

MINUTES OF THE REGULAR MEETING  
CITY COUNCIL  
CITY OF BOCA RATON, FLORIDA  
TUESDAY, MARCH 24, 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 Haynie gave the invocation.

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

Boy Scout Troop #337 was in attendance and led the pledge.

**ROLL CALL:**

Mayor Susan Whelchel  
Council Member M. J. Mike Arts  
Council Member Bill Hager  
Council Member Susan Haynie  
Council Member Michael Mullaugh

**AMENDMENTS TO THE AGENDA:**

*Motion was made by Council Member Mullaugh, seconded by Council Member Hager, to amend the agenda as follows:*

- 1) *to add a proclamation (Earth Hour) under, "Proclamations/Recognitions/Awards,"*
- 2) *to replace Ordinance No. 5089 (Item No. 7) with revised Ordinance No., 5089,*
- 3) *to replace Resolution Nos. 31-2009 and 32-2009 (Item Nos. 9 and 10) with revised Resolution Nos. 31-2009 and 32-2009,*
- 4) *to replace Ordinance No. 5091 (Item No. 11) with revised Ordinance No. 5091, and*
- 5) *to add Resolution No. 49-2009 under, "Regular Business – Part IV," as Item No. 10.a.*

*Motion carried unanimously on a voice vote; Mayor Whelchel, Council Members Arts, Hager, Haynie, and Mullaugh voting yes.*

**MINUTES:**

Minutes of the Regular Workshop Meeting of February 23, 2009  
Minutes of the Regular Meeting of February 24, 2009  
Minutes of the Special Council Meeting of March 5, 2009

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

**PROCLAMATIONS/RECOGNITIONS/AWARDS:**

Earth Hour – 8:30 p.m. until 9:30 p.m. on March 28, 2009

Mayor Whelchel gave the proclamation to Arthur Abrams, the son of former Mayor Steven Abrams.

**REGULAR BUSINESS - PART I:**

1. Appointments to the following boards:

- a. Builders' Board of Adjustment & Appeals – one (1) vacancy, for an architect.

There were no applicants.

- b. Citizens' Pedestrian and Bikeway Advisory Board – one (1) vacancy.

*Motion was made by Council Member Hager, seconded by Council Member Haynie, to appoint Linda Socolow to the Citizens' Pedestrian and Bikeway Advisory Board. Motion carried unanimously on a voice vote; Mayor Whelchel, Council Members Arts, Hager, Haynie, and Mullaugh voting yes.*

Ms. Socolow was appointed to the Board.

- c. Civil Service Board – one (1) vacancy.

*Motion was made by Council Member Haynie, seconded by Council Member Mullaugh, to appoint Al Travastos to the Civil Service Board. Motion carried unanimously on a voice vote; Mayor Whelchel, Council Members Arts, Hager, Haynie, and Mullaugh voting yes.*

Mr. Travastos was appointed to the Board.

- d. Financial Advisory Board – one (1) vacancy.

David Birkman expressed interest in the position.

On a unanimous voice vote, Council appointed David Birkman.

Mr. Birkman was appointed to the Board.

- e. General Employees' Pension Board – one (1) vacancy.

*Motion was made by Council Member Haynie, seconded by Council Member Hager, to reappoint Lewis Duberman to the General Employees' Pension Board. Motion carried unanimously on a voice vote; Mayor Whelchel, Council Members Arts, Hager, Haynie, and Mullaugh voting yes.*

Mr. Duberman was reappointed to the Board.

- f. Pearl City Blue Ribbon Committee – one (1) vacancy.

There were no applicants.

- g. Planning & Zoning Board – three (3) vacancies.

Council Member Arts nominated Richard Coffin, Arnold Sevell, and Steve Utrecht; Council Member Haynie nominated Scot MacLaren. Nominations were then closed without objection.

In the voting, Mayor Whelchel, Council Members Arts, Hager, and Mullaugh voted for Mr. Coffin, Mr. Sevell, and Mr. Utrecht. Council Member Haynie voted for Mr. Coffin, Mr. MacLaren, and Mr. Utrecht.

Richard Coffin, Arnold Sevell, and Steve Utrecht were reappointed to the Planning and Zoning Board.

- h. Police & Firefighters' Pension Board – two (2) vacancies.

