

MINUTES OF THE REGULAR MEETING
CITY COUNCIL
CITY OF BOCA RATON, FLORIDA
TUESDAY, JULY 22, 2003
6:00 PM

The regular meeting of the City Council of the City of Boca Raton, Florida was called to order by Mayor Steven L. Abrams at 6:00 p.m.

INVOCATION:

Council Member Freudenberg gave the invocation.

PLEDGE OF ALLEGIANCE TO THE FLAG:

ROLL CALL:

Mayor Steven L. Abrams
Deputy Mayor Susan Whelchel
Council Member Dave Freudenberg
Council Member Bill Hager
Council Member Susan Haynie

Also attending the meeting were:

City Manager Leif J. Ahnell
City Attorney Diana Grub Frieser
City Clerk Sharma Carannante

AMENDMENTS TO THE AGENDA:

Motion was made by Council Member Freudenberg, seconded by Council Member Haynie, to amend the agenda to delete Consent Agenda Item 3.a.2 and to add Resolution Nos. 129-2003 and 130-2003 to the Consent Agenda.

PROCLAMATIONS/PRESENTATIONS:

National Night Out – August 5, 2003

The proclamation was accepted by Harry Whittle on behalf of Citizens Crimewatch of Boca Raton and the Boca Raton Police Services Department. The proclamation recognized this unique, nationwide crime, drug and violence prevention program.

MINUTES:

Minutes of the Regular Workshop Meeting of July 7, 2003
Minutes of the Regular Meeting of July 8, 2003

Motion was made by Council Member Hager, seconded by Deputy Mayor Whelchel, to approve the minutes as presented. Motion carried unanimously on a voice vote; Mayor Abrams, Deputy Mayor Whelchel, and Council Members Freudenberg, Hager and Haynie voting yes.

REGULAR BUSINESS - PART I:

1. Appointments to the following boards:

- a. Financial Advisory Board – two (2) vacancies due to term expirations of Christina A. Hutchison and Jeffrey D. Lowe, whose terms expire 08/26/03.

No one came forward to interview for the positions. Mayor Abrams noted that an additional application was submitted by Steven R. Tubbs, who was unable to attend this meeting.

Mayor Abrams nominated Ms. Hutchison and Mr. Tubbs; Deputy Mayor Whelchel nominated Mr. Birkman. Nominations were then closed without objection. In the voting: Mayor Abrams and Council Member Haynie voted for Ms. Hutchison and Mr. Tubbs. Deputy Mayor Whelchel and Council Members Freudenberg and Hager voted for Ms. Hutchison and Mr. Birkman.

Christina Hutchison and David Birkman were appointed.

- b. Library Advisory Board – two (2) vacancies due to term expirations of Robert C. Keltie and Elizabeth E. Grinnan, whose terms expire 08/10/03.

Motion was made by Council Member Haynie, seconded by Council Member Freudenberg, to reappoint Robert Keltie and Elizabeth Grinnan to the Board. Motion carried unanimously on a voice vote; Mayor Abrams, Deputy Mayor Whelchel, and Council Members Freudenberg, Hager and Haynie voting yes.

Robert Keltie and Elizabeth Grinnan were reappointed.

2. Responses to Workshop Information Requests:

(Consent Agenda Item 3.a.1 – Street Resurfacing Program) An e-mail was provided. The City Manager reviewed the areas to be resurfaced as outlined in the e-mail, dated July 21, 2003, from Municipal Services Director Robert DiChristopher. Those areas include Timbercreek, Millpond, Boca Madera, and portions of Deer Park Estates, NW 35th Street, Sheraton Way, and SW 7th Street.

(Consent Agenda Item 3.g. – Resolution No. 127-2003 / The City's travel/per diem expense policy) Mr. Ahnell referred Council to a memo, dated July 22, 2003, from Acting Financial Services Director Celeste Lucia, which compared the meal allowances provided for in the Florida Statute with those provided for by the City, pending approval of Resolution No. 127-2003.

3. Consent Agenda:

Motion was made by Deputy Mayor Whelchel, seconded by Council Member Hager, to approve the Consent Agenda as amended. Motion carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, and Council Members Freudenberg, Hager and Haynie voting yes.

a. Sealed Bid

- 1) Street Resurfacing Program
Requested by Municipal Services
Weekley Asphalt Paving, Inc \$462,810

