

MINUTES OF THE REGULAR MEETING
CITY COUNCIL
CITY OF BOCA RATON, FLORIDA
TUESDAY, APRIL 28, 2009
6:00 PM

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

INVOCATION:

No invocation was given.

PLEDGE OF ALLEGIANCE TO THE FLAG:

Prior to the Pledge of Allegiance, the color guard from the Boca Raton High School Junior Naval Reserve Officer Training Corp presented the colors.

ROLL CALL:

Mayor Susan Whelchel
Deputy Mayor Susan Haynie
Council Member Anthony Majhess
Council Member Michael Mullaugh
Council Member Constance Scott

AMENDMENTS TO THE AGENDA:

There were no amendments to the agenda.

MINUTES:

Minutes of the Regular Workshop Meeting of April 13, 2009
Minutes of the Regular Meeting of April 14, 2009

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

PROCLAMATIONS/RECOGNITIONS/AWARDS:

Proclamation recognizing April 2009 as Water Conservation Month and the week of May 3 through May 9, 2009 as Drinking Water Week and recognition of Water Conservation Poster Contest winners.

The proclamation was accepted by Utility Services Director Chris Helfrich. Three winners of the poster contest were recognized and came forward to accept their award.

Proclamation recognizing the accomplishments of the Boca Raton High School Naval Junior ROTC.

Lieutenant Commander Kenneth Bingham, who formed the Boca Raton High School Bobcat Battalion NJROTC in 1994, and members of the battalion who were in attendance, accepted the proclamation.

REGULAR BUSINESS - PART I:

1. Appointments to the following boards:

There were no positions advertised.

2. Responses to Workshop Information Requests:

(Consent Agenda Item No. 3.c.1. – Change Order for Street Resurfacing) A map depicting the streets that are to be resurfaced was provided.

3. Consent Agenda:

Mayor Whelchel provided an opportunity for members of the public to comment on the Consent Agenda; no one came forward to speak.

Motion was made by Council Member Mullaugh, seconded by Council Member Scott, to approve the Consent Agenda. Motion carried unanimously; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh and Scott voting yes.

a. Sealed Bid

- | | | |
|----|---|-----------|
| 1) | Wastewater Treatment Plant Primary Digester No. 2 Repairs
Requested by Utility Services
TLC Diversified, Inc. | \$196,659 |
|----|---|-----------|

b. Intergovernmental Agreements

- | | | |
|----|--|----------|
| 1) | Turf Equipment (New and Replacement)
Requested by Recreation Services
Wesco Turf, Inc. | \$64,233 |
| 2) | Athletic Field Turf Renovation
Requested by Recreation Services
Odums Sod | \$69,620 |

c. Change Order

- | | | |
|----|--|----------|
| 1) | Street Resurfacing
Requested by Municipal Services
Community Asphalt Corporation | \$90,919 |
|----|--|----------|

d. Resolution No. 59-2009

A resolution of the City of Boca Raton authorizing the City Manager to apply for grants from the Florida Division of Cultural Affairs for the State Touring Program; authorizing the acceptance of said grants, if awarded; authorizing the expenditure of matching funds for said grants, if awarded; authorizing and directing the City Manager to comply with the terms and conditions of said grants, if awarded; providing for severability; providing for repealer; providing an effective date

e. Resolution No. 60-2009

A resolution of the City of Boca Raton authorizing the City Manager to apply for a grant from the Fireman's Fund Heritage Program for the purchase of carbon monoxide detectors; 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

f. Resolution No. 61-2009

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute an agreement with Greenberg Traurig, P.A., for the purpose of providing bond counsel services; providing for severability; providing for repealer; providing an effective date

g. Resolution No. 62-2009

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute an agreement with Public Financial Management, Inc., for the purpose of providing financial advisory services; providing for severability; providing for repealer; providing an effective date