*Motion was made by Council Member Haynie, seconded by Council Member Mullaugh, to reappoint Mervyn Timberlake and Steven Tubbs to the Police & Firefighters' Pension Board. Motion carried unanimously on a voice vote; Mayor Whelchel, Council Members Arts, Hager, Haynie, and Mullaugh voting yes.*

Mr. Timberlake and Mr. Tubbs were reappointed to the Board.

- i. Zoning Board of Adjustment – two (2) vacancies.

*Motion was made by Council Member Haynie, seconded by Council Member Hager, to reappoint Jeffrey Barker and Jeffrey McDonough to the Zoning Board of Adjustment. Motion carried unanimously on a voice vote; Mayor Whelchel, Council Members Arts, Hager, Haynie, and Mullaugh voting yes.*

Mr. Barker and Mr. McDonough were reappointed to the Board.

2. Responses to Workshop Information Requests:

(Consent Agenda Item 3.I. – Resolution No. 44-2009 / Assignment of, and an amendment to, an existing agreement with Vrchota Corp. for the purpose of providing vehicle towing and storage services on a rotating basis) A memo was provided. Mr. Ahnell explained that the towing yard would remain the same since the assignee (WestWay Towing, Inc.) would be acquiring the property; staff confirmed that the assignee met all the licensing requirements for Palm Beach County. The City Manager then spoke to auto body shops, advising that the company is allowed to have auto body shops but they are prohibited from towing vehicles directly to auto body shops. It was also noted that WestWay has body shops in Delray Beach and Ft. Lauderdale but none in the City.

Mr. Ahnell then advised that additional questions tendered at the Workshop meeting would be covered 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 Hager referred to Item No. 3.d.1. (Property Insurance) and questioned whether the 5-year contract gave the City to right to accept or reject the contract annually. Mr. Ahnell confirmed with Council that the City has the right to accept or reject the contract annually; the City could also eliminate the contract entirely and go back into the market each year to ensure that the best price is being obtained. Details were provided.

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

a. Sealed Bid

- 1) Solar Salt  
Requested by Utility Services  
Morton Salt \$233,400

b. Intergovernmental Agreements

- 1) Anhydrous Ammonia  
Requested by Utility Services  
Tanner Industries, Inc. \$54,750
- 2) Network Infrastructure, Equipment and Services for City Networks  
Requested by City Manager  
IBM Corporation, Insight Public Sector, CDW Government, Inc.,  
Champion Solutions Group, Inc. Midrange Support Services, Inc.  
Presidio Networked Solutions, Nortel Networks \$462,600

c. Competitive Sealed Proposal

- 1) Bus Service for Summer Camp and GAP Programs  
Requested by Recreation Services  
American Coach Lines of Miami, Inc. \$142,316
- 2) Fire Alarm Monitoring, Maintenance, Testing/Inspection and Repairs  
Requested by Municipal Services  
Siemens Building Technologies, Inc. \$93,386

d. Competitive Sealed Proposal - Renewal

- 1) Property Insurance  
Requested by Financial Services  
Beacon Group Insurance, Inc. \$1,585,139

e. Resolution No. 37-2009

A resolution of the City of Boca Raton authorizing the City Manager to execute Work Order No. 14 with CH2MHILL, INC. for the purpose of providing design and permitting of the Intracoastal Waterway Wastewater Force Main Crossings; providing for severability; providing for repealer; providing an effective date

f. Resolution No. 38-2009

A resolution of the City of Boca Raton authorizing the City Manager to apply for a grant from the Florida Department of Transportation Safety Office for the Highway Safety 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

g. Resolution No. 39-2009

A resolution of the City of Boca Raton naming Fire Rescue Station Five in honor of Michael G. Debrecht, former Fire Rescue Services firefighter, to commemorate his 12 years of dedicated services to the City; providing for severability; providing for repealer; providing an effective date

h. Resolution No. 40-2009

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 Royal Oak Hills Association, Inc. for the purpose of placing landscaping and signs in City right-of-way within Royal Oak Hills; providing for severability; providing for repealer; providing an effective date

i. Resolution No. 41-2009

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute an agreement with the Florida Department of Transportation for the purpose of entering into a Maintenance Memorandum of Agreement for Glades Road beautification from east of Corporate Way (M.P. 2.349) to west of Renaissance Way (M.P. 4.776); providing for severability; providing for repealer; providing an effective date