- 3) Emergency Medical Supplies
Requested by Fire Rescue Services
Aero Products Corp. d/b/a American LaFrance Medicmaster,
Boundtree Medical, Inc., Southeastern Emergency Equipment,
Tri-Anim Health Services, Inc. \$136,250

b. Intergovernmental Agreement

- 1) Road Construction Materials
Requested by Municipal Services/ Utility Services
Austin Tupler Trucking, Community Asphalt,
Conrad Yelvington Distributor Inc., Hardrives of Delray \$43,500
- 2) City Hall Plaza
Requested by Police Services
Recreational Design & Construction, Inc. \$187,750

c. Emergency

- 1) Wastewater Line Repairs
Requested by Utility Services
Man-Con, Inc. \$27,600

d. Resolution No. 124-2003

A resolution of the City of Boca Raton authorizing the City Manager to apply for a grant from the Federal Emergency Management Agency pursuant to the purchase of equipment, supplies, and printing of materials for the City of Boca Raton Community Emergency Response Team (CERT); authorizing the acceptance of said grant, if awarded; authorizing and directing the City Manager to comply with the terms and conditions of said grant, if awarded; providing for severability; providing for repealer; providing an effective date

e. Resolution No. 125-2003

A resolution of the City of Boca Raton authorizing the submission of an Annual Consolidated Action Plan for Program Year 2003-04 to the U.S. Department of Housing and Urban Development; designating the City Manager as Chief Executive Officer for the purpose of said program; authorizing the City Manager to execute the certification; providing for severability; providing for repealer; providing an effective date

f. Resolution No. 126-2003

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute the First Amendment to Memorandum of Understanding with Boca Technology Center, LLC ("BTC") and assignees of BTC, Stiles/BLP, LLC, Shoppes of Blue Lake I, Inc. and Shoppes of Blue Lake II, LLC; providing for severability; providing for repealer; providing an effective date

g. Resolution No. 127-2003

A resolution of the City of Boca Raton adopting the travel/per diem expense policy of the City of Boca Raton; providing for severability; providing for repealer; providing an effective date

h. Resolution No. 128-2003

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute an agreement with LM Engineering, Inc., DBA GFA International for the purpose of providing professional engineering services for concrete, soils, geotechnical and asphalt testing and inspection services; providing for severability; providing for repealer; providing an effective date

i. Receive and File Board Minutes – July 22, 2003

- 1) Boca Raton Housing Authority
May 28, 2003
- 2) Civil Service Board
April 11, 2002
- 3) Community Appearance Board
June 10, 2003
June 17, 2003
June 24, 2003
- 4) Education Advisory Board
May 19, 2003
- 5) Parks and Recreation Board
June 3, 2003
- 6) Pearl City Blue Ribbon Committee
April 24, 2003
- 7) Police & Firefighters' Pension Board
May 21, 2003
- 8) Special Master
May 28, 2003

j. Resolution No. 129-2003

A resolution of the City of Boca Raton rescheduling the first regular meeting in September 2003; providing for severability; providing for repealer; providing an effective date

k. Resolution No. 130-2003

A resolution of the City of Boca Raton supporting the designation of a new Metropolitan Statistical Area for South Florida and encouraging the Office of Management and Budget to revise the title of said Metropolitan Statistical Area to more accurately reflect the Tri-County makeup of the newly-established Metropolitan Statistical Area; providing for severability; providing for repealer; providing an effective date

REGULAR BUSINESS – PART II – QUASI-JUDICIAL AND RELATED PUBLIC HEARINGS:

The public hearing on Ordinance Nos. 4715 and 4716 and Resolution Nos. 109-2003 and 110-2003 will be conducted contemporaneously. A separate vote will be taken on each petition.

4. Ordinance No. 4715 (Revised)

An ordinance of the City of Boca Raton amending the Future Land Use Map of the Comprehensive Plan by redesignating certain property consisting of 8.85 acres, more or less, located at 1330 North Military Trail, as more specifically described herein, from C (Commercial) to RM (Residential Medium); providing for the appropriate revisions of the Future Land Use Map; providing for severability; providing for repealer; providing an effective date (UC-03-01)

5. Ordinance No. 4716

An ordinance of the City of Boca Raton relating to rezoning; providing for the rezoning of a parcel of land consisting of 8.85 acres, more or less, located at 1330 North Military Trail, as described more particularly herein, from RB1/PCD (Motel Business District/Planned Commercial Development) to PUD/R-3 (Planned Unit Development/Multifamily Residential District); providing for the appropriate revisions of the Zoning District Map; providing for severability; providing for repealer; providing an effective date (UC-03-01)

6. Resolution No. 109-2003 (Revised)

A resolution of the City of Boca Raton granting Planned Unit Development master plan approval of the proposed Fairfield Gardens Planned Unit Development, subject to conditions; providing for severability; providing for repealer; providing an effective date (UC-03-01)

7. Resolution No. 110-2003 (Revised)

A resolution of the City of Boca Raton granting tentative plat approval to the proposed Fairfield Gardens Planned Unit Development Plat, subject to conditions; providing for severability; providing for repealer; providing an effective date (UC-03-01)

The City Attorney reviewed the quasi-judicial procedures that would govern the public hearing. The City Clerk administered the oath to those who indicated they wished to speak on the petitions. Under ex-parte disclosures, Council Member Haynie advised that she had spoken with Kevin Borkenhagen and Jeff Evans. Deputy Mayor Whelchel stated that she had also spoken with Kevin Borkenhagen and Jeff Evans. Council Member Freudenberg explained that he had previously submitted his disclosures.