h. Resolution No. 63-2009

A resolution of the City of Boca Raton authorizing the City Manager to accept a grant from the Department of Homeland Security for the Buffer Zone Protection Plan; authorizing and directing the City Manager to comply with the terms and conditions of said grant, providing for severability; providing for repealer; providing an effective date

i. Resolution No. 64-2009

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute a Local Agency Program (LAP) agreement with the Florida Department of Transportation for the purpose of construction of enhancements along SW 18th Street; providing for severability; providing for repealer; providing an effective date

j. Receive and File Board Orders

- 1) Builders' Board of Adjustment & Appeals
 - a) BBAA Case No. 09-0641
- 2) Special Master
 - a) SM(C) Case No. 07-980
 - b) SM(C) Case No. 08-00004520
 - c) SM(C) Case No. 09-00000530

k. Receive and File Board Minutes – April 28, 2009

- 1) Civil Service Board Hearing
August 28, 2003
- 2) Community Appearance Board
March 24, 2009
March 31, 2009
- 3) Elder Affairs Advisory Board
March 4, 2009

- 4) Marine Advisory Board
March 4, 2009
- 5) Parks and Recreation Board
March 3, 2009
- 6) People With Disabilities Board
March 5, 2009
- 7) Special Master
March 11, 2009

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

There were no items for consideration.

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

There were no items for consideration.

REGULAR BUSINESS – PART III – REGULAR PUBLIC HEARINGS:

4. Ordinance No. 5077

An ordinance of the City of Boca Raton amending the list of permitted uses and the criteria applicable to authorize professional office uses in the Light Industrial and Research Park Zoning District pursuant to Section 28-977(C); providing for severability; providing for repealer; providing for codification; providing an effective date

The City's Property Specialist/Appraiser Lynn Bodor gave the PowerPoint presentation and reviewed background information on a prior ordinance (No. 4998), which provided amendments to the LIRP zoning district to allow flexibility in the occupancy and development of LIRP-zoned land. Included in that ordinance was an amendment allowing professional office use, subject to various conditions, including a condition that any building (the entire building - not just the portion for professional office use) proposed for office use must be new or refurbished to substantially improve its appraised value. Consequently, reconstruction standards were also included in the prior amendment to implement that condition.

New language in the proposed ordinance (No. 5077) would provide a timeframe for the refurbishment of a building containing professional office uses; these buildings must have been reconstructed or refurbished after September 1, 2004. Ms. Bodor explained that this date mirrored the existing timeframe for the CO (Certificate of Occupancy) of new buildings that contain professional office uses. Referring to the first public hearing on this ordinance wherein concerns were raised regarding those buildings constructed or refurbished prior to September 1, 2004 and that would not qualify for professional office use under the revised regulations, Ms. Bodor explained that the purpose of this amendment was to provide clarification of the provisions of existing Code Section 28-977. Therefore, staff did not recommend, at this time, making significant changes to that Code Section, which would be necessary in order to address that concern.

Additional text would also clarify that "appraised," rather than "assessed," value would be the standard for determining the value of reconstructed buildings. Also, the date of the appraisal must be prior to, but no more than six months before, the commencement of reconstruction. Referring to a third-party benchmark, as defined by the Urban Land Institute Office Development Handbook, and contained within the City's reconstruction standards, Ms. Bodor advised that passage of this ordinance would change the definition of "benchmark" to reference the version of the handbook in effect on the date of an application for professional office use. In addition, new language would clarify that a change in quality designation is not necessary for a building that would already be defined as Class A. Ms. Bodor explained that site plan

approval petition to the Planning & Zoning Board is the vehicle to obtain professional office use in the LIRP; the decision of this Board is appealable to the City Council per Code. In conclusion, the Planning and Zoning Board reviewed this ordinance in December 2008 and unanimously recommended approval, as did staff. Ms. Bodor then answered questions from Council.

Les Stevens, the attorney for ZNT, LLC, requested clarification as to what buildings could or could not obtain professional office use under this ordinance.

