

MINUTES OF THE REGULAR WORKSHOP MEETING
CITY COUNCIL
BOCA RATON, FLORIDA
TUESDAY, MAY 26, 2009
1:30 PM

The Workshop Meeting of the City Council of the City of Boca Raton, Florida was called to order by Mayor Susan Whelchel at 1:30 p.m.

ATTENDING THE MEETING WERE:

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

Also attending the meeting were:

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

Council agreed to reorder the agenda to move Item No. 4.a. for consideration immediately following "PUBLIC REQUESTS."

AWARD: 2008 Best Restored Beach Award – Boca Raton North Beach Nourishment Project
The American Shore and Beach Preservation Association (ASBPA)

Tom Campbell, representing ASBPA, tendered the award to Mayor Whelchel and Jennifer Bistyga of Municipal Services, who accepted same on behalf of the City of Boca Raton.

1. BOARD INTERVIEWS:

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

Bill Trinka expressed interest in the position.

Julia Berger, a junior at Spanish River High School, expressed interest in serving on either the Education Advisory Board or the Community Relations Board. Ms. Berger advised that she would be out of town when interviews and appointments to these Boards are held (June 8 and June 9, 2009), which is why she wished to interview this afternoon.

2. PUBLIC REQUESTS:

No one came forward to speak.

4. FUTURE AGENDA MATTERS/ITEMS OF COUNCIL/PUBLIC CONCERN:

- a. Palm Beach Community College Students' Green Projects Summaries

Using a PowerPoint presentation, Assistant City Manager Mike Woika spoke briefly about Boca Raton Green Partners, which has as its mission, the promotion of environmental stewardship within the community; details were provided as to all aspects of green partnerships and what businesses, residents, and educational institutions can do to promote green sustainability. He then gave the floor to one of the City's partners, Dr. Bernadette Russell, the Provost of Palm Beach Community College.

Dr. Russell indicated that the faculty and students of PBCC had completed research on green sustainability for Boca Raton's Sustainability Task Force and would be presenting information to Council today regarding the surveys and best practices. She then introduced the members of her team before giving the floor to Dr. Dan McGavin.

Using a PowerPoint presentation, Dr. McGavin reviewed questions that the student task force came up with to include in the sustainability survey and referred to a 28-page handout provided to Council, which represented a compilation of all the answers obtained. He then introduced those students, who would review recommendations and information resulting from completion of the survey.

Polly Daugherty continued the PowerPoint presentation, providing recommendations in regard to CO2 emissions, land use, alternative energy for City operations, green building, fuel efficiency, water management, recycling, urban forestation, education, and green business; details were provided on all the above.

Richard Schuster spoke next on recommendations related to grant opportunities, specifically, Federal, State and private funding opportunities, before giving the floor back to Ms. Daugherty, who provided statistics as to how "green" restaurants are in Boca Raton. Details were provided on all the above.

Dr. Laura Heath presented information obtained from a survey of the community's preferences for receiving information on the environment. She reviewed nine questions asked of participants and provided a breakdown of the responses and ultimate conclusions.

Tracy Joinson, Chairman of the PBCC Environmental Sustainability Committee, explained what PBCC is currently doing in terms of community service and outreach, as well as internal sustainable operating practices.

Professor Bobbette Wolesensky reported on specific initiatives at PBCC's Boca Raton Campus related to community service and outreach in connection with the school system, town hall events, clean-up events and programs, and internal sustainable operating practices.

Professor McGavin summarized the conclusions reached by the PBCC task force, based on the information received as reported by the previous speakers, and then gave closing comments.

Mayor Whelchel thanked those present for their efforts and provided positive commentary related to the Provost of PBCC.

3. REVIEW OF REGULAR AGENDA ITEMS:

- a. Questions relating to the agenda.

(Consent Agenda Item No. 3.c. - Resolution No. 66-2009 / Authorizing the refinancing of the Special Assessment Refunding Bonds, Series 2009) Deputy Mayor Haynie asked for an overview of this item and the proposed benefits. The City Manager advised that there is approximately \$13,000,000 in existing bonds that were obtained for the purpose of improving the downtown; this resolution sought to refund the bonds, which is essentially the same as refinancing a house. He advised that the City expected to save approximately \$540,000 over the life of the bonds.

- b. Ordinance No. 5097 (*Regular Agenda Item No. 4*), 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).

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. Access to the site would continue to operate from two existing driveways off of Park of Congress Boulevard. He then noted that a manufacturing facility consisting of 83,150 square feet currently exists on the site and explained that in April 2009, the Planning & Zoning Board approved the site plan, which provided for

construction of a 21,090 square foot addition to allow for additional manufacturing and storage space; details were provided. At this time, Mr. Johnson concluded his presentation and, responding to Council, confirmed that discussion on the requested parking deviation would be covered at tomorrow night's meeting.