j. Resolution No. 42-2009

A resolution of the City of Boca Raton urging the boards of the City's pension funds to operate consistently with the "Protecting Florida's Investment Act"; providing for severability; providing for repealer; providing an effective date

k. Resolution No. 43-2009

A resolution of the City of Boca Raton authorizing the City Manager to apply for two grants from the State of Florida Department of Transportation for the Surface Transportation Program; authorizing the acceptance of said grant(s), if awarded; authorizing and directing the City Manager to comply with the terms and conditions of said grant(s), if awarded; providing for severability; providing for repealer; providing an effective date

l. Resolution No. 44-2009

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute an assignment of and an amendment to an existing agreement with Vrchota Corp. for the purpose of providing vehicle towing and storage services on a rotating basis; providing for severability; providing for repealer; providing an effective date

m. Resolution No. 45-2009

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute an assignment of and an amendment to an existing agreement with Ultimate Catering, Inc. for the purpose of providing concession services at the Boca Raton Municipal Golf Course; providing for severability; providing for repealer; providing an effective date

n. Resolution No. 46-2009

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute the First Amendment to an Agreement with Ultimate Catering, LLC for the purpose of providing concession services at the Spanish River Library and Community Center; providing for severability; providing for repealer; providing an effective date

o. Resolution No. 47-2009

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute the Third Amendment to Agreement 05PB3 with the Florida Department of Environmental Protection for the purpose of reimbursable funding for the design and permitting, construction and monitoring of the South Boca Raton Beach Nourishment Project; providing for severability; providing for repealer; providing an effective date

p. Resolution No. 48-2009

A resolution of the City of Boca Raton authorizing the Mayor and City Clerk to execute the Fifth Amendment to Agreement 03PB1, with the Florida Department of Environmental Protection, for the purpose of reimbursable funding related to the North Boca Raton Beach Nourishment Project; providing for severability; providing for repealer; providing an effective date

q. Board Resignations

- 1) Resignation of Annette Farenga from the North Federal Highway Steering Committee
- 2) Resignation of Christian Karas from the Financial Advisory Board
- 3) Resignation of Joel Goldsmith from the Civil Service Board

r. Receive and File Board Orders

- 1) SM(G) Case No. 08-3399
- 2) SM(G) Case No. 08-00003933
- 3) SM(G) Case No. 08-4081

s. Receive and File Board Minutes – March 24, 2009

- 1) Citizen's Pedestrian and Bikeway Advisory Board  
December 15, 2008
- 2) Community Appearance Board  
January 27, 2009  
February 3, 2009  
February 10, 2009
- 3) Community Relations Board  
October 20, 2008
- 4) Downtown Boca Raton Advisory Committee  
January 21, 2009
- 5) Education Advisory Board  
November 24, 2008
- 6) Elder Affairs Advisory Board  
February 4, 2009
- 7) Environmental Advisory Board  
January 15, 2009

- 8) Financial Advisory Board  
January 20, 2009
- 9) General Employees' Pension Board  
December 11, 2008 (Investment Committee)  
December 11, 2008 (Regular)
- 10) Historic Preservation Board  
October 21, 2008
- 11) Library Advisory Board  
December 17, 2008  
January 21, 2009  
January 29, 2009 (Special Meeting)
- 12) Marine Advisory Board  
January 7, 2009  
February 4, 2009
- 13) North Federal Highway Steering Committee  
December 2, 2008
- 14) Parks and Recreation Board  
February 3, 2009
- 15) People With Disabilities Board  
August 7, 2008 (Program and Special Events)  
December 4, 2008 (Program and Special Events)  
January 5, 2009
- 16) Planning and Zoning Board  
January 8, 2009  
January 22, 2009  
February 5, 2009
- 17) Police & Firefighters' Pension Board  
September 4, 2008 (Joint Adm. Committee w/Gen Emp)  
September 25, 2008 (Investment Committee)  
December 10, 2008 (Joint Adm. Committee w/Gen Emp)  
December 18, 2008 (Disability Review Committee)  
December 18, 2008 (Regular Mtg.)
- 18) Special Master  
November 26, 2008

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

There were no items for consideration.