Community Development Director Jorge Camejo explained that if a building was constructed prior to 2004 and a substantial investment was made to upgrade it to meet the threshold of quality standards as delineated in this amendment, then that building could qualify. In response to another query by Mr. Stevens, the City Attorney explained that if the building did not have an original Certificate of Occupancy, post 2004, then the building must meet the requirements for refurbishment/reconstruction as outlined in the amendment, post 2004; details were provided. At this time, Mr. Stevens acknowledged that his concerns had been addressed by staff.

Motion was made by Deputy Mayor Haynie, seconded by Council Member Mullaugh, to adopt Ordinance No. 5077, as revised 4/22/09. Motion carried unanimously; Motion carried unanimously; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh and Scott voting yes.

5. Ordinance No. 5092

An ordinance of the City of Boca Raton amending Rule 1.17 of Section 2-27, Code of Ordinances, to provide that a legally required public hearing regarding an ordinance shall not be held at the same City Council meeting at which the ordinance has been introduced; providing for severability; providing for repealer; providing for codification; providing an effective date

The City Manager reiterated the purpose of the ordinance. The public hearing was opened and, seeing no one come forward to speak, closed.

Motion was made by Deputy Mayor Haynie, seconded by Council Member Scott, to adopt Ordinance No. 5092. Motion carried unanimously; Motion carried unanimously; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh and Scott voting yes.

6. Ordinance No. 5093

An ordinance of the City of Boca Raton amending Chapter 4, Code of Ordinances, relating to the regulation of establishments serving alcoholic beverages; providing definitions, imposing security requirements and establishing restrictions on the presence of individuals under the age of 21; amending Chapter 2, Code of Ordinances, to provide that violations of Chapter 4 shall fall within the jurisdiction of the Special Master; providing for severability; providing for repealer; providing for codification; providing an effective date

Police Chief Dan Alexander gave the PowerPoint presentation, advising that this would be an abbreviated version of the presentation given at the April 13, 2009 Workshop meeting. Chief Alexander focused on recommended amendments to Chapter 4, beginning with the definitions for "Alcoholic Beverage Establishment" (ABE) and "nightclub." Specifically, an ABE is an establishment with a 4COP or 14BC license as issued by the State of Florida; a business with a SRX license would not be considered an ABE. A nightclub is any alcoholic beverage establishment that includes a band, orchestra or other form of music or musical entertainment and includes floor space for dancing. Further amendments include the following: 1) outside areas of ABEs must be clean and free from trash and debris, 2) admission to ABEs of people under the age of 21 between 10:00 pm and 8:00 am is unlawful with the following exceptions: a) the nightclub does not serve alcohol where beverages are secured from access, b) members of the armed services with appropriate identification, c) persons legitimately working at the nightclub, and d) persons accompanied by either of their parents or legal guardian.

Additional restrictions for nightclubs include the following: 1) security personnel is required after 10:00 pm; 1 person for every 150 occupants or any portion thereof; and 2) a camera system with signage notifying patrons of same; interior and exterior video images at all hours, covering exits and entrances at a minimum, with videos being retained for a 30-day period. Chief Alexander then concluded his presentation and answered questions from Council as to how many establishments would be affected, the occupancy number of 150 and enforcement of same, and the licensing designations of 4COP (For Consumption On Premises) and 14BC (relates to Bottle Clubs wherein people bring bottles to clubs).

Michael Tice, owner of Murphy's Downtown, supported safety and the prohibition of underage drinking but spoke in opposition to the ordinance, indicating that the City should seek to regulate those establishments with SRX licenses, as opposed to the handful of businesses holding the 4COP license. Doris Carroll, Director of the Palm Beach County Substance Abuse Coalition, distributed material on teens and drinking and advocated support of the ordinance.

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

Motion was made by Deputy Mayor Haynie, seconded by Council Member Majhess, to adopt Ordinance No. 5093. Motion carried unanimously; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh and Scott voting yes.