Development Services Senior Planner Jennifer Simon gave the PowerPoint presentation. She explained that the request for Universal Conditional Approval included: 1) a Comprehensive Plan Amendment, 2) a rezoning, 3) site plan approval, 4) Planned Unit Development master plan approval, and 5) tentative plat approval. The Comprehensive Plan Amendment does not require DCA approval, as the subject property is less than 10 acres (8.85 acres) and less than 10 units per acre are proposed. Location, acreage, and zoning information were provided. The applicant proposed to rezone the property to PUD/R3 and change the Future Land Use Map designation to RM (Residential Medium). Currently, there is a Development Order in place, which allows for two hotel buildings with a total of 256 hotel rooms. The applicant proposes to develop the site as Fairfield Gardens, an 84-unit townhouse project with unit square-foot ranges from 1,268 to 2,370, with three bedrooms provided for each townhouse. Ms. Simon outlined the open space and amenities, walkways, and bike paths, and stated that, while 40% of open space is required, 42% has been provided. Building heights were then addressed; the project is consistent with the 50-foot maximum allowed by Code. One- and two-car garages are proposed. Code requires 168 parking spaces; 213 are provided.

A technical deviation was requested in regard to the width of the parking spaces. Code requires a 10-foot width; the applicant proposes a 9-foot width. The City's Traffic Engineer supported the request as the spaces are for the homeowners, not the general public. Site access was then detailed.

The project is one mile from the Boca Raton Airport. It was determined that 17 units would be affected by airport operations by 2006. The Airport Authority reviewed this project and concluded that it would be incompatible with the activities of the airport; particular focus was on noise. In order to address concerns expressed by the Airport Authority, staff proposed that the applicant dedicate an aviation easement over the impacted area to the Airport Authority and provide notice to purchasers related to impacts resulting from airport operations.

Since an amendment to the Comprehensive Plan is proposed, the project was reviewed for consistency, compatibility, and concurrency, and found to be in compliance with those goals; Ms. Simon provided information in support of same. Requested modifications to the Planned Unit Development (PUD) Master Plan, relating to building setbacks, the perimeter landscaping requirement, and the minimum lot size, were addressed next, as was the tentative plat.

The Parks and Recreation Board, the School Board of Palm Beach County, and the Environmental Advisory Board all reviewed the project and all Boards recommended approval. The Planning and Zoning (P & Z) Board also reviewed this petition and recommended approval with the conditions provided in the accompanying ordinance and resolutions.

After the P & Z Board meeting, the Fairfield at Boca Homeowners' Association hired Miller Legg to redesign the access drive to allow for 40-foot landscaping setbacks as opposed to 25 feet. Staff conducted a preliminary review of this redesign and recommended approval of the redesigned driveway, as prepared by Miller Legg, which is identified as Exhibit C in both Ordinance No. 4715 and Resolution No. 109-2003. In addition to the redesigned driveway, three new conditions were added to the resolutions and ordinances to recognize that the driveway and landscaping buffer would require an access easement onto the Boca Center property and the Fairfield at Boca subdivision. If the petitioner cannot acquire these easements, then the driveway must be redesigned so that it is contained solely within the recorded easements. In conclusion, staff recommended approval of the Universal Conditional Approval. Ms. Simon then answered questions from Council.

The public hearing was opened.

Patrick Barry, counsel for the Boca Raton Airport Authority, outlined three areas of concern to the Airport Authority: 1) the aviation easement, 2) sound attenuation, and 3) the real estate disclosure. He stated that City staff had negotiated with the applicant for the aviation easement and the disclosure. On the issue of sound attenuation, Mr. Barry explained that the applicant's representatives had indicated to him that measures would be taken to mitigate the higher noise levels that some of the units would experience. However, the Authority still objected to the project; he would provide details later.

Jeff Evans, with Broad and Cassel and representing the applicant, spoke to the compatibility of the proposed project with the surrounding uses and stated that the project has received the support of the neighbors.

Bob Benson, with Land Design South, the architect for the project, gave a PowerPoint presentation in support of the petitions.

Mr. Evans explained that his client was willing to exchange the buffer for the access in a manner that would work best for everyone involved. However, he voiced concern relating to the revised language in the resolution and provided statements in support of same. Mr. Evans then submitted suggested language to the City Attorney for review.

Albert Miller, a resident of Fairfield, voiced support of the project with the redesigned driveway as outlined.

