



**CITY OF PUNTA GORDA, FLORIDA
REGULAR CITY COUNCIL MEETING MINUTES
WEDNESDAY, JANUARY 21, 2009 9:00 A.M.**

COUNCILMEMBERS PRESENT: Friedman, Albers, Wallace, Goldberg, McCormick

CITY EMPLOYEES PRESENT: Dave Drury, Finance; Rick Keeney, Public Works; Tom Jackson, Utilities; Phil Wickstrom, Human Resources; Dennis Murphy, Growth Management; Kathy Dailey, City Manager's Office; Butch Arenal, Police; Robert Hancock, Fire; City Attorney Levin; City Manager Kunik; City Clerk Foster

Mayor Friedman called the meeting to order at 9:00 a.m.

Invocation was given by Mr. John Burrage, followed by the Pledge of Allegiance.

PROCLAMATIONS/PRESENTATIONS

10 Year Service Award – Sharon Knippenberg, Finance Department

City Manager Kunik presented the award, which was accepted by Ms. Sharon Knippenberg.

Mr. Dave Drury, Finance Director, spoke of Ms. Knippenberg's years with the City.

Business Development Committee Projects – John Wright, Punta Gorda Chamber of Commerce

Mr. John Wright stated the committee began in September, 2008 following the development of their business plan, adding they began a series of surveys at that time. He provided a detailed description of the surveys and the results thereof. He explained a pamphlet similar to the City's "How to do Business with Your City" presentation had been drafted to present to new businesses and would be widely distributed. He then provided a brief description of businesses that have been assisted, adding an outreach program to attract business had been commenced. He then spoke of a trend for retail stores moving from malls to downtown areas, noting plans were underway to locate a regional Sears store in Punta Gorda. He acknowledged the economic climate; however, he stated they were working with other businesses with an interest in Punta Gorda. He then spoke of regional outreach through other Chambers within the State in an attempt to locate specific, successful businesses which may wish to either relocate or expand into the City. He stated the committee had not yet begun branding due to the expense

and lack of response to the mailing; however, he had spoken with the County Economic Development Director who was looking into regional branding which may provide an opportunity for Punta Gorda. He concluded by mentioning the events sponsored by the Chamber which should have more media attention, thus attracting visitors to the City.

Councilmember Wallace inquired if there were adequate vacant locations for prospective businesses.

Mr. Edgard Parra, Chamber board member, stated realtors were consulted based upon the space needs of the individual businesses. He added much follow up was provided to assist the businesses.

Councilmember Goldberg asked if any of the contacts were interested in new construction.

Mr. Wright responded not at this time.

Councilmember Albers commented favorably on the progress thus far.

Discussion ensued with regard to the County's economic development program and its efforts.

Councilmember McCormick suggested sunshine be considered as a part of the branding process due to the interest in green development.

Councilmember Goldberg inquired if they had encountered any zoning issues which prevented a problem to the potential new businesses.

Mr. Wright responded in the negative, noting economics was the main issue at this time.

PUBLIC HEARINGS

ZA-17-08 – An Ordinance of the City of Punta Gorda, Florida, amending Chapter 26 of the City Code of Ordinances known as “The Land Development Regulations”, Article 8, Standards of General Applicability; amending Subsection 8.13., Soil Conservation, providing for materials permitted in drainage areas, providing for limitations on inorganic mulch materials, and defining location of drainage areas; providing for conflict and severability; and providing an effective date.

FIRST READING

City Attorney Levin read the ordinance by title.

Ms. Teri Tubbs, Zoning Official, explained the City's code did not adequately identify the location of stormwater drainage areas in required yards which created a problem with drainage and stormwater runoff when homeowners did not use living groundcover or sod in those areas. She stated the proposed amendment defined the location of drainage areas and specified the required ground covers as well as addressing the use

of organic mulch, versus inorganic mulch such as rocks and shell within the drainage areas. She concluded that staff and the Planning Commission recommended approval with the Planning Commission recommending an amendment denoting that multi-family, commercial developments and private greenbelts were regulated by a separate stormwater permit, as delineated in the agenda material.

