

MINUTES OF THE REGULAR MEETING
CITY COUNCIL
CITY OF BOCA RATON, FLORIDA
TUESDAY, FEBRUARY 27, 2007
6:00 PM

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

INVOCATION:

Council Member Hager gave the invocation.

PLEDGE OF ALLEGIANCE TO THE FLAG:

ROLL CALL:

Mayor Steven L. Abrams
Deputy Mayor Susan Whelchel
Council Member M. J. Mike Arts
Council Member Peter R. Baronoff
Council Member Bill Hager

Also attending the meeting were:

Deputy City Manager George S. Brown
Deputy City Attorney Jeffrey Scheffel
City Clerk Sharma Carannante

AMENDMENTS TO THE AGENDA:

There were no amendments to the agenda.

MINUTES:

Minutes of the Regular Workshop Meeting of February 12, 2007
Minutes of the Regular Meeting of February 13, 2007

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

PROCLAMATIONS/RECOGNITIONS/AWARDS:

There were no proclamations, recognitions, or awards.

REGULAR BUSINESS - PART I:

1. Appointments to the following boards:

There were no applicants to consider.

2. Responses to Workshop Information Requests:

As there were no questions tendered at yesterday's workshop, there were no responses.

3. Consent Agenda:

Mayor Abrams provided the public with an opportunity to comment on the Consent Agenda; no one came forward to speak.

Motion was made by Deputy Mayor Whelchel, seconded by Council Member Hager, to adopt the Consent Agenda. Motion carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Arts, Baronoff and Hager voting yes.

a. Sealed Bid

- | | | |
|----|---|-----------|
| 1) | Reclaimed Water Polymer
Requested by Utility Services
KED Group, Inc. | \$56,140 |
| 2) | Hughes Park Improvements
Requested by Development Services
Hartzell Construction Inc. | \$129,711 |

b. Intergovernmental Agreement

- | | | |
|----|---|----------|
| 1) | Pavement Markings
Requested by Municipal Services
Transmark Inc. | \$55,000 |
| 2) | Posi Track Multi Terrain Loader
(Replacement)
Requested by Municipal Services
Ring Power Corporation | \$65,186 |
| 3) | Sodium Hydroxide
Requested by Utility Services
Allied Universal Corp. | \$69,800 |
| 4) | Coagulant Aid
Requested by Utility Services
Tropichem Enterprises | \$80,800 |

c. Sole Source

- | | | |
|----|---|----------|
| 1) | Traffic Pre Emption System
Requested by Fire-Rescue Services
3M Company | \$87,125 |
|----|---|----------|

d. Final Assessment Resolution No. 03-F

A resolution of the City of Boca Raton providing for the acceptance of certain improvements, including the construction of a wastewater collection system and other improvements in an area generally known as Area II; providing for billing of the special assessments and impact fees; providing for severability; providing for repealer; providing an effective date

e. Resolution No. 20-2007

A resolution of the City of Boca Raton opposing Florida House Bill 529, known as the "Consumer Choice Act of 2007"; urging members of the Florida Legislature to refrain from any form of support or co-sponsorship of HB529 and to vote in opposition to HB529; requesting Governor Crist to advise the House and Senate leadership that he does not support HB529 in advance of the opening of the 2007 Regular Session; and directing that this resolution be forwarded to Governor Crist, the Palm Beach County Legislative Delegation, the Palm Beach County League of Cities, the Florida League of Cities, and the Palm Beach County Board of County Commissioners; providing for severability; providing for repealer; providing an effective date

f. Receive and File Board Minutes – February 27, 2007

- 1) Community Appearance Board
January 23, 2007
January 30, 2007
February 6, 2007
- 2) Community Relations Board
January 8, 2007
- 3) Environmental Advisory Board
September 21, 2006
- 4) Financial Advisory Board
November 20, 2006
- 5) Library Advisory Board
December 20, 2006
- 6) North Federal Highway Steering Committee
November 7, 2006
- 7) Parks and Recreation Board
January 9, 2007
- 8) Pearl City Blue Ribbon Committee
October 26, 2006
- 9) Physically and Mentally Challenged Board
January 4, 2007
- 10) Telecommunications Advisory Board
December 4, 2006

REGULAR BUSINESS – PART II-A – QUASI-JUDICIAL CONSENT AGENDA:

Mayor Abrams provided the public with an opportunity to comment on the Quasi-Judicial Consent Agenda; no one came forward to speak.

