

MINUTES OF THE REGULAR MEETING
CITY COUNCIL
CITY OF BOCA RATON, FLORIDA
TUESDAY, APRIL 14, 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:

Council Member Mullaugh 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:

Motion was made by Council Member Haynie, seconded by Council Member Mullaugh, to amend the Consent Agenda to revise Item No. 3.a.1. (Computer Desktops and Laptops) to reflect \$282,400 instead of \$330,000. Motion carried unanimously on a voice vote; Mayor Whelchel, Deputy Mayor Susan Haynie, Council Members Majhess, Mullaugh, and Scott voting yes.

Motion was made by Council Member Haynie, seconded by Council Member Mullaugh, to amend the agenda to add Ordinance No. 5095 as Item No. 8.a. under, "Regular Business – Part V – Introduction of Ordinances." Motion carried unanimously on a voice vote; Mayor Whelchel, Deputy Mayor Susan Haynie, Council Members Majhess, Mullaugh, and Scott voting yes.

Council Member Majhess indicated that he wished to amend the agenda to add Ordinance No. 5096, which the City Attorney drafted at his request, and then explained what this ordinance proposed to accomplish, specifically, the nullification of Ordinance No. 4991. Mr. Majhess subsequently made a motion to amend the agenda to add Ordinance No. 5096 for introduction; that motion died for lack of a second.

MINUTES:

Minutes of the Regular Workshop Meeting of March 23, 2009
Minutes of the Regular Meeting of March 24, 2009
Minutes of the Organizational Meeting of March 31, 2009

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

PROCLAMATIONS/RECOGNITIONS/AWARDS:

City of Boca Raton Firefighter Appreciation Month - April 2009

The proclamation was accepted by Elise Qvale, representing the Muscular Dystrophy Association, the City's Fire Chief Tom Wood, and Firefighter Marcus Cooper.

Arbor Day - April 24, 2009

The proclamation was accepted by Brian Kane, one of the City's Environmental Officers.

REGULAR BUSINESS - PART I:

1. Appointments to the following boards:

- a. Boca Raton Advisory Board for People with Disabilities – five (5) vacancies.

Motion was made by Deputy Mayor Haynie, seconded by Mayor Whelchel, to reappoint Joseph Bensmihen, Shawn Friedkin, Gary Susser, and Jay Van Vechten, and to appoint Lisa Hamilton-Johnson, to the Boca Raton Advisory Board for People with Disabilities. Motion carried unanimously on a voice vote; Mayor Whelchel, Deputy Mayor Susan Haynie, Council Members Majhess, Mullaugh, and Scott voting yes.

Mr. Bensmihen, Mr. Friedkin, Mr. Susser and Mr. Van Vechten were reappointed; Ms. Hamilton-Johnson was appointed.

- b. Environmental Advisory Board – two (2) vacancies.

Robert McCarthy and Gary Nash expressed interest in serving on the Board. Elizabeth Hoffman, Chairman of the Environmental Advisory Board, explained that incumbent Dan Taylor was interested in reappointment but unable to attend today's meeting.

Motion was made by Deputy Mayor Haynie, seconded by Council Member Scott, to reappoint Robert McCarthy and Dan Taylor to the Environmental Advisory Board. Motion carried unanimously on a voice vote; Mayor Whelchel, Deputy Mayor Susan Haynie, Council Members Majhess, Mullaugh, and Scott voting yes.

Mr. McCarthy and Mr. Taylor were reappointed to the Board.

- c. Financial Advisory Board – two (2) vacancies.

Motion was made by Council Member Scott, seconded by Deputy Mayor Haynie, to appoint Mary Jane Evans to the term expiring August 26, 2011 and Thomas Dunne to the term expiring August 26, 2009. Motion carried unanimously on a voice vote; Mayor Whelchel, Deputy Mayor Susan Haynie, Council Members Majhess, Mullaugh, and Scott voting yes.

Ms. Evans and Mr. Dunne were appointed to the Board.

- d. North Federal Highway Steering Committee – one (1) vacancy.

