

In a recent survey of Island residents, well over half of respondents considered “oversized residences” an urgent issue. Whatever the cause for the public’s concern, it warrants a closer look at the rules in place for dealing with “oversized” homes on Sanibel and ways in which the process might be improved.

Many localities do not regulate the size or mass of homes, other than by setback regulations and height and lot coverage limitations - so called objective criteria. Some people have argued that that is all that is needed on Sanibel. Indeed, in the case of some neighborhoods, lot size and the unavailability of contiguous lots for grouping may take care of the problem. However, that is not always the case. The recent experience at Chateaux Sur Mer is but one example. There, the owners purchased a lot that would support a very large house under the objective criteria. Still, many neighbors reacted with alarm at the size and mass of the proposed home in relation to the neighborhood as a whole.

For years Sanibel has relied on Section 86 - 43 of the Land Development Code to supplement the objective criteria. The operative language is straight forward “ **... no structure shall be constructed or altered in any manner... so as to interrupt the rhythm of existing structures in the established neighborhood; or in any manner which would be inharmonious with the general atmosphere and character of the established neighborhood.**” It seems clear enough; new construction in a given neighborhood must not interrupt the *rhythm* of existing structures or be *inharmonious* with the general atmosphere of the neighborhood.

Why then is there controversy? The problem is that the law requires subjective judgments and that tends to make people uneasy. Some people would rather have a neat formula by which to calculate whether or not a structure complies. Much of code enforcement works in just that way. But, that does not mean that Section 86 - 43 is defective or unenforceable. Regulators are asked to make subjective judgments all the time. In such cases the public needs assurance that decisions are not being made arbitrarily.

Currently, Planning Department personnel usually decide (sometimes in consultation with an independent architect) whether a structure complies with Section 86 - 43, pursuant to a short form application; one which is not required to go before the Planning Commission for fuller review. It *may* be referred to the Planning Commission by the Planning Director as was the case recently with the proposed home in Chateaux Sur Mer. (In a 4 -3 vote, the Commission declined to approve that application.) However, referral to the Commission was discretionary. Long form applications, on the other hand - those which *must* be referred to the Planning Commission - are usually required for development projects that are out of the ordinary. Elevated swimming pools which exceed a height of seven feet fall within that category. Shouldn't a home which will exceed the size of all others in a neighborhoods fall within that category as well?

Whereas it would be impractical and unnecessary to send all new home applications to the Planning Commission, there are advantages to having the Commission consider cases which involve difficult judgment calls under 86 - 43. Here are the reasons:

- A hearing before the Commission is quasi judicial in nature.
- Witnesses, including expert witnesses, testify under oath.
- Members of the public, particularly those whose interests may be directly affected, may participate, produce witnesses and be represented by counsel.
- Commission decisions, which must be based on substantial evidence, not mere personal opinion, are reviewable by City Council and ultimately, the courts.

An additional reason to retain Section 86 - 43 is that actions in furtherance of 86 - 43 are not subject to challenge under the state's Bert Harris law. That's the law which says a property owner may seek compensation for the loss of fair market value of real property when governmental action "inordinately burdens" an existing use of that property. Laws enacted prior to May 11, 1995 are exempt. New approaches to home size regulation, if challenged, would have to pass muster in the courts under Bert Harris.

What are possible next steps?

- There is a simple, practical way to expand Planning Commission jurisdiction in Section 86 - 43 cases without overtaxing the system. A long form application could be required any time a proposed home would exceed the size (calculated on a consistent basis) of the largest home in a given neighborhood (or the city as a whole if there is no established neighborhood). Applications which do not trigger Planning Commission review would be processed, as before, by the Planning Department alone.
- Much of the uncertainty which exists today under Section 86 - 43 could be eliminated by the adoption of a set of design criteria which would be used by the Planning Department and the Planning Commission in assessing compliance. For example, hipped roofs, extended roof overhangs and indented second stories - design elements which tend to reduce the appearance of mass, could be considered mitigating factors in the analysis. A comprehensive set of published design criteria would have the additional benefit of influencing design decisions before they even reach regulators.

Section 86 - 43 has served Sanibel well. We should improve it, not rush to abandon it. One need only look to neighboring communities to envision what Sanibel might look like today if the only limitations on home size were set back, and height and lot coverage limitations.