## **REGULAR BUSINESS – PART II-B – QUASI-JUDICIAL PUBLIC HEARINGS:**

### **4. Resolution No. 33-2009**

A resolution of the City of Boca Raton considering an amendment to Resolution No. 188-2002; granting a modification to a variance pursuant to the City of Boca Raton Coastal Construction Setback Ordinance for property located at 2500 South Ocean Boulevard; providing for severability; providing for repealer; providing an effective date (SC-08-09)

The City Attorney reviewed the quasi-judicial procedures to be followed for this public hearing. The City Clerk administered the oath to those who indicated they wished to speak. There were no ex parte disclosures.

Development Services Principal Planner Jennifer Hofmeister gave the PowerPoint presentation. Location, zoning, and future land use designation were provided for the previously-approved Luxuria Condominium. The project was approved by Council in November 2002, and included two elevated dune crossovers; one for private beach access and another for public beach access. By providing the public beach access, the building height was allowed to be increased by 25 feet, pursuant to City Code. Ms. Hofmeister advised that the petitioner currently proposes to eliminate the elevated crossovers in favor of at-grade sand beach accesses.

The Environmental Advisory Board reviewed this proposal in January 2009 and unanimously recommended approval, based on the justification that the at-grade sand paths reduce the amount of structure placed within the dune system and eliminate potential damage to the dune that a crossover structure might cause in the event of a storm. In addition, the sand paths do not deter from the natural setting of the beach. Ms. Hofmeister explained that, per the petitioner, the Florida Department of Environmental Protection, through their Division of Recreation and Parks, has constructed at-grade sand paths at many State parks. Due to their design, these at-grade sand paths have the added bonus of providing additional sea turtle protection; specifically, the design deters sea turtles and their hatchlings from wandering onto the paths and into developed portions of the site. Ms. Hofmeister concluded her presentation by advising that staff recommended approval and then provided additional information to Council as requested regarding dune crossovers versus at-grade sand paths and a public access easement.

Derek Vander Ploeg, the architect for the project, distributed a handout and provided additional commentary related to the dune area, suggesting that the goal was to try to be as unobtrusive as possible. He then answered questions from Council.

Henri Levy distributed a handout to Council and voiced opposition to the resolution. He indicated that a mistake was made in platting the easement, opining that they overlapped.

Newton Fuller and Mike Demoreuille supported the resolution with a condition that a small shower be installed so people could clean their feet.

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

Mr. Vander Ploeg stated that his client would install a hose bib and water at the location indicated. He then rebutted Mr. Levy's comments and provided copies of the plat, the survey, and photographs of the staked easement.

At Council's request, Lynn Bodor, the City's Property Specialist/Appraiser, explained that at the time the plat was recorded there was a scrivener's error relating to the amount of footage in the legal description. The City Surveyor caught the error and asked the surveyor who completed the plat to file an affidavit in the public records, which he did on January 26, 2005. In addition, the surveyor included a statement in his affidavit that it was a scrivener's error and did not affect anything "on the ground."

Responding to Council Member Hager, the City Attorney provided information as to whether the City had authority over platting issues; details were provided.

*Motion was made by Council Member Arts, seconded by Council Member Hager, to adopt Resolution No. 33-2009. Motion carried unanimously; Mayor Whelchel, Council Members Arts, Hager, Haynie, and Mullaugh voting yes.*

#### **REGULAR BUSINESS – PART III-A – REGULAR PUBLIC HEARINGS:**

5. Ordinance No. 5077 (First 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's Property Specialist/Appraiser Lynn Bodor gave the PowerPoint presentation and reviewed background information on a prior ordinance (No. 4998), which provided amendments to the LIRP zoning district to allow flexibility in the occupancy and development of LIRP-zoned land. Included in that ordinance was an amendment allowing professional office use, subject to various conditions, including a condition that any building (the entire building - not just the portion for professional office use) proposed for office use must be new or refurbished to substantially improve its appraised value. Consequently, reconstruction standards were also included in the prior amendment to implement that condition. Referring to a third-party benchmark contained within the reconstruction standards, Ms. Bodor advised that said benchmark could be subject to continual revisions due to fluctuations in market standards; passage of the ordinance today would eliminate the benchmark and clarify the remaining language of the original amendment. Specifically, the new language would provide a timeframe for the refurbishment of a building containing professional office uses; these buildings must have been reconstructed or refurbished after September 1, 2004. Ms. Bodor explained that this date mirrored the existing timeframe for the CO (Certificate of Occupancy) of new buildings that contain professional office uses. Additional details were provided.

