

MINUTES OF THE REGULAR MEETING
CITY COUNCIL
CITY OF BOCA RATON, FLORIDA
TUESDAY, JANUARY 28, 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:

Deputy Mayor Haynie gave the invocation.

PLEDGE OF ALLEGIANCE TO THE FLAG:

ROLL CALL:

Mayor Steven L. Abrams
Deputy Mayor Susan Haynie
Council Member Dave Freudenberg
Council Member Carol Hanson

Council Member Bill Hager was absent (excused).

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 Deputy Mayor Haynie, to amend the agenda to add Resolution No. 29-2003 and 30-2003 to the Consent Agenda. Motion carried 4-0 on a voice vote; Mayor Abrams, Deputy Mayor Haynie, Council Members Freudenberg and Hanson voting yes.

PROCLAMATIONS/PRESENTATIONS:

Soccer Association of Boca Raton (SABR) – 25th Anniversary – Earl Starkoff provided a video, which gave a brief history of soccer in Boca Raton and showcased the achievements of SABR for its work with children of all ages and abilities. He then presented a plaque to Mayor Abrams in appreciation of the City's continued support.

MINUTES:

Minutes of the Regular Workshop Meeting of January 13, 2003
Minutes of the Regular Meeting of January 14, 2003

Motion was made by Council Member Freudenberg, seconded by Deputy Mayor Haynie, to approve the minutes as presented. Motion carried 4-0 on a voice vote; Mayor Abrams, Deputy Mayor Haynie, Council Members Freudenberg and Hanson voting yes.

REGULAR BUSINESS - PART I:

1. Appointments to the following boards:

- a. Boca Raton Advisory Board for the Physically and Mentally Challenged – (2) vacancies due to resignations of Judith Wong, whose term expires 4/23/04, and Grace Pertile, whose term expires 4/23/03.

Peter Schnell interviewed for the position.

Motion was made by Council Member Freudenberg, seconded by Deputy Mayor Haynie, to appoint Peter Schnell to the Boca Raton Advisory Board for the Physically and Mentally Challenged for the term expiring 4/23/04. Motion carried 4-0 on a voice vote; Mayor Abrams, Deputy Mayor Haynie, Council Members Freudenberg and Hanson voting yes.

Mr. Schnell was appointed.

- b. Citizens' Pedestrian and Bikeway Advisory Board – (1) vacancy due to resignation of Mark Traveis, whose term expires 1/12/04.

Neil Meisel interviewed for the position.

Motion was made by Council Member Freudenberg, seconded by Deputy Mayor Haynie, to appoint Neil Meisel to the Citizens' Pedestrian and Bikeway Advisory Board. Motion carried 4-0 on a voice vote; Mayor Abrams, Deputy Mayor Haynie, Council Members Freudenberg and Hanson voting yes.

Mr. Meisel was appointed.

- c. Education Advisory Board – (1) vacancy due to resignation of Matthew S. Nelles, whose term expires 7/28/05.

Thomas Vinci and Yuri Konnikov interviewed for the position.

Council Member Hanson nominated Yuri Konnikov; Mayor Abrams nominated Thomas Vinci. The nominations were then closed without objection.

In the voting: Mayor Abrams voted for Thomas Vinci; Deputy Mayor Haynie and Council Members Freudenberg and Hanson voted for Yuri Konnikov.

Mr. Konnikov was appointed to the Education Advisory Board.

2. Responses to Workshop Information Requests:

(Consent Agenda Item 3.b.2. – Laptop Computers for Police Services) An e-mail response was provided, stating that funding from the Local Law Enforcement Block Grant program would be used to purchase 15 Panasonic Toughbooks laptop computers for use in police vehicles. The balance of the funding is to come from the annual replacement budget; Mr. Ahnell explained that there is a 3-year replacement schedule for these computers. It was noted that normal laptops are not designed to withstand rain, extreme heat, and violent vehicle movement, to name a few hazards; many laptops are sent in for repair, resulting in officers being without a computer for a week or more. Approximately 105 laptops are to be replaced, which would also create an inventory of spares.

