

MINUTES OF THE REGULAR MEETING
CITY COUNCIL
CITY OF BOCA RATON, FLORIDA
TUESDAY, DECEMBER 8, 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 (arrived at approximately 6:05 pm)

AMENDMENTS TO THE AGENDA:

Motion was made by Deputy Mayor Haynie, seconded by Council Member Mullaugh to amend the agenda to add Ordinance No. 5124 as Item No. 8.a. under "Regular Business – Part V – Introduction of Ordinances." Motion carried 4-0 on a voice vote; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess and Mullaugh voting yes.

MINUTES:

Minutes of the Regular Workshop Meeting of November 23, 2009
Minutes of the Regular Meeting of November 24, 2009

Motion was made by Council Member Mullaugh, seconded by Deputy Mayor Haynie, to approve the minutes as presented. Motion carried 4-0 on a voice vote; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess and Mullaugh voting yes.

PROCLAMATIONS/RECOGNITIONS/AWARDS:

There were no proclamations, recognitions or awards.

REGULAR BUSINESS - PART I:

1. Appointments to the following boards:

- a. Boca Raton Advisory Board for People With Disabilities – one (1) vacancy.

Joni Marin expressed interest in serving on the Board.

Motion was made by Deputy Mayor Haynie, seconded by Mayor Whelchel, to appoint Joni Marin to the Boca Raton Advisory Board for People With Disabilities. Motion carried 4-0 on a voice vote; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess and Mullaugh voting yes.

Ms. Marin was appointed to the Board.

- b. Citizens' Pedestrian & Bikeway Advisory Board – three (3) vacancies.

Joe Brinkerhoff interviewed for a position on the Board.

Motion was made by Deputy Mayor Haynie to reappoint Herbert Levin, James Sumislaski, and James Wood, and to appoint Joe Brinkerhoff, to the Citizens' Pedestrian & Bikeway Advisory Board. Motion carried unanimously on a voice vote; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh, and Scott voting yes.

Mr. Levin, Mr. Sumislaski, and Mr. Wood were reappointed; Mr. Brinkerhoff was appointed.

- c. Downtown Boca Raton Advisory Committee – three (3) vacancies.

Jariel Bortnick expressed interest in serving on the Committee.

At this time, Derek Vander Ploeg came to the podium and advised that Clem Storch, a member of the Downtown Boca Raton Advisory Committee, had passed away yesterday. Responding to Council, the City Attorney explained that the currently advertised vacancies should be filled first; Mr. Storch's position on the Committee would be advertised and filled at a later date.

Seeing no one else come forward to speak, the floor was opened for nominations. Council Member Mullaugh nominated Jariel Bortnick, Judith Teller-Kaye, and Bill Trinkka. Deputy Mayor Haynie nominated Joe Panella; Council Member Majhess nominated Andrea O'Rourke. Nominations were then closed without objection.

In the voting: Mayor Whelchel voted for Joe Panella, Jariel Bortnick, and Judith Teller-Kaye. Deputy Mayor Haynie, Council Members Majhess and Scott voted for Joe Panella, Bill Trinkka, and Andrea O'Rourke. Council Member Mullaugh voted for Bill Trinkka, Judith Teller-Kaye, and Jariel Bortnick.

Mr. Panella, Mr. Trinkka, and Ms. O'Rourke were appointed to the Downtown Boca Raton Advisory Committee.

- d. Green Living Task Force – one (1) vacancy.

Pat St. Germaine, David Etzler, Silvia Hall, and Maggie Barszewski expressed interest in appointment.

Motion was made by Council Member Scott to appoint Maggie Barszewski to the Green Living Task Force. Motion carried unanimously on a voice vote; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh, and Scott voting yes.

Ms. Barszewski was appointed to the Task Force.

- e. North Federal Highway Steering Committee – five (5) vacancies.

Robert Aufdenkampe and Derek Vander Ploeg interviewed for positions on the Committee. Following discussion, it was revealed that Mr. Vander Ploeg had not submitted an application. As there were three applicants and five openings, it was determined that Mr. Vander Ploeg could submit an application for one of the two remaining vacancies, which would be advertised again at a later date.

