

MINUTES OF THE REGULAR MEETING
BOCA RATON COMMUNITY REDEVELOPMENT AGENCY
TUESDAY, FEBRUARY 22, 2005
3:30 P.M.

The regular meeting of the Boca Raton Community Redevelopment Agency was called to order by Chairman Susan Whelchel at approximately 3:30 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG:

ROLL CALL:

Chairman Susan Whelchel
Vice Chairman Susan Haynie
Commissioner Steven L. Abrams
Commissioner Dave Freudenberg
Commissioner Bill Hager

Also attending the meeting were:

CRA Executive Director Jorge Camejo
Boca Raton City Manager Leif J. Ahnell
Boca Raton City Attorney Diana Grub Frieser, Attorney to the Agency

AMENDMENTS TO THE AGENDA:

Motion was made by Commissioner Hager, seconded by Vice Chairman Haynie, to amend the agenda to add Resolution 2004-10-CRA for consideration under, "Regular Business – Part II – Resolutions." Motion carried unanimously on a voice vote; Chairman Whelchel, Vice Chairman Haynie, and Commissioners Abrams, Freudenberg, and Hager voting yes.

MINUTES:

Minutes of the Regular Meeting of February 7, 2005

Motion was made by Commissioner Hager, seconded by Vice Chairman Haynie, to approve the minutes as presented. Motion carried unanimously on a voice vote; Chairman Whelchel, Vice Chairman Haynie, and Commissioners Abrams, Freudenberg, and Hager voting yes.

REGULAR BUSINESS - PART I - QUASI-JUDICIAL & RELATED PUBLIC HEARINGS:

1. **DDRI IDA NO. CRP-04-04**

An Individual Development Approval of the City of Boca Raton Community Redevelopment Agency granting the petition of Elidin Enterprises, Inc. for Individual Development Approval to develop a 6,830 square foot office building located at 21 SE 5th Street

The City Clerk administered the oath to those who indicated they wished to speak on this petition; the City Attorney advised that this hearing would be governed by quasi-judicial procedure. There were no ex parte disclosures.

Development Services Planner Daryl Johnson gave the PowerPoint presentation. Frontages, acreage, zoning, and land use designation was provided. Mr. Johnson explained that the proposed two-story building would consist of office space on the first and second floors; pedestrian and vehicle access was then reviewed. It was noted that this building met all setback requirements; information related to parking, building heights, and the expected tax revenue was also outlined. This proposal was reviewed by the Community Appearance Board, whose members recommended approval. The Planning and Zoning Board also reviewed this project and recommended approval, as did staff, with the conditions

listed in the Individual Development Approval (IDA). Mr. Johnson concluded his presentation and then answered questions from the CRA.

The public hearing was opened and, seeing no one come forward, closed.

Motion was made by Vice Chairman Haynie, seconded by Commissioner Abrams, to adopt DDRI IDA NO. CRP-04-04. Motion carried unanimously; Chairman Whelchel, Vice Chairman Haynie, and Commissioners Abrams, Freudenberg, and Hager voting yes.

2. DDRI IDA NO. CRP-04-06

An Individual Development Approval of the City of Boca Raton Community Redevelopment Agency granting the petition of 200 East Limited; granting a transfer of authorized development between subareas to develop a 335,480 square foot retail and residential building with an attached parking garage located at 200 East Palmetto Park Road

The City Clerk administered the oath to those who indicated they wished to speak on this petition; there were no ex parte disclosures. It was noted that this hearing would also be governed by the rules for quasi-judicial procedure.

Development Services Senior Planner Jennifer Simon gave the PowerPoint presentation, saying that this was a request to change the previously-approved Individual Development Approval (IDA) for the 200 East Mixed-Use Project. Acreage, location, and the project's history were provided, beginning with the original IDA approval on July 8, 2002. Ms. Simon advised that the first phase of the development, comprised of a 10,953 square foot, two-story freestanding bank building, had been completed.

