

CITY OF WEST PALM BEACH
OFFICE OF THE CITY CLERK
REGULAR CITY COMMISSION MEETING
JUNE 16, 2008

The City Commission of the City of West Palm Beach met in regular session on Monday, June 16, 2008 at 4:08 p.m., at City Hall, with the following persons present:

Mayor Lois J. Frankel, President of the Commission Geraldine Muoio, Commissioner Molly Douglas, Commissioner William Moss, Commissioner Isaac Robinson, Jr., City Administrator Edward Mitchell, City Attorney Claudia McKenna, City Clerk Blane Kauthen.

INVOCATION / PLEDGE OF ALLEGIANCE:

The Mayor offered a moment of silence in honor of all the men and women serving overseas and Commissioner Muoio led the Pledge of Allegiance.

ADDITIONS/DELETIONS/REORGANIZATION OF AGENDA:

City Attorney Claudia McKenna [a] announced that an Attorney-Client Session styled as Wright v. Frankel, et al was added to the Agenda, listed as item #23a; and [b] asked that the Attorney-Client Session be announced immediately. It was the consensus of the Commission to allow the immediate announcement of item #23a. Commissioner Douglas announced that the Boys & Girls Club would be accepting a proclamation.

**REORDERED AGENDA:
ANNOUNCEMENT:**

23a. Announcement of Attorney-Client Session – City Attorney Claudia McKenna [a] announced that an Attorney-Client Session to discuss the pending litigation styled as Wright v. Frankel, et al, Case No. 4D06-3386 & 4D06-3697, L.T. No.: 502006CA006094XXXXMB will be conducted on Monday, June 16, 2008, at 5:00 p.m., or as soon thereafter as practicable, in Room 519, City Hall, City of West Palm Beach, 200 Second Street, West Palm Beach, Florida 33401; and [b] noted that Pursuant to Section 286.011(8), Florida Statutes, the Attorney-Client Session will be private and only the following persons may attend the session: the Mayor, Commissioners Douglas, Moss, Muoio and Robinson, City Administrator Edward Mitchell and City Attorney Claudia McKenna.

At this time the Mayor suggested that the Attorney-Client Session be held in the Commission Chambers. Without objection, City Attorney Claudia McKenna amended her announcement to provide that the Attorney-Client Session will be held in the Commission Chambers.

PRESENTATIONS:

1. Presentation regarding the Federal Legislative Action Plan – Rich Gold of Holland & Knight, LLP [a] made a presentation regarding the City’s federal agendas regarding climate change, law enforcement and transportation for Fiscal Years 2007/2008 and 2008/2009; and [b] responded to Commission questions.
2. Presentation of Resolution No. 246-08 – Marketing and Community Events Manager Mary Pinak [a] made a presentation; [b] introduced the Youth Actor’s Guild of Bob Carter’s Actor’s Workshop and Repertory Theatre Company; [c] announced that the Youth Actor’s Guild will perform “We the People,” a patriotic play, at 2:00 p.m. on July 4, 2008 at the Cuillo Centre for the Arts; [d] announced that an adult cast will perform “We the People” at 12:00 p.m. and 4:00 p.m. on July 4, 2008 at the Cuillo Centre for the Arts; [e] announced that the 4th on Flagler event will be held on July 4, 2008 from 5:00 p.m. to 10:00 p.m.; and [f] thanked the City departments, the Executive Committee members, the Community Events Division and the event sponsors who made the 4th on Flagler event possible. The Youth Actor’s Guild performed a scene from “We the People,” and Marketing and Community Events Manager Mary Pinak thanked them for their performance. It was moved by Commissioner Robinson, seconded by Commissioner Douglas, to adopt Resolution No. 246-08 authorizing road closures and the sale, possession and consumption of alcoholic beverages at the 4th on Flagler; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Moss, Muoio and Robinson. Motion therefore carried unanimously.

At this time the Mayor [a] introduced Kimberly Hester, who was partnered with the Mayor in the Turtle Nest Village Program; [b] gave Ms. Hester a book regarding the history of West Palm Beach as a gift; and [c] congratulated her for her success in the program. Ms. Hester [a] spoke about the Turtle Nest Village Program; and [b] accepted the gift with thanks.