(Consent Agenda Item 3.c. – Resolution No. 26-2003 / Grant application for Transportation Demand Management (TDM) Data Collection and Analysis) A memorandum was provided, which confirmed that the grant amount requested was for \$73,000 as opposed to \$78,000.

(Consent Agenda Item 3.d. – Resolution No. 27-2003 / Agreement with Boca Raton Educational Television {BRET}) A memorandum was provided, which explained that satellite service providers are not subject to local franchise requirements, as they do not use the City’s rights-of-way. The State collects a telecommunications tax on satellite services and remits the City’s portion (currently 5.7%) back to the City in accordance with tax laws enacted by the State in 2000. The memorandum further explained the City’s current agreement with BRET in regard to Cable Television revenue.

(Balance of Law Enforcement Trust Funds {LETf}) A memorandum was provided, which reflected an estimated ending fund balance of over \$4.6 million after figuring in estimated revenues, expenditures, and purchase of the police training facility.

Mr. Ahnell stated that responses to other items would be provided separately, when available.

3. Consent Agenda:

Mark Wantshouse, representing Boca Aviation, spoke in support of Resolution No. 29-2003, as did Carl Jacobs.

Motion was made by Council Member Freudenberg, seconded by Deputy Mayor Haynie, to approve the Consent Agenda, as amended. Motion carried 4-0; Mayor Abrams, Deputy Mayor Haynie, Council Members Freudenberg and Hanson voting yes.

a. Sealed Bid Renewals

- | | | |
|----|--|-----------|
| 1) | Landscape Maintenance Services for Cemetery and Mausoleum (Renewal)
Requested by Recreation Services
Edge & Cut Landscaping | \$42,570 |
| 2) | Landscape Maintenance Services for Downtown Section (Renewal)
Requested by Recreation Services
Custom Care, Inc. | \$176,773 |
| 3) | Landscape Maintenance Services for El Rio Bicycle/Pedestrian Corridor (Renewal)
Requested by Recreation Services
Lucky Lawns, Inc. | \$42,456 |
| 4) | Landscape Maintenance Services for East Section (Renewal)
Requested by Recreation Services
Lucky Lawns, Inc. | \$105,134 |
| 5) | Landscape Maintenance Services for North Section (Renewal)
Requested by Recreation Services
Lucky Lawns, Inc. | \$134,074 |
| 6) | Landscape Maintenance Services for Central Section (Renewal)
Requested by Recreation Services
Complete Property Services | \$200,200 |

b. Intergovernmental Agreement

- 1) Chemicals and Fertilizers
Requested by Recreation Services & Utility Services
Agro Distribution d/b/a Pro Source One;
Atlantic Florida East Coast Fertilizer & Chemical Co.;
Carso, Inc.; Diamond R. Fertilizer;
Du Cor International Corp.; Golf Ventures;
Helena Chemical; Howard Fertilizer & Chemical, Co., Inc.;
Lesco, Inc.; Liquid Ag Systems; Lykes Agri Sales, Inc.;
Parkway Research/division of Brandt;
Southeastern Turf and Grass Supply, Inc.;
United Horticultural Supply; and Univar USA \$326,828
- 2) Laptop Computers
Requested by City Manager
Police Services
Insight Public Sector \$348,950

c. Resolution No. 26-2003

A resolution of the City of Boca Raton authorizing the City Manager to apply for a grant from the U.S. Department of Transportation Bureau of Transportation Statistic for Transportation Demand Management (TDM) Data Collection and Analysis; authorizing the acceptance of said grant, if awarded; authorizing the expenditure of matching funds for 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

d. Resolution No. 27-2003

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute an amended and restated Agreement with Boca Raton Educational Television, Inc., for the purpose of providing programming and management services for the City's educational access channels; providing for severability; providing for repealer; providing an effective date

e. Resignations

- 1) Resignation of Anthony Dutton from the Library Advisory Board
- 2) Resignation of Jacqueline Waldeck from the Historic Preservation Board

f. Receive and File Board Minutes – January 28, 2003

- 1) Builders' Board of Adjustment and Appeals
August 5, 2002
- 2) Downtown Visions Committee
October 10, 2002
- 3) General Employees' Pension Board
December 11, 2002
December 19, 2002
- 4) Marine Advisory Board
November 13, 2002