Dennis Mitchell interviewed for the position on the Committee.

Motion was made by Deputy Mayor Haynie, seconded by Council Member Mullaugh, to appoint Dennis Mitchell to the North Federal Highway Steering Committee. Motion carried unanimously on a voice vote; Mayor Whelchel, Deputy Mayor Susan Haynie, Council Members Majhess, Mullaugh, and Scott voting yes.

Mr. Mitchell was appointed to the Committee.

2. Responses to Workshop Information Requests:

The City Manager advised that answers to questions from yesterday's Workshop meeting would be included in tonight's presentations.

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.

Council Member Mullaugh referred to the resignation of Arnold Straus from the Financial Advisory Board and commented on his years of service to the City.

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

a. Intergovernmental Agreements

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|----|---|-----------|
| 1) | Computer Desktops and Laptops - Replacements
Requested by City Manager
Hewlett Packard, Panasonic, c/o Synnex Corporation | \$282,400 |
| 2) | Sodium Hydroxide
Requested by Utility Services
Allied Universal Corp. | \$101,896 |

b. Resolution No. 50-2009

A resolution of the City of Boca Raton authorizing the Mayor to execute the Fourth Amendment to Agreement 02PB1, with the Florida Department of Environmental Protection, for the purpose of reimbursable funding related to the Central Boca Raton Beach Restoration Project; providing for severability; providing for repealer; providing an effective date

c. Resolution No. 51-2009

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 Hiring Recovery Program (CHRP); 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

d. Resolution No. 52-2009

A resolution of the City of Boca Raton authorizing the City Manager to execute Work Order No. 5 with Applied Technology and Management for the purpose of design services related to Red Reef Park dune overwalk rehabilitation; providing for severability; providing for repealer; providing an effective date

e. Resolution No. 53-2009

A resolution of the City of Boca Raton authorizing the City Manager to execute Work Order No. 9 with Eckler Engineering, Inc. for the purpose of providing engineering services during the construction of the Reclaimed Water Production Facility expansion; providing for severability; providing for repealer; providing an effective date

f. Resolution No. 54-2009

A resolution of the City of Boca Raton requesting the assistance of Governor Crist and Florida Department of Transportation Secretary Kopelousos to prioritize the Intercity Rail Component of the FEC Corridor Project (from Jacksonville to Miami) as part of the Federal economic stimulus package for the State of Florida; providing for severability; providing for repealer; providing an effective date

g. Resolution No. 55-2009

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute an agreement with the Gehring Group for the purpose of consulting on the health benefit programs for City employees; providing for severability; providing for repealer; providing an effective date

h. Resolution No. 56-2009

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute the first amendment to a Revocable License Agreement with the Boca Quay Homeowners' Association, Inc. for the purpose of placing landscaping and traffic islands in City right-of-way adjacent to Boca Quay; providing for severability; providing for repealer; providing an effective date

i. Resolution No. 57-2009

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute an Agreement with Terry Cohen, M.D., for the purpose of providing professional services as Medical Director for emergency and non-emergency medical services provided by the Fire Rescue Services Department; providing for severability; providing for repealer; providing an effective date

j. Resolution No. 58-2009

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 Recovery Act: Edward Byrne Memorial Competitive Grant 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

k. Board Resignations

- 1) Resignation of Arnold M. Straus from the Financial Advisory Board

l. Receive and File Board Minutes – April 14, 2009

- 1) Builders' Board of Adjustment and Appeals
October 7, 2008
- 2) Citizen's Pedestrian and Bikeway Advisory Board
February 9, 2009

- 3) Community Appearance Board
February 17, 2009
February 24, 2009
March 3, 2009
March 10, 2009
March 17, 2009
- 4) Community Relations Board
February 9, 2009
- 5) Downtown Boca Raton Advisory Committee
February 4, 2009
- 6) Education Advisory Board
January 26, 2009
February 23, 2009
- 7) Financial Advisory Board
February 17, 2009
- 8) North Federal Highway Steering Committee
February 3, 2009
- 9) People With Disabilities Board
February 5, 2009
- 10) Special Master
January 14, 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. 5091 (Revised 3/20/09)

