

MINUTES OF THE REGULAR MEETING
CITY COUNCIL
CITY OF BOCA RATON, FLORIDA
TUESDAY, NOVEMBER 9, 2004
6:00 PM

The regular meeting of the City Council of the City of Boca Raton, Florida was called to order by Deputy Mayor Bill Hager at 6:00 p.m.

INVOCATION:

Council Member Whelchel gave the invocation.

PLEDGE OF ALLEGIANCE TO THE FLAG:

ROLL CALL:

Mayor Steven L. Abrams (arrived at approximately 6:36 p.m.)
Deputy Mayor Bill Hager
Council Member Dave Freudenberg
Council Member Susan Haynie
Council Member Susan Whelchel

Also attending the meeting were:

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

AMENDMENTS TO THE AGENDA:

Motion was made by Council Member Whelchel, seconded by Council Member Haynie, to amend the agenda to add Resolution No. 207-2004 to the Consent Agenda as Item No. 3.j. and to add revised Resolution No. 201-2004, listed as Item No. 8 under, "Regular Business – Part II – Quasi-judicial and Related Public Hearings." Motion carried 4-0; Deputy Mayor Hager, Council Members Freudenberg, Haynie, and Whelchel voting yes.

MINUTES:

Minutes of the Regular Workshop Meeting of October 25, 2004
Minutes of the Regular Meeting of October 26, 2004

Motion was made by Council Member Whelchel, seconded by Council Member Haynie, to approve the minutes as presented. Motion carried 4-0; Deputy Mayor Hager, Council Members Freudenberg, Haynie, and Whelchel voting yes.

PROCLAMATIONS:

National Family Caregiver's Month – November 2004

The proclamation was accepted by Dr. Connie Siskowsky, Florida representative for the National Family Caregivers' Association, and Abby Bentz, Director of Nursing at Matrix Homecare.

REGULAR BUSINESS - PART I:

1. Appointments to the following boards:

There were no vacancies to fill.

2. Responses to Workshop Information Requests:

The City Manager advised that, since all questions had been answered at yesterday's workshop meeting, there were no responses.

3. Consent Agenda:

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

a. Sealed Bids – FY 03/04

- | | | |
|----|--|-----------|
| 1) | Meadows Park Pool Renovations
Requested by Recreation Services
Superior Pools, Spas & Waterfalls, Inc. | \$546,800 |
| 2) | Sanborn Square Renovations
Requested by Recreation Services
Hartzell Construction, Inc. | \$206,000 |

b. Sealed Bid - Renewal

- | | | |
|----|--|-----------|
| 1) | Electrical Supplies - Renewal
Requested by Municipal Services
Erin Electrical Enterprises, Rexal Consolidated,
GE Supply, McDonald Distributors of FL.,
Miami Breakers Inc., Mercedes Electric Supply Inc.,
and W.W. Grainger, Inc. | \$118,500 |
|----|--|-----------|

c. Intergovernmental Agreement

- | | | |
|----|---|-----------|
| 1) | Mobile Intensive Care Vehicles - Replacement
Requested by Fire-Rescue Services
American LaFrance Medic Master | \$372,422 |
|----|---|-----------|

d. Sole Source

- | | | |
|----|---|-----------|
| 1) | Custom Built Advanced Life Support Pumper –
New (1), Replacement (1)
Requested by Fire-Rescue Services
Sutphen Corporation | \$802,530 |
| 2) | Open Software Solutions, Inc.
Software Maintenance
Requested by City Manager
Open Software Solutions, Inc. (OSSI) | \$189,441 |
| 3) | Fire Apparatus Repair Parts
Requested by Fire-Rescue Services
Sutphen Corporation | \$25,000 |