Mayor Friedman called three times for public comment.

Councilmember Albers **MOVED** to close the public hearing, **SECONDED** by Councilmember McCormick.

MOTION UNANIMOUSLY CARRIED.

Councilmember Goldberg **MOVED** approval as amended, **SECONDED** by Councilmember Wallace.

MOTION UNANIMOUSLY CARRIED.

QUASI-JUDICIAL PUBLIC HEARINGS

City Clerk Foster swore in all participants for the following quasi-judicial proceedings.

V-09-08 – Request to grant a variance to the Land Development Regulations per Section 26-16.10., Page 26-196, of the City Code to allow the maximum building height for the mixed used buildings which are located in the center of the proposed ‘Public Works Campus’ mixed use project to be no greater than 5 stories and 54 feet in height as measured from Base Flood Elevation (BFE) to the top of the roof structure, and to allow the office use buildings located along Maud Street to be no greater than 4 stories and 40 feet in height as measured from BFE to the top of the roof structure; and to allow the multi-family buildings which will face Shreve Street to have no more than 3 habitable floors and be no greater than 40 feet in height as measured from BFE to the top of the tie beam; instead of 2 stories and 35 feet in height as allowed in the Neighborhood Center (NC) zoning district, per City Code Section 26-3.8.(g)(11), Page 26-18, located on property commonly known as “The City of Punta Gorda Public Works Campus”.

Legal: A portion of Trabue Subdivision, Blocks 51, 52, 53, 55, 56 & 78 as recorded in Plat Book 1, Page 1, Section 12, Township 41 south, Range 22 east, of the public records of Charlotte County, Florida. Long legal description available at the City of Punta Gorda, Urban Design Division, 126 Harvey Street, Punta Gorda, Florida

Continued from December 17, 2008

Applicant Requests Continuance to March 18, 2009

Mayor Friedman announced the request for continuance.

Councilmember Albers **MOVED** to continue V-09-08 to March 18, 2009, **SECONDED** by Councilmember Goldberg.

MOTION UNANIMOUSLY CARRIED.

V-03-08 – Request by Punta Gorda Lodging, LLC, to reconsider and extend the time-line included as a condition on the variance approved for the Hilton Garden Inn to be located on the property known as the northeast corner of the City Marketplace Property generally addressed as 115 Tamiami Trail. Legal: A parcel of land lying in Trabue, (now known as the City of Punta Gorda), as recorded in Plat Book 1, Page 1, of the Public Records of Charlotte County, Florida, and lying in Section 6, Township 41 South, Range 23 East, Charlotte County, Florida. Containing 50,231 square feet (1.15 Acres ±).

City Attorney Levin presented the request for extension.

Ms. Tubbs drew members' attention to the letter of request to extend the timeline condition in the variance. She indicated the applicant had indicated economics had prevented adherence to same, noting the request was to continue application for permit to no later than February 1, 2010 and construction to begin by August 1, 2010.

Mayor Friedman recalled the original variance required the hotel to be operated as a Hilton Garden Inn for a specific period of time, questioning if same could be included in the extension.

City Attorney Levin explained any conditions of the original variance would be included in the amended certificate of variance, stating same would be clarified at that time.

Ms. Tubbs recalled the previous verbiage referenced hotel.

City Attorney Levin responded the amended variance would specify Hilton Garden Inn.

Mayor Friedman called three times for public comment.

Councilmember McCormick **MOVED** to close the public hearing, **SECONDED** by Councilmember Albers.

MOTION UNANIMOUSLY CARRIED.

Councilmember Goldberg **MOVED** approval to extend V-03-08 as requested, **SECONDED** by Councilmember Albers.

MOTION UNANIMOUSLY CARRIED.

Mr. Fred Herschovits, applicant, stated Hilton agreed to the conditions requested this date. He provided a brief update of progress to date with Hilton Garden Inn, noting the economy had greatly stalled financing.

