtained thus far had been input by Charlotte County staff.
 - Mr. Brodersen reminded members data was preliminary at this time.

MEMBER COMMENTS

- Ms. Dauster announced “No Anchoring” signage had been installed in Ponce de Leon Inlet.
- Mr. Dixon announced Mr. McBride was recently reappointed to a full, three year term. He then reported Marine Patrol logged 128 hours on the water, issued no citations and

issued 13 warnings in September 2010, adding volunteers spent 153 hours on the water.

ADJOURNMENT

- Meeting Adjourned: 3:36 p.m.

Bill Dixon, Chairman

Mary Kelly, Recording Secretary