CONSENT CALENDAR:

Commissioner Robinson [a] spoke on item #14; and [b] requested that item #16 be pulled from the Consent Calendar for discussion. Director of the Housing and Community

Development Department Emelda Johnson spoke on item #14. Commissioner Moss and Director of Engineering Services Jonathan Bramley spoke on item #15. It was moved by Commissioner Robinson, seconded by Commissioner Moss, to approve the following Consent Calendar:

3. Minutes of the Regular City Commission Meeting held May 19, 2008.
4. Resolution No. 271-08 authorizing the Settlement Agreement reached in the workers compensation claims of John O'Connor.
5. Resolution No. 258-08 authorizing the assessment of City liens in the total amount of \$25,109.26 for unpaid water, sewer, and stormwater service for the month of February 2008.
6. Resolution No. 278-08(F) providing appropriations from General Fund contingency for the Via Clematis project; and Resolution No. 279-08 assessing a lien against the property at 516 Banyan Boulevard for the costs incurred by the City in abating the unsafe conditions.
7. Resolution No. 255-08 authorizing an Interlocal Agreement between the City and the CRA regarding funding for the City Commons and Waterfront project.
8. Resolution No. 280-08(F) amending the personnel detail of the Water and Sewer Operating Fund budget for Fiscal Year 2007/2008 by reallocating certain positions within the Water Treatment Plant; and Resolution No. 14-08 amending the City's Salary Plan to upgrade the pay grade for the Water Plant Operator Trainee and Water Plant Operator job classifications and creating the job classifications of Water Plant Shift Supervisor and Water Plant Operator II.
9. Resolution No. 259-08 approving and authorizing the Mayor to execute a Subordination Agreement which subordinates the City of West Palm Beach mortgage against the Azalea Place Apartments located at 2100 Australian Boulevard. The property owner is SP Azalea Place, LP.
10. Resolution No. 251-08 approving and authorizing Amendments to One Year Action Plans for the Fiscal Years 2001/2002 through 2006/2007 to reprogram federal funds to new activities; and Resolution No. 272-08(F) amending the budget for the reprogramming of funds.

11. Resolution No. 275-08 authorizing the reprogramming of Program Income Funds from State Housing Initiatives Partnership (SHIP) and Hurricane Housing Recovery Program (HHRP); and Resolution No. 273-08(F) providing the appropriations for the reallocation.
12. Resolution No. 288-08 authorizing an application for a grant of up to \$500,000 from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, for a mentoring program at the Northwood and Gaines Park Youth Empowerment Centers.
13. Resolution No. 257-08 authorizing the filing of an application for Federal Transit Administration Grant Funds in the amount of \$247,500 for the construction of the Downtown Transportation Shelter Project.
14. Resolution No. 291-08 establishing a Utility Assistance Program (UAP) for the City of West Palm Beach, Florida; and Resolution No. 292-08(F) providing appropriations.
15. Resolution No. 286-08 authorizing the approval of a Joint Project Agreement between the Florida Department of Transportation (FDOT) and the City of West Palm Beach, providing \$120,001 in funding to the City for the construction of the Belvedere Road and I-95 North Exit Ramp Beautification Project; and Resolution No. 287-08(F) recognizing the grant and amending the Capital Projects Fund to recognize project funding.

and thereafter it was voted as follows: Ayes: Commissioners Douglas, Moss, Muoio and Robinson. Motion therefore carried unanimously.

CONSENT CALENDAR [CONTINUED]:

16. Resolution No. 283-08 – Director of Engineering Services Jonathan Bramley responded to Commission questions. Commissioner Robinson asked that the percentage of small businesses involved in the project be increased from 7% to 10%. Brad Steinmann of Bradanna, Inc. responded to Commissioner Robinson’s question. It was moved by Commissioner Robinson, seconded by Commissioner Douglas, to adopt Resolution No. 283-08 authorizing the award of the Construction Contract for the Gaines Park Community Center and North Wing Renovation Project to Bradanna, Inc.; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Moss, Muoio and Robinson. Motion therefore carried unanimously.

RESOLUTIONS:

17. Resolution No. 281-08, Resolution No. 282-08, Resolution No. 285-08 and Resolution No. 289-08(F) – Director of Finance Randy Sherman responded to Commission questions. It was moved by Commissioner Moss, seconded by Commissioner Douglas, to adopt Resolution No. 281-08 authorizing the issuance of not to exceed \$57,000,000 in principal amount of Utility System Revenue Bonds, Series 2008A, for the purpose of refunding the Utility System Revenue Bonds, Series 2005; Resolution No. 282-08 authorizing the issuance of not to exceed \$40,000,000 in principal amount of Utility System Revenue Bonds, Series 2008B for the purpose of paying the cost of certain utility improvements; Resolution No. 285-08 authorizing the issuance of not to exceed \$110,000,000 in principal amount of Utility System Revenue Bonds, Series 2008C for the purpose of paying the cost of certain utility improvements and authorizing the execution of Series 2008 Swap Agreements; and Resolution No. 289-08(F) providing appropriations; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Moss, Muoio and Robinson. Motion therefore carried unanimously.