Motion was made by Deputy Mayor Haynie to appoint Andrew Zerbock, Robert Aufdenkampe, and Joseph Sullivan to the North Federal Highway Steering Committee in the positions of Residential Property Owners. Motion carried unanimously on a voice vote; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh, and Scott voting yes.

2. Responses to Workshop Information Requests:

The City Manager indicated that responses to questions from yesterday's workshop meeting would be included in tonight's presentations.

3. Consent Agenda:

Mayor Whelchel provided an opportunity for any member of the public to speak on any Consent Agenda item. No one came forward to speak.

Motion was made by Council Member Mullaugh, seconded by Mayor Whelchel, to approve the Consent Agenda. Motion carried 4-1; Mayor Whelchel, Deputy Mayor Haynie, Council Members Mullaugh and Scott voting yes. Council Member Majhess voted no.

a. Sealed Bid

- | | | |
|----|--|-------------|
| 1) | Reclaimed Water Pipeline Extension – Broken Sound West Golf Course Requested by Utility Services American Engineering & Development Corp. | \$1,712,425 |
|----|--|-------------|

b. Intergovernmental Agreements

- | | | |
|----|--|-----------|
| 1) | Ambulance Stretchers (Replacement) Requested by Fire Rescue Services Stryker Sales Corporation | \$147,000 |
| 2) | Roof Replacement Requested by Municipal Services Advanced Roofing, Inc. | \$211,373 |

c. Sole Source

- | | | |
|----|---|-----------|
| 1) | Radio Controlled Irrigation Equipment System Upgrades Requested by Recreation Services Contemporary Controls & Communications, Inc. | \$209,080 |
|----|---|-----------|

d. Resolution No. 183-2009

A resolution of the City of Boca Raton approving the City's Year 2010 Federal Legislative and Funding Priorities; providing for severability; providing for repealer; providing an effective date

e. Resolution No. 184-2009

A resolution of the City of Boca Raton approving the City's Year 2010 State Legislative and Funding Priorities; providing for severability; providing for repealer; providing an effective date

f. Resolution No. 185-2009

A resolution of the City of Boca Raton canceling and rescheduling certain workshop and regular meetings in 2010, as described more particularly herein; providing for severability; providing for repealer; providing an effective date

g. Board Resignations

- 1) Resignation of Joseph Bensminen from the Boca Raton Advisory Board for People With Disabilities
- 2) Resignation of Nancy Chanin Sneider from the Environmental Advisory Board
- 3) Resignation of Bob Bettinger from the Green Living Task Force
- 4) Resignation of Brian K. Duffey from the North Federal Highway Steering Committee

h. Receive and File Board Minutes – December 8, 2009

- 1) Community Appearance Board
October 27, 2009
November 3, 2009
- 2) Education Advisory Board
August 24, 2009
- 3) Historic Preservation Board
October 20, 2009
- 4) Parks and Recreation Board
October 6, 2009
- 5) People With Disabilities
October 1, 2009
October 1, 2009 (Website Link Committee)

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:

There were no items for consideration.

REGULAR BUSINESS – PART III – REGULAR PUBLIC HEARINGS:

4. Ordinance No. 5118

An ordinance of the City of Boca Raton amending the fiscal year 2009-2010 Budget through a Budget Amendment, relating to acquisition of property at 551 East Palmetto Park Road (Wildflower Property) from Omega Group of West Palm Beach, LP; providing for severability; providing for repealer; providing an effective date

Office of Management and Budget Director Sharon McGuire gave the presentation, stating that in the General Fund, the City Manager's Office recognized a transfer from Reserves to the Capital Improvement

Fund related to the purchase of the Wildflower property in the amount of \$4.5 million; the Capital Improvement Fund recognized the transfer of \$4.5 million from Reserves. Regarding the Land Dedication Fund, Financial Services recognized \$3 million from Reserves for acquisition of the Wildflower property. The grand total of additional revenues and expenditures for this budget amendment is \$4.5 million. Council Member Mullaugh questioned what was left in the Reserves. The City Manager advised that the General Fund Reserves had approximately \$45 million left. He then confirmed with Council Member Mullaugh that staff had anticipated the purchase of this property if the price was right and the administration believed the price was right.