ORDINANCE/RESOLUTION

No Public Hearing Required

An Ordinance of the City of Punta Gorda, Florida, amending the City of Punta Gorda General Employees' Retirement System, adopted pursuant to Ordinance 1286-00, as subsequently amended, is hereby further amended by amending

Section 4, Finances and Fund Management; repealing all ordinances in conflict herewith and providing an effective date. **SECOND READING**

City Attorney Levin read the ordinance by title.

Councilmember Albers **MOVED** approval, **SECONDED** by Councilmember Goldberg.

MOTION UNANIMOUSLY CARRIED.

An Ordinance of the City of Punta Gorda, Florida, amending Chapter 17 “Public Utilities” of the City Code of Ordinances, Article III “Water Emergencies”, amending Sections 17-19, 17-22, 17-25, 17-26 to comply with the requirements of Southwest Florida Water Management Code Rule 40D-21; amending Section 17-23 by decreasing penalties for violations; providing for conflict and severability and providing an effective date. **SECOND READING**

City Attorney Levin read the ordinance by title.

City Manager Kunik explained staff was requesting a continuance to February, 2009 based upon a conversation with the Southwest Florida Water Management District (SWFWMD), adding the ordinance had been modeled based upon comments from SWFWMD, with the exception of the change in the fine structure. He noted SWFWMD wished to make additional comments. He concluded the City was proposing the ordinance under SWFWMD’s existing rules which would allow the City to manage their water supply in-house based upon criteria that had been established in concert with SWFWMD staff, adding the City of Tampa had been working toward the same and had stopped after comments from SWFWMD.

Ms. Terri Behling, SWFWMD, acknowledged the City had been following SWFWMD code rule 40D-21.441 related to public supply water shortage mitigation plans which had been established to allow local water suppliers to have a mitigation plan for emergencies such as drought or treatment plant or pipeline failures. She pointed out the final sentence in the rule indicated the existence of a mitigation plan did not affect the authority of the district to declare or rescind a water shortage response mechanism, adding if a water shortage was declared for the entire 16 county region, same would overrule a local mitigation plan unless the plan was stricter than the district’s restrictions. She explained currently the district was under a one day per week watering schedule; however, the proposed ordinance included triggers that would remove the City from that restriction. She stated she met with City staff and expressed concern, adding based upon same and similar requests from seven other water suppliers, SWFWMD had determined the language in the rule could be easily misinterpreted and would recommend to their board that the rule be reconsidered or removed.

Councilmember McCormick asserted there was never an attempt to trump SWFWMD's mitigation plan, opining their interpretation of the rule appeared to be a denial of the City's home rule powers. He requested scientific proof that the excess water flowing over the City's dam was vital to the health of Charlotte Harbor, adding if not, the district's denial of Punta Gorda's home rule with regard to the water supply was not appropriate.

Councilmember Albers pointed out SWFWMD had encouraged the City for many months to be a model for the district by adoption of the ordinance.

Ms. Behling responded they had not reviewed the entire ordinance, nor were they aware that it would be adopted this date.

Councilmember Albers reiterated the ordinance was drafted based upon the requests made by SWFWMD staff.

Ms. Behling pointed out there was no mention of SWFWMD's water shortage measures, adding if the City used their trigger levels in phases one and two, they would be exempt from the district's current shortage regulations.

Councilmember Albers maintained that was the point of the entire effort, adding if there was water going over the dam into Charlotte Harbor there was no reason to restrict the City's users.

Ms. Behling reported she had been advised by the Director and Deputy Director that they would not approve a variance allowing the City to be exempt from the districts regulations.

Mr. Tom Jackson, Utility Director, explained City staff had been working with the district's drought coordination office, adding he had received no indication that the City's ordinance was not being considered favorably. He stated he felt there had been a breakdown in communication, adding the district was reviewing the ordinance now and would provide comments.

Councilmember McCormick stated the addition of verbiage indicating the City accepted the district's authority to override any of the City's regulations would provide the necessary assurances. He maintained the City did not desire prohibitions listed in the ordinance but rather preferred home rule.