Mr. Barry provided additional details related to the Airport Authority's opposition to the petition, stating that the project was incompatible with the goal of the Authority and, from their perspective, the interests of the public. He also stated that neither the Airport Authority nor the Federal Aviation Administration (FAA) was in favor of increased residential populations in areas impacted by high noise. Since Mr. Evans had indicated, today, a willingness to provide sound insulation for those units impacted by higher noise, Mr. Barry asked that Council include language to that effect. However, he went on record as saying that the Airport Authority still opposed the rezoning and then answered questions from Council.

Mr. Evans confirmed that the applicant agreed to the sound attenuation measures required to lower the amount of noise that would be experienced by 17 units.

Seeing no one else come forward, the public hearing was closed.

Motion was made by Deputy Mayor Whelchel, seconded by Council Member Haynie, to adopt Ordinance No. 4715, as revised.

Motion was made by Deputy Mayor Whelchel, seconded by Council Member Haynie, to amend Ordinance No. 4715, as follows, using language generally consistent with the following:

Amendment #1: Page 6, Line 10, to read, "...permit, to be substantially consistent with Exhibit C." adding the word, "substantially."

Amendment #2: Page 11, adding language at the end of both Condition Nos. 32 and 33 to read, "In the event that the relocation of the driveway is required, an amendment to the site plan shall be reviewed and approved by the Planning and Zoning Board, as a site plan amendment, and shall not require review by the City Council."

Amendment #3: Page 12, renumbering the conditions to add a new Condition No. 35 to read, "The construction of any residential unit to be located within the 60 to 65 DNL contour shall be constructed with noise attenuation materials and/or techniques to reduce indoor noise levels within such units to a level not to exceed 45 DB."

Motion was made by Council Member Hager, seconded by Council Member Haynie, to amend the amendment (#3) to Ordinance No. 4715 to provide for super-insulation of all 84 units within the project as opposed to 17. Motion failed 2-3. Council Members Freudenberg and Hager voting yes; Mayor Abrams, Deputy Mayor Whelchel, and Council Member Haynie voted no.

The vote on the motion to amend Ordinance No. 4715 carried unanimously on a voice vote. Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

The vote on the main motion to adopt Ordinance No. 4715, as revised and amended, carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

Motion was made by Deputy Mayor Whelchel, seconded by Council Member Haynie, to adopt Ordinance No. 4716. Motion carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

Motion was made by Council Member Haynie, seconded by Council Member Hager, to adopt Resolution No. 109-2003, as revised.

Motion was made by Council Member Haynie, seconded by Council Member Freudenberg, to amend Resolution No.109-2003, as follows, using language generally consistent with the following:

Amendment #1: Page 2, Line 14, to read, "...permit, to be substantially consistent with Exhibit C." adding the word, "substantially."

Amendment #2: Page 7, adding language at the end of both Condition Nos. 32 and 33 to read, "In the event that the relocation of the driveway is required, an amendment to the site

plan shall be reviewed and approved by the Planning and Zoning Board, as a site plan amendment, and shall not require review by the City Council.”

Amendment #3: Page 8, renumbering the conditions to add a new Condition No. 35 to read, “The construction of any residential unit to be located within the 60 to 65 DNL contour shall be constructed with noise attenuation materials and/or techniques to reduce indoor noise levels within such units to a level not to exceed 45 DB.”

The vote on the motion to amend Resolution No. 109-2003 carried unanimously on a voice vote; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

The vote on the main motion to adopt Resolution No.109-2003, as revised and amended, carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

Motion was made by Council Member Haynie, seconded by Council Member Hager, to adopt Resolution No. 110-2003, as revised. Motion carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

REGULAR BUSINESS – PART III – REGULAR PUBLIC HEARINGS:

The public hearing on Ordinance Nos. 4717, 4718 and 4719 will be conducted contemporaneously. A separate vote will be taken on each petition.

8. Ordinance No. 4717 (Revised)

An ordinance of the City of Boca Raton providing for the involuntary annexation of property generally located south of Glades Road, east of Saint Andrews Boulevard, north of Lake Worth Drainage District Canal No. L-46 west of Military Trail and north of Lake Worth Drainage District Canal No. L-47 east of Military Trail and comprising all unincorporated property within such area, as more particularly described herein, to the corporate limits of the City of Boca Raton, Florida, as initiated by the City of Boca Raton; providing for a referendum on the question of annexation for the registered electors within the property proposed for annexation; providing for a revision of the City’s boundaries pursuant to the City Charter to include the property annexed; providing for severability; providing for repealer; providing an effective date