- c. Ordinance No. 5095 & Resolution No. 68-2009 (*Regular Agenda Item Nos. 5 & 5.a*) repealing the existing Code Section entitled "Telecommunications Towers and Facilities" and creating a new Code Section, entitled "Wireless Communications Facilities" relating to telecommunications towers and antennas; and amending the Boca Raton Municipal Facilities and Services User Fee Schedule; establishing fees relating to applications for required approvals for wireless communications facilities.

Deputy City Manager George Brown advised that today's presentation would provide Council with an update on the ordinance. He explained that, following his presentation, representatives of the wireless telecommunications industry wished to provide their own presentation as to how the industry chooses sites for facilities; this would be the same presentation that was made at the Planning & Zoning (P&Z) Board meeting on Thursday night.

Mr. Brown gave the PowerPoint presentation, explaining that the purpose of the revised ordinance was to provide a set of balanced regulations to protect the community from impacts, provide wireless service, promote collocation on existing sites, and to provide a clear regulatory framework. He explained that the revised ordinance (5/20/09) currently before Council might yet include additional revisions, based on comments made at the P&Z meeting of May 21, 2009, as well as discussions today. This ordinance was compiled after receiving input from Council, the Planning & Zoning Board, residents, and industry representatives. It was noted that the majority of revisions consisted of technical clarifications to definitions, procedures, and regulations and included several amendments.

There followed a review of the basic provisions of ordinance, which included prohibition of towers and antennas in residential areas/districts, except where authorization is provided upon receipt of documented proof of the need to site the facility in the residential district and after cooperation with the City to find an alternative site. Mr. Brown then spoke to a preferred zoning district hierarchy to provide for locations of facilities, ranging from Industrial, which is the most preferred, to Residential, which is the least preferred. Mr. Brown then reviewed a proposed revision related to maximum tower height. Essentially, all towers, regardless of height, must have a minimum of two different providers. A tower 100 feet tall would require a minimum of three different users; a 120-foot tower requires a minimum of four different users; a 140-foot tower requires a minimum of five different users. The maximum height in residential districts/areas is 100 feet. Additional details were provided as to required approvals and setbacks. Mr. Brown also spoke to antennas and the collocation of same when there is already a facility (residential or non-residential) available, noting that stealth antennas are preferred. Information was then provided in regard to antennas located on utility poles in rights-of-way (it was noted that these antennas were not viewed as collocations) and proposed revisions regarding non-conforming towers. Mr. Brown enumerated the many revisions and clarifications made to date including, but not limited to, a closer tracking of the State law, elimination of the 5-year reporting requirement by the industry (sufficient contact information would be required at the time of applications), residential area tower fall setbacks of 100% to the building, allowing antennas on residential buildings, and requiring that antennas in rights-of-way must be stealth. Details were provided on all the above.

Mr. Brown then drew attention to an industry proposal related to antennas on poles. Instead of a 10-foot height limitation, the industry suggests a 12-foot height limitation, which would allow two antenna arrays to be located in the 12-foot canister. According to the industry, by increasing the canister antenna height by two feet, the number of canisters needed is reduced and, theoretically, more coverage with fewer locations would be provided with less equipment needed outside the canister. Staff recommends that Council consider the option.

Industry comments were then reviewed. Basically, the industry desired clarification of the State of the Art requirement (what the industry installs should have the least impact on the City) and objected to: 1) the requirement to obtain site plan approval for minor site plan amendments, 2) antennas on poles in rights-of-way being subject to the zoning hierarchy and approval process, 3) the one-mile radius restriction on minimum search areas, 4) the one-mile minimum distance separation for towers, 5) the development standards modification language, and 6) the collocation requirement for non-conforming towers. Details were provided on all the above.

Mr. Brown concluded his presentation and answered questions from Council regarding the industry's proposal for a 12-foot canister, the process for locating antennas on utility poles in rights-of-way, and the definition of "State of the Art."

Perry Adair, an attorney with Becker & Poliakoff and representing T-Mobile, gave a 30-minute PowerPoint presentation, advising that this would provide an overview of "the real life parameters that drive what the carriers do in the field." Following that, Mr. Adair planned to address specific points in the proposed ordinance. At this time, Julio Oresta (phonetic) introduced himself as a telecommunication engineer; Mr. Adair indicated that Mr. Oresta would be explaining certain points during the presentation. There followed information related to design for delivery of wireless service, signal propagation, restrictions on the height of wireless facilities, mobility in a wireless network, different antenna mounting techniques, calculation of height, vertical clearance regarding rooftops, and wireless communication facilities in residential areas. Ultimately, Mr. Adair spoke to the ordinance, itself, opining that the proposed ordinance violates State law and provides for discrimination against carriers. He also alleged that the City's ordinance would not allow for full coverage, resulting in unreliable coverage and lost calls; in particular, he cited coverage problems in relation to E911 (emergency calls made over cell phones). Overall, Mr. Adair objected to restrictions on height, location, and setbacks and advocated redrafting the entire ordinance.