Motion was made by Council Member Arts, seconded by Deputy Mayor Whelchel, to approve the Quasi-Judicial Consent Agenda. Motion carried unanimously on a voice vote; Mayor Abrams, Deputy Mayor Whelchel, Council Members Arts, Baronoff and Hager voting yes.

4. Resolution No. 18-2007

A resolution of the City of Boca Raton accepting and approving the final plat known as the Lynn Financial Center subdivision plat, and authorizing the Mayor and City Clerk to execute the plat; providing for severability; providing for repealer; providing an effective date (SUB-05-02)

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

5. Resolution No. 14-2007

A resolution of the City of Boca Raton granting the petition of Vander Ploeg and Associates, Inc., for modifications to the approved master plan for Library Commons, subject to conditions; providing for severability; providing for repealer; providing an effective date (PUD-04-02R1)

Mayor Abrams advised that quasi-judicial procedure would be followed for this public hearing; the City Clerk administered the oath to those who indicated they wished to speak.

Development Services Planner Daryl Johnson gave the PowerPoint presentation. Information related to location, acreage, zoning, and land use designation was provided, and surrounding roadways were identified. The applicant was requesting an amendment to the previously approved PUD (Planned Unit Development) for a reduction in residential units from 92 to 85; specifically, 54 single-family units and 31 multi-family units. In addition, the applicant wished to provide one community area with a pool and spa, and convert two, four-story buildings into townhouse units. Vehicular access would remain the same. Mr. Johnson advised that 170 parking spaces are required; 211 spaces are being provided. No other modifications are requested and all other conditions remain in effect. The Planning and Zoning Board reviewed the request and recommended approval, as did staff. Responding to Council, Mr. Johnson stated that although the number of units would be reduced, the density would remain the same.

Derek Vander Ploeg, representing the applicant, provided the reasoning behind the request for the modifications and made himself available for questions. Seeing no one else come forward to speak, the public hearing was closed.

Motion was made by Council Member Hager, seconded by Council Member Arts, to adopt Resolution No. 14-2007. Motion carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Arts, Baronoff and Hager voting yes.

6. Resolution No. 15-2007

A resolution of the City of Boca Raton granting conditional use approval for a convenience store with gasoline sales for the Spanish River Chevron on a parcel of land located at 4055 North Federal Highway, providing for severability; providing for repealer; providing an effective date (CA-06-06)

Mayor Abrams advised that quasi-judicial procedure would be followed for this public hearing; the City Clerk administered the oath to those who indicated they wished to speak.

Development Services Senior Planner Susan Lesser gave the PowerPoint presentation. Location, acreage, zoning, and land use designation was provided. She noted that the applicant planned to make improvements to the property, which would bring it into compliance with the City Code. Those improvements included additional landscaping, modifying parking spaces, and construction of a future cross access connection to a public shopping center; this connection was made a condition of approval. The number of pump islands would remain the same. Vehicular access would be one "right-in, right-out" intermediate driveway connection onto Spanish River Boulevard and one "right-in, right-out" driveway connection to Federal Highway. Consequently, technical deviations for the driveway reservoir distance standards are also being requested. Ms. Lesser then reviewed elevations, parking, and trip generations.