The petition before members today involved an amendment to the second phase of the project. The proposed change would convert the second and third levels of the mixed-use building from office to residential use, resulting in residential uses occupying the second through the ninth levels of the building. In addition, the petitioner was proposing to eliminate 29 of the residential units and enlarge the remaining 117. Ms. Simon outlined the uses on each of the levels and included square footages and architectural details; driveway design, access, and parking were also reviewed. Focus was then given to the Transfer of Authorized Development. Ms. Simon advised that the reduction in residential units would result in a decrease in the required Transfer of Authorized Development from the previously-approved 89,752 square feet to 34,514 square feet; details were provided. Ms. Simon also spoke to the issue of traffic and explained that trip generations would be decreased.

The Community Appearance Board and the Planning and Zoning Board reviewed this petition; both bodies unanimously recommended approval. Staff also recommended approval with the conditions listed in the IDA. Ms. Simon noted that Condition 8.b.6. of the IDA should have been deleted by staff; at this time, staff requested a motion to that effect be made. She concluded her presentation and answered questions from members.

Wendy Larsen, representing the petitioner, spoke in support of the request.

Thomas LaFreniere and Dave Gillette voiced concern regarding problems encountered by affected neighborhoods during the first construction phase. Mr. Gillette also reported that construction began before 8:00 a.m. and posed several other questions to Council before opining that planning consideration should be given to the current lack of green space needed for dog owners. Mr. Camejo advised that, per Code, construction may begin at 7:00 a.m. and responded to questions from Mr. Gillette regarding eight proposed public parking spaces and a right-turn only lane. The City's Traffic Engineer Douglas Hess responded to a question regarding a proposed speed hump, stating that one speed hump currently exists on Royal Palm Road; a condition of this approval proposes to construct another speed hump on the same road. He added that a third speed hump was proposed on Royal Palm Road, further east, for a separate development.

Siglinda Reider, a resident of GolfView Condominiums, voiced opposition to additional traffic on Royal Palm Road and requested more bike lanes and sidewalks.

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

Motion was made by Commissioner Hager, seconded by Vice Chairman Haynie, to adopt DDRI IDA NO. CRP-04-06.

Motion was made by Commissioner Hager, seconded by Vice Chairman Haynie, to amend DDRI IDA NO. CRP-04-06 by deleting Condition 8.b.6. Motion carried unanimously on a voice vote; Chairman Whelchel, Vice Chairman Haynie, and Commissioners Abrams, Freudenberg, and Hager voting yes.

The vote on the main motion to adopt DDRI IDA NO. CRP-04-06, as amended, carried unanimously; Chairman Whelchel, Vice Chairman Haynie, and Commissioners Abrams, Freudenberg, and Hager voting yes.

The Community Redevelopment Agency recessed at 4:10 p.m. and reconvened at 4:20 p.m.

PUBLIC REQUESTS:

No one came forward to speak.

REGULAR BUSINESS - PART II - RESOLUTIONS:

3. Resolution No. 2004-11-CRA (Continued from the February 7, 2005 meeting)

A resolution of the Boca Raton Community Redevelopment Agency consenting to, and authorizing the execution of, the assignment of the lease with the International Museum of Cartoon Art, Inc.; authorizing the execution of an amended and restated lease agreement; authorizing the execution of any documents provided for or contemplated by the assignment and/or the amended and restated lease; providing for severability; providing for repealer; providing an effective date

The court reporter was asked to identify herself; she stated that she was Lindsay Ash with Lawyers' Reporting, Inc., here on behalf of Charles Rutherford.

Executive Director Jorge Camejo gave a brief history of events leading up to the present and then stated that the PowerPoint presentation this afternoon would summarize the report provided under separate cover to Agency members on Friday.

Mr. Camejo advised that the subject resolution would authorize the CRA Chairman to execute the Assignment of Lease, the Amended and Restated Lease, the Right to Cure Agreement and additional documents contemplated therein. He added that Council would consider Ordinance No. 4841 tomorrow and, upon passage of same and delivery of an executed lease agreement between Mizner Park Cultural Arts Association (MPCAA) and Mizner Park Holdings V, the transaction would be complete. Mr. Camejo clarified that the not-for-profit entity was MPCAA and identified the Board appointees; the private entity is Mizner Park Holdings V, which consists of the former Rouse Company, now known as General Growth Properties.

