

MINUTES OF THE REGULAR MEETING
CITY COUNCIL
CITY OF BOCA RATON, FLORIDA
WEDNESDAY, MAY 27, 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:

Deputy Mayor Haynie gave the invocation.

PLEDGE OF ALLEGIANCE TO THE FLAG:

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 May 11, 2009
Minutes of the Regular Meeting of May 12, 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:

There were no proclamations, recognitions, or awards.

REGULAR BUSINESS - PART I:

1. Appointments to the following boards:

- a. Planning and Zoning Board – one (1) vacancy.

Raymond Rahn, J. Scott MacLaren, James Banaeian, and Patrick Bless interviewed for the position. Seeing no one else come forward to interview, the floor was opened for nominations. Deputy Mayor Haynie nominated J. Scott MacLaren; Council Member Majhess nominated Bill Trinka. Nominations were then closed without objection.

In the voting: Mayor Whelchel, Deputy Mayor Haynie, Council Members Mullaugh and Scott voted for J. Scott MacLaren; Council Member Majhess voted for Bill Trinka.

Mr. MacLaren was appointed to the Planning and Zoning Board.

2. Responses to Workshop Information Requests:

The City Manager advised that responses to questions raised at yesterday's Workshop meeting would be covered during the presentations tonight.

3. Consent Agenda:

Mayor Whelchel provided an opportunity for members of the public to comment on the Consent Agenda.

Charles Siemon referred to Consent Agenda Item No. 3.c. (Resolution No. 66-2009) and indicated opposition, noting that the downtown was suffering badly in the current economy and taking on more debt was not the answer. In response, the City Manager explained that this resolution did not provide for going out and borrowing additional funds but, instead, would provide for refinancing of existing debt by lowering the interest on money that has already been borrowed. Similar to refinancing a house, refinancing the bonds would save the City money.

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

a. Competitive Sealed Proposal

- | | | |
|----|--|----------|
| 1) | Fire Station Alerting System - Replacement
Requested by Fire-Rescue Services
Citation Communications, Inc. | \$76,376 |
|----|--|----------|

b. Intergovernmental Agreement

- | | | |
|----|---|-----------|
| 1) | Rehabilitation of Lift Stations
Requested by Utility Services
TLC Diversified, Inc. | \$561,685 |
|----|---|-----------|

c. Resolution No. 66-2009

Resolution of the City of Boca Raton, Florida (the "City") authorizing the issuance by the City of Special Assessment Refunding Bonds, Series 2009 (Visions 90 Project) (the "Series 2009 Bonds"), in the initial principal amount of not exceeding \$13,000,000 for the purpose of paying and defeasing the City's outstanding Special Assessment Refunding Bonds, Series 2001 (Visions 90 Project) (the "Prior Bonds") which Prior Bonds refinanced improvements within the Downtown Special Assessment District of the City, plus the cost of issuing the Series 2009 bonds; pledging assessments against properties to be specially benefited by the refinancing of such improvements and certain investment earnings to secure payment of the principal and interest on the Series 2009 bonds; authorizing the City to covenant to budget and appropriate non ad valorem revenues to fund deficiencies in the principal and interest account in the manner provided in this resolution; establishing the maturity schedule in connection therewith; authorizing the City Manager or the Director of Financial Services of the City to publish through electronic means a summary notice of sale and to receive bids pursuant to a competitive sale of said Series 2009 bonds and award the sale of said Series 2009 bonds to the responsive bidder offering the lowest true interest cost to the City which shall not exceed five percent (5.00%); approving the execution and delivery of said Series 2009 bonds; approving the form of and authorizing the execution of a Registrar/Paying Agent Agreement; approving the preparation and use of an Official Notice of Bond Sale, a Preliminary Official Statement and final Official Statement; authorizing the electronic dissemination of the Preliminary Official Statement and Official Statement; approving the form of and authorizing the execution and delivery of an Escrow Deposit Agreement; providing for the

rights, remedies and security of the holders of said Series 2009 bonds; making certain covenants and agreements in connection with the Series 2009 bonds; appointing a Paying Agent, Registrar and Escrow Agent; authorizing the registration of the Series 2009 bonds pursuant to a book-entry system, providing for an undertaking required under Rule 15c2-12 of the Securities and Exchange Commission; providing for severability; providing for repealer; and providing an effective date.