At this time City Attorney Claudia McKenna recognized staff, the bond team and the financing team that worked on putting the bonds together.

PUBLIC HEARING:

18. Public Hearing and Second Reading of Ordinance No. 4150-08 – It was moved by Commissioner Muoio, seconded by Commissioner Douglas, to adopt Ordinance No. 4150-08 amending the City Charter relative to repeal of legislative resolutions; providing for a municipal election to be held on November 4, 2008 to approve or reject the amendment; thereupon Ordinance No. 4150-08 was read into the record by title; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Moss, Muoio and Robinson. Motion therefore carried unanimously.
19. Public Hearing and Second Reading of Ordinance No. 4149-08 – It was moved by Commissioner Moss, seconded by Commissioner Muoio, to adopt Ordinance No. 4149-08 amending Chapter 2 of the City Code to reestablish the provision relating to instances in which ordinances, resolutions and motions are required or permitted; thereupon Ordinance No. 4149-08 was read into the record by title; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Moss, Muoio and Robinson. Motion therefore carried unanimously.

At this time the Mayor announced that without objection, item #20 would be discussed after 5:00 p.m.

21. **Public Hearing and First Reading of Ordinance No. 4142-08** – Assistant City Attorney Lisa Conforti made a presentation and responded to Commission questions.

[The Mayor passed the gavel to the President of the Commission and left the meeting at 4:55 p.m.]

Police Captain Patrick Maney and Police Officer David Duncan responded to Commission questions. Commissioner Douglas commended staff for their work on this Ordinance. It was moved by Commissioner Robinson, seconded by Commissioner Moss, to approve Ordinance No. 4142-08 amending Chapter 22 (Businesses and Business Regulations), Article II (Certificate of Use), Division 2 (Employees of Certain Businesses and Drivers of Vehicles for Hire), and creating Article X (Secondhand Goods Dealers) and XI (Secondary Metal Recyclers, Junk Merchants, and Junk Peddlers) to require registration, photographing and fingerprinting requirements as well as regulation relating to Secondhand Goods Dealers, Secondary Metal Recyclers, Junk Merchants and Junk Peddlers operating in the City; thereupon Ordinance No. 4142-08 was read into the record by title; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Moss, Muoio and Robinson. Motion therefore carried unanimously.

At this time Chairperson of the Board of the Florence DeGeorge Boys & Girls Club of Palm Beach County Dr. Gary Barrett [a] made a presentation; [b] thanked the Mayor and Commissioners for supporting the Boys & Girls Club by attending their events; and [c] announced that the fountain at the Florence DeGeorge Boys & Girls Club will be dedicated as the Ray Gore Memorial Fountain on Thursday, June 19, 2008 at 4:00 p.m. The Board of the Florence DeGeorge Boys & Club of Palm Beach County introduced themselves.

[The Mayor returned to the meeting at 5:03 p.m.]

The Mayor declared June 16, 2008 Boys & Girls Club Day. President and CEO of the Boys & Girls Clubs of Palm Beach County Mary O'Connor [a] announced that the Florence DeGeorge Boys & Girls Club was recognized as having the highest degree of excellence in terms of programming above all other Boys & Girls Clubs in the United States; [b] made a presentation; and [c] accepted the proclamation with thanks.

**REORDERED AGENDA:
PUBLIC HEARING [CONTINUED]:**

20. **Public Hearing and Second Reading of Ordinance No. 4141-08** – Deputy City Attorney Nancy Urcheck made a presentation and responded to Commission questions. Finance Director Randy Sherman responded to Commission questions. The Mayor announced that without objection, item #20 would be continued until after item #22.

PUBLIC HEARING - QUASI-JUDICIAL:

-DISCLOSURE OF EX-PARTE COMMUNICATIONS, IF ANY*

Commissioner Muoio stated that she [a] had had ex-parte communications with Trinity 1515, LLC and community members regarding item #22; and [b] would base her decision on the evidence and testimony to be presented.