The terms of the Amended and Restated Lease were briefly reviewed, as were the conditions related to redevelopment of the site. Time frames were also outlined; Mr. Camejo advised Agency members of a correction, stating that dates could be extended in the event of an unavoidable delay including litigation. Improvements to the first, second, and third floors of the building were then delineated in detail; permitted uses for each of the floors were also reviewed.

Mr. Camejo then detailed rent to be charged to cultural subtenants, pass-through charges, and occupancy for the second and third floors. He also advised that the excess liability insurance met the requirements of other commercial leases in Mizner Park and then reviewed the Right to Cure Agreement, which addresses what would take place should the cultural subtenants cease to operate. Essentially, this document provides that the commercial interests on the first floor may continue in the event that the cultural subtenants fail. Mr. Camejo also outlined two types of limited events of default, that being, 1)

failure to comply with cultural opening or reopening requirements, and 2) loss of not-for-profit status, and reviewed measures to be taken to correct these limited events of default. He then concluded his presentation, thanking all parties involved in this transaction, and answered questions from Agency members.

Elaine Cohen, special counsel for the CRA, addressed the issue brought forward by the Agency related to the restaurant use, saying that it fell within the purview of Section 37.22(ii) of the Assignment of Lease. The Agency also questioned the provision regarding the period of litigation and/or unavoidable delay. Ms. Cohen advised that a redevelopment schedule could be found in Section 11 for the proposed redevelopment, which would be tolled in the event of an unavoidable delay, such as war, riots, or ongoing litigation brought by a third party. The City Attorney then read into the record a revision to the subject provision, which was agreed to by the parties, found on Page 32 of the lease assignment, the following new last sentence to appear before Section 11.2: "Notwithstanding the foregoing, the afore-described redevelopment schedule shall not be tolled in the event of any litigation brought by a tenant or subtenant or any sub-subtenant under any further level of subletting within the Mizner Park project, challenging the use of the premises by a particular tenant or subtenant or any sub-subtenant under any further level of subletting."

Charles Siemon, representing General Growth Properties, advised that there would never be any tenants on the first floor; everyone would be a subtenant. Therefore, he asked that the language be revised to read, "...particular subtenant or sub-subtenant..." Ms. Frieser agreed with the correction. Mr. Siemon then spoke in support of the transaction.

Charles Rutherford, an attorney representing Max's Grill, questioned whether a traffic study and a parking study had been conducted in terms of projected cars and trip generations and whether any tenants had been settled upon at this point. Mr. Camejo stated that traffic issues are addressed as part of the Individual Development Approval (IDA) process. With regard to tenants, it was hoped that Vald Svekis, the former owner of the Liberties Bookstore, would come back to Mizner Park; otherwise, there were no tenants contemplated in the documents. Ms. Frieser clarified that the documents presented are with MPCA, the cultural non-profit organization, which will enter into the subleases; the CRA is removed from that action.

Mr. Siemon provided commentary related to parking in Mizner Park, stating that previously-approved parking management strategies are being implemented to accommodate the uses in the Cartoon Museum building.

Michael Kotler, representing Mort and Catherine Walker, the current owners of the Cartoon Museum building, spoke in support of the signing of the documents and thanked all parties involved in same.

Mr. Rutherford advised that his clients were concerned with the last amendment made to the agreement, that forestalls the development plan until any litigation that might be brought forward is resolved, and wished to note their position for the record. Seeing no one else come forward to speak, the public hearing was closed.

Responding to Agency members, Ms. Frieser answered questions related to the bookstore proposed for location in Mizner Park and the \$3 million anticipated from the County, as a result of the cultural bond issue passed by voters in 2002. She then referred to three items previously distributed to Agency members, the first being replacement pages for the Amended and Restated Lease; Ms. Frieser stated that these corrections were simply "clean-up" revisions with the exception of one, which she would review momentarily. The second item was a copy of a set of plans, which was an attachment to the amended and restated lease. The third item was the Right to Cure agreement, containing language to address the final revisions made in the amended and restated lease, as well as some "clean-up" items. She advised that representatives of the MPCA reviewed these documents and found them acceptable.