a. Resolution No. 164-2009

A resolution of the City of Boca Raton considering a purchase and sale agreement with Omega Group of West Palm Beach, LP for the purpose of the acquisition of certain real property located in the City of Boca Raton with a street address of 551 East Palmetto Park Road, Boca Raton, Florida; authorizing the Mayor and City Clerk or the City Manager to execute documents provided for or contemplated by the agreement, and to effectuate the transaction; providing for severability; providing for repealer; providing an effective date

Deputy City Manager George Brown gave the PowerPoint presentation. Referring to a question tendered at yesterday's workshop meeting in regard to notice connected with this public hearing and availability of documents, he explained that notice was published on November 6, 2009, which is more than 30 days prior to today's public hearing; consequently, the City was in compliance with the 30-day notice as required by Florida Statute. He also referred to another question regarding a restriction on outdoor dining, explaining that a prior approval (which no longer exists) obtained for the Wildflower restaurant in the 1980s did not provide for outdoor dining; however, there was no deed restriction on the property or recorded covenant related to a restriction on outdoor dining. He advised that when the City plans and develops the property, it would be necessary to obtain approval for same; any appropriate restrictions would be included in the zoning and use approval for the property.

At this time, Mr. Brown provided the location and acreage of the property, advising that the purchase price was \$7.5 million, which was less than the average appraised value of \$8.9 million. Two appraisals were conducted, as required by Statute and the closing was anticipated to take place on December 21, 2009. He added that purchase of this property had been a strategic goal of the City for a number of years and was included in this year's goals as a high priority. He then answered questions from Council Member Mullaugh and Deputy Mayor Haynie as to the use of the property and whether any of the acreage comprised submerged land.

John Stetz, Tom Thayer, Daryl Hurlbert, and Gene Folden all expressed support.

Motion was made by Deputy Mayor Haynie, seconded by Council Member Scott, to adopt Ordinance No. 5118. Motion carried unanimously; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh and Scott voting yes.

Motion was made by Council Member Mullaugh, seconded by Deputy Mayor Haynie, to adopt Resolution No. 164-2009. Motion carried unanimously; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh and Scott voting yes.

5. Ordinance No. 5119

An ordinance of the City of Boca Raton related to construction and demolition debris and commercial solid waste collection franchise requirements; amending Sections 14-21 and 14-22, Code of Ordinances, to clarify requirements and references with regard to container markings, reporting formats, bonds and financial statements and other provisions; providing for severability; providing for repealer; providing for codification; providing an effective date

Municipal Services Director Bob DiChristopher gave the presentation, explaining that this was basically a housekeeping item to provide refinement and clarification of an existing ordinance. He stated that the City currently has 12 vendors providing construction and demolition (C&D) services to the City, the benefits of which had resulted in self-enforcement and competitiveness. Regarding commercial solid waste, there are currently three vendors providing service to the City. Mr. DiChristopher advised that implementation of these services was very effective and presented a good source of revenue; details were provided. He then added that this ordinance would provide clarification regarding insurance and identification of cans and made himself available for questions.

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

Motion was made by Council Member Mullaugh, seconded by Mayor Whelchel, to adopt Ordinance No. 5119. Motion carried unanimously; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh and Scott voting yes.

6. Ordinance No. 5120

An ordinance of the City of Boca Raton amending the City's Comprehensive Plan by changing the Capital Improvement Element to include projects which are necessary for the City to continue to meet its adopted level-of-service standards; amending the Capital Improvement Element to update Table 1: The School District of Palm Beach County Six Year Capital Improvement Schedule; providing for inclusion in the Comprehensive Plan; providing for severability; providing for repealer; providing an effective date

Office of Management and Budget Director Sharon McGuire gave the presentation, stating that this ordinance amended the Capital Improvement Element (CIE) to include projects necessary for the City to continue to meet its adopted level-of-service standards as adopted in the Capital Improvements Program (CIP). Responding to Council Member Majhess, the City Manager explained that the CIP, which includes large construction projects, had already been adopted. Since the City is required by State law to have a Comprehensive Plan, any projects in the CIP and connected with Comprehensive Plan infrastructure must be adopted in the CIE; details were provided.

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

Motion was made by Deputy Mayor Haynie, seconded by Mayor Whelchel, to adopt Ordinance No. 5120. Motion carried unanimously; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh and Scott voting yes.