Janna Lhota, an attorney with Holland and Knight and representing Verizon Wireless, went over her objections to the ordinance and advised that she would provide a letter to Council tomorrow, which would cover the comments she was making at this time. Generally, her comments echoed Mr. Adair's in terms of coverage and collocation. She also objected to the fees proposed in Resolution No. 68-2009.

Joe Verdone, with Carlton Fields and representing AT&T Mobility; Diane Borchardt, National Zoning Manager with SBA Network Services; Lawrence Gabriel, and Gene Folden all voiced objections to the ordinance; Ms. Borchardt also voiced opposition to the fees imposed by the resolution.

Mayor Whelchel advised that she planned to ask for a continuance of the public hearing tomorrow night. Council concurred and asked that staff review issues and questions brought forward to date and bring this information back. The City Manager asked Council to clarify whether they wanted reliable (100% seamless) cell phone coverage, advising that, if so, it may be in conflict with what they have been hearing from residents. Discussion ensued with attention focused on E911 coverage. At this time, Mr. Brown clarified that nothing in the ordinance was designed to prohibit the location of a tower, antenna or anything else; the ordinance simply required a process in order for the City to address the land development impacts of that site, wherever it may be. The industry was suggesting the simplification or elimination of all or parts of that process in favor of building permits in certain cases, rather than an evaluation of the impact on the community and what other alternatives might exist. Mr. Ahnell then confirmed with Mr. Brown that there was nothing in the ordinance that would prohibit any of the providers from achieving seamless coverage throughout the City. Mr. Brown added that the process would simply have to be observed. Mayor Whelchel requested that Council be able to see what the industry is looking for in writing. At this point, Mr. Brown provided additional commentary related to E911 calls.

4. FUTURE AGENDA MATTERS/ITEMS OF COUNCIL/PUBLIC CONCERN (cont'd):

There were no other items to consider.

5. CITY MANAGER REPORTS:

The City Manager had nothing to report at this time.

6. CITY ATTORNEY REPORTS:

The City Attorney had nothing to report at this time.

7. MAYOR AND COUNCIL MEMBER REQUESTS AND REPORTS:

Deputy Mayor Haynie requested an update on the Eden property for tomorrow night.

Council Member Majhess referred to calls he received from vendors who want to provide information to Council on products related to green sustainability. He suggested having a workshop wherein these vendors could be invited to give a presentation to Council. In this way, should grant money come available in the future, Council will already know what's existing in the market.

Mr. Majhess advised that he had lengthy discussions with the City Manager and the City Attorney related to three meetings that had been scheduled by the City Manager regarding economic development. He stated that, to his knowledge, there was no set schedule, no mission statement, and no purpose provided for these meetings, which he would like to attend without necessarily participating. Specifically, given the list of participants, he wished to monitor the meetings as an elected official representing the public, voicing concern that policy could come out of those meetings. Mr. Majhess noted that although he believed these meetings should fall under the Sunshine Law, per the City Attorney's opinion, they do not. He then provided an overview of the attendees at these meetings and stated again that he wished to monitor same. Referring to his conversation with the City Manager, Mr. Majhess advised that should Council wish to form its own economic development task force, Mr. Ahnell would no longer hold the meetings. Consequently, Mr. Majhess stated that he would ask Council tomorrow night to give direction to the City Manager to open the economic development meetings to the public that he might monitor same, discontinue the meetings altogether and have Council form its own economic development partnership, or possibly come up with another option. Council Member Majhess then reiterated that policy could come out of these meetings and, referring to the RAM project, indicated that it was totally formulated beforehand; Council had no opportunity to be involved with the project and weigh in on the direction that should be taken. Mr. Ahnell clarified that the meetings held regarding economic development had nothing to do with the RAM project or any of the Crocker proposals. Much discussion ensued.

Responding to Council, the City Attorney provided additional information related to the Sunshine Law. Mayor Whelchel voiced concern that the City Manager must be able to do his job as prescribed by the City Charter vs. the insertion of the political process. She noted that Council makes policy; Mr. Ahnell runs the City. Mr. Ahnell explained that, per the Charter, it is his responsibility as the Chief Administrative Officer to plan and administer the legislative intent of the City; this includes going out into the City, researching and talking to people, and formulating ideas to bring back to the Council. He advised that if Council wished to set up a task force, staff could do so. In addition, operational meetings of the City could be made public as well. In response to commentary from other members of Council, Mr. Majhess reiterated that he wished to attend and monitor the meetings held by the City Manager. At this time, Mr. Ahnell advised that he would need definition as to what meetings he could and could not schedule and what should and shouldn't be made public.

Mr. Majhess stated that he spoke with another attorney who interpreted the Sunshine Law to include meetings on economic development project meetings. Ms. Frieser advised that she contacted the Attorney General's Office in regard to this matter; they concurred with her opinion.

Mayor Whelchel spoke positively in regard to the Memorial Day services held on Monday and thanked all those in attendance.

The regular workshop meeting of the City Council of the City of Boca Raton, Florida, adjourned at approximately 4:50 p.m. on Tuesday, May 26, 2009.

Vanessa Hines, Assistant City Clerk