Ms. Frieser then drew attention to Page 59, Section 37.27 of the assignment of lease, and read the following revised language into the record, ".....preparation, negotiation, finalization and execution of this Lease in an amount not to exceed the sum of \$25,000, which sum is in addition to those fees and expenses previously paid or reimbursed to landlord prior to February 22, 2005." Ms. Frieser also confirmed that the legal description, which exists on the current lease, and the legal description attached

to the amended and restated lease, is identical. Last of all, Ms. Frieser advised that the instrument Agency members would be voting on was Revised Resolution 2004-11-CRA, which was distributed to the CRA as part of the package, prior to this afternoon.

Motion was made by Commissioner Hager, seconded by Commissioner Abrams, to adopt Revised Resolution No. 2004-11-CRA, as modified.

Responding to the CRA, Mr. Siemon answered questions related to whether any identified non-profit organizations had an agreement with the MPCAA and whether a new name yet existed for the Cartoon Museum building. Mr. Siemon advised that Boca Raton Educational Television (BRET) would be located on the third floor, and cultural groups that had previously expressed interest in the site would be contacted again. At this time, a name had not yet been chosen for the building, although "Cultural Arts Center" was a suggestion.

Responding the Chairman Whelchel, the City Attorney advised that she understood the main motion to incorporate the revisions she distributed and identified, as well as the revisions she read into the record.

The motion to adopt Revised Resolution No. 2004-11-CRA, as amended, carried unanimously; Chairman Whelchel, Vice Chairman Haynie, and Commissioners Abrams, Freudenberg, and Hager voting yes.

3.a. Resolution No. 2004-10-CRA

A resolution of the Boca Raton Community Redevelopment Agency amending Resolution No. 89-B-89 regarding the policy of the Agency for parcels of land planned for civic, public and cultural uses in Mizner Park; providing for severability; providing for repealer; providing an effective date

Mr. Camejo stated that this resolution would provide for limited commercial uses on Parcel 2, which is the Cartoon Museum parcel, located at the southwest corner of Mizner Park, provided those commercial opportunities are supportive of the cultural and civic uses placed in the Cartoon Museum facility.

The public hearing was opened and, seeing no one come forward to speak, closed.

Motion was made by Commissioner Hager, seconded by Vice Chairman Haynie, to adopt Resolution No. 2004-10-CRA. Motion carried unanimously; Chairman Whelchel, Vice Chairman Haynie, and Commissioners Abrams, Freudenberg, and Hager voting yes.

QUASI-JUDICIAL PUBLIC HEARING – APPEAL OF BOARD DECISION:

There were no items for consideration.

OTHER BUSINESS:

There were no items for consideration.

DIRECTOR'S REPORT:

4. Request for Extension of Cessation of Operations
(International Museum of Cartoon Art)

Michael Kotler, the attorney representing Mort and Catherine Walker, spoke on behalf of his clients with regard to the actual finalization of this transaction, which was expected within the next two weeks. The City Attorney provided assurances to Mr. Kotler that, should the CRA act on the default – which the CRA did not intend to do – she would give Mr. Kotler advance notice in order that he could appear before the CRA, should she seek direction to that end. Mr. Kotler agreed with the assurance provided and added that his clients simply needed enough time to close, in what was anticipated to be approximately ten to twelve days. Consequently, Ms. Frieser advised the Chairman that this request had been disposed of; no action was needed.

ATTORNEY'S REPORT:

The City Attorney had nothing to report at this time.

COMMISSIONERS' REPORTS:

Vice Chairman Haynie commented on the showing of the "Wizard of Oz" at the amphitheatre on Friday night, at Mizner Park, and stated that the event was well attended.

ADJOURNMENT:

Motion was made by Commissioner Hager, seconded by Commissioner Abrams, to adjourn the meeting. Motion carried unanimously on a voice vote; Chairman Whelchel, Vice Chairman Haynie, Commissioners Abrams, Freudenberg, and Hager voting yes.

The regular meeting of the Boca Raton Community Redevelopment Agency adjourned at approximately 5:07 p.m., Tuesday, February 22, 2005.

Susan Whelchel, Chairman

ATTEST:

Sharma Carannante, City Clerk