- 5) Parks and Recreation
December 3, 2002
December 12, 2002
 - 6) Physically and Mentally Challenged Board
December 5, 2002
 - 7) Planning and Zoning Board
November 6, 2002
November 7, 2002
 - 8) Special Master
September 25, 2002
December 11, 2002
 - 9) Telecommunications Advisory Board
December 2, 2002
- g. Resolution No. 29-2003
- A resolution of the City of Boca Raton encouraging the Boca Raton Airport Authority to seek alternatives to the establishment of a second fixed base operator and/or a second fuel storage and fueling operation at the Boca Raton Airport; encouraging the Boca Raton Airport Authority to take all available actions to oppose the establishment of scheduled airline service at the Boca Raton Airport; providing for severability; providing for repealer; providing an effective date
- h. Resolution No. 30-2003
- A resolution of the City of Boca Raton urging the Congressional Conference Committee of the United States Senate and the United States House of Representatives to approve the Omnibus Appropriations Bill as adopted by the United States Senate, including provisions in said bill for the United States Government to acquire the anthrax-contaminated property located at 5401 NW Broken Sound Boulevard in Boca Raton, Florida, owned by American Media, Inc. ("AMI Property"); urging the President of the United States to enact the Omnibus Appropriations Bill, including the provisions regarding the AMI Property; urging the United States Government, after acquisition of the AMI Property, to proceed promptly with cleanup of the anthrax contamination on the AMI Property; providing for severability; providing for repealer; providing an effective date

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

There were no quasi-judicial public hearings.

REGULAR BUSINESS – PART III – REGULAR PUBLIC HEARINGS:

4. Ordinance No. 4685 (*Revised*)

An ordinance of the City of Boca Raton authorizing the Mayor and City Clerk to execute a Memorandum of Understanding with Boca Technology Center, LLC; approving and accepting certain deeds and easements from Boca Technology Center, LLC, granting certain easements and modifying the existing Parking Lot Lease establishing certain permanent parking rights, all over certain lands more particularly described herein; providing for severability; providing for repealer; providing an effective date

The City Attorney, assisted by Planning and Zoning Director Carmen Annunziato, gave the PowerPoint presentation. She distributed two handouts – one entitled, “Second Revised,” which detailed minor revisions to the agreement, and one entitled, “Second Revised 1/28/03,” which was comprised of the ordinance and the full attachment e.g. the Memorandum of Understanding with all exhibits; Ms. Frieser noted that the attachments contained all revisions distributed yesterday and tonight.

The City Attorney explained that the Memorandum of Understanding addressed matters related to the development order (D.O.) and D.O.-related issues, which included the completion of road improvements initially budgeted by the City, with Boca Technology Center providing additional bonding and other obligations in order to secure the completion of said improvements. The relocation of Broken Sound Boulevard was then reviewed; each land parcel needed for this relocation was described and discussed in detail.

Other issues addressed by the Memorandum of Understanding included: the pre/post 1973 office occupancy, new development, the merge analysis, the employee service/commercial node, and the City letter. The City letter covered several matters relating to roadway improvements, the Environmental Management Plan, intersection improvements, the merge analysis, and the site-specific Master Plan Traffic Study. Ms. Frieser then brought attention to the revisions, which she reviewed individually.

As a last note, Ms. Frieser distributed three letters to Council, two of which came from the Florida Department of Transportation (FDOT). The cover letter, sent by FDOT on January 28, 2003 and addressed to Joseph Pollack at the Boca Technology Center, was read into the record; essentially, FDOT stated that the Master Plan Study was accepted as proposed. Of the two remaining letters, one was from Municipal Services Director Robert DiChristopher to FDOT and provided information on Transportation Demand Management (TDM). The last letter was from FDOT and voiced concerns related to TDM, which were assuaged by Mr. DiChristopher’s subsequent response letter.