Ms. Bodor advised that the Planning and Zoning Board reviewed this petition in December 2008 and unanimously recommended approval, as did Development Services staff. She then concluded her presentation and answered questions from Council.

Les Stevens, an attorney representing the owners of 5300 and 5400 Broken Sound Boulevard (the old Rail America Building and the old Purity Wholesale Building), agreed with providing flexibility in the LIRP but objected to the required 50% of appraised value for "A" rated buildings, stating that it was an undue burden. Details were provided. He advised there was nothing in the ordinance to provide for a waiver procedure or exception opportunity for those buildings wherein improvements were made prior to the September 1, 2004 date and were still in excellent condition. Mr. Stevens then answered questions from Council.

Seeing no one else come forward to speak, the public hearing was closed. Mayor Whelchel advised that no vote would be taken this evening.

Mr. Ahnell indicated that staff would take Mr. Stevens' comments under advisement and noted that one of the reasons the September date was chosen was because there were significant changes in the Code at that time. Details were provided. He stated that staff would report back at the next meeting.

6. Ordinance No. 5088 (As revised 3/13/09)

An ordinance of the City of Boca Raton amending Chapter 20, Article II, Environmentally Sensitive Lands, Code of Ordinances, relating to alterations involving environmentally sensitive lands; the amendments serve to modify the procedures, eligibility and calculations related to the requirement to set aside environmentally sensitive lands and the criteria for a payment in lieu of the environmental set aside; providing for severability; providing for repealer; providing for codification; providing an effective date (AM-08-05)

Development Services Principal Planner Jennifer Hofmeister began by responding to a Workshop query regarding the relationship between open space and environmental set aside requirements and then proceeded with a PowerPoint presentation on the above ordinance. She explained that this ordinance was created in response to the understanding that small pockets of preserved land cannot maintain the diversity necessary for wildlife habitat. In addition, the requirement for the environmental set aside can result in isolated natural areas that have minimal positive effects on the community. This ordinance would modify the criteria for the payment in lieu of a set aside based upon, among other standards, the size of the preserve rather than the total acreage of the development site, as currently required by Code. The purpose of the ordinance is to allow the City to efficiently protect, preserve, and manage existing publicly-owned environmentally sensitive lands. There followed a review of five requirements that must be met before the payment in lieu option may be considered by Council, which included an environmental assessment prepared by a qualified biologist, as defined by City Code. Information required in the assessment was also reviewed.

Ms. Hofmeister explained that this proposed ordinance would not apply to lands designated as Public Recreation (PR) or Conservation (N), and it would not permit previously-approved set asides of environmentally sensitive land, which have deteriorated due to poor management, to participate in the payment in lieu option. The amendment also establishes the application process, the methodology for calculating the payment, the timing of the payment to the City, and where the City deposits the funds. Additional information was provided as to the amount of the payment in lieu and how it is calculated.

The Environmental Advisory Board (EAB) and the Planning and Zoning Board reviewed this petition; both Boards unanimously recommended approval, as did staff. Ms. Hofmeister then answered questions from Council regarding revisions made to the ordinance related to environmental species; how the City might protect small pockets of environmental land set asides, listed on previously-approved site plans, which are located in areas not platted as natural; and whether these revisions had occurred after review by the EAB.

Robert DuKate voiced opposition to the ordinance and indicated that it was being brought forward to benefit a specific property owned by Kolter Company. Details were provided.

Grant Thornbrough, a landscape architect retained by Kolter Company, rebutted statements made by Mr. DuKate.

The City Attorney clarified that this ordinance was not being considered with respect to the Kolter property; it was an amendment to the Code of Ordinances. Consideration of the Kolter property or any other property with respect to a payment in lieu would require its own public hearing.

Responding to Council, Ms. Hofmeister provided additional information related to an inconsistency discovered – and corrected – by staff, regarding environmental species, which resulted in the revisions. She then gave the floor to the City's Environmental Officer, Nora Fosman, who explained in greater detail the term, "isolated natural areas," and the purpose/intent of the amendment; details were provided. She confirmed with Council that this ordinance offered protections for the environmental parcels in the City.