- | | | |
|-----|---|-----------|
| 4) | Radio Controlled Irrigation Equipment Maintenance
Requested by Recreation Services
Contemporary Controls & Communication, Inc. | \$45,300 |
| 5) | Original Equipment Manufacturer (OEM) Parts
and Service for Altec and Asplundh Equipment
Requested by Municipal Services
Altec Industries, Inc. | \$30,000 |
| 6) | Original Equipment Manufacturer (OEM) Parts
and Service for Sterling Trucks (formerly, Ford)
Requested by Municipal Services
Atlantic Truck Center | \$110,000 |
| 7) | Refuse Packer, Original Equipment Manufacturer
(OEM) Parts and Factory Authorized Repairs for
Mack Trucks
Requested by Municipal Services
Nextran Truck Center | \$135,000 |
| 8) | Original Equipment Manufacturer (OEM)
for GS Recycling Truck Bodies and Crane Carrier Trucks
Requested by Municipal Services
Container Systems & Equipment | \$50,000 |
| 9) | Original Equipment Manufacturer (OEM) Parts
and Service for Leach Garage Trucks and Labrie
Recycling Trucks
Requested by Municipal Services
Fleet
Clarke Waste Systems | \$80,000 |
| 10) | Original Equipment Manufacturer (OEM)
for Petersen Parts & Services
Requested by Municipal Services
Peterson Industries Machinery | \$40,000 |
| 11) | Original Equipment Manufacturer (OEM) Parts
and Factory Authorized Repairs for International Trucks
Requested by Municipal Services
Rechtien International Trucks | \$30,000 |
| 12) | Security Management System Services
Requested by Municipal Services
Johnson Controls, Inc. | \$75,480 |

e. Emergency

- | | | |
|----|---|----------|
| 1) | Electrical Repairs at Mizner Park
Requested by Recreation Services
Reichenback Electric | \$52,300 |
|----|---|----------|

f. Resolution No. 196-2004

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute an encroachment license agreement with Lake Worth Drainage District; providing for severability; providing for repealer; providing an effective date

g. Resolution No. 199-2004

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute an agreement with Advanced Data Processing, Inc. for the purpose of providing emergency medical transportation billing services; providing for severability; providing for repealer; providing an effective date

h. Receive and File Board Orders

- 1) Special Master
 - a) SM(G) Case No. 04-00000642
 - b) SM(G) Case No. 04-00001289
 - c) SM(G) Case No. 04-00002325

i. Receive and File Board Minutes – November 9, 2004

- 1) Citizen's Pedestrian and Bikeway Advisory Board
July 12, 2004
- 2) Community Appearance Board
September 28, 2004
October 5, 2004
October 12, 2004
- 3) Community Relations Board
September 20, 2004
- 4) Education Advisory Board
September 27, 2004
- 5) Environmental Advisory Board
July 15, 2004
September 23, 2004
- 6) Historic Preservation Board
July 20, 2004
- 7) K-12 Education Task Force
May 25, 2004
August 17, 2004
August 24, 2004
August 31, 2004
- 8) Library Advisory Board
August 18, 2004
- 9) Physically and Mentally Challenged Advisory Board
August 5, 2004
- 10) Planning and Zoning Board
September 23, 2004
- 11) Police and Firefighters' Pension Board
August 26, 2004
- 12) Zoning Board of Adjustment
August 12, 2004

j. Resolution No. 207-2004

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute a License Agreement with the Boca Raton Airport Authority for the purpose of the construction, reconstruction, operation, repair, replacement, relocation and maintenance of utility lines; providing for severability; providing for repealer; providing an effective date

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

4. Resolution No. 188-2004 (Continued from the 10/26/04 meeting)

A resolution of the City of Boca Raton providing for the development of, and the approval of certain conditional uses on, certain property, as more specifically described herein; authorizing the Mayor and City Clerk to execute an amended and restated agreement with Florida Atlantic Research and Development Authority; providing for severability; providing for repealer; providing an effective date (SC-04-01)

Mr. Ahnell advised that a letter had been received from the petitioner, requesting that consideration of this item be postponed to the November 23, 2004 meeting. Noting the number of people in the audience having interest in this matter, he suggested that the public hearing be opened and then continued to the next Council meeting. Council voiced no objections to doing so.

Deputy Mayor Hager advised that this was a quasi-judicial matter; the City Clerk administered the oath to those who indicated they wished to speak on this petition.

The City Manager stated briefly that the proposed agreement between the City and Florida Atlantic Research and Development Authority related to operations of the Research and Development Park, located within the Florida Atlantic University (FAU) property. Deputy Mayor Hager then asked anyone wishing to speak on this topic to come forward.

Mark Hopin, Miriam Lemms, and Linda Donez, all parents of children in the Henderson School, spoke in opposition to the agreement. Mr. Hopin voiced concerns related to the proposed charter school being located in a runway clear zone, its close proximity to a hazardous waste site, and increased traffic. Ms. Lemms and Ms. Donez also voiced concerns over traffic.