The Planning and Zoning Board recommended two technical deviations from the required 50-foot driveway reservoir distance, specifically, 1) allowing the existing reservoir length of 20 feet for the Spanish River Boulevard Driveway to be maintained, and 2) allowing the proposed reservoir length at the Federal Highway driveway to be 25 feet, which is an improvement over the existing 18-foot driveway distance. Ms. Lesser noted that the driveways closest to the intersection of Spanish River Boulevard and Federal Highway were closed. Based on safety improvements to be made in the neighborhood, the City's traffic engineer supports the requested deviations.

The Planning and Zoning Board reviewed the petition and recommended approval of same, as did staff, with the conditions as listed in the accompanying resolution.

Curt Keyser, representing the applicant, provided positive commentary in regard to the petition. Seeing no one else come forward to speak, the public hearing was closed.

Motion was made by Deputy Mayor Whelchel, seconded by Council Member Hager, to adopt Resolution No. 15-2007. Motion carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Arts, Baronoff and Hager voting yes.

7. Ordinance No. 4962

An ordinance of the City of Boca Raton amending the Future Land Use Map of the Comprehensive Plan by redesignating certain property consisting of 1.607 acres, more or less, located at 8300 Congress Avenue as more specifically described herein, from Manufacturing Industrial (IM) to Commercial (C); providing for the appropriate revisions of the Future Land Use Map; providing for severability; providing for repealer; providing an effective date (UC-06-02/SC)

8. Ordinance No. 4963

An ordinance of the City of Boca Raton rezoning a parcel of land consisting of 1.607 acres, more or less, located at 8300 Congress Avenue, as described more particularly herein, from Manufacturing and Industrial to Motel-Business; providing for the appropriate revisions of the Zoning District Map; providing for severability; providing for repealer; providing an effective date (UC-06-02/ZC)

Mayor Abrams advised that the public hearings on Ordinance Nos. 4962 and 4963 would be held contemporaneously and pursuant to quasi-judicial procedure. The City Clerk administered the oath to those who indicated they wished to speak.

Planning and Zoning Director Carmen Annunziato gave the PowerPoint presentation, advising that approval of the above ordinances, brought forward by Paul Slattery on behalf of HN Investors, would provide for improvements to the subject site and redevelopment of an existing structure into a medical office building. Surrounding properties were then identified and the site plan was briefly reviewed. Mr. Annunziato explained that the existing building would be reduced to approximately 19,000 square feet. Access to the site is from Congress Avenue. The petitions were reviewed for concurrency, compatibility, and consistency; those standards were met. The Planning and Zoning Board also reviewed this request and recommended approval, subject to Council approving the Comprehensive Plan

Amendment and the rezoning. In conclusion, staff also recommended approval. Responding to Council, Mr. Annunziato advised that 1) M3-zoned land (Manufacturing and Industrial) is at a premium, 2) the nearby Beacon Square property included opportunities for medical office use, and 3) a single tenant is expected to occupy the proposed medical building. In response to another query, Mr. Annunziato explained that the City would be conducting a facilitated land use study as part of its multimodal transportation initiative. The results of that study would answer many questions as to the future land uses of the area in question. Mr. Annunziato provided additional information as requested related to what types of businesses usually reside in M3-zoned property.

Paul Slattery, the architect for the project, clarified that the original application requested medical and professional offices, in the event that the entire building was not used for medical. He added that the proposed building would be occupied by Holy Cross.

Bonnie Miskel, representing HN Investors, responded to a query from Council. She stated, for the record, that a restrictive covenant was being offered that would limit the use to medical office and professional office although at this time, the entire facility would be used for one medical tenant upon the expiration of the term of the lease. Seeing no one else come forward to speak, the public hearing was closed.

In general, Council voiced concern over moving land out of the M3 land use category, citing a current lack of available M3 land. In addition, Council was in the process of hiring a consultant to create an overall plan for the area. Lastly, in terms of the rezoning, it did not appear that a compelling public purpose or significant change in circumstances had been shown.