*Motion was made by Council Member Arts, seconded by Council Member Hager, to adopt Ordinance No. 5088. Motion carried unanimously; Mayor Whelchel, Council Members Arts, Hager, Haynie, and Mullaugh voting yes.*

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

The public hearings on Item Nos. 7 through 10 were held contemporaneously and pursuant to quasi-judicial procedure; a separate vote was taken on each item.

7. Ordinance No. 5089 (As revised 3/24/09) (Four votes required for adoption)

An ordinance of the City of Boca Raton amending the Future Land Use Map of the Comprehensive Plan by redesignating certain property consisting of 5.934 acres, from Light Industrial (IL) to Commercial (C); providing for severability; providing for repealer; providing an effective date (UC-08-03SC)

8. Ordinance No. 5090 (As revised 3/16/09)

An ordinance of the City of Boca Raton rezoning, pursuant to Article VI, Chapter 23, Code of Ordinances, a parcel of land consisting of 5.934 acres, located at 4002 North Military Trail, from Light Industrial Research Park (LIRP) to Community Business (B-2); providing for severability; providing for repealer; providing an effective date (UC-08-03)

9. Resolution No. 31-2009 (Revised 3/24/09)

A resolution of the City of Boca Raton approving a Planned Commercial Development, with a Master Plan, for the proposed Boca Commercial, subject to conditions; providing for severability; providing for repealer; providing an effective date (UC-08-03/PCD)

10. Resolution No. 32-2009 (Revised 3/24/09)

A resolution of the City of Boca Raton granting Tentative Plat Approval to the proposed Military/Spanish River Planned Commercial Development Plat, subject to conditions; providing for severability; providing for repealer; providing an effective date (UC-08-03/SUB)

The City Attorney reviewed the quasi-judicial procedures that would govern the public hearing; the City Clerk administered the oath to those who indicated they wished to speak. Under ex parte disclosures, Council Members Arts, Haynie and Mullaugh advised that they met with Mitch Kirschner and John Csapo. Council Member Hager advised that he met with Mr. Kirschner; Mayor Whelchel stated she spoke with Mr. Kirschner on the phone.

Development Services Principal Planner Jennifer Hofmeister gave the PowerPoint presentation, advising that this was a request for Universal Conditional Use approval to construct a retail and office development, known as Boca Commercial, at the corner of Military Trail and Spanish River Boulevard; this request included site plan approval with three technical deviations related to parking and driveway design. Acreage and location was then reviewed. Ms. Hofmeister stated that the proposed development would consist of a 4,000 square-foot drive-through bank; a two-story, 25,000 square-foot office building; and two one-story retail buildings, containing 25,500 square feet of retail and 6,000 square feet of restaurant uses. She then outlined vehicular access to and from the site. Referring to the City's MMTD (MultiModal Transportation District) initiative, Ms. Hofmeister advised that MMTD design concepts were incorporated into the site, which sought to encourage pedestrian access, reduce the number of daily trips on external roadways, and provide for a shared parking program; details were provided.

Attention then focused on the three technical deviations. The first technical deviation related to the driveway design. Specifically, the bank driveway along Military Trail did not meet the minimum driveway spacing requirements of 245 feet, being approximately 100 feet to the north of the proposed right-in /

right-out driveway along Military Trail. Since it is a right-out only driveway, the City's Engineer can support the technical deviation.

The two remaining technical deviations related to a reduction in parking spaces and the reservation of required parking spaces. Ms. Hofmeister advised that a shared parking analysis concluded that the site had a peak parking demand of 292 parking spaces; the petitioner proposed to provide 259 spaces. The petitioner also requested that five additional parking spaces be reserved for employees of the proposed office building. Details were provided on both technical deviations. Ms. Hofmeister stated that the project's traffic engineer, Kimley-Horn, certified there is adequate parking even without the five reserved spaces; the City's Traffic Engineer supported the technical deviations.

There followed information related to trip generations; 2,203 more daily trips would be generated by this development. An evaluation of roadway links was conducted to determine which links would exceed capacity at project build-out. Ms. Hofmeister indicated that the link along Glades Road from St. Andrews Boulevard to I-95 is projected to fail and was, in fact, anticipated to do so with or without this proposed project, since the Glades Road link is currently more than 10% over capacity now. Due to this projected failure, growth management legislation would normally prohibit any development from going forward. However, Palm Beach County adopted temporary CRALLS designations for certain roadways, such as those that exceed 110% of capacity, for the exclusive use of projects with insignificant impacts. In order to utilize the CRALLS designation, projects must implement one of a list of mitigation requirements, one of which is payment of a mitigation fee. In this case, the proposed Boca Commercial project would impact the Glades Road temporary CRALLS with eight additional peak hour trips, resulting in a de minimus mitigation fee of \$288 to Palm Beach County.

