

CITY OF WEST PALM BEACH
OFFICE OF THE CITY CLERK
REGULAR CITY COMMISSION MEETING
AUGUST 11, 2008

The City Commission of the City of West Palm Beach met in regular session on Monday, August 11, 2008 at 4:11 p.m., at City Hall, with the following persons present:

Mayor Lois J. Frankel, President of the Commission Geraldine Muoio, Commissioner Molly Douglas, Commissioner Kimberly Mitchell [arrived at 4:14 p.m.], Commissioner William Moss, Commissioner Isaac Robinson, Jr., Deputy City Administrator Dorritt Miller, City Attorney Claudia McKenna, Deputy City Clerk Jennifer McDonald and Deputy Clerk Lisa Hedge [left at 5:00 p.m.].

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.

PRESENTATIONS AND AWARDS OF MERIT:

1. & Presentation of Resolution No. 337-08(F) and Resolution No.
2. 350-08(F) – Parking Systems Administrator Sue Olley made a presentation and responded to Commission questions. Executive Director of Turtle Nest Village Liz Brown made a presentation and accepted the donation check with thanks. The Mayor thanked Ms. Brown for allowing her to become a volunteer for the Turtle Nest Village program. Holly Boland of Urban Youth Impact [a] made a presentation; [b] thanked the City for partnering with Urban Youth Impact for the Back 2 School Blast event; and [c] accepted the donation check with thanks. The Mayor thanked [a] Urban Youth Impact for collaborating with the Back 2 School Blast event; and [b] Neighborhood Liaison Dean Reilly for his services regarding the event. Alan Mentser of the Guardian Ad Litem Program commended City Staff for their participation in the Back to School Blast event. It was moved by Commissioner Mitchell, seconded by Commissioner Moss, to adopt Resolution No. 337-08(F) amending the Fiscal Year 2007/2008 General Fund budget to recognize Parking Meter donation revenue for Memorial Day, May 26, 2008 and appropriating funds for a donation to Turtle Nest Village; and Resolution No. 350-08(F) amending the Fiscal Year 2007/2008 General Fund budget to recognize Parking Meter donation revenue for Independence Day, July 4, 2008 and

appropriating said funds for a donation to the Urban Youth Impact, Back 2 School Blast Program; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Mitchell, Moss, Muoio and Robinson. Motion therefore carried unanimously.

3. Presentation of Resolution No. 268-08 – Planner Amy Stelly made a presentation and responded to Commission questions. It was moved by Commissioner Robinson, seconded by Commissioner Douglas, to adopt Resolution No. 268-08 authorizing and approving the “Face of the City” for Clear Lake Overlook; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Mitchell, Moss, Muoio and Robinson. Motion therefore carried unanimously.

ADDITIONS/DELETIONS/REORGANIZATION OF AGENDA:

Deputy City Administrator Dorritt Miller announced that changes were made to item #12, Ordinance 4142-08, and they will be stated for the record. City Attorney Claudia McKenna stated that she will have an announcement at the end of the meeting regarding the Florida League of Cities.

CONSENT CALENDAR:

It was moved by Commissioner Muoio, seconded by Commissioner Douglas, to approve the following Consent Calendar:

4. Minutes of the Special City Commission Meeting held July 10, 2008.
5. Minutes of the Regular City Commission Meeting held July 14, 2008.
6. Resolution No. 339-08(F) providing appropriations for the receipt of Federal Emergency Management Agency (FEMA) funds for the Banyan Street Parking Garage Repairs.
7. Resolution No. 340-08(F) amending the Capital Project Fund budget to provide appropriations to replace the roof on the pavilion at Prospect Park.
8. Resolution No. 302-08 authorizing approval of an Amendment to a Grant Agreement, Agreement 07HM-4@-10-60-02-056, between the City and the State of Florida Division of Emergency Management providing for an extension of time to the City for the Police Department Wind Retrofit Project.
9. Resolution No. 331-08 authorizing the assessment of City liens in the total amount of \$10,090.17 for unpaid lot clearing charges.

10. Resolution No. 343-08 approving an Interlocal Agreement for Fire Vehicle Maintenance between Palm Beach County and the City of West Palm Beach.
11. Resolution No. 356-08 urging the Florida Legislature to equalize funding based on population, to provide each region of Florida, including South Florida, with its fair share of state funding.

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

PUBLIC HEARING:

12. Public Hearing and Second Reading of Ordinance No. 4142-08 – Assistant City Attorney Lisa Conforti stated for the record the changes made to the Ordinance and responded to Commission questions. Police Captain Patrick Maney, Police Officer David Duncan and City Attorney Claudia McKenna responded to Commission questions. Public comment: Alfred Malefatto, representing Trade Mark Metals. It was moved by Commissioner Mitchell, seconded by Commissioner Muoio, to continue 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; thereafter it was voted as follows; Ayes: Commissioners Douglas, Mitchell, Moss, Muoio and Robinson. Motion therefore carried unanimously.