Commissioner Moss stated that he [a] had had ex-parte communications with staff, the applicant and members of the public regarding item #22; and [b] would base his decision on the evidence and testimony to be presented.

Commissioner Douglas stated that she [a] had had ex-parte communications with members of the public, members of staff and Trinity 1515, LLC regarding item #22; and [b] would base her decision on the evidence and testimony to be presented.

Commissioner Robinson stated that he [a] had had ex-parte communications with the representative of Trinity 1515, LLC, the neighborhoods and interested persons regarding item #22; and [b] would base his decision on the evidence and testimony to be presented.

The Mayor stated that she [a] had had ex-parte communications regarding item #22; and [b] would base her decision on the evidence and testimony to be presented, should her decision be needed to cast a tie-breaking vote.

22. **Public Hearing and Second Reading of Ordinance No. 4137-08** – Principal Planner Eric Schneider made a presentation and responded to Commission questions. City Attorney Claudia McKenna [a] asked Mr. Schneider to swear or affirm that everything he had testified to at this meeting was true; and [b] asked that all others with interest in this item be sworn in. Mr. Schneider swore that everything he testified was true.

At this time the City Clerk swore in all those persons having an interest in item #22.

Ron Kolins of Greenberg Traurig, PA made a presentation on behalf of the applicant and responded to Commission questions. City Attorney Claudia McKenna [a] noted that the Mayor's Office received a letter from Neil Schiller stating that he represents Norton Park Place condominium; and [b] stated that it is at the discretion of the Commission as to whether to allow Mr. Schiller more time to speak since he is representing multiple people. It was the consensus of the Commission to allow Mr. Schiller more time. Public comments: Neil Schiller, representing Norton Park Place condominium, Margaret Muldoon, Jeanine Heidtman, George Ciszak, Ron Zetouni, Margaret Cooper, William Peterson, Willie DeGray, Robert Wood, Michael Weeks, Trustee of the Norton Museum of Art William Sned, Jr., William Pruitt, representing the Norton Museum of Art, Rebecca Young, Greg Weiss, Diane Wendin, Susan Riley, Bill Diamond, Nancy Pullum, Mary Margaret Mahon and Britt Deviney. The Mayor [a] read the remaining names on the public comment cards of those persons who did not publicly speak; [b] noted whether they were for or against the project; and [c] submitted the cards for the record. City Attorney Claudia McKenna responded to Commission questions. Commissioner Robinson recommended that the applicant [a] look at the easement; and [b] allow the community to view the revised proposal prior to returning to the Commission. It was moved by Commissioner Douglas to continue Ordinance No. 4137-08. The motion died due to the lack of a second.

After further discussion, the Mayor announced that without objection, Ordinance No. 4137-08 a request by Ron Kolins of Greenberg Traurig, PA, on behalf of Trinity 1515, LLC, for a rezoning from Multifamily High Density (MF32) Residential to Residential Planned Development (RPD) to construct The Modern, a 26-story residential condominium building containing 84 units and associated amenities at 1515 South Flagler Drive, on approximately 2.05 acres, was continued. The request seeks the approval of six (6) waivers.

[The meeting recessed at 8:09 p.m.
and reconvened at 8:13 p.m.]

**REORDERED AGENDA:
PUBLIC HEARING [CONTINUED]:**

20. Public Hearing and Second Reading of Ordinance No. 4141-08 – Finance Director Randy Sherman made a presentation and responded to Commission questions. Public comments: President of West Palm Beach Association of Firefighters Thomas Sheppard, Hal Bradford of Moyle, Flanigan, Katz, White & Krasker, P.A. and James Carman of United Way and Payne Chapel AME Church. It was moved by Commissioner

Moss, seconded by Commissioner Douglas, to adopt Ordinance No. 4141-08 authorizing the imposition and collection of a Fire Service Special Assessment against properties within the City and providing a method of collection; thereupon Ordinance No. 4141-08 was read into the record by title; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Moss, Muoio and Robinson. Motion therefore carried unanimously.

Resolution No. 212-08 – The Mayor suggested amending the Resolution to [a] set the cap at \$25 per resident and the corresponding commercial rate; and [b] make nonprofit organizations exempt. It was moved by Commissioner Moss, seconded by Commissioner Robinson, to adopt Resolution No. 212-08, as amended, the initial assessment Resolution describing the method of apportionment and the computation of the Fire Service Special Assessment, setting the assessment rates and directing the preparation of an initial assessment roll; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Moss, Muoio and Robinson. Motion therefore carried unanimously.