Ms. Hofmeister spoke to the proposed change in the Future Land Use designation as well as consistency, concurrency, and compatibility with the City's Comprehensive Plan; details were provided. It was also noted that the Planning and Zoning Board reviewed this petition and recommended approval.

Advising that revised documents were provided to Council this evening, Ms. Hofmeister reviewed the minor changes to the ordinances and resolutions. She concluded her presentation, stated that staff recommended approval, and then answered questions from Council.

Responding to Council, the City's Traffic Engineer, Douglas Hess, provided information on how traffic would be mitigated in relation to this project and whether there was concern regarding the peak hours of adjacent schools coinciding with operation of Boca Commercial; details were provided.

John Csapo, Senior Vice President of Kolter Communities, spoke about the Kolter company and advocated support of the project.

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

*Motion was made by Council Member Arts, seconded by Council Member Hager, to adopt Ordinance No. 5089, as revised 3/24/09. Motion carried unanimously; Mayor Whelchel, Council Members Arts, Hager, Haynie, and Mullaugh voting yes.*

*Motion was made by Council Member Haynie, seconded by Council Member Hager, to adopt Ordinance No. 5090, as revised 3/16/09. Motion carried unanimously; Mayor Whelchel, Council Members Arts, Hager, Haynie, and Mullaugh voting yes.*

*Motion was made by Council Member Arts, seconded by Council Member Hager, to adopt Resolution No. 31-2009, as revised 3/24/09. Motion carried unanimously; Mayor Whelchel, Council Members Arts, Hager, Haynie, and Mullaugh voting yes.*

*Motion was made by Council Member Hager, seconded by Council Member Mullaugh, to adopt Resolution No. 32-2009, as revised 3/24/09. Motion carried unanimously; Mayor Whelchel, Council Members Arts, Hager, Haynie, and Mullaugh voting yes.*

**REGULAR BUSINESS – PART IV - REGULAR PUBLIC HEARINGS/SETTLEMENTS:**

10.a. Resolution No. 49-2009

A resolution of the City of Boca Raton authorizing the settlement of a claim for Nicholas Solomone (AL07-OO15-PS); providing for severability; providing for repealer; providing an effective date

The City Manager recommended approval of this settlement, which involved an auto accident.

*Motion was made by Council Member Hager, seconded by Council Member Arts, to adopt Resolution No. 49-2009. Motion carried unanimously; Mayor Whelchel, Council Members Arts, Hager, Haynie, and Mullaugh voting yes.*

**REGULAR BUSINESS – PART V - INTRODUCTION OF ORDINANCES:**

11. Ordinance No. 5091

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; providing for severability; providing for repealer; providing an effective date

The ordinance was introduced by Council Member Mullaugh.

**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.

**QUASI-JUDICIAL PUBLIC HEARING – REQUEST FOR VARIANCE FROM CHAPTER 24 – SIGN CODE:**

12. Resolution No. 35-2009

A resolution of the City of Boca Raton considering a variance from the provisions of Section 24-77(B), Code of Ordinances, to allow three (3) additional freestanding signs for a total of four (4) freestanding signs on the property; to allow four (4) freestanding signs to be illuminated beyond 9:00 PM; and to allow the faces of one of the four (4) free standing signs to exceed 24 square feet; for the Advent Lutheran Church property located at 300 E. Yamato Road and 4798 N. Dixie Highway; providing for severability; providing for repealer; providing an effective date (SCV 08-10)

Mayor Whelchel indicated that quasi-judicial procedure would be followed for this public hearing; the City Clerk administered the oath to those who indicated they wished to speak. Under ex parte disclosures, Council Member Haynie advised that she spoke with Kevin Wrenn.

Community Development Director Jorge Camejo gave the PowerPoint presentation. He explained that in single-family residential districts, nonresidential uses are limited to one sign per property. Advent Lutheran proposed a total of four signs, which would be illuminated beyond 9:00 p.m., with one sign exceeding 24 square feet for the sign face. Mr. Camejo outlined the locations of the proposed signs, identified as A-1, A-2, B, and C, noting that A-1, A-2, and B (the sign exceeding 24 square feet) would face Yamato Road, and C would face Dixie Highway; details were provided.