Motion was made by Deputy Mayor Whelchel, seconded by Council Member Hager, to adopt Ordinance No. 4962. Motion failed 0-5; Mayor Abrams, Deputy Mayor Whelchel, Council Members Arts, Baronoff, and Hager voting no.

Motion was made by Deputy Mayor Whelchel, seconded by Council Member Hager, to adopt Ordinance No. 4963. Motion failed 0-5; Mayor Abrams, Deputy Mayor Whelchel, Council Members Arts, Baronoff, and Hager voting no.

REGULAR BUSINESS – PART III – REGULAR PUBLIC HEARINGS:

9. Ordinance No. 4972

An ordinance of the City of Boca Raton related to commercial solid waste collection services amending Chapter 14, Code of Ordinances; providing for definitions, non-exclusive franchises for commercial solid waste collection services, regulations and requirements for commercial solid waste collection services franchises, rates and fees for said franchises; amending Sections 2-92 and 2-113, Code of Ordinances, to provide that violations of said provisions shall be within the jurisdiction of the Special Master; providing for severability; providing for repealer; providing for codification; providing an effective date

a. Resolution No. 17-2007

A resolution of the City of Boca Raton adopting an amended and restated Boca Raton Municipal Facilities and Services User Fee Schedule; providing for severability; providing for repealer; providing an effective date

Mayor Abrams noted that the public hearings on Ordinance No. 4972 and Resolution No. 17-2007 would be held contemporaneously.

Municipal Services Director Robert DiChristopher gave the presentation, noting that the ordinance had been revised and distributed to Council this evening. He then outlined the revisions, which were: 1) clarification of the definition of “recyclable materials,” to conform to the Statutory definition, and

2) clarification of the City's conformance with displacement rules and regulations in the Florida Statutes; details were provided.

Essentially, staff proposed a franchise on commercial solid waste haulers; there would be 8% franchise fee required, along with a \$15,000 annual fee. Surveys of South Florida cities showed these rates to be squarely in the middle, and they would be reviewed annually. Passage of the resolution would incorporate these fees into the City's User Fee Schedule. Mr. DiChristopher added that, several months ago, staff had suggested an exclusive franchise; however, it was not well received. The commercial haulers and many of the City's business owners indicated that they prefer to negotiate their own contracts; this proposed legislation would allow them to do so.

Bill Smith, an attorney representing Southern Waste Systems, proffered thanks to Council and City staff for listening to the concerns of his clients and coming up with a solution that is helpful to everyone. He noted that the City would now have the ability to regulate the solid waste collection business and acquire revenue. Mr. Smith also advised that his client's customers, as well as other haulers, have indicated they are satisfied with how the legislation is written.

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

Motion was made by Council Member Arts, seconded by Council Member Hager, to adopt Ordinance No. 4972 as revised. Motion carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Arts, Baronoff and Hager voting yes.

Motion was made by Deputy Mayor Whelchel, seconded by Council Member Hager, to adopt Resolution No. 17-2007. Motion carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Arts, Baronoff and Hager voting yes.

10. Ordinance No. 4973

An ordinance of the City of Boca Raton repealing Section 19-101, Code of Ordinances, Alternative Permitting Process; providing for severability; providing for repealer; providing for codification; providing an effective date

Ruby Childers, Manager of Administrative Services for Development Services, gave the presentation. She explained that the Florida Building Code authorizes the Building Official to issue a permit for construction of foundations or any other part of a building or structure before construction documents for the entire building/structure have been submitted; City Code refers this process to the City Manager, which is inconsistent with the State Code. Ms. Childers further noted that the City's Alternative Permitting Process provides flexibility in the development process; however, this same flexibility is already covered in the Florida Building Code, resulting in a duplicative effort. Consequently, in order to eliminate inconsistency and simplify the permitting process, staff recommended approval of the ordinance.