No one wished to speak at the public hearing.

Motion was made by Council Member Freudenberg, seconded by Deputy Mayor Haynie, to adopt Ordinance No. 4685, “Second Revised 1/28/03.” Motion carried 4-0; Mayor Abrams, Deputy Mayor Haynie, Council Members Freudenberg and Hanson voting yes.

5. Ordinance No. 4686 (First of two required public hearings.)

An ordinance of the City of Boca Raton creating Section 28-1305, Code of Ordinances, to provide that in all zoning districts certain parks and park facilities and City water, sewer, reclaimed water, and stormwater facilities and appurtenances shall be permitted uses, to provide that in all nonresidential zoning districts any buildings, facilities and uses owned, operated, utilized or conducted by the City (inclusive of police and fire stations) shall be a permitted use, and to provide that in all residential zoning districts City police and fire stations (and related facilities) shall be a conditional use; providing for severability; providing for repealer; providing for codification; providing an effective date (AM-02-12/02-92500013)

Planning and Zoning Director Carmen Annunziato gave the PowerPoint presentation. He explained that this ordinance would amend the list of permitted and conditional uses in all the zoning districts within the City. Due to the upcoming program for expansion and/or location of new fire stations throughout the City, staff reviewed the Code and found that, while the list of conditional and permitted uses is very specific, no option/language existed with regard to municipal facilities. Essentially, if municipal facilities are not named on the list of uses, they are not allowed. Therefore, this ordinance addresses this deficiency and provides the framework for future municipal facility development. The Planning and Zoning Board unanimously recommended approval of this ordinance with amendments related to fire stations as a conditional use in residential zoning districts. The proposed ordinance was amended accordingly. Mr. Annunziato then answered questions from Council. It was noted that the County is responsible for South Inlet Park.

No one wished to speak at the public hearing. Since two public hearings are required before a vote may be taken by Council, consideration of this ordinance was carried forward to the next regularly scheduled Council meeting.

6. Ordinance No. 4687

An ordinance of the City of Boca Raton relating to the General Employees' Pension Board; amending Subsection 12-87(13), Code of Ordinances, to create an exemption to the review and reconsideration procedure for one-time only purchases and distributions not exceeding five hundred (\$500) dollars; providing for severability; providing for repealer; providing for codification; providing an effective date

The City Manager gave the presentation and stated that this was primarily an administrative ordinance. Mr. Ahnell explained that he must approve all expenditures made by the General Employees' Pension Board. Unfortunately, the Board has encountered small, miscellaneous administrative expenditures, such as Federal Express charges, that it cannot move forward on until Mr. Ahnell approves same. Therefore, it was suggested that review and approval by the City Manager for distributions costing \$500 or less, and one-time purchases costing \$500 or less, would not be required.

No one wished to speak at the public hearing.

Motion was made by Council member Freudenberg, seconded by Deputy Mayor Haynie, to adopt Ordinance No. 4687. Motion carried 4-0; Mayor Abrams, Deputy Mayor Haynie, Council Members Freudenberg and Hanson voting yes.

REGULAR BUSINESS – PART IV – PUBLIC HEARINGS/SETTLEMENTS:

There were no items for consideration.

REGULAR BUSINESS – PART V - INTRODUCTION OF ORDINANCES:

7. Ordinance No. 4688

An ordinance of the City of Boca Raton amending the Fiscal Year 2002-2003 Budget through the First Quarterly Budget Amendment; providing for severability; providing for repealer; providing an effective date

Council Member Freudenberg introduced the ordinance.

8. Ordinance No. 4689

An ordinance of the City of Boca Raton providing for the vacation and abandonment of a public utility easement, located at 300 West Palmetto Park Road, as more specifically described herein; providing for conditions for vacation and abandonment; providing for severability; providing for repealer; providing an effective date (E-02-EA-03)

Deputy Mayor Haynie introduced the ordinance.