9. Ordinance No. 4718 (Revised)

An ordinance of the City of Boca Raton providing for the involuntary annexation of property generally located south of Town Center Mall, east of Saint Andrews Boulevard, north of West Palmetto Park Road and west of Military Trail and comprising all unincorporated property within such area, as more particularly described herein, to the corporate limits of the City of Boca Raton, Florida, as initiated by the City of Boca Raton; providing for a referendum on the question of annexation for the registered electors within the property proposed for annexation; providing for a revision of the City’s boundaries pursuant to the City Charter to include the property annexed; providing for severability; providing for repealer; providing an effective date

10. Ordinance No. 4719 (Revised)

An ordinance of the City of Boca Raton providing for the involuntary annexation of property generally located north of Glades Road and east of Powerline Road and comprising all currently unincorporated property in the Santa Barbara residential community, as more particularly described herein, to the corporate limits of the City of Boca Raton, Florida, as initiated by the City of Boca Raton; providing for a referendum on the question of annexation for the registered electors within the property proposed for annexation; providing for a revision of the City’s boundaries pursuant to the City Charter to include the property annexed; providing for severability; providing for repealer; providing an effective date

Assistant City Manager George Brown gave a PowerPoint presentation on all three ordinances. He explained that Ordinance No. 4717 called for the annexation of the Town Center Mall area. Acreage, population, and the number of affected businesses were detailed and the assessed value of \$523,675,708 was provided. The fiscal impact of this annexation, which is comprised of Areas 1 – 4 as noted on an accompanying map, reflected an ongoing net to the City of Boca Raton in the amount of \$1,254,781.

Ordinance No. 4718, which provides for the annexation of the Town Place area, was addressed next. Acreage, population, and affected businesses were detailed; the assessed value is \$110,323,402. The fiscal impact of this annexation, comprising Area 5 as identified on an accompanying map, revealed an ongoing net to the City of \$501,437.

Ordinance No. 4719 calls for the annexation of the Santa Barbara subdivision. Acreage and population was provided; there are no affected businesses in this area. The assessed value is \$60,008,563. The fiscal impact of this annexation, encompassing Area 6 on an accompanying map, shows an ongoing net to the City of \$151,286.

Mr. Brown then addressed the fiscal impacts of annexation on those areas proposed to be absorbed into the City. Those owning residential property assessed at \$150,000 net taxable value would receive a savings of approximately \$183 annually, which equates to a 14.5% savings in taxes and fees. An average business in the area would receive a savings of approximately \$354 annually or a 5.7% savings. It was noted that annexed areas would experience reduced costs and improved services.

The cumulative annexation impacts were provided. Total acreage, population, and businesses of all annexed areas were detailed; the total assessed value is \$694,007,673. The summary of the fiscal impact of annexation of Areas 1 – 6 reflected a total ongoing net to the City of \$1,907,503.

Tonight's public hearing was the second of two required public hearings for the three annexation referendum ordinances. A special election is scheduled for September 9, 2003, for electors in the City, on a question with regard to annexation of these areas. If that election results in a positive outcome, the City will proceed with three separate referendum elections, proposed for November 4, 2003, for electors in those areas proposed to be annexed. Mr. Brown concluded his presentation and answered questions from Council.

Jack Davenport stressed the importance of assuring the public that the September election, and the subsequent November elections if held, would be binding.

Motion was made by Council Member Haynie, seconded by Council Member Hager, to adopt Ordinance No. 4717, as revised. Motion carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

Motion was made by Council Member Haynie, seconded by Council Member Freudenberg, to adopt Ordinance No. 4718, as revised. Motion carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

Motion was made by Council Member Haynie, seconded by Council Member Hager, to adopt Ordinance No. 4719, as revised. Motion carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

11. Ordinance No. 4720

An ordinance of the City of Boca Raton authorizing the Mayor and City Clerk to execute a lease agreement with the Children's Museum, Inc. for the City-owned property located at 498 Crawford Boulevard; providing for severability; providing for repealer; providing an effective date (SC-03-06)

Development Services Property Specialist/Appraiser Lynn Bodor gave the PowerPoint presentation. She explained that, since 1978, the Children's Museum has executed three consecutive long-term leases with the City for the Singing Pines and Arvida House buildings, located within the boundaries of the Community Redevelopment Area (CRA). The third lease recently expired and a long-term lease of 10 years with four automatic five-year extensions (or 30 years) is proposed; the lease amount would be \$1 per year. Since long-term leases constitute a sale of City-owned property and the land is within the CRA, this transaction is governed by the City Code and the Florida Statutes. Details were provided in regard to the required procedure for the sale of City-owned property, particularly as they relate to non-profit organizations and fair market value.

The Directors of Municipal, Utility and Recreations Services were contacted; they all support the proposal. In addition, this item came before the Community Redevelopment Agency on June 23, 2003; Agency members unanimously recommended approval of the petition. In conclusion, due to the Children's Museum providing and maintaining a cultural site of tremendous benefit to the community, staff recommended approval of the petition.