An ordinance of the City of Boca Raton approving modifications to the previously approved Universal Conditional Approval (Ordinance No. 5066), for construction of a 3,320 square foot bank facility with three (3) drive-up teller lanes and a drive-up ATM lane, located at 232 Yamato Road; providing for severability; providing for repealer; providing an effective date (UC-99-02R2)

The City Attorney explained the quasi-judicial procedure that would govern the hearing; the City Clerk administered the oath to those who indicated they wished to speak. There were no ex parte disclosures.

Development Services Planner Daryl Johnson gave the PowerPoint presentation. He began by explaining that questions tendered at yesterday's workshop meeting regarding driveways, trip generations, and previous conditions connected with the Yamato Crossings approval would be covered this evening. He added that Page 2 of Exhibit A to the ordinance had been revised to correct a resolution number and date; copies of the revised ordinance were distributed. Mr. Johnson then confirmed that all other conditions related to the prior Yamato Crossings approval remained in effect.

Background information, location, zoning, and future land use designation was provided. Mr. Johnson explained that this modified plan would provide for improved on-site circulation. Vehicle access was then reviewed; it was noted that this proposal resulted in a minor trip reduction. In conclusion, Mr. Johnson

advised that the Planning & Zoning Board reviewed this petition and unanimously recommended approval, as did staff, subject to conditions provided in the revised 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 Mullaugh, to adopt Ordinance No. 5091, as revised 3/20/09 and 4/14/09. Motion carried unanimously; Mayor Whelchel, Council Members Arts, Hager, Haynie and Mullaugh voting yes.

REGULAR BUSINESS – PART III – REGULAR PUBLIC HEARINGS:

5. Ordinance No. 5077 (Second of two required public hearings.)

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 Manager advised that staff was currently working on revisions to the ordinance. Therefore, he recommended that the public hearing be opened and continued to the next Council meeting of April 28, 2009 for consideration at that time.

Morris "Skip" Stoltz, managing general partner of the Stonegate Bank building on 301 Yamato Road, voiced opposition to the ordinance, stating that strict criteria for the LIRP (Light Industrial and Research Park) was being "liberalized" and/or removed. He opined that this new legislation would put owners in the POI (Professional Office & Industrial) districts at an extreme disadvantage; details were provided.

Motion was made by Deputy Mayor Haynie, seconded by Council Member Mullaugh, to continue the public hearing to the Council meeting of April 28, 2009. Motion carried unanimously on a voice vote; Mayor Whelchel, Council Members Arts, Hager, Haynie and Mullaugh 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. 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 ordinance was introduced by Mayor Whelchel.

7. 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

The ordinance was introduced by Deputy Mayor Haynie.

8. 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 ordinance was introduced by Council Member Mullaugh.

8.a. 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

The ordinance was introduced by Deputy Mayor Haynie.

REGULAR BUSINESS - PART VI - PUBLIC REQUESTS:

Robert DuKate and Deborah Golden-Gestner advocated reversal of the approvals tendered by Council in regard to the Ocean Breeze project, opining that certain facts in the matter were misstated and/or not made clear. A PowerPoint presentation was provided by Mr. DuKate.

Sheila Seid, a resident of the Eden Condominiums, questioned whether the Eden would be considered as part of the downtown development area. If not, she questioned whether any additional meetings would be scheduled in regard to completion of the Eden project. The City Manager advised that a building permit for the Eden would be expiring in September and, at this point, it appeared the owner was not acting on that permit. Consequently, Council would probably take up this matter again; residents of the Eden would be notified as to the date and time.