**REORDERED AGENDA:
PUBLIC COMMENTS:**

Gail Levine [a] provided an update regarding the efforts to close down the problematic motels in the south end of the City; [b] suggested that it be communicated to residents that the City will no longer be handing out ice in the case of a crisis or a hurricane; [c] suggested that reminders regarding the water restrictions be included in the City's periodical, "City News;" [d] spoke about the Police Athletic League; and [e] spoke about a waterfront parcel of land downtown. Roger Gaskins spoke about code violations that were put on his house. John Allen of Absolute Plumbing stated that Absolute Plumbing's storage area was deemed as a residential area, which has prevented the business from moving forward with the grant that it was awarded. James Jorgensen spoke about a fine that was placed on his property. Rick Rodgers spoke about code violations on Railroad Avenue.

**REORDERED AGENDA:
ANNOUNCEMENT [CONTINUED]:**

23. Announcement of Attorney-Client Session – City Attorney Claudia Mckenna [a] announced that an Attorney-Client Session to discuss the pending litigation styled as Rick M. Curtis, Aaron Richardson, Michael Williams and Leonard Smith, Plaintiffs vs. City of West Palm Beach, Defendant, Case No.: 50 2004 CA 001280 XXXX MBAG, Fifteenth Judicial Circuit, Palm Beach

County, Florida will be conducted on Monday, June 23, 2008, at 9:30 a.m. or as soon thereafter as practicable, in the Law Library, 4th Floor, City Hall, City of West Palm Beach, 200 Second Street, West Palm Beach, Florida 33401; and [b] noted that Pursuant to Section 286.011(8), Florida Statutes, the Attorney-Client Session will be private and only the following persons may attend the session: Mayor Frankel, Commissioners Douglas, Moss, Muoio and Robinson, City Administrator Edward Mitchell, City Attorney Claudia McKenna, Assistant City Attorney Douglas Yeargin, Assistant City Attorney Zoë Panarites and Jacob Rose, Esq.

COMMENTS BY THE CITY COMMISSIONERS:

Commissioner Robinson urged everyone to lobby their congressional representatives regarding Byrne-JAG and COPS grant programs.

Commissioner Douglas [a] announced that Northwood Village will hold an Art and Wine Promenade event on the fourth Friday of every month during summer 2008; and [b] asked City Administrator Edward Mitchell to follow-up on the Construction Services application regarding 2401 and 2405 North Dixie Highway for a new day spa.

Commissioner Moss [a] asked City Administrator Edward Mitchell whether Don Ramon's restaurant is permitted to grow plants in the planters in front of the restaurant; and [b] asked for an update regarding the neighborhood meeting during which Bak Middle School's bus routes were discussed.

Planning Director Charles Wu provided an update regarding the neighborhood meeting and responded to Commission questions. City Administrator Edward Mitchell responded to Commission questions. It was moved by Commissioner Moss, seconded by Commissioner Douglas, to send a letter to the Palm Beach County School District detailing the Planning Director's recommendation to split traffic between buses on one route and cars on the other and to let them know that this is the recommendation of the City Commission. The Mayor recommended that this issue be discussed at the Mayor/Commission Work Session on June 23, 2008. Commissioner Robinson asked that Planning Director Charles Wu meet with him to discuss this issue before the June 23, 2008 Mayor/Commission Work Session. The maker of the motion, with the concurrence of the seconder, withdrew his motion. It was the consensus of the Commission to discuss this matter at the June 23, 2008 Mayor/Commission Work Session.

Commissioner Muoio did not make any comments.

COMMENTS BY THE MAYOR:

The Mayor announced that a Special City Commission Meeting will be held on Wednesday, June 18, 2008 at 10:30 a.m. regarding the Palm Beach Photographic Centre lease and the potential settlement in the City Center case, depending upon the outcome of the Attorney-Client Session that will be held on the evening of June 16, 2008.

ADJOURNMENT:

There being no further business to come before the Commission, the meeting was adjourned at 8:53 p.m.

APPROVED:

PRESIDING OFFICER

ATTEST:

CITY CLERK

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***Pursuant to Resolution No. 179-95, adopted according to the provisions of Section 286.0115, Florida Statutes, members of the Commission shall disclose on the record: 1) ex-parte communications - verbal or written and written communications shall be placed in the record; and 2) site visits, investigations, etc.**