7. Ordinance No. 5094

An ordinance of the City of Boca Raton relating to the review process for Individual Development Approvals within the Downtown Redevelopment Area; amending Section 2-135, Powers and Duties of the Community Appearance Board; amending Section 2-265, Powers and Duties of the Planning and Zoning Board; providing for severability; providing for repealer; providing for codification; providing an effective date

The City Manager advised that this resolution would make changes to the Rules of the Community Redevelopment Agency that would again provide for the Community Appearance Board and the Planning and Zoning Board to have a role in the Individual Development Approval process.

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

Motion was made by Deputy Mayor Haynie, seconded by Council Member Mullaugh, to adopt Ordinance No. 5093. Motion carried unanimously; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh and Scott voting yes.

8. Ordinance No. 5095

An ordinance of the City of Boca Raton repealing existing Division 13 of Article XV of Chapter 28, City Code of Ordinances, entitled "Telecommunications Towers and Facilities" and creating a new Division 13 of Article XV of Chapter 28, City Code of Ordinances, entitled "Wireless Telecommunications Facilities" relating to wireless telecommunications towers and antennas; providing for severability; providing for repealer; providing for codification; providing an effective date

Mayor Whelchel advised that this was the first public hearing on the ordinance and no vote would be taken at this meeting. Responding to the Mayor, the court reporter identified herself as Marsha Travis, with U.S. Legal Support, retained by Neil Schiller of Becker & Poliakoff.

Deputy City Manager George Brown gave the PowerPoint presentation, explaining that this was the first of two public hearings, and the ordinance had been revised as of April 23, 2009. He noted that further revisions were expected prior to adoption.

The ordinance proposed to repeal the existing Telecommunications Facilities Code and adopt a new, updated Code, the purpose of which was to minimize adverse impacts, encourage collocation, enhance the ability to provide service, and provide an efficient and timely application process. This ordinance would apply to all new facilities and pending applications. Existing facilities would be grandfathered in; however, compliance with the new Code would be required in five years. Mr. Brown also advised that this ordinance did not provide for regulation of environmental effects of radio frequency admissions pursuant to Federal law. There followed information including, but not limited to, definitions, collocation of facilities, permit requirements, prohibitions, preferred zoning districts for locating facilities, construction and development standards, reconstruction or modification of existing facilities, and violations. Mr. Brown then explained that the ordinance was referred to the Planning & Zoning Board, which conducted a hearing on April 23, 2009; this hearing was continued to May 7, 2009 in order to continue dialog with residents and the wireless industry. Tonight represented the first public hearing before Council. After the Planning & Zoning Board hears the ordinance, the second public hearing before Council is scheduled for May 12, 2009. Noting that more revisions were expected, Mr. Brown added that staff would continue to work with all parties to ensure a final document for Council's consideration on May 12 and then provided additional information to Council as requested.

Henry Wulf, an attorney with the firm of Carlton Fields and representing AT&T Mobility, LLC, voiced opposition to the ordinance; as did Rod Feiner, an attorney with the firm of Coker & Feiner, representing T-Mobile; Diane Borchardt, National Zoning Manager with SBA Network Services; and Joe Verdone, a planner with Carlton Fields. Essentially, they indicated that the proposed new Code would make it very difficult or impossible to tender service to their customers and provided comments in support of their position. All parties in opposition advocated delaying consideration of this issue.

Joe Pinella, representing the Board of the Palm Beach Farms Neighborhood Association, spoke in support of the April 23 version of the ordinance, advising that it represented a good balance between meeting the need to improve on telecommunications and addressing the concerns of the citizens.

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

Noting that a number of revisions appeared to be anticipated and desiring to ensure that the public was informed, Council asked the City Attorney to opine on comments made during the public hearing, in addition to providing options available to Council at this time. Ms. Frieser stated that the existing telecommunications code was being repealed and a new code was being proposed. Consequently, the notice was fairly broad and all encompassing since the City was attempting to revisit an entire area of regulation. She also spoke to Zoning in Progress actions, saying that they were being extended to those affected parties.