d. Resolution No. 72-2009

A resolution of the City of Boca Raton cancelling the first workshop and regular meetings in July 2009, August 2009, and September 2009; providing for severability; providing for repealer; providing an effective date.

e. Resolution No. 73-2009

A resolution of the City of Boca Raton approving and authorizing the submission of a substantial amendment to the Annual Consolidated Action Plan for Program Year 2008-09 to the United States Department of Housing and Urban Development as required to secure Community Development Block Grant Recovery Funds appropriated through the American Recovery and Reinvestment Act of 2009; designating the City Manager as the Chief Executive Officer for the Community Development Block Grant Recovery Funds; authorizing and directing the City Manager to execute and submit said substantial amendment, the application for Federal assistance and any certifications or other documents related to said Recovery Act funding; 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. 74-2009

A resolution of the City of Boca Raton authorizing the City Manager to apply for a grant from the U.S. Department of Justice for the 2009 COPS Technology Program; 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.

g. Board Resignations

1) Resignation of Elizabeth Fleishman from the Education Advisory Board

h. Receive and File Board Minutes – May 27, 2009

1) Citizen's Pedestrian and Bikeway Advisory Board
March 9, 2009

2) Community Appearance
April 21, 2009

3) Community Relations Board
March 16, 2009

4) Downtown Boca Raton Advisory Committee
March 4, 2009

5) Education Advisory Board
March 23, 2009

- 6) Executive Employees' Retirement Plan
October 31, 2008
March 25, 2009
- 7) General Employees' Pension Plan
January 8, 2009
February 18, 2009
- 8) Marine Advisory Board
April 1, 2009
- 9) Parks and Recreation Board
April 7, 2009
- 10) Police and Firefighters' Pension Board
January 22, 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:

4. Ordinance No. 5097

An ordinance of the City of Boca Raton rezoning a parcel of land consisting of 4.997 acres, located at 6100 Park of Commerce Boulevard, from Warehouse (W-1) to Light Industrial Research Park (LIRP); providing for severability; providing for repealer; providing an effective date (ZC-08-02)

The City Attorney reviewed the quasi-judicial procedure that would govern the hearing; the City Clerk administered the oath to those who indicated they wished to speak. Under ex parte disclosures, Mayor Whelchel advised that she had spoken with the owner.

Development Services Planner Daryl Johnson gave the PowerPoint presentation. Information regarding acreage, location, zoning, and land use designation was provided. Mr. Johnson advised that the property is currently vested with a .40 Floor Area Ratio (FAR). The rezoning would allow the subject property to have a .60 FAR; however, with the proposed addition the FAR would increase to only .49. He also noted that a manufacturing facility consisting of 83,150 square feet currently exists on the site; the petitioner proposed to construct a 21,090 square foot addition to allow for additional manufacturing and storage space. Mr. Johnson then referred to yesterday's query from Council related to a technical deviation for parking. He explained that 200 parking spaces are required, due to the addition; however, there are currently only 139 spaces on site, as a result of a prior technical deviation that was approved for a reduction of 26 spaces. The petitioner proposed to provide a total of 95 parking spaces thereby requesting a reduction of 79 spaces. The City's Traffic Engineer reviewed the petitioner's traffic study, conducted by Kimley Horn, and agreed that 95 spaces would be sufficient. Mr. Johnson advised that on April 23, 2009, the Planning & Zoning Board recommended approval of the zoning change and the site plan. In conclusion, staff also recommended approval.