During the public hearing, Poppi Mercier, Curator for the Children's Museum, spoke in support of the ordinance.

Motion was made by Deputy Mayor Whelchel, seconded by Council Member Haynie, to adopt Ordinance No. 4720. Motion carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

12. Ordinance No. 4721 (Revised)

An ordinance of the City of Boca Raton amending Sections 19-71 through 19-75, Code of Ordinances, relating to appeals from fire and building codes; creating Sections 19-76 and 19-77, Code of Ordinances, relating to variances to Chapter 22, Code of Ordinances; amending Sections 22-56 through 22-65, Code of Ordinances, relating to marine structures; creating Section 22-66, Code of Ordinances relating to non-conforming structures; renumbering Section 22-67, Code of Ordinances; creating Section 22-68, Code of Ordinances, relating to the granting of variances; amending Section 28-1486, Code of Ordinances, relating to mooring; providing for severability; providing for repealer; providing for codification; providing an effective date

Planning and Zoning Director Carmen Annunziato gave the PowerPoint presentation and briefly reviewed the process followed in the last three years to update the Marine Code. It was noted that this petition came before Council with recommended approvals from both the Marine Advisory Board and the Planning and Zoning Board. He briefly outlined the modifications to Chapters 19, 22, and 28. Particular attention was given to proposed changes in Chapter 22, Sections 22-61 Dolphins; and Sections 22-63 Boat lifts. Regarding dolphins, Mr. Annunziato explained that, 1) they would be prohibited in the center 50% of canals, 2) they would be allowed to extend 25 feet or 25% of the canal width, whichever is less, and 3) concrete dolphins would be prohibited. There was no change to the requirement that a canal must extend 80 feet in width in order to obtain dolphins. On the subject of boat lifts, 1) they could extend outward 25% of the canal width or 20 feet, whichever is less, 2) wood pilings would be required on outermost posts, 3) reflective bands would be required, and 4) boat lifts would be prohibited when deemed a hazard to navigation.

Using examples, Mr. Annunziato then spoke more extensively to the issue of boat lifts and the mooring of boats in order to clarify issues brought forward at the workshop yesterday. The current Code provides for boat lifts to extend into the canal no more than 20% of the canal width; the proposed change would increase the allowable extension to 25%. He explained that there is no minimum required canal width to obtain a boat lift; however, the percentage, whether current or proposed, would be the same.

Mr. Annunziato elucidated that, in regard to mooring, the Code currently provides that a boat owner may moor or park a boat at a distance not to exceed one-third of the waterway, including the dock; this would leave the center one-third of the canal unobstructed. When speaking yesterday about the middle 50 feet

of a canal remaining unobstructed, Mr. Annunziato clarified that he was referring to the installation of boat lift structures – not the mooring of boats.

Proposed amendments to Section 22-63(1) Boat lifts; Section 22-59(2) Mooring; and Section 28-1486(2) Mooring, were then reviewed. Existing and proposed language was compared; there were no changes in concept, only changes in wording. It was noted that Sections 22-59 and 28-1486 were duplicative. After closing comments, Mr. Annunziato concluded his presentation.

During the public hearing, Paul Gonnelli, Jr., Steve Reiss, Mark Ericsson, Glen Gidseg, Arthur Asinmaz, and Paul Guardino spoke in support of the ordinance.

Motion was made by Deputy Mayor Whelchel, seconded by Council Member Haynie, to adopt Ordinance No. 4721, as revised.

Motion was made by Council Member Freudenberg, seconded by Deputy Mayor Whelchel, to amend Ordinance No. 4721 to delete the existing Section 28-1486, using language generally consistent with the following:

Amendment #1: Page 1, Line 15, to read, "...deleting Section 28-1486, Code of Ordinances," deleting the word, "amending."

Amendment #2: Page 2, Line 7, to read, "...variances to Chapter 22; and by deleting..." deleting the word, "amending."

Amendment #3: Page 23, deleting the text within Section 20 and including an introductory phrase to read, "Section 28-1486, Code of Ordinances, is deleted in its entirety."

The motion to amend Ordinance No. 4721 carried unanimously on a voice vote; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

The vote on the main motion to adopt Ordinance No. 4721, as revised and amended, carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

REGULAR BUSINESS – PART IV – REGULAR PUBLIC HEARINGS/SETTLEMENTS:

There were no items for consideration.

REGULAR BUSINESS – PART V - INTRODUCTION OF ORDINANCES:

13. Ordinance No. 4722

An ordinance of the City of Boca Raton amending the Future Land Use Map of the Comprehensive Plan by redesignating certain property consisting of 1.812 acres, more or less, located at 1 North Ocean Boulevard, as more specifically described herein, from C (Commercial) and RM (Residential Medium) to RH (Residential High); providing for the appropriate revisions of the Future Land Use Map; providing for severability; providing for repealer; providing an effective date (UC-03-03SC/ZC/SPA)

The ordinance was introduced by Deputy Mayor Whelchel.