In response to Council's queries regarding the traffic impacts due to the Henderson School's expansion, Mr. Ahnell explained that State law governs traffic on university land; according to those rules, there is sufficient traffic capacity to expand the Henderson School under the FAU Master Plan. He added that the rules governing universities are very different from the rules governing private developers. The City Attorney and the City Manager then responded to questions from Mr. Hopin. Mr. Ahnell clarified that both the City and the Research and Development Authority are governmental agencies whose respective authority is provided through State Statute. He also stated that, unofficially, it appears that the Airport Authority believes the proposed charter school is in the runway protection zone; however, an official response is yet to be received. In regard to traffic, Mr. Ahnell advised that he had spoken with FAU officials, who indicated that plans for next year include widening the road by Henderson School to four lanes to the point where it meets with the Research and Development Authority property. In addition, the Research and Development Authority may be widening the road to Spanish River Boulevard. No timeline has been provided, but road improvements are being planned by both FAU and the Research and Development Authority.

Motion was made by Council Member Haynie, seconded by Council Member Whelchel, to continue the public hearing on Resolution No. 188-2004 to the November 23, 2004 Council meeting. Motion carried 4-0; Deputy Mayor Hager, Council Members Freudenberg, Haynie, and Whelchel voting yes.

Mayor Abrams entered the meeting at approximately 6:36 p.m.

5. Resolution No. 193-2004

A resolution of the City of Boca Raton granting conditional use approval for Fire Station No. 1 on a parcel of land located at 1151 North Federal Highway, as described more particularly herein; providing for severability; providing for repealer; providing an effective date (CA-04-07)

The City Clerk administered the oath to those persons who indicated they might wish to speak on this petition.

Development Services Senior Planner Vicky Gatanis gave the PowerPoint presentation. Information regarding location, zoning, land use designation, acreage, and surrounding roads/properties was provided. The proposed addition and renovation of the fire station would add 718 square feet for a total of 10,350 square feet. The current and proposed site plan configurations were reviewed. The existing building would be completely renovated; maximum height would be 21 feet. The apparatus bays would be in the center of the structure, flanked on either side by two-story sections containing living quarters and offices. Parking was then reviewed. The credit union would be relocated off site; access points and the employee entrance were also outlined.

The Planning and Zoning Board reviewed this application and recommended approval. A meeting for the purpose of review before the Community Appearance Board is to be scheduled. Ms. Gatanis concluded her presentation by stating that staff recommended approval of the project.

No one came forward to speak at the public hearing.

Motion was made by Council Member Whelchel, seconded by Deputy Mayor Hager, to adopt Resolution No. 193-2004. Motion carried unanimously; Mayor Abrams, Deputy Mayor Hager, Council Members Freudenberg, Haynie, and Whelchel voting yes.

6. Resolution No. 194-2004

A resolution of the City of Boca Raton accepting and approving the final plat known as the Vistazo at Boca Raton subdivision plat, and authorizing the Mayor and City Clerk to execute the plat; providing for severability; providing for repealer; providing an effective date (UC-01-03SUB)

7. Resolution No. 200-2004

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute a contract for construction of required improvements with Lennar Homes, Inc. for the purpose of ensuring timely and complete construction of subdivision improvements at Vistazo at Boca Raton; providing for severability; providing for repealer; providing an effective date

8. Resolution No. 201-2004 (Revised 11/9/04)

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute a Lake Maintenance Agreement with Lennar Homes, Inc. for Vistazo at Boca Raton; providing for severability; providing for repealer; providing an effective date

Mayor Abrams advised that this was a quasi-judicial matter; the City Clerk administered the oath to those who indicated they wished to speak on the above petitions.

Planning and Zoning Director Carmen Annunziato gave the PowerPoint presentation. He stated that this project was formerly known as the Villas of Spanish River and explained that the final plat was before Council as a quasi-judicial item, instead of a Consent Agenda item, because staff and the City Attorney determined that tentative and final plats are subject to quasi-judicial rules of procedure, under certain circumstances, and a public hearing is required prior to City Council final action.

Location was provided, as was an outline of the final plat. The most prominent feature identified was NW 6th Way, which is the replacement through-road for NW 5th Avenue. Mr. Annunziato explained that NW 5th would terminate in a cul-de-sac at Spanish River Road; NW 6th Way would tie into the existing NW 5th Avenue, south of 35th Street. The presentation was concluded with staff recommending approval of the final plat and the accompanying resolutions.