Mr. Johnson and Ms. Frieser answered questions from Council related to the reduction in parking. Ms. Frieser advised that the reduction was connected with the type of use; there could be a different tenant with a similar use. She also clarified that the technical deviation was not before Council for consideration this evening; the technical deviation was part of the site plan that was previously approved by the Planning and Zoning Board. The site plan was contingent on the rezoning, and tonight Council was considering the zoning change only; details were provided.

Wendy Larsen, an attorney with Siemon and Larsen and representing Metritek Corporation, provided information related to her client and the proposed technical deviation.

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

Motion was made by Deputy Mayor Haynie, seconded by Council Member Scott, to adopt Ordinance No. 5097. Motion carried unanimously; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh, and Scott voting yes.

REGULAR BUSINESS – PART III – REGULAR PUBLIC HEARINGS:

5. Ordinance No. 5095 (Revised 5/20/09 – Third public hearing.)

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 Communications Facilities” relating to telecommunications towers and antennas; providing for severability; providing for repealer; providing for codification; providing an effective date

a. Resolution No. 68-2009

A resolution of the City of Boca Raton amending the Boca Raton Municipal Facilities and Services User Fee Schedule; establishing fees relating to applications for required approvals for wireless communications facilities; providing for severability; providing for repealer; providing an effective date

Mayor Whelchel explained that, based on discussion which took place at yesterday’s Workshop meeting, it appeared that these items would be continued to the June 23, 2009 Council meeting. However, the public hearing would be opened tonight to provide an opportunity for anyone to speak on this matter.

Deputy City Manager George Brown also referred to the extensive discussion and comments provided by representatives of the telecommunications industry at yesterday’s Workshop meeting and advised that staff would like an opportunity to review those comments, which staff has requested in writing. Mr. Brown explained that, per his conversation with one of the representatives, she would try to put all comments into one document in order to submit same to staff for review, along with one amended ordinance incorporating all their desires.

Responding to comments made yesterday regarding coverage, Mr. Brown clarified that nothing in the proposed ordinance prohibits the provision of service throughout the City. He noted that a process is required before service may be provided but it does not prohibit service and is, in fact, in compliance with State law. The continuance to June 23, 2009, would provide staff time to speak with industry representatives for the purpose of clarifying language and avoiding “glitches.” Staff would also attempt to gain an understanding from industry representatives as to what the future holds in terms of facilities in the City. At this time, Mr. Brown concluded his comments and answered questions from Council related to coverage, compliance with Florida Statutes, and E911 cell phone calls.

Peter Greenblatt advised that he had fears about cell towers in connection with land located in the area where he lives and thanked Mr. Brown for helping him to understand how this legislation would work.

Brian Bibbee, President of Palm Beach Farms Neighborhood Association, indicated that his association and the City were “on the same page” in regard to protecting neighborhoods from cell tower encroachment. He acknowledged that everyone wanted better cell service but no one wanted a cell tower near their homes. He also agreed with the hierarchy as proposed in the ordinance, stating that the industry is not being locked out of neighborhoods but must show that there is a reason to be in the neighborhoods. Voicing concern that the hierarchy would get “watered down” and the ordinance subjected to “a thousand cuts,” Mr. Bibbee noted that Council’s function is to look out for the interests of

the citizens. He then referred to T-Mobile's attempt to install an antenna on an existing FPL pole in his neighborhood and asked Council to stand firm and protect the neighborhoods, saying that (with this ordinance) a good balance had been struck between the neighborhoods and the interests of the industry.

Motion was made by Mayor Whelchel, seconded by Deputy Mayor Haynie, to continue Ordinance No. 5095 to the Council meeting of June 23, 2009. Motion carried unanimously on a voice vote; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh, and Scott voting yes.