Mayor Friedman acknowledged there could be times when the district could reverse the City's regulations; however, he voiced uncertainty as to why the district would wish to hold the City to regulations relating to the other counties when there was adequate flow over the City's dam.

City Manager Kunik pointed out there may be instances where the SWFWMD area was on a two day watering schedule while the City was on a one day schedule based upon rainfall conditions.

Councilmember Goldberg added there may be instances where the City had the opportunity to utilize excess water to distribute same to other areas to assist with their water needs. He expressed concern with the stance being voiced this date after the many months the City had worked with SWFWMD staff with no indication of any problems.

Consensus of members was for the Mayor and City Manager to meet with the SWFWMD Executive Director in an attempt to resolve any outstanding issues.

City Attorney Levin stated the relationship between the City and SWFWMD was similar to that which regulated dock permitting based upon local conditions and local manatee protection plans, releasing those areas from the previously adopted general plan. He pointed out the adoption of the proposed ordinance would be analogous to the adoption of a manatee protection plans based upon local conditions, thus relieving the City from the overall, general plan.

City Manager Kunik stated staff had explained same the previous day and the response was that other utilities had made similar requests and SWFWMD did not want to deal with it in that manner.

Councilmember Albers **MOVED** to continue to February 18, 2009, **SECONDED** by Councilmember Wallace.

MOTION UNANIMOUSLY CARRIED.

CONSENT AGENDA

Councilmember Albers **MOVED** approval of the consent agenda, **SECONDED** by Councilmember McCormick.

MOTION UNANIMOUSLY CARRIED.

A. CITY CLERK

1. Approval of Minutes: Regular Meeting of January 7, 2009

B. CITY ATTORNEY

1. Request for assignment of Communications Site Lease Agreement (GROUND) from Nextel South Corp. to TowerCo Acquisition LLC
2. A Resolution of the City of Punta Gorda, Florida, accepting easement from Harbor Walk Condominium Association, Inc.
3. A Resolution of the City of Punta Gorda, Florida, accepting a drainage easement located on the Charlotte County Justice Center Tract as described in OR Book

1492, Page 1831, of the Public Records of Charlotte County, Florida from Charlotte County.

UNFINISHED BUSINESS

Approval of Land Swap Agreements between the City and Southwest Land Developers regarding the Henry Street property and Airport Commerce Center property.

Continued from December 17, 2008

Continuance to March 18, 2009 requested

Mayor Friedman announced the request for continuance.

Councilmember Albers **MOVED** to continue to March 18, 2009, **SECONDED** by Councilmember Goldberg.

MOTION UNANIMOUSLY CARRIED.

Utility Line Extension Interlocal Agreement with Charlotte County

Mayor Friedman recalled discussion during the previous City/County joint meeting, noting what had been requested was not legally possible; however, individual proposals could be presented to the City as they arose. He stated a consensus of members was that the proposal, as presented, was no longer under consideration.

City Manager Kunik stated staff's recommendation was to continue the existing extension policy for reimbursement of offsite improvements and to consider development projects in the Airport Park on an individual basis only when direct rationale was presented as to why the City should participate.

Councilmember McCormick **MOVED** approval of the recommended action, **SECONDED** by Councilmember Goldberg.

MOTION UNANIMOUSLY CARRIED.

Presentation of the Evaluation and Selection Committee's Short List of Offerors for design/engineering services for the Harborwalk.

City Manager Kunik explained 11 responses were received with three being disqualified as not meeting the requirements. He noted a committee reviewed and ranked the remaining responses with a recommendation to negotiate with the top ranked firm of Tetra Tech of Fort Myers. He further explained if negotiations were not successful with the top ranked firm, staff generally began negotiations with the second ranked firm, and so forth. He concluded staff was comfortable with the rankings, adding Council had the following options: follow the above mentioned negotiation process; interview a select number of firms and rank on their own criteria or to review staff's criteria to determine if a sufficient number of points were awarded to local businesses in order to revise the criteria for future proposals.