REGULAR BUSINESS - PART VI - PUBLIC REQUESTS:

Kurt Olson spoke in opposition to Florida Power & Light's (FPL's) Citywide over-pruning of trees and asked for Council's assistance in halting same. Mayor Abrams advised that the City was already looking into this matter. FPL and Asplundt are to come before Council at the February 24, 2003 workshop to address this issue.

Robert Oppenheimer referenced a proposed settlement in regard to problems with IRIS water and dumping of contaminated water into the sewage system and questioned why this item was not on

tonight's agenda as a public hearing. Ms. Frieser explained that there was no settlement pending; however, an appeal was pending. She added that the hearing process is different since it is at the State level and would not come before the Council for consideration. Ms. Frieser advised that the State hearing was expected the first week of February. Responding to Council Member Hanson, Ms. Frieser explained that the Department of Environmental Protection (DEP) issued a permit to the City for disposal of wastewater effluent, and certain individuals were challenging certain conditions of the permit. However, DEP and the City are in agreement that the permit complies with the law.

Mr. Oppenheimer then referred to the AMI building and the release of water, used to clean the HazMat "space suits," into the sewage system, voicing concern that the water was contaminated with anthrax. Mr. Ahnell explained that said water was taken from the AMI building and tested for contaminants at a separate laboratory facility; none were found. The water was then released through the sewer system. Mr. Ahnell stressed that if any contaminants had been found, the water would not have been discharged into the sewer system. On the issue of the challenge to the DEP permit, the City Manager mentioned that he was not aware of any settlement.

Scot Menke referenced the September meetings last year and asked for an update regarding a traffic study relating to the installation of a traffic signal at NW 13 Street and NW 9th Court. He also asked for an update on the user fees/rates for IRIS water, which (he said) were to have been increased in order to recover the cost of the system itself; at this point, potable water users are making up the difference. Mr. Menke then spoke to the issue of the challenge regarding the City's DEP permit for disposal of wastewater effluent. Carl Jacobs is the petitioner; Mr. Menke is the intervener. He stated that a meeting had been held on January 15, 2003 in West Palm Beach between himself, Mr. Jacobs, and the DEP; Mr. Menke said he also understood a settlement had been reached and would come before the Council tonight. It was his belief that the alleged settlement would necessitate City Council discussion and consent.

The City Attorney stated that there was never any discussion of a settlement document nor has one been drafted. She explained that the City had filed a motion to dismiss a series of the counts; those charges were dismissed by the administrative law judge. Additional motions to dismiss would be considered by the law judge for other counts. Some charges were not initially dismissed and are currently pending; the City would proceed with the State hearing pursuant to the requirements of the Statute and the Administrative Procedures Act. Ms. Frieser explained that, at this time, there has been nothing to report. However, should Council wish to review all documentation regarding this issue, she was happy to provide same. A memo listing the date, time, and venue of the upcoming State hearing is to be provided by the City Attorney for Council's review.

Referring to the January 15, 2003 meeting, Ms. Frieser explained that a settlement discussion took place in regard to issues outside the scope of the permit; discussion addressed those separate matters brought forward by Mr. Jacobs, which would not result in amending the DEP permit conditions. Ms. Frieser reiterated that neither the City nor DEP believes that any of the permit conditions are unlawful.

Mr. Ahnell responded to Mr. Menke's requests and explained that a traffic study was currently being conducted by staff in regard to the traffic signal at NW 13 Street and NW 9th Court; a staff member from Municipal Services would be in contact with him. Regarding the IRIS rates, Mr. Ahnell explained that a study was brought back before Council, which compared IRIS rates at other municipalities across the State. Mayor Abrams expressed that he understood the IRIS rates would be considered at the same time Council reviews the annual cost-of-living adjustments for the potable water rates; it was suggested that the City Manager would bring forward a recommendation regarding same this summer.