Referring to allegations made by the speakers related to review of the Ocean Breeze project, Deputy Mayor Haynie asked whether staff might prepare responses to address each of the concerns. Mr. Ahnell advised that litigation was still pending at this time. The City Attorney added that she was not aware of any new action and then gave a brief overview of the matter, advising that the DCA (Department of Community Affairs) agreed with the City's conclusion that the Comprehensive Plan amendment was fully in compliance with the Statute. She explained that a full administrative hearing was concluded prior to August 2008. At that hearing, Mr. DuKate and Save Boca Raton Green Space were represented by counsel and submitted testimony and evidence. Ultimately, the judge in that administrative hearing did not recommend in favor of any of their claims; instead, the judge issued a recommended order to the DCA and a DCA final order is anticipated. Stating that there has been a full quasi-judicial hearing and subsequent administrative hearings in regard to this matter, Ms. Frieser did not recommend a reassessment of facts previously raised. However, she advised that transcripts of hearings that took place before Council and the Planning and Zoning Board are available for review. In addition, there might be transcripts of the administrative hearing available and, therefore, would be provided as well.

QUASI-JUDICIAL PUBLIC HEARING – APPEAL OF HEARING OFFICER'S DECISION:

9. Resolution No. 34-2009

A resolution of the City of Boca Raton considering the appeal filed by Prestige Limousines, Inc., of the decision of the hearing officer to deny an application for a Certificate of Public Convenience and Necessity; providing for severability; providing for repealer; providing an effective date

The City Attorney advised that quasi-judicial procedure would govern the public hearing; the City Clerk administered the oath to those who indicated they wished to speak. Under ex parte disclosures, Deputy Mayor Haynie advised that she spoke with Staci Garcia, Merrill Stromberger, Michael Weiner, Brock Rosayn, Rod Cunningham, and Jim Barr. Council Member Scott advised she spoke with Jim Barr, Rod Cunningham, and Merrill Stromberger. Mayor Whelchel advised that she spoke with Staci Garcia, Rod Cunningham, and Jim Barr. Council Member Mullaugh advised that he spoke with Jerry Goldman, Jim Barr, Rick Versace, and Rod Cunningham. Council Member Majhess advised that he spoke with Jerry Goldman, Merrill Stromberger, and Michael Weiner.

Development Services Manager of Administrative Services Ruby Childers gave the PowerPoint presentation. She explained that City Code requires all taxicab and limousine services to obtain a Certificate of Public Convenience and Necessity, prior to operating within the City, that certain financial and safety standards are met in order to ensure the public welfare. On July 1, 2008, an application was submitted by Prestige Limousines, Inc. to operate a new business with ten vehicles. There followed a timeline of events as to review of the application as well as the criteria used to evaluate same. A public hearing was held on October 16, 2008 and the Hearing Officer issued a denial on November 14, 2008, based on a failure to demonstrate: 1) a public demand for additional limousine service, 2) inadequacy of the current limousine service within the City, and 3) illegal operation of Prestige Limousines, Inc. within the City limits without an approved certificate. Prestige Limousines subsequently appealed the decision.

Following review of the appeal request, staff recommended granting the appeal, based on information provided by the appellant at the public hearing related to population growth within the City and the knowledge that the appellant showed intent to correct the unlawful business activity by applying for a certificate. Ms. Childers noted that although there appeared to be a demand for additional services within the City, the volume of population and its impact to the industry was difficult to determine. Therefore, staff recommended a condition to the approval, limiting the number of vehicles to five, which is the minimum number required by Code. Ms. Childers then concluded her presentation and answered questions from Council related to 14 unused permits formerly held by Carey Limousine. Regarding the illegal operation, Ms. Childers clarified that the appellant indicated she was picking up customers in areas of unincorporated Palm Beach County, as a licensed County business, that were later annexed into the City. Once annexed, those areas became part of the City and in order to pick up customers, one must be a licensed certificate holder with the City. Responding to Council, Ms. Childers then clarified staff's recommendation of five vehicles.

Michael Weiner, the attorney representing the appellant, distributed copies of Palm Beach County traffic reports and the City's EAR (Evaluation and Appraisal Report) amendment and then gave a presentation, explaining why his client should receive a certificate to operate ten vehicles. Essentially, he stated that the City had grown and was continuing to experience growth; therefore, additional limousine service was needed. In addition, his client was an honest person who, when she realized she was operating a business illegally, came in to apply for a certificate. Details were provided on all the above. Mr. Weiner concluded his presentation and answered questions from Council.