Mayor Friedman pointed out members could determine to modify the existing system; however, same would affect future projects rather than the present evaluation. He stated he had previously suggested that the existing system be utilized to reduce the number of bidders to a manageable number who would then make their presentation to City Council on projects such as this. He stated he felt the options were to make a selection this date or to require presentations.

Councilmember McCormick questioned the weighting used to determine the ranking as the it appeared the number two group ranked higher on knowledge of what was desired, opining same was much more important than the weighting given to the academic accomplishments of the consultants. He felt all the groups were talented, adding it should be Council's determination as to who would provide the desired vision for Punta Gorda.

Mayor Friedman concurred; however, the weighting system was known by all participants from the beginning of the process. He reiterated if Council inserted itself into the process, they could devise their own weighting process.

Councilmember Albers pointed out without the local points, the top two firms would not have won the bid. He then referenced a letter of concern from one of the involved firms with several accusations. He inquired if same had been reviewed and if same had any validity.

City Manager Kunik responded same had been reviewed and the Procurement Manager would respond to same.

Councilmember Goldberg inquired if Council were to become involved in the process, if a weighting system would be agreed upon by all members.

Mayor Friedman stated he felt the current process should have been used to narrow the bidders down to three who would then make a presentation to City Council in order to convince members they were the best firm, noting same would not be quantifiable as there would be no scores, but rather members would simply rank the firms from first to third. He noted he felt same should be the process for subjective projects such as this.

Councilmember Wallace concurred, pointing out the project involved a vision for the City, thus Council should be involved in the process.

Councilmember McCormick opined if an evaluation criteria was agreed upon for Council's use, it could become subjective, thus he felt the key area of the evaluation was who best understood the City's vision.

Councilmember Albers stated he was not opposed to changing the selection manner for future projects; however, he felt members should not change in the middle of this process.

Councilmember Albers **MOVED** to accept staff's recommendation.

Motion **DIED** for lack of **SECOND**.

Councilmember Goldberg stated he felt the program worked to obtain a short list; however, the responsibility to make a decision on large scale projects should rest with City Council.

Councilmember Wallace stated he felt there was a consensus to review this type of project, asking if this was the time to do so.

Councilmember Wallace **MOVED** to involve City Council in the process by hearing presentations from the top three ranked firms, **SECONDED** by Councilmember McCormick.

Councilmember Wallace requested clarification as to when Council would be involved with future projects.

Mayor Friedman responded it would be appropriate for large scale, visionary projects. Discussion ensued with regard to the committee's scoring with a consensus to hear half hour presentations from the top three ranked firms.

MOTION UNANIMOUSLY CARRIED.

NEW BUSINESS

Hendrickson Dam Spillway Replacement - Stanley Consultants

Mr. Tom Jackson, Utility Director, stated a brief presentation would be made with regard to the type of spillway to replace the Hendrickson Dam.

Mr. Steve Adams, Utility Engineer, advised Stanley Consultants had been employed to perform engineering services to provide design and recommendations on the long term operation and management of the spillway. He introduced Brad Collins and Bill Owens of Stanley Consultants.

Mr. Brad Collins displayed a PowerPoint presentation, as delineated in the agenda material, stating they were charged with providing design materials for maintenance improvements and to prepare a Spillway Replacement Alternatives Analysis Report and Recommendation. He then listed the replacement alternatives as follows: #1 - Replacement in-kind, constructing a new steel sheet pile spillway either up or downstream while leaving existing spillway in place; #2 - Replacement with pre-cast concrete sheet piles while leaving the existing spillway in place and #3 - Replacement with new cast-in-place concrete structure. He provided a brief description of each alternative, denoting the estimated service life and costs as follows: #1 - 60 years and

\$4,706,000; #2 - 80 years and \$7,904,000 and #3 - 100 years and \$9,037,000. He concluded with a recommendation to utilize Replacement Alternative #1 as it was the least costly and would require the least time to permit, design and construct.