Council Member Haynie questioned why an avigation easement did not appear on the final plat. The City Attorney noted that the avigation easement was a recorded instrument; Mr. Annunziato stated that a note would be included on the plat in reference to the easement. Additional questions included when construction was expected to begin and whether adequate traffic management would be in place during construction.

No one wished to speak at the public hearing.

Motion was made by Council Member Freudenberg, seconded by Deputy Mayor Hager, to adopt Resolution No. 194-2004, as amended, to include language in Section 1 to the effect that the avigation easement would be noted on the final plat. Motion carried unanimously; Mayor Abrams, Deputy Mayor Hager, Council Members Freudenberg, Haynie, and Whelchel voting yes.

Motion was made by Deputy Mayor Hager, seconded by Council Member Haynie, to adopt Resolution No. 200-2004. Motion carried unanimously; Mayor Abrams, Deputy Mayor Hager, Council Members Freudenberg, Haynie, and Whelchel voting yes.

Motion was made by Council Member Freudenberg, seconded by Deputy Mayor Hager, to adopt Resolution No. 201-2004, as revised. Motion carried unanimously; Mayor Abrams, Deputy Mayor Hager, Council Members Freudenberg, Haynie, and Whelchel voting yes.

REGULAR BUSINESS – PART III – REGULAR PUBLIC HEARINGS:

9. Resolution No. 197-2004

A resolution of the City of Boca Raton terminating a Lease Agreement with the New Pines Foundation, Inc.; providing for severability; providing for repealer; providing an effective date

10. Ordinance No. 4827

An ordinance of the City of Boca Raton authorizing the Mayor and City Clerk to execute a lease agreement with the Boys and Girls Clubs of Palm Beach County, Inc. for the City-owned property at 300 Newcastle Street; providing for severability; providing for repealer; providing an effective date (SC-04-12)

11. Resolution No. 198-2004

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute an agreement with the Boys & Girls Clubs of Palm Beach County, Inc., a Florida not-for-profit corporation, for the purpose of assisting with operating costs of the New Pines Neighborhood Center; providing for severability; providing for repealer; providing an effective date

Development Services Property Appraiser/Specialist Lynn Bodor gave the PowerPoint presentation. Essentially, the resolution would terminate an existing lease agreement between the New Pines Foundation, Inc. and the City for use of the New Pines Neighborhood Center. Due to the merger between the New Pines Foundation, Inc. and the Boys and Girls Clubs of Palm Beach County, Inc., a new long-term lease agreement would be executed by the Boys and Girls Clubs of Palm Beach County, Inc., and the City, for the same neighborhood center; details regarding the lease were provided. Ms. Bodor noted that long-term leases constitute the sale of City-owned property and cited Section 13-72(1) of the Code in support of same; Ordinance No. 4827 would authorize the above actions. Existing activities, such as after-school programs, tutoring, mentoring, recreational activities, and summer camps would continue to

be provided. Municipal and Utility Services had no objections to this proposal. The Parks and Recreation Board and the Planning and Zoning Board reviewed and recommended the petitions, as did staff. The suggested lease amount, if approved, would be \$1 per year. Ms. Bodor then gave the floor to Community Improvement Administrator Annette Evans.

Ms. Evans spoke to Resolution No. 198-2004, which would authorize an agreement between the City and the Boys and Girls Clubs of Palm Beach County, Inc. for the purpose of obtaining Community Development Block Grant (CDBG) funding to assist with the operating costs for the New Pines Neighborhood Center. Ms. Evans provided details regarding the proposed merger, mentioned previously, and advised that funding was contingent upon Council approving the new long-term lease; if the lease was not approved, funding would go to New Pines Foundation, Inc, as it had in the past. She then concluded her presentation.

Bill Capeller and Mary O'Connor spoke in support of the petitions.

Motion was made by Council Member Whelchel, seconded by Deputy Mayor Hager, to adopt Resolution No. 197-2004. Motion carried unanimously; Mayor Abrams, Deputy Mayor Hager, Council Members Freudenberg, Haynie, and Whelchel voting yes.