Ms. Frieser confirmed with those present that a full public hearing was conducted tonight; a second public hearing was anticipated and, should Council wish to do so, a third public hearing could be scheduled to ensure that even more input from residents and the wireless industry is received. Commenting that this was a very technical piece of legislation, Ms. Frieser indicated it would be unreasonable to expect that, even after the Planning and Zoning Board reviews the draft ordinance, it would be in final form.

Motion was made by Deputy Mayor Haynie, seconded by Council Member Mullaugh, to schedule a third public hearing on Ordinance No. 5095. Motion carried unanimously; Motion carried unanimously; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh and Scott 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 ordinances for introduction..

REGULAR BUSINESS - PART VI - PUBLIC REQUESTS:

Robert DuKate, a resident of Boca Teeca and Chairman of the citizen advocacy group known as Save Boca Raton Green Space expressed appreciation for passage of ordinances that would increase accountability and transparency and urged that it be a continued topic of discussion at the upcoming goal setting sessions. Mr. DuKate then referred to the objections raised at yesterday's workshop meeting by residents of the Caldwell Heights neighborhood in regard to changes to the Addison Park project. He expressed concern that changes could be made to a development project without subsequent review by City Council. Lastly, Mr. DuKate reiterated his group's position related to the "Boca Teeca Development."

REGULAR BUSINESS - PART VII- RESOLUTIONS AND OTHER BUSINESS:

There were no items for consideration.

CITY MANAGER RECOMMENDATIONS AND REPORTS:

The City Manager reminded those present of the goal setting sessions scheduled for Wednesday and Thursday of this week; he also advised that, per Council's request, the County's Traffic Engineer, George Webb, would provide a summary of the County's traffic issues at tomorrow's goal setting session at approximately 2:00 p.m.

Mr. Ahnell then reported on the City's property values, which were just made public by the Palm Beach County Property Appraiser's Office, noting that property values in the City decreased by approximately 9%. He concluded his comments by asking Council to bring their calendars to the next Council meeting that the summer meeting schedule might be determined.

CITY ATTORNEY REPORTS:

Ms. Frieser referred to Council's suggestions related to changing the meeting schedules for the CRA and the Workshop, advising that a resolution would be necessary to do so. In connection with the summer meeting schedule, she reminded those present that Council is required to meet once a month.

MAYOR AND COUNCIL MEMBER REPORTS:

Deputy Mayor Haynie referred to comments made by residents at yesterday's Workshop meeting regarding the Addison Park project and questioned whether the change from condominiums to rental units fell into the category of transient ownership. Mr. Ahnell stated that staff was conducting thorough research, looking at all aspects of this matter, and would provide Council with a comprehensive answer. On another topic, Ms. Haynie confirmed with the City Manager that there were no restrictions as to how many volunteers the City may utilize. Last of all, Ms. Haynie mentioned the Wildflower property and existing code enforcement issues; Mr. Ahnell explained that the structure should be demolished in approximately 30 days.

Council Member Scott referred to the Police Athletic League's third annual golf tournament, scheduled for this Friday, May 1, 2009, at 11:00 a.m. and advised that tickets were still available.

Council Member Mullaugh referred to the Addison Park project and opined that care needs to be taken to be certain that promises that are made when approving development projects are unenforceable.

Council Member Majhess voiced concern that Ray Gindroz of Urban Design Associates (UDA) was anticipated to appear before the CRA to discuss downtown design guidelines during the summer months when many City residents are gone. Mr. Ahnell advised that he would explore the possibility that a representative from UDA may have earlier availability.

ADJOURNMENT:

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

The regular meeting of the City Council of the City of Boca Raton adjourned at approximately 8:01 p.m. on Tuesday, April 28, 2009.

Susan Whelchel, Mayor

ATTEST:

Sharma Hagerty, City Clerk