7. Ordinance No. 5122

An ordinance of the City of Boca Raton amending Section 4-2, Code of Ordinances, extending the hours for sale, delivery and consumption of alcoholic beverages; providing for severability; providing for repealer; providing for codification; providing an effective date

Deputy City Manager George Brown gave the PowerPoint presentation. He explained that current regulations allow the sale, delivery and consumption of alcohol Monday through Saturday from 8:00 am to 2:00 am and on Sunday from 1:00 pm to 2:00 am. This ordinance would allow sale, delivery and consumption of alcoholic beverages seven days per week from 7:00 am to 2:00 am; prohibited hours would be from 2:00 am to 7:00 am. He noted that an exception to this proposed regulation existed in connection with those areas annexed into the City in 2003 and 2004 wherein the sale, delivery and consumption of alcoholic beverages is currently allowed seven days per week from 7:00 am to 5:00 am; details were provided. Responding to Council, Mr. Brown provided clarification as to the regulations in the annexed areas; in general, those areas currently adhere to the County's regulations.

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

Motion was made by Council Member Scott, seconded by Deputy Mayor Haynie, to adopt Ordinance No. 5122. Motion carried unanimously; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh and Scott voting yes.

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

There were no items for consideration.

REGULAR BUSINESS – PART V - INTRODUCTION OF ORDINANCES:

8. Ordinance No. 5123

An ordinance of the City of Boca Raton allowing the City Council to waive residency and elector requirements for appointment to City Boards and Commissions; 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. 5124

An ordinance of the City of Boca Raton creating Division 14, Article XV, Chapter 28 establishing regulations relating to the dispensing of controlled substances; 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:

William Bulla opined that there were security and safety issues within the City that were not being addressed and provided pictures in support of his comments.

QUASI-JUDICIAL PUBLIC HEARING – APPEAL OF BOARD DECISION:

There were no items for consideration.

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:

There were no items for consideration.

CITY MANAGER RECOMMENDATIONS AND REPORTS:

9. Annual Executive Performance Evaluation

Individually, the Mayor and each Council Member provided positive commentary on Mr. Ahnell's abilities and job performance.

Motion was made by Deputy Mayor Haynie, seconded by Council Member Scott, to increase the City Manager's salary by 2%. Motion carried unanimously; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh, and Scott voting yes.

CITY ATTORNEY REPORTS:

10. Annual Executive Performance Evaluation

Individually, the Mayor and each Council Member provided positive commentary on Ms. Frieser’s abilities and job performance.

Motion was made by Council Member Mullaugh, seconded by Mayor Whelchel, to increase the City Attorney’s salary by 2%. Motion carried unanimously; Mayor Whelchel, Deputy Mayor Haynie, Council Members Majhess, Mullaugh, and Scott voting yes.

MAYOR AND COUNCIL MEMBER REPORTS:

The Mayor and Council joined in offering condolences to the family and friends of Clem Storch, a longtime activist in the community and a member of the Downtown Boca Raton Advisory Committee, who passed away yesterday; a service was scheduled for Friday afternoon.

The Mayor and Council also joined in wishing everyone a healthy, happy, and safe holiday season and reminded those present of upcoming holiday festivities.

Council Member Mullaugh referred to a Sun Sentinel article wherein Broward County communities audited Florida Power & Light (FPL) bills in connection with street lights and found that they were consistently being overcharged; credit was given to an outside auditing firm for finding the discrepancies. He suggested that if the City had not yet performed an audit, it should do so. Mr. Ahnell recognized the Municipal Services Department, advising that they are able to perform audits internally on an ongoing, regular basis, which saves the City money by eliminating the need to retain an outside auditing firm. Last year’s audit revealed that FPL overcharged the City by approximately \$33,000 in connection with 167 street lights, which the City was able to recoup. He went on to explain that there are tens of thousands of street lights and it is not easy to keep track of them; however, Municipal Services has stayed on top of this issue and saved our residents money.

ADJOURNMENT:

The regular meeting of the City Council of the City of Boca Raton adjourned, without objection, at approximately 7:30 p.m. on Tuesday, December 8, 2009.

Susan Whelchel, Mayor

ATTEST:

Susan S. Saxton, City Clerk