Responding to Council, Mr. Ahnell explained that if someone comes to the City with a project and expresses a need to expedite same, staff would entertain an agreement with that party to pay for additional services in order to accomplish that goal. Mr. Ahnell then clarified that this ordinance related more to allowing projects with multiple phases to move forward and vest the entire project, itself; however, he noted there are other ways to achieve that objective. In response to another query, the City Manager referred to the workforce housing ordinance and stated that staff is looking at expediting those projects that include a workforce housing component.

The public hearing was opened and, seeing no one come forward to speak, closed.

Motion was made by Deputy Mayor Whelchel, seconded by Council Member Hager, to adopt Ordinance No. 4973. Motion carried unanimously; Mayor Abrams, Deputy Mayor Whelchel, Council Members Arts, Baronoff and Hager voting yes.

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

There were no items for consideration.

REGULAR BUSINESS – PART V - INTRODUCTION OF ORDINANCES:

There were no items for consideration.

REGULAR BUSINESS - PART VI - PUBLIC REQUESTS:

No one came forward to speak.

REGULAR BUSINESS - PART VII- RESOLUTIONS AND OTHER BUSINESS:

There were no items for consideration.

QUASI-JUDICIAL PUBLIC HEARING – APPEAL OF BOARD DECISION:

11. Resolution No. 19-2007

A resolution of the City Council of the City of Boca Raton considering the appeal filed by Peter B. McAllister of the decision of the Community Appearance Board to approve with conditions Permit No. 06-13517 (wall sign) for the property located at 10 East Boca Raton Road; providing for severability; providing for repealer; providing an effective date

Mayor Abrams advised that quasi-judicial procedure would be followed for this public hearing; the City Clerk administered the oath to those who indicated they wished to speak.

Planning and Zoning Director Carmen Annunziato gave the PowerPoint presentation, advising that this appeal related to the size of the lettering for a sign for Old Town Tavern. He pointed out the proposed location of the sign, specifically, the west wall of the building, which faces Dixie Highway. Mr. Annunziato noted that, originally, the applicant requested 20-inch letters, which they then reduced to 14-inches; the CAB approved the lettering at 10 inches. In response to Council, Mr. Annunziato advised that the 14-inch letters would meet Land Development Code requirements.

Everett Jenner, Vice Chairman of the CAB, indicated that the location in question is more of a pedestrian area and not far away from the sidewalk. The Board was concerned that the letters were too large at slightly above eye level. He advised that a well-formed, 10-inch letter with contrasting background could be read easily at a distance of 130 feet by someone with normal eyesight.

Dominic Scarpo, the architect, was present, as was Patty Ludlow, Vice President of PBM Development, who asked Council to review the decision of the CAB.

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

Motion was made by Council Member Arts, seconded by Council Member Baronoff, to adopt Resolution No. 19-2007, as revised, to affirm with modifications the decision of the CAB. Motion carried unanimously on a voice vote; Mayor Abrams, Deputy Mayor Whelchel, Council Members Arts, Baronoff and Hager voting yes.

(The modifications gave approval for 14-inch letters.)

CITY MANAGER RECOMMENDATIONS AND REPORTS:

Property Taxes

Mr. Ahnell advised that many proposals are being brought forward to correct the property tax system. The most recent one, proposed by the Speaker of the House, would eliminate property tax on homesteaded properties and increase the State sales tax by 2.5%. If adopted, that proposal would significantly change the way local governments obtain revenue. One of the City's own financial experts - Office of Management & Budget Director Linda Davidson - was contacted by cities and counties throughout the State, as well as members from the Florida League of Cities and the Florida Government Officers Finance Association, to determine what the implications of this proposal would be; consequently, Ms. Davidson prepared a program that can be tailored to calculate the numbers for the different cities and counties.

Over a hundred proposals have been suggested; no one knows, at this point, what is going to happen. The City has been in contact with Representative Hasner and Senator Atwater; the City's lobbyists are tracking this issue very closely; staff has made presentations to various Boards; and the Mayor and staff members recently attended State hearings on this matter. Once the Legislature goes into session, some proposals will, ultimately, come to the forefront and others will fall by the wayside. Mr. Ahnell indicated that he would provide Council with information on an ongoing basis.