Motion was made by Council Member Haynie, seconded by Deputy Mayor Hager, to adopt Ordinance No. 4827. Motion carried unanimously; Mayor Abrams, Deputy Mayor Hager, Council Members Freudenberg, Haynie, and Whelchel voting yes.

Motion was made by Deputy Mayor Hager, seconded by Council Member Whelchel, to adopt Resolution No. 198-2004. Motion carried unanimously; Mayor Abrams, Deputy Mayor Hager, Council Members Freudenberg, Haynie, and Whelchel 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.

CITY MANAGER RECOMMENDATIONS AND REPORTS:

The City Manager requested direction from Council in regard to the re-landscaping of Mizner Park. He explained that the City had planned to plant oaks and royal palms in place of the ficus trees that had been destroyed by the hurricanes. However, the use of canary date palms, in place of the oaks, was favored by the Community Appearance Board as having a more majestic look. Mr. Ahnell advised that the cost for eight oak trees would be \$10,000; the cost for eight canary date palms was estimated at \$70,000. He stated that the Rouse Company had only committed to contributing \$5,000 toward the cost. Discussion followed.

Motion was made by Deputy Mayor Hager, seconded by Council Member Whelchel, directing the City Manager to plant canary date palms in place of the destroyed ficus trees and to seek additional funding from the Rouse Company. Motion carried 4-1 on a voice vote; Mayor Abrams; Deputy Mayor Hager, Council Members Haynie and Whelchel voting yes. Council Member Freudenberg voted no.

CITY ATTORNEY REPORTS:

The City Attorney advised that she was seeking direction from Council, on behalf of Code Enforcement staff, regarding the current policy for collection of occupational license taxes from residential rental property owners. She explained that, historically, the City charged all residential property owners an occupational license tax for the privilege of doing business in the City of Boca Raton, regardless of whether or not the multi-unit property had a management or leasing office on site. In 1999, a property owner challenged the City's enforcement of this policy with regard to a residential property, for rental, that did not have a management office on site. The case went to the Special Master, who ruled that City staff was not properly applying that regulation. As a result, the occupational license tax for that property was set aside; a "carve-out" was created. However, the City continued to apply the tax to all other properties, including other properties owned by the same property owner who brought forward the challenge.

Currently, a different property owner is challenging the City over the same issue. Staff was preparing to take the matter to the Special Master. In anticipation, staff wished to clarify Council's position in regard to collection of the occupational license tax from residential rental properties for presentation to the Special Master; this way, the Special Master would be very clear regarding Council's position on this ordinance and Council's legislative intent.

Ms. Frieser mentioned that last year, when other issues came forward relating to the occupational license tax, the Council determined that, consistent with the statutory intent, the City should follow its historical practice regarding categories in which the tax has been collected and categories in which the tax has not been collected. As the City consistently followed this policy of assessing the tax against owners of residential rental properties, notwithstanding whether the building has a management or leasing office on site, Ms. Frieser recommended that the City continue to collect the tax in the future from each residential rental property, as has been the historical practice of the City, and to advise the Special Master of same.

Motion was made by Council Member Haynie, seconded by Council Member Whelchel, to reaffirm the Council's position, which remains unchanged, in regard to the City's current policy for collection of occupational license taxes as applied to each residential rental apartment building within the City. Motion carried unanimously on a voice vote; Mayor Abrams; Deputy Mayor Hager, Council Members Freudenberg, Haynie, and Whelchel voting yes.

MAYOR AND COUNCIL MEMBER REPORTS:

Council Member Haynie thanked the Fraternal Order of Police (FOP) for sponsoring a great picnic event Sunday at the beach, which she attended; she also mentioned that this was her first opportunity to see the inlet after the hurricanes and the damage was substantial. Ms. Haynie then reported that the Florida Department of Transportation awarded Miller Consulting the I-95 Preliminary Design & Environmental (PD&E) Study from Glades Road to Yamato Road, which is part of the interchange feasibility study.

Council Member Whelchel commented on viewing the Vietnam Wall currently on exhibit at Mizner Park, saying that it was a very moving experience; she encouraged everyone to visit it while the opportunity exists.

ADJOURNMENT:

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

The regular meeting of the City Council of the City of Boca Raton adjourned at approximately 7:29 p.m. on Tuesday, November 9, 2004.

Steven L. Abrams, Mayor

ATTEST:

Sharma Carannante, City Clerk