14. Ordinance No. 4723

An ordinance of the City of Boca Raton relating to rezoning; providing for the rezoning of a parcel of land consisting of 1.812 acres, more or less, located at 1 North Ocean Boulevard, as described more particularly herein, from B-2 (Community Business), R-2 (Multifamily Residential) and R-3 (Multifamily Residential) to R-5-A/PUD (Multifamily Residential with a Planned Unit Development overlay); providing for the appropriate revisions of the Zoning District Map; providing for severability; providing for repealer; providing an effective date (UC-03-03SC/ZC/SPA)

The ordinance was introduced by Deputy Mayor Whelchel.

15. Ordinance No. 4724

An ordinance of the City of Boca Raton amending the Future Land Use Map of the Comprehensive Plan by redesignating certain property consisting of 17.2 acres, more or less, located at 701 Canal View Drive, as more specifically described herein, from Industrial Manufacturing (IM) and Commercial (C) to Residential Medium (RM); providing for the appropriate revisions of the Future Land Use Map; providing for severability; providing for repealer; providing an effective date (SC-03-04)

The ordinance was introduced by Council Member Freudenberg.

16. Ordinance No. 4725

An ordinance of the City of Boca Raton relating to rezoning; providing for the rezoning of a parcel of land consisting of 17.2 acres, more or less, located at 701 Canal View Drive, as described more particularly herein, from Manufacturing (M-3) and Motel Business (RB-1) to Multiple Family Residential (R-3); providing for the appropriate revisions of the Zoning District Map; providing for severability; providing for repealer; providing an effective date (ZC-03/01-67500001)

The ordinance was introduced by Council Member Haynie.

17. Ordinance No. 4726

An ordinance of the City of Boca Raton amending the Comprehensive Plan; amending the Public School Facilities Element by amending Table 1.1-1 and Table 1.1-2 to provide updated tiered and maximum level of service standards for public schools; amending Table 1 of the Capital Improvement Element to incorporate the updated six-year Capital Improvement Schedule; amending the Map Appendix by amending maps PS 2.1, PS 3.1, and PS 3.3 to provide updates to school facilities planning; providing for severability; providing for repealer; providing for codification; providing an effective date (SC-02-09)

The ordinance was introduced by Deputy Mayor Whelchel.

18. Ordinance No. 4727

An ordinance of the City of Boca Raton amending the Future Land Use Element of the Comprehensive Plan by creating Policy LU.1.1.6 relating to the provision of municipal buildings and facilities within specific zoning districts; providing for the appropriate revisions to the Comprehensive Plan; providing for severability; providing for repealer; providing for codification; providing an effective date (SC-03-13)

The ordinance was introduced by Council Member Freudenberg.

REGULAR BUSINESS - PART VI - PUBLIC REQUESTS:

No one came forward to speak.

REGULAR BUSINESS - PART VII- RESOLUTIONS AND OTHER BUSINESS:

19. Selection of Canvassing Board Member

The City Manager explained that a Canvassing Board must be implemented in anticipation of the September 9, 2003 special election regarding annexation. The Canvassing Board is comprised of three members: the City Clerk, the County Supervisor of Elections, and one Council Member appointed to the Board. A pre-election and a post-election meeting will be necessary. The City Attorney suggested the

appointment be for both the September 9, 2003 election and the November 4, 2003 election, should it be held.

Motion was made by Mayor Abrams, seconded by Council Member Haynie, to appoint Council Member Hager as a member of the Canvassing Board. Motion carried unanimously on a voice vote; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

CITY MANAGER RECOMMENDATIONS AND REPORTS:

20. Setting of the date for the public hearing on the petition for a Notice of Proposed Change (NOPC) for Boca Technology Center Development of Regional Impact (DRI)

The City Manager explained that the petitioner was requesting an NOPC in order to modify the Boca Technology Center Master Plan to allow an additional directional access point from Yamato Road into the Boca Tech Center; this does not constitute a substantial deviation from the DRI. According to the Florida Statutes, the review process should take place no sooner than 30 days, and no later than 45 days, after the submittal by the petitioner. Therefore, a public hearing must be held within 90 days after submittal of the proposed changes. Mr. Ahnell recommended that the hearing be held on September 10, 2003.