The Community Appearance Board reviewed this request and voted 3-1 to recommend approval with the condition that the street address be added to signs A-1 and A-2. In conclusion, staff also recommended approval. Mr. Camejo then answered questions from Council related to the illumination, advising that the signs would be lit from sunup to sundown but they would not be flashing signs. Mr. Ahnell added that staff researched other residential areas with illuminated signage to provide a comparison.

Kevin Wrenn, Business Administrator for Advent Ministries, advocated support for the petition.

*Motion was made by Council Member Haynie, seconded by Council Member Hager, to adopt Resolution No. 35-2009 to allow the variance. Motion carried unanimously; Mayor Whelchel, Council Members Arts, Hager, Haynie and Mullaugh voting yes.*

### **CITY MANAGER RECOMMENDATIONS AND REPORTS:**

Referring to the cell tower proposed in the Palm Beach Farms subdivision, Mr. Ahnell advised that staff and the City's attorneys had reviewed this issue, at Council's request, and now sought authorization to bring forward several proposed Code amendments to the next Council meeting. Specifically, those amendments were as follows: 1) utility poles and similar structures are not eligible to be considered antenna support structures but instead treated as telecommunication towers and subject to the full review of Council, 2) antenna support structures would require City Council review, and 3) any antenna installations or support structures cannot become the principle feature or main use of a facility. He noted that these amendments would provide for general policy and solidify the City's position and asked for direction.

*Motion was made by Council Member Haynie, seconded by Council Member Mullaugh, to authorize City staff to move forward in the direction as outlined by the City Manager. Motion carried unanimously; Mayor Whelchel, Council Members Arts, Hager, Haynie and Mullaugh voting yes.*

Mr. Ahnell added that no additional information had been forthcoming in regard to the FPL substation tower issue at Palm Beach Farms. T-Mobile had not come to the City to satisfy their building permit requirements; therefore, they would fall under the new direction provided by Council tonight for anything they might apply for in the future.

Mr. Ahnell then advised that staff was closely monitoring the State budgetary process, noting numerous bills are coming forward that, if adopted, would significantly impact the City's finances and operations; in many cases, the City is aggressively lobbying as well. He cautioned that substantial budgetary impacts may be coming out of the State this year, which would not benefit the City.

Council Member Haynie reported that some legislation sought to prohibit cities from applying surcharges to water bills levied on people who live outside city limits but use city water. Noting that the City receives substantial revenue from this, she asked for input from the City Manager. Mr. Ahnell provided information on water surcharges, which are applied by many cities other than Boca Raton, and the proposed legislation that would eliminate same. He stated that, although there was a hard push to pass the bill, there is just as much opposition; details were provided.

### **CITY ATTORNEY REPORTS:**

Ms. Frieser referred to the Ocean Breeze project and several challenges to the Council's decision, which were brought forward by, "Save Boca Raton Green Space, Inc.," and related to referendum issues. She reported that counsel for the developer, together with City's counsel, filed a Motion for Summary Judgment. The petitioner agreed not to dispute same; details were provided. Ms. Frieser concluded by stating that staff would continue to follow the remaining portions of the Ocean Breeze project.

**MAYOR AND COUNCIL MEMBER REPORTS:**

Council Members Haynie and Mullaugh voiced pleasure at having served with Council Members Arts and Hager, as did Mayor Whelchel, who indicated she would reserve her goodbyes for the Organizational Meeting. Council Members Arts and Hager recognized one another, as well as their colleagues – past and present – and professional staff and family, and congratulated the incoming Council Members-elect.

Council Member Hager also advised that he announced today his candidacy for District 87 (State House of Representatives), currently held by Representative Adam Hasner, who would be term limited out.

Mayor Whelchel reported on the opening today of the new Blazing Star Preserve.

**ADJOURNMENT:**

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

The regular meeting of the City Council of the City of Boca Raton adjourned at approximately 8:20 p.m. on Tuesday, March 24, 2009.

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Susan Whelchel, Mayor

ATTEST:

\_\_\_\_\_  
Sharma Hagerty, City Clerk