RESOLUTIONS:

- 13.& Public Hearing of Resolution No. 351-08 and Resolution No. 349-14. 08 – Traffic Engineer Brian Collins made a presentation and responded to Commission questions. Planning Director Charles Wu responded to Commission questions. Public comments: Pineapple Park Neighborhood President Ed Williams, Lance Littell, Jake Littell, Elizabeth Scott and Martin Murphy of the Murphy Construction Company. The Mayor read into the record the names of the persons that had submitted cards and asked that they indicate their opinion of the permanent closure: Jessica Littell, Donna Harris, Jeffrey Thompson, Randy Bianchi, Cindy Orr, Patricia Claiborne, Don Weeks, John Melvin, Penny Payne, Jim Norquest, Jane Littell, George Samra, Jr., Richard Wade and Julie Norquest. It was moved by Commissioner

Mitchell, seconded by Commissioner Robinson, to adopt Resolution No. 351-08, adding that it be taken into account the ingress and egress on Mercer Avenue at Belvedere Road and to direct staff to come back in two weeks with a proposal to change the signal to alleviate some of the backup on Belvedere Road. The motion died due to lack of a vote.

After further discussion, the maker of the motion, with the concurrence of the seconder, amended her motion as follows: It was moved by Commissioner Mitchell, seconded by Commissioner Robinson, to adopt Resolution No. 351-08 approving the proposed permanent closure of the Boyd Street CSX Highway-Rail Grade Crossing in the City of West Palm Beach, Florida; and Resolution No. 349-08 authorizing the execution of a Second Amendment to the Stipulation of Parties for the temporary closure of the Boyd Street CSX Highway-Rail Grade Crossing in the City of West Palm Beach, Florida; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Mitchell, Moss, Muoio and Robinson. Motion therefore carried unanimously.

Commissioner Mitchell asked whether staff can address the issues she stated in her previous motion in a timely manner. Traffic Engineer Brian Collins asked that staff be given four weeks instead of two to develop the proposal. It was the consensus of the Commission to allow staff to return with the proposal within a reasonable amount of time.

[The Mayor passed the gavel to the President of the Commission and left the meeting at 6:13 p.m.]

PUBLIC HEARING - QUASI-JUDICIAL:

-SWEARING IN OF WITNESSES

The Deputy City Clerk swore in all those persons having an interest in items #15 through #18.

-DISCLOSURE OF EX-PARTE COMMUNICATIONS, IF ANY*

Commissioner Douglas stated that she [a] had had ex-parte communications with representatives regarding items #15 through #18; and [b] would base her decisions on the evidence and testimony to be presented.

Commissioner Moss stated that he [a] had had ex-parte communications with the applicants and interested parties regarding items #15 through #18; and [b] would base his decisions on the evidence and testimony to be presented.

Commissioner Mitchell stated that she [a] had had no additional ex-parte communication regarding item #15; [b] had had ex-parte communications with applicants and staff regarding items #16 and #17; [c] had had ex-parte communication with residents regarding item #18; and [d] would base her decisions on the evidence and testimony to be presented.

Commissioner Robinson stated that he [a] had had no additional ex-parte communication regarding item #15; [b] had had ex-parte communications with the applicant and staff regarding items #16 and #17; [c] had had ex-parte communications with residents and the developer regarding item #18; and [d] would base his decisions on the evidence and testimony to be presented.

Commissioner Muoio stated that she [a] had had no additional ex-parte communication regarding item #15; [b] had had ex-parte communications with the applicant and staff regarding items #16 and #18; [c] had had ex-parte communication with the applicant regarding item #17; and [d] would base her decisions on the evidence and testimony to be presented.

15. Public Hearing and Second Reading of Ordinance No. 4157-08 – It was moved by Commissioner Douglas, seconded by Commissioner Robinson, to adopt Ordinance No. 4157-08 a request by James R. Brindell, Esq., of Gunster, Yoakley & Stewart, P.A., on behalf of RSBC Real Estate Company LLLP, for a Major Amendment to the Rybovich Commercial Marine Planned Development (CMPD) to amend the development regulations, providing a site plan review process for any facilities or amenities associated with the boatyard or marina operations; thereupon Ordinance No. 4157-08 was read into the record by title; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Mitchell, Moss, Muoio and Robinson. Motion therefore carried unanimously.
16. Public Hearing and First Reading of Ordinance No. 4162-08 – Principal Planner Eric Schneider made a presentation and responded to Commission questions.