Howard Berkowitz, Ellis Jacobs, Russell Sepuchini, Nancy Davis, and Gene Peachy supported granting the appeal. Jerry Goldman, Jim Barr, Brock Rosayn, and Rodney Cunningham voiced opposition.

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

Michael Weiner rebutted statements made by those in opposition.

Motion was made by Deputy Mayor Haynie, seconded by Council Member Scott, to grant the appeal and provide a Certificate of Public Convenience and Necessity to operate ten vehicles within the City of Boca Raton.

Motion was made by Deputy Mayor Whelchel, seconded by Council Member Mullaugh, to amend the main motion to provide for operation of five vehicles. Motion failed 2-3; Mayor Whelchel and Council Member Mullaugh voting yes. Deputy Mayor Haynie, Council Members Majhess and Scott voted no.

The vote on the main motion carried 3-2; Deputy Mayor Haynie, Council Members Majhess and Scott voting yes. Mayor Whelchel and Council Member Mullaugh voted no.

REGULAR BUSINESS - PART VII- RESOLUTIONS AND OTHER BUSINESS:

There were no items for consideration.

CITY MANAGER RECOMMENDATIONS AND REPORTS:

The City Manager referred to resurfacing and roadway improvements performed throughout South Florida by the Florida Department of Transportation (FDOT), advising that when they request permission to do night work, the City's policy is to permit same; however, if the work becomes too disruptive to a neighborhood, the approval can be withdrawn. Mr. Ahnell sought, and received, a reaffirmation of this policy by Council.

CITY ATTORNEY REPORTS:

The City Attorney had nothing to report at this time.

MAYOR AND COUNCIL MEMBER REPORTS:

Deputy Mayor Haynie reported on the success of an Easter community dinner held at the Barton Center and thanked volunteers from Boca Helping Hands and Temple Beth El for their participation. Ms. Haynie then questioned how and where the dates and times of the goal setting sessions would be published that the public might participate in same. The City Manager advised that an agenda and a notice would be posted on the website.

Council Member Majhess referred to questions tendered during Public Requests in regard to alleged misstatement of facts connected with the Ocean Breeze project; he questioned why the City Attorney had concerns over addressing those allegations. Ms. Frieser began by outlining the many legislative public hearings, and the full administrative public hearing, that had taken place in regard to Ocean Breeze, explaining that an Administrative Order was now pending before the Department of Community Affairs. She stated that it would be inappropriate for Council to start weighing in on portions or partial aspects of the matter. However, in response to an earlier request by Deputy Mayor Haynie, she added that it was completely appropriate for staff to provide a full record of all the hearings to Council for review. Ms. Frieser then provided additional information to Council Member Majhess as requested, noting that the recommendation of the administrative law judge was fully in favor of the City and the DCA's hearing, based on extensive evidence presented to the Court.

Mayor Whelchel referred to an energy grant worth \$990,000 available through the stimulus package and suggested that the City's "green" partners provide input as to how the grant could be put to the best use, with the City making the ultimate decision. Responding to Council, Mr. Ahnell advised that staff planned to make a presentation on this grant at the next Council workshop meeting. Noting that there were approximately 15 categories in which to apply, the City Manager indicated that staff intended to seek Council's guidance on this matter.

Mayor Whelchel then reported that there was no money set aside in the stimulus package for beaches and advised that Virginia Beach was speaking with their representatives in an attempt to secure \$10 million for beach renourishment. Acknowledging that Florida relies heavily on tourism, she suggested that the City write to its own representatives to advocate funding for its beaches.

ADJOURNMENT:

Motion was made by Deputy Mayor Haynie, 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 8:25 p.m. on Tuesday, April 14, 2009.

Susan Whelchel, Mayor

ATTEST:

Sharma Hagerty, City Clerk