Motion was made by Deputy Mayor Haynie, seconded by Mayor Whelchel, to continue Resolution No. 68-2009 to the Council meeting of June 23, 2009. Motion carried unanimously on a voice vote; 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:

6. Ordinance No. 5098

An ordinance of the City of Boca Raton amending the Fiscal Year 2008-2009 Budget through the Second Quarterly Budget Amendment; providing for severability; providing for repealer; providing an effective date

The ordinance was introduced by Council Member Mullaugh.

7. Ordinance No. 5099

An ordinance of the City of Boca Raton amending Section 23-189, Code of Ordinances, modifying the limitations for the number of driveways permitted in certain residential plots and providing for the opportunity to seek a technical deviation in case of special considerations and exceptions in single family districts; providing for severability; providing for repealer; providing for codification; providing an effective date

The ordinance was introduced by Deputy Mayor Haynie.

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.

CITY MANAGER RECOMMENDATIONS AND REPORTS:

Sustainability Task Force (Residential Component)

The City Manager referred to the Sustainability Task Force, advising that a residential component of same was being advocated; with Council's support, staff would begin accepting applications for same. Mr. Ahnell suggested that membership of this new residential component should number no more than nine and that certain designations for some of those positions should apply. Council agreed on a membership of nine; staff is to bring forward recommendations related to the membership, including some specific classifications, at the next Council meeting.

Eden Update

Assistant City Manager George Brown gave the update, explaining that in September of 2007, Council granted the developer a permit extension agreement for the Eden project; this agreement extended the building permits past their original deadline to September 21, 2009. The developer was required to obtain building permits by a certain date; the developer did not obtain those permits for the revised project that was approved by the Planning & Zoning Board (P&Z Board) within the time frame specified in the agreement. On April 28, 2009, the City issued a Notice of Default to the developer, advising that they had failed to obtain the building permits pursuant to the agreement and that they needed to cure the default within 15 days. As of May 15, 2009, the developer had not cured the default. It was noted that the developer submitted a partial payment; the City rejected same as it would in all such cases. On May 15, 2009, the City notified the developer that the default had not been cured and, therefore, the permit extension agreement was terminated and the building permits considered expired.

Mr. Brown advised that a letter addressed to Council was received by staff very late this afternoon from the developer's representatives disputing staff's determination and arguing that the default notice requirements were met and the permits were not expired. It appeared that the letter asked Council to withdraw staff's determination that the permits had expired. There were numerous assertions in the letter, which staff had yet to review before reporting back to Council with a response. Mr. Brown reiterated that the permit extension agreement provides that the permits finally expire on September 21, 2009, regardless of this dispute. Mr. Brown then provided additional commentary related to compliance issues and answered questions from Council.

Addison Park

The City Manager confirmed with Council that they received the update provided by staff in regard to the Addison Park issue. He advised that, unless he was directed otherwise, the recommendations outlined in the material would be brought forward to Council at the next meeting.

CITY ATTORNEY REPORTS:

The City Attorney had nothing to report at this time.

MAYOR AND COUNCIL MEMBER REPORTS:

Deputy Mayor Haynie invited everyone to participate with her in a walking tour of historic Pearl City and Lincoln Court on Saturday, June 13, 2009, which is being sponsored by the DISC (Developing Interracial and Social Change) group.

Council Member Majhess advocated scheduling a green workshop for the purpose of allowing vendors to show their wares to Council. In this way, should grant money become available, Council would be familiar with the products existing on the market. Mr. Ahnell advised that, barring objections from Council, staff planned to bring forward a workshop, process, or demonstration whereby people would be asked to come in and speak about their products.

Mr. Majhess referred to his comments yesterday regarding his desire to attend the Economic Development Partnership meetings scheduled by the City Manager and advised that he was withdrawing his request, due to an obvious lack of support. He reiterated his comments that any business held in the name of the City and for the City should be conducted in the light of day in an open meeting. He added that, per his conversation yesterday with the President of the Chamber of Commerce, they had offered to host the Economic Development Partnership meetings, an action that Mr. Majhess supported.