[The Mayor returned to the meeting at 6:27 p.m.]

Commissioner Moss disclosed that his firm represented the applicant many years ago. City Attorney Claudia McKenna stated that as long as there has been no business within the last twelve months, Commissioner Moss does not need to abstain from voting. It was moved by Commissioner Muoio, seconded by Commissioner Robinson, to approve Ordinance No. 4162-08, finding that the applicant complies with Section 94-32 of the City's Zoning and Land Development Regulations, regarding a request by Brian Terry, of Land Design South, on behalf of Oakton Commons, LLC, and Schickedanz Oakton Building Group, LLLP, for a Major Amendment to the Oakton Commons Commercial Planned

Development (CPD) to amend the design guidelines and the master plan to accommodate the changes for the residential "Oakton Preserve" portion of the CPD; thereupon Ordinance No. 4162-08 was read into the record by title; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Mitchell, Moss, Muoio and Robinson. Motion therefore carried unanimously.

17. Public Hearing of Resolution No. 133-08 – Urban Designer Ana Maria Aponte made a presentation and responded to Commission questions. Greg Kino, on behalf of the applicant, and Willy Bermello of BAP Development, Inc. responded to Commission questions. Public comment: President and Treasurer of the 610 Clematis Condominium Board Lenore Newbold. It was moved by Commissioner Moss, seconded by Commissioner Muoio, [that the City Commission grant the application by Gregory Kino, Esq. of Casey, Ciklin, Lubitz, Martens, McBane & O’Connell, on behalf of Opera Place, LLC, for a Level III Site Plan approval to allow the construction of a new development, the Opera Place Project, which will include 350 residential units, 317,179 square feet of office space, 57,710 square feet of retail uses and 250 rooms hotel, for a total square footage of 1,083,840. The motion is based upon the testimony presented along with the application submitted and the staff report, which constitute competent, substantial evidence. The City Commission hereby makes findings of fact that with all the conditions imposed and detailed in Resolution No. 133-08, each of the 14 Site Design Qualitative Development Standards found in Article II, Section 94-35(c) have been met]; to adopt Resolution No. 133-08 regarding a Level III Site Plan approval for the Opera Place project; and thereafter it was voted as follows: Ayes: Commissioners, Mitchell, Moss, Muoio and Robinson; Nays: Commissioner Douglas. Motion therefore carried with a vote of four in favor and one opposed.

18. Public Hearing and First Reading of Ordinance No. 4137-08 – Principal Planner Eric Schneider [a] stated his credentials for the record; [b] made a presentation; [c] submitted for the record 52 letters against the building, inclusive of The Norton Museum of Art and El Cid Neighborhood; and [d] responded to Commission questions. Commissioner Mitchell read into the record a letter from the Southland Park Historic Neighborhood Association. Planning Director Charles Wu responded to Commission questions. Al Malefatto, on behalf of the applicant, [a] made a presentation; [b] submitted a binder containing resumes and reports from Architect James Anstis, Kieran Kilday of Kilday & Associates, Inc., John Kowalchik of Walker Parking Consultants, John Underwood of Appraisal & Acquisition Consultants, Inc., Project Architect Kermit White and shadow expert Nicholas Polley; and [c] responded to Commission questions

The Deputy City Clerk swore in all additional persons having an interest in item #18.

[The Mayor passed the gavel to the President of the Commission and left the meeting at 7:48 p.m.]

At this time Mr. Malefatto requested that the Commission recognize the credentials of the experts that will testify regarding this item.

It was moved by Commissioner Moss, seconded by Commissioner Douglas to certify the applicant's experts as experts; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Mitchell, Moss, Muoio and Robinson. Motion therefore carried unanimously.

Kieran Kilday of Kilday and Associates, Inc. [a] stated his credentials for the record; [b] made a presentation; and [c] responded to Commission questions.

[The Mayor returned to the meeting at 8:07 p.m.]

Founder and Managing Director of 3rd Dimension, Ltd. Nicholas Polley made a presentation regarding the shadow studies. John Underwood of Appraisal & Acquisition Consultants, Inc., and Architect James Anstis made presentations. Neil Schiller of Becker and Polliakoff Law Firm, representing Norton Park Place, [a] introduced Jennifer Tighe and Stephen Graham of Land Design South as experts for the record; [b] submitted his presentation and Ms. Tighe and Mr. Graham's resumes and reports for the record; [c] made a presentation; and [d] responded to Commission questions.

It was moved by Commissioner Mitchell, Seconded by Commissioner Robinson, to accept their credentials as experts; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Mitchell, Moss, Muoio and Robinson. Motion therefore carried unanimously.