Discussion ensued with regard to permitting.

Councilmember Wallace inquired as to funding and the result on utility rates.

City Manager Kunik responded same was funded by utility revenues, adding the replacement was a necessary core project and had been included in previous rate studies.

Mr. Jackson added it was premature to attempt to determine the financial impact until design was completed and the project cost determined.

Councilmember Goldberg **MOVED** to accept the summary and approval to move forward with Replacement Alternative #1, **SECONDED** by Councilmember Wallace.

MOTION UNANIMOUSLY CARRIED.

Discussion of current boat maintenance regulations for properties located in the Special Residential Overlay Districts.

Ms. Tubbs explained direction was being requested based upon the current regulations for boat maintenance causing difficulties for staff due to the fact boats were only allowed in the rear yard which was not generally possible now with build out occurring in most residential districts. She noted as presently written, the code did not permit boats in the driveway or front yard. She stated the Waterfront Development Advisory Committee (WDAC) and the Land Development Regulation (LDR) Committee had reviewed same, adding discussion had occurred relating to allowing kayaks to be strapped to a car as well. She concluded the ordinance addressed watercraft in general.

Mayor Friedman suggested they address each item, with the following consensus: kayaks and canoes would be allowed on the car top on a temporary basis; allowing trailered boats with a no-cost permit such as provided for recreational vehicles with no maintenance work to be permitted; cleaning or waxing would be permitted under the permit and cleaning of boats would be allowed during daylight hours.

Mr. Jay Buckley, WDAC, stated they had approached same based upon Punta Gorda being a boating community, drawing members' to their recommendations as delineated in the agenda material.

Downtown Property Tax Inequities - Paul LaFleur, Revitalization Committee

City Manager Kunik explained the Revitalization Committee had requested they be able to address Council.

Mr. Paul LaFleur referenced the area maps provided by the Property Appraiser to assess downtown properties. He then displayed a map which denoted the prime development

areas, explaining he met with the Property Appraiser with regard to the commercial zones defined by his office. He provided detail on the various assessment rates utilized by the Property Appraiser and the fact that adjacent properties not located within the prime commercial zone were assessed at a much lower rate. He explained that zone was not what the City viewed as its core downtown area, adding he hoped to meet with the Property Appraiser again to recommend he consider evolving the core downtown area to coordinate with the City's view of same.

Mayor Friedman advised the City Manager would also meet with the Property Appraiser with regard to same.

BOARDS AND COMMITTEES

Announcement of Vacancies

Board of Zoning Appeals – Alternate (2)

City Clerk Foster announced the vacancies.

Nominations

There were none.

Appointments

Waterfront Development Advisory Committee

Voting forms were distributed.

City Attorney Levin announced Mr. Hempel had received the most votes and was therefore appointed to the WDAC.

POLICY AND LEGISLATION

FRIEDMAN: Mentioned the possible schedule for the summer break, asking for consensus of members.

Consensus of members was to reschedule only the July meetings.

Mayor Friedman then referenced communication with regard to reallocation of the Enterprise Punta Gorda funding, opining he felt the participants should be refunded a prorata share of the remaining funding.

City Manager Kunik explained the City funded the position, while the other participants funded the operational programming. He advised there was approximately \$18,000 remaining, explaining the payments were made in the March/April timeframe for the following year. He further explained Enterprise Punta Gorda ended in April, thus the funds for operations were not expended for the next year. He advised the City stopped payments when Enterprise Punta Gorda ended.

Mayor Friedman confirmed the prior year's contributions were expended.

Consensus of members was that there were no remaining City funds allocated to Enterprise Punta Gorda, thus no refunds were necessary.

MCCORMICK: Mentioned he had been elected by the Southwest Florida Regional Planning Council (SWFRPC) to be their representative on the Charlotte Harbor National Estuary Program (CHNEP), which was represented by Councilmember Wallace for the City.

The meeting was adjourned at 11:19 a.m.

Mayor

City Clerk