For the sake of clarification, Mr. Ahnell responded to comments made by Council Member Majhess at yesterday's Workshop meeting. He explained that the City operates under the Charter and all applicable Federal and State laws; to his knowledge, neither he nor any City employees operate outside the Sunshine Laws where they apply. He added that if there's ever a question about application of the Sunshine Law, the City Attorney is consulted as well as the State, if necessary, to ensure that the law is being followed.

Regarding the economic meetings, Mr. Ahnell advised that in order for him to be effective as the City Manager and Chief Administrative Officer of the City, conduct day-to-day operations, and carry forward the goals of the City Council, it is necessary for him to have many meetings with many different people. There may be ideas, concepts, and theories that come out of those meetings; if they rise to the level wherein a Council action would be needed, such as a policy, then those recommendations would be brought forward to the Council. He stated that it is not his job, nor staff's job, to set policy; the only people who can set policy are the Mayor and Council.

When the City Manager contemplated starting these economic meetings, he asked the City Attorney about the Sunshine Laws. She indicated that those meetings would not be subject to the Sunshine Laws. When the issue arose again approximately one week ago, the City Attorney contacted the Attorney General's Office (AGO); the AGO confirmed that the Economic Development Partnership meetings were not subject to the Sunshine Laws, due to the nature of the conversations. Mr. Ahnell then clarified that economic development was not about constructing buildings; it was about, community-wide, creating jobs, retaining jobs, and attracting new jobs. He added that people and businesses are hurting; there is significant competition across the nation and particularly in South Florida to take companies out of the City, attract companies to other areas, and take away employees. If the City doesn't communicate with the best, the brightest, and some of the largest organizations in the community, Boca Raton will not be able to compete. Additional information was provided, including details related to the Economic Development link on the City's website. Mr. Ahnell then reviewed those people who were invited to the three meetings that have been held over the last year. They included representatives from: the Chamber of Commerce, Boca Raton Community Hospital, Florida Atlantic University, the Business Development Board, a venture capitalist firm (which invests in companies all over the world), a private sector land attorney (who asked to attend), a local bank representative, the Boca Raton Resort & Club, Lynn University, NCCI (a large employer), and a small employer. Mr. Ahnell advised that the discussions held so far have not included anything about constructing buildings; it's all been about how to create, attract, and retain jobs in order to have a sustainable community. Mr. Ahnell concluded by advising that unless he hears otherwise from Council, he would continue to operate the City as he has in the past.

Deputy Mayor Haynie confirmed with those present that in the last couple of goal setting sessions, Mr. Ahnell was directed by Council to go forth in this endeavor, in lieu of hiring someone to come in and handle economic development, which was established by Council as a priority. The City Manager noted that staff has updated Council on a quarterly basis in regard to the goal setting priorities; another update will be forthcoming shortly.

Council Member Majhess apologized if he cast aspersions on anyone as doing something wrong or illegal, saying that was not his intention. He stated he had a strong interest in the economic development of the City and, learning that a group had already been formed, he wanted to participate in same. Mr. Majhess then spoke to the Sunshine Laws and concluded his comments by requesting that, should anything come out of these meetings wherein taxpayer dollars might be spent in terms of staff research, he be notified of same by the City Manager. Mr. Ahnell explained that after each meeting is held, he speaks individually with each member of Council to inform them of what has transpired.

Mayor Whelchel advised that she attended a ceremony today wherein Dr. Bernard E. Metrick, a 92-year-old former endodontist, received the French Legion of Honor Award from the French Consul General at Boca Towers for services rendered during World War II.

ADJOURNMENT:

Motion was made by Council Member Majhess, seconded by Council Member Mullaugh, 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 7:20 p.m. on Wednesday, May 27, 2009.

Susan Whelchel, Mayor

ATTEST:

Sharma Hagerty, City Clerk