Mayor Abrams suggested that, once a proposal(s) begins to solidify, the City might wish to take a leadership role by creating public presentations, which outline suggestions to make the proposal(s) more palatable.

CITY ATTORNEY REPORTS:

Litigation - Funding of Countywide Fire-Rescue Dispatch System

Ms. Frieser provided an update, advising that she expected this case to wrap up tomorrow. The judge asked both sides to submit proposed Findings of Fact and an Order. Responding to Council, Ms. Frieser explained that the judge was expected to render a decision at a later date.

Sober House Litigation

A complex, Federal court decision was reached in this case late yesterday. Copies of the 32-page ruling were distributed to Council. Essentially, the judge did not find that the City had intentionally discriminated in any of its actions; in addition, there was no ADA or Equal Protection violation. Regarding damage award, the plaintiff was awarded the nominal sum of \$1. Ms. Frieser noted that the judge was also very sympathetic and respectful of the City's issues and understood the City's motivation and concern over protecting its residential neighborhoods. The judge, in fact, pointed out that the City is entitled to ensure that commercial businesses and uses do not intrude into residential areas.

In regard to the "reasonable accommodation" claim, specifically, the plaintiff's request to exceed the three-person limit (i.e.: the number of unrelated people legally allowed to live together under one roof), which is enforced in the City, the judge denied the request and concluded that the three-person limit could not be exceeded.

On the last issue of the FHA (Federal Housing Administration) violation, specifically, the City ordinance, the judge determined that certain portions of the ordinance, as applied, would violate the FHA; he issued a partial injunction of the City's enforcement of the ordinance in a way that would be inconsistent with his order. While the injunction stands, it does not affect any operational issue today. Ms. Frieser added that the judge did attempt to provide guidance, even in regard to this issue, and the parameters that may be permissible. She stated that she would conduct further analysis of the order and come back to Council with proposed actions to address those issues and other issues that counsel became more knowledgeable about during the litigation process. It was noted that this order is not a final order; either side could appeal.

Responding to Council, Ms. Frieser provided information on the Department of Justice (DOJ) case that was filed on the same regulations. The judge refused the plaintiff's request to consolidate the cases so this is a separate case, which will be heard before a separate judge. Ms. Frieser indicated that, if the order on the first case becomes final, the City would then decide what the implications are for the secondary (DOJ) case; details were provided. She advised that, in terms of the DOJ case, it was very premature. Ms. Frieser concluded her remarks by extending thanks to City's outside counsel for their assistance in these matters.

MAYOR AND COUNCIL MEMBER REPORTS:

Council Member Baronoff outlined scheduled artists and events for the upcoming Festival of the Arts Boca, which will take place March 1 through March 11, 2007, at Mizner Park.

Council Member Hager, in regard to the new traffic signalization on Yamato Road at the entrance to Patch Reef Park, suggested using flashing yellow lights when the park is closed in order to facilitate traffic. He also asked that staff review the section of Yamato Road between Military Trail and Congress, stating that three or four red-light spurs are timed to use long cycles even when there is very little traffic late at night.

Deputy Mayor Whelchel referred to a lighting ceremony at the Royal Oak Hills subdivision, which highlighted their new trees and shrubs at the entrance off of Camino Real.

Mayor Abrams referred to the fatality that occurred Sunday afternoon on St. Andrews Boulevard, just south of Glades Road, and asked that the engineering department survey the area to determine whether any improvements could be made. He indicated that staff might also provide private property owners in that area with suggestions for improving traffic circulation and exiting from their properties.

ADJOURNMENT:

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

The regular meeting of the City Council of the City of Boca Raton adjourned at approximately 7:14 p.m. on Tuesday, February 27, 2007.

Steven L. Abrams, Mayor

ATTEST:

Sharma Carannante, City Clerk