



**CITY OF PUNTA GORDA, FLORIDA
REGULAR CITY COUNCIL MEETING MINUTES
WEDNESDAY, DECEMBER 14, 2011 9:00 A.M.**

COUNCILMEMBERS PRESENT: Albers, Goldberg, Wallace, Freeland, Keesling

CITY EMPLOYEES PRESENT: Dave Drury, Finance; Rick Keeney, Public Works; Tom Jackson, Utilities; Dennis Murphy, Growth Management; Butch Arenal, Police; Robert Hancock, Fire; City Attorney Levin; City Manager Kunik; City Clerk Foster

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

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

PROCLAMATION/PRESENTATIONS

Introduction of Board/Committee Member Nominees

Mr. John Chalifoux introduced himself as a nominee for the Building Board, sharing highlights of his experience.

PUBLIC HEARINGS

AX-01-11 - An Ordinance of the City of Punta Gorda, Florida, annexing within the corporate area of the City of Punta Gorda, property described as Lots 28 & 29, Block A, Unit 1, Aqui Esta Subdivision as per plat thereof, recorded in Plat Book 3, Pages 11 and 12, of the Public Records of Charlotte County, Florida, less state road right of way as described in O.R. Book 500, Page 398, and generally described as 3225 Tamiami Trail, Punta Gorda, Florida, as more particularly described in attached Exhibit "A", in accordance with the voluntary annexation provisions of Section 171.044 Florida Statutes; redefining the boundary lines of said City in conformance therewith; amending the Official Boundary Map of the City of Punta Gorda, Florida; providing for conflict and severability and providing an effective date.

SECOND READING

Mayor Albers advised this was the voluntary annexation of the Goodyear Tire property presented at the December 7, 2011 meeting.

City Attorney Levin read the ordinance by title.

Mayor Albers called three times for public comment.

Councilmember Wallace **MOVED** to close the public hearing, **SECONDED** by Councilmember Keesling.

MOTION UNANIMOUSLY CARRIED.

Councilmember Keesling **MOVED** approval, **SECONDED** by Councilmember Wallace.

MOTION UNANIMOUSLY CARRIED.

CP-02-11 - An Ordinance of the City of Punta Gorda, Florida, amending the City of Punta Gorda Comprehensive Plan Future Land Use Map changing the current designation from Commercial/County (C/County) to Highway Commercial Corridor/City (HCC/City) on property generally described as 3225 Tamiami Trail, Punta Gorda, Florida, as more particularly described on Exhibit "A" attached to this ordinance; providing for conflict and severability; and providing an effective date.

SECOND READING

City Attorney Levin read the ordinance by title.

Mayor Albers called three times for public comment.

Councilmember Keesling **MOVED** to close the public hearing, **SECONDED** by Councilmember Goldberg.

MOTION UNANIMOUSLY CARRIED.

Councilmember Freeland **MOVED** approval, **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-03-11 - Request for a variance to the Land Development Regulations pursuant to Chapter 26, Section 16.10, Punta Gorda Code to allow a new two-car garage addition to be constructed and attached to the historic structure addressed as 413 W. Retta Esplanade with a street yard setback on the Durrance Street side of the property of 4.1 feet instead of 10 feet as is required per Chapter 26, Section 3.7.(g)(2), Punta Gorda Code. Said property is located within the Neighborhood Residential 10 Units per Acre (NR-10) the National Register Historic District. LEGAL: A part of Lot H and all of Lot B, measuring 73 feet by 140 feet in the Northwesterly corner of the East one-half of Block 8, a Subdivision of Block 8, City of Punta Gorda, recorded in Plat Book 1, at page 34 of the Public Records of Charlotte County, Florida; and that portion of an alley described in that deed dated March 5, 1986, recorded in Official Records Book 859, at Page 1673, of the Public Records of Charlotte County, Florida. A/K/A: 413 W Retta Esplanade, Punta Gorda Florida

City Attorney Levin presented the variance request.

Ms. Teri Tubbs, Zoning Official, displayed an overhead of the subject property and entered her staff report, as delineated in the agenda material, into the record. She advised staff found the application met the criteria required for a variance and therefore recommended approval of the request. She acknowledged the site was large enough to construct the garage elsewhere on the property; however, due to the configuration of the wrap-around porch, location of the garage on that side of the property could detrimentally impact the architectural and historic character of the home. She concluded staff, the Board of Zoning Appeals (BZA) and the Historic Preservation Advisory Board (HPAB) recommended approval.

Mr. Roger Miller, applicant's agent, offered to answer any questions.

Mayor Albers called three times for public comment.

Councilmember Keesling **MOVED** to close the public hearing, **SECONDED** by Councilmember Freeland.

MOTION UNANIMOUSLY CARRIED.

Councilmember Wallace **MOVED** approval, **SECONDED** by Councilmember Freeland.

MOTION UNANIMOUSLY CARRIED.

V-04-11 – Request for a variance to the Land Development Regulations pursuant to Chapter 26, Section 16.10, Punta Gorda Code, on an existing single-family structure to allow a sidewalk in the required drainage area of the side yard of the property, instead of sod as is required per Chapter 26, Section 8.13(a) and (f)(2), Punta Gorda Code; and to allow the sidewalk to have a setback of zero feet instead of three (3) feet as required by Chapter 26, Section 8.14(h), Punta Gorda Code, and to allow two walkways for access to the seawall, instead of a single walkway as is permitted by Chapter 26, Section 3.13(t), Punta Gorda Code. LEGAL: Block 10, Lot 34, Punta Gorda Isles Section Four of the Public Records of Charlotte County, Florida. A/K/A: 2284 Palm Tree Drive, Punta Gorda Florida

City Attorney Levin presented the variance request.