Motion was made by Deputy Mayor Whelchel, seconded by Council Member Hager, to set the public hearing on the petition for a Notice of Proposed Change (NOPC) for Boca Technology Center Development of Regional Impact (DRI) for September 10, 2003. Motion carried unanimously on a voice vote; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

21. Millage Notification to the Property Appraiser and Tax Collector

Mr. Ahnell stated that the proposed operating millage is 3.15 mills per \$1,000; the debt service millage is .4731 per \$1,000, the proposed rollback rate is 2.9861 per \$1,000, and the current year proposed rate, as a percentage change of rollback rate, is 5.49%. The date scheduled for the tentative budget hearing is September 16, 2003, at 7:00 p.m.

Motion was made by Council Member Freudenberg, seconded by Council Member Haynie, to set the proposed millage for the City as stated by the City Manager. Motion carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

Special Meeting

The City Manager referred again to the upcoming budget workshops to be held Tuesday and Wednesday of next week at 7:00 p.m. and obtained approval from Council to schedule a special meeting for review of the western library design at 6:00 p.m. on Tuesday, prior to the workshop. He explained that it was necessary to obtain design approval and have the construction contract bid and awarded in order to meet grant deadlines.

CITY ATTORNEY REPORTS:

Citrus Canker Update

Ms. Frieser spoke to three main issues. First, she provided an update related to the ongoing litigation, spearheaded by Broward County, to which the City of Boca Raton, among other entities, is a party. Judge Fleet entered an injunction order late last week to halt the cutting of citrus trees. The Department of Agriculture (DOA) is expected to appeal that order in the 4th District Court; if the appeal is filed, there will be a stay to the injunction. As plaintiffs, the City will then ask Judge Fleet to lift the stay. But as of this time, the injunction is in effect and there is a stay on cutting.

The second issue was related to search warrants. As a result of the aforementioned injunction, Judge Barkdull (Palm Beach County) has not issued additional warrants. A second batch of warrants is pending

before Judge Barkdull. It was noted that the City filed objections to both the first set of warrants and the second set. In a recent action, Judge Barkdull has scheduled a hearing next week in order that the DOA might respond to assertions that the department acted improperly in determining when to cut which trees.

The last issue was related to the pending Verified Motion for Contempt. Attorney Barry Silver went before Judge Barkdull with a request for a criminal contempt finding because the DOA failed to have law enforcement officers observe the work of the cutting crews and failed to follow decontamination procedures. The judge only heard arguments with respect to whether a hearing should be scheduled; he has not yet ruled on that matter. If he determines that there is a basis for further hearings, he could issue an "Order to Show Cause," which would require that the DOA show cause as to why it should not be held in contempt. Conversely, he could rule that there is insufficient evidence to request contempt and reject the motion. Ms. Frieser explained that the City did not join in the motion to seek a finding of contempt. However, the City did file a letter with Judge Barkdull, requesting a hearing on this issue.

Ms. Frieser then commented on the GLA matter involving the Athena Condominium and the modification of a dune without proper permitting from the City. The constitutional validity of the ordinance was challenged. Fortunately, the City prevailed; a 4th District Order was entered last week, which was extremely favorable to the City on all counts.

MAYOR AND COUNCIL MEMBER REPORTS:

Council Member Haynie referred to the last Airport Authority meeting, questioning why the Airport Authority refused the Fire-Rescue Department's request for \$20,000 to fund specialized training, tailored to the needs of the airport. He noted that the City has purchased special equipment specific to the airport's needs, but for unknown reasons the Authority has not deemed it necessary to partner with the City in this regard. Mr. Ahnell advised the City would continue to encourage a partnership.

Council Member Haynie reported on the most recent meeting of the Metropolitan Planning Organization (MPO), stating that the City of Boca Raton will receive \$750,000, earmarked for road-related projects. She explained that \$500,000 would be used to initiate the Airport Road and Glades Road project, which should begin in August; \$250,000 is slated for the City's Automated Traffic Management System (ATMS) project.

Council Member Hager commented on the Airport Authority's refusal to partner with the City in the matter of providing \$20,000 in funding to the Fire-Rescue Department. He confirmed with the City Manager that no dollars are expected to come from any other source.

Council Member Whelchel referred to a memo from John Reilly, City Transportation Analyst, to the City Manager relating to a South Florida East Coast (FEC) Railway Passenger Services Initiative meeting, which took place on June 20, 2003, and commented that support was being requested from cities in regard to transit projects along the FEC Corridor and for changing the Regional Transportation Organization (RTO) to a Regional Transportation Authority (RTA).

ADJOURNMENT:

Motion was made by Council Member Freudenberg, seconded Council Member Hager, to adjourn the meeting. Motion carried unanimously on a voice vote; Mayor Abrams, Deputy Mayor Whelchel, Council Members Freudenberg, Hager and Haynie voting yes.

The regular meeting of the City Council of the City of Boca Raton adjourned at approximately 8:19 p.m. on Tuesday, July 22, 2003.

Steven L. Abrams, Mayor

ATTEST:

Sharma Carannante, City Clerk