Jennifer Tighe of Land Design South, Inc. made a presentation. Certified Planner Wayne Arnold of Q. Grady Minor & Associates, PA [a] stated he was hired by El Cid Historic Neighborhood Association, Mango Promenade Neighborhood Association and Southland Park Historic Neighborhood Association to present; and [b] made a presentation. Realtor Mimi Vail [a] stated that she was hired to speak on behalf of El Cid Historic Neighborhood Association, Mango Promenade Neighborhood Association, Southland Park Historic Association, and other neighborhoods on Flagler Drive; [b] submitted her testimony and resume for the record; and [c] made a presentation. Jonathan Moore of Smith and Moore Architects, Inc. [a] stated his credentials for the record; and [b] made a presentation. Public comments: Dominick Locicero, George Ciszak, Gerry Jantzi, Pearl Carson and Harold Smith of Smith and Moore Architects, Inc., who also spoke on

behalf of Dr. Scott McCranels, Margaret Cooper, William Pruitt on behalf of the Norton Museum of Art, John Scholar, President of the Mango Promenade Neighborhood Association Britt Deviney, Ann Ostrowski, past president and current board member of the Viking Arms Condominium Association Board of Directors, Ewa Lagriffoul, Jeanine Heidtman, Mimi Humphrey, John Revson, Susan Riley, Sean Jackson, Willie DeGray and Nancy Pullum. The Mayor [a] announced for the record that Lila Young was opposed to the project; [b] read into the record a statement by Valerie Harris stating that the project “is just too massive”; [c] stated for the record that Dorothy Engels-Gulden was against the project; and [d] read statements from Mary Margaret Mahon, Penny Whitlock and Diane Wendin into the record. City Attorney Claudia McKenna responded to Commission questions.

It was moved by Commissioner Mitchell, to deny Ordinance No. 4137-08. The motion died due to a lack of a second.

It was moved by Commissioner Douglas, seconded by Commissioner Moss, [that the City Commission grant the application by Ron Kolins of Greenberg Traurig, PA, on behalf of Trinity 1515, LLC, for a rezoning of 1515 Flagler Drive from Multifamily High Density (MF32) Residential to Residential Planned Development (RPD) to construct The Modern, a 26-story residential condominium building containing 81 units and associated amenities, including the waivers. The motion is based upon the testimony presented along with the application submitted and the staff report, which constitute competent, substantial evidence, and that the City has a compelling interest in the public health, safety and welfare of its residents which can be achieved by the approval of The Modern, including the waivers, in order to ensure the removal of the existing Tower 1515, and that the approval of this application is based upon the unique circumstances of this site and does not in any way set precedence to justify waivers to the height, scale and mass of future applications for projects located along Flagler Drive. The City Commission hereby makes findings of fact that each of the eight (8) Rezoning Standards found in Article II, Section 94-32(a) has been met.]; to approve Ordinance No. 4137-08 regarding 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 residential condominium building containing 81 units and associated amenities at 1515 South Flagler Drive, on approximately 2.05 acres. The request seeks the approval of eight (8) waivers; thereupon Ordinance No. 4137-08 was read into the record by title; and thereafter it was voted as follows: Ayes: Commissioners Douglas and Moss; Nays: Commissioners Mitchell, Muoio and Robinson. Motion therefore failed with a vote of two in favor and three opposed.

At this time City Attorney Claudia McKenna suggested that either the Commission should decide to make a motion for denial of the Ordinance, or the applicant should choose to withdraw the application. The applicant announced he would like to withdraw the application.

OTHER BUSINESS:

City Attorney Claudia McKenna [a] announced that the City is a potential defendant in a class action lawsuit that was filed against the City of Tampa and declares that a business tax that is imposed on lawyers is an unconstitutional attempt to regulate members of the Florida Bar; [b] stated that the Florida League of Cities, which is working in defense of the cities and counties, is asking for some of the major named cities to make a contribution for the legal defense; [c] suggested that \$5,000 be contributed to the legal defense; and [d] noted that it is possible that the City may have to intervene as a defendant in the future. It was the consensus of the Commission to allow City Attorney Claudia McKenna to contribute \$5,000 to the Florida League of Cities for legal defense.

The Mayor asked the Commission if they would like to have a meeting to discuss the consent order regarding the changes that need to be made regarding the City's water treatment plant. It was the consensus of the Commission to discuss it at the Mayor/Commission Work Session of Monday, August 18, 2008.

ADJOURNMENT:

There being no further business to come before the Commission, the meeting was adjourned at 10:41 p.m.

ATTEST:

APPROVED:

CITY CLERK

PRESIDING OFFICER

lmh

***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.**