Carl Jacobs thanked the City Manager for having the sign at Palmetto Park Road and 12th Avenue for the International Museum of Cartoon Art removed, which he had mentioned at yesterday's workshop. He also mentioned that an inspector had been sent out to look at the fire hydrant in Camino Gardens and cleaned it up. Mr. Jacobs then spoke to the issue of the IRIS water and the DEP permit, saying that he understood that a settlement had been reached and provided details in support of his position.

Don Londeree explained that he works in Mizner Park and supported the appointment of someone to follow up on the IRIS watering system for accountability purposes, saying that education, accountability, and proper signage were essential to the IRIS program.

REGULAR BUSINESS - PART VII- RESOLUTIONS AND OTHER BUSINESS:

There were no items for consideration.

REGULAR BUSINESS - PART VIII - PUBLIC HEARINGS/APPEAL OF BOARD DECISIONS:

There were no items for consideration.

CITY MANAGER RECOMMENDATIONS AND REPORTS:

Mr. Ahnell referred to the conversation at yesterday's workshop and asked for direction from Council regarding the suggested letter of support for the new location of the proposed Tri-Rail station.

Motion was made by Council Member Freudenberg, seconded by Deputy Mayor Haynie, to direct the City Manager to move forward with the original letter of support regarding construction of a Tri-Rail station to be located on a portion of the Blue Lake DRI, south of Yamato Road. Motion carried 3-1; Mayor Abrams, Deputy Mayor Haynie, and Council Member Freudenberg voting yes. Council Member Hanson voted no.

CITY ATTORNEY REPORTS:

The City Attorney reported that she had spoken with opposing counsel in the case of Florida Outdoor Advertising vs. The City of Boca Raton, and no appeal would be filed. Ms. Frieser stated at yesterday's workshop that the case had been decided in the City's favor.

MAYOR AND COUNCIL MEMBER REPORTS:

Council Member Freudenberg commented on the missing fence along the railroad tracks near Boca Raton Elementary School and suggested that another fence should be installed. The City Manager is to follow up.

Council Member Freudenberg stated that he had recently attended a Spanish River Homeowners' Association meeting, where residents voiced displeasure with varying speed limits along a one-mile stretch of Spanish River Boulevard. He asked the City Manager to follow up on the reasoning behind why such differences exist.

Council Member Freudenberg referenced the City's park property, located south of Spanish River Boulevard, saying that users of All Terrain Vehicles (ATVs) are still a problem on the City's park property, south of Spanish River Boulevard, and on the Lamson property.

Deputy Mayor Haynie reported that the North Federal Highway focus group, which she is heading, met on January 22, 2003 and discussed many issues, including those related to Code Enforcement. A consensus was reached to ask the City to explore the possibility of scheduling a charrette to discuss development of that area. Mr. Ahnell explained that the cost to do so would be approximately \$50,000. It was decided that the City Manager would bring forward a cost proposal in regard to the above for consideration by Council.

Council Member Hanson referenced the Citywide over-pruning currently taking place, sponsored by Florida Power & Light, and asked that the City's arborist and members of the Beautification Committee provide guidance to Council regarding tree-trimming standards, prior to the appearance at a workshop by Asplundt and Florida Power & Light to explain their justification in using an aggressive tree-cutting approach.

Council Member Hanson requested an update on the temporary Certificate of Occupancy for Mizner Grand. Mr. Ahnell stated that a memorandum has been provided in Council's mail.

Council Member Hanson questioned whether the City's electricians are required to obtain journeyman licensing. The City Manager is to follow up.

Council Member Hanson referred to Sally Stewart, a local activist, who would be moving away from the City of Boca Raton and recited an original poem in her honor.

ADJOURNMENT:

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

The regular meeting of the City Council of the City of Boca Raton adjourned at approximately 8:00 p.m. on Tuesday, January 28, 2003.

Steven L. Abrams, Mayor

ATTEST:

Sharma Carannante, City Clerk