Ms. Tubbs displayed several overheads depicting the subject property, as delineated in the agenda material, stating the property owners had installed a 33.5 inch sidewalk along the south side of the property line. She advised City Code required all sidewalks to be a minimum of three feet from any property line, adding the side yard area, where the walkway was located, was designated as a drainage area and was required to be sodded. She pointed out two walkways to a large dock in the rear of the property were existing; however, City Code allowed only one. She then stated the applicant had become disabled since purchasing the property and thus needed the walkway to access the side and rear yards. She noted drainage in the side yard was provided by use of

French drains and other vegetation; thus, other than the literal reading of City Code, the Urban Design Division had no objections to V-04-11 in order to facilitate the accessibility needs of the property owner. She advised an inspection was made following the BZA hearing to determine the stormwater structures were adequate. She entered her staff report, as delineated in the agenda material, into the record, offering to answer any questions. She advised staff and the BZA recommended approval.

Councilmember Keesling asked how the French drain worked.

Ms. Tubbs responded the drain was underground which would direct the water back to the soil in the plant bed.

Mayor Albers pointed out the walkway was constructed on the property line, adding the abutting property owner was not happy with same. He stated while the drain assisted with the applicant's property, it did not address the fact that the neighboring property's drainage was now hampered by paver blocks. He pointed out this area was a drainage easement. He recalled another property with a similar situation where the pavers were required to be removed.

Ms. Tubbs responded affirmatively, stating abutting property owners agreed to landscape and utilize pavers between their houses, displaying photos of same. She stated the property owners agreed to remove same and reinstall the sod rather than apply for a variance.

Mayor Albers stated it had been mentioned it would be the applicant's responsibility to fix the drain should it become clogged in the future; however, the applicant could just as easily remove the drain leaving water to run onto the ground which would be of even more concern to the neighboring property.

Councilmember Freeland inquired if there were photos which displayed the abutting property as well as the applicants.

Ms. Tubbs displayed photos provided by the abutting property owner's agent.

Councilmember Freeland commented it appeared there was adequate space for drainage, adding pavers did not inhibit drainage.

Ms. Tubbs acknowledged same.

Councilmember Keesling confirmed the no charge zoning permit would have considered the setbacks.

Councilmember Freeland inquired as to other options.

Mayor Albers responded the walkway could have been placed immediately adjacent to the house with a small portion moved out to fit around the air conditioning equipment. He opined same would have been fairer to the adjacent property owner.

Discussion ensued with regard to same.

Councilmember Goldberg inquired if a drainage issue existed.

Ms. Tubbs responded pervious pavers were utilized, adding same allowed for more stormwater drainage. She voiced concern the pavers may become more pervious if not properly maintained. She stated staff would not recommend allowing a similar situation in all yards; however, the City Engineer stated same would not be detrimental on the subject property.

Councilmember Goldberg confirmed the French drain ran the length of the sidewalk.

Councilmember Keesling mentioned the two walkways in the rear yard, confirming the code amendment to allow same had not been approved yet.

Ms. Tubbs responded it had not, thus the reason to include same in the variance. She then read an email from a neighboring property owner who voiced approval of the walkway.

Mr. Jonathan Rubin, applicant, stated the walkway had been constructed for medical reasons, providing a detailed description of same. He displayed a letter from his physician indicating he must have a firm, flat surface to walk on. He commented on the number of building permits they had obtained, explaining his contractor had advised no permit was necessary as the pavers were removable. He asserted they were not attempting to avoid gaining a permit. He then displayed a photo of the French drain, providing a detailed explanation of how same worked. He stated a comment had been made as to maintenance of same, adding if same were not maintained it would damage his home's foundation, thus it would behoove them to keep it in proper conditioning. He maintained drainage through pavers was better than through turf due to the growth of roots. He concluded any future issues that may arise would be maintained by he and his wife.

Ms. Mary Teets stated she was attending on behalf of the adjoining property owner, stating they were not averse to making things easier for their neighbor's disability, but rather were concerned the removal of the curbing may hinder drainage. She stated they asked a decision not be made until they returned to Punta Gorda to view the project and ascertain the viability of the French drain. She asked how deep the drain was located.

Mr. Rubin responded the drain was located initially located 1' below the surface; however, when problems arose, the drain was located 5' below the surface. He added caps were placed on the ends to deter water rushing out rather than percolating along its length.

Ms. Teets responded the depth in reference to the water table was a concern of the adjacent property owners. She then reiterated her concern with the elimination of

curbing, which created a slope into the abutting property. She pointed out there was no gutter on the Rubin's house due to the hip roof. She concluded with a request to delay approval to allow the abutting property owners to inspect the project and satisfy their concerns.

Mayor Albers stated he felt provisions must be made to allow Mr. Rubin to move freely around his house, adding he had no problem with continuing V-04-11 to allow the neighbors to inspect the construction and satisfy their concerns.

Mr. Rubin stated he would have no problem with installing gutters on the house, adding approval of the variance could be conditioned on it being done within 30 days.

Councilmember Goldberg asked if the gutter was installed if same would flow into the French drain.

Mr. Rubin responded affirmatively, adding an additional drain would most likely be installed. He referenced a photo displayed earlier, pointing out the water did not fall onto the walkway, but into the landscaped area adjacent to the house.

Councilmember Keesling inquired if French drains required permitting.

Ms. Tubbs responded in the negative.

In reference to the concern regarding curbing, Mr. Rubin advised it was removed in response to a concern the walkway was encroaching onto the abutting property. He reported the two irrigation systems were not interconnected.

Mayor Albers reiterated his preference to continue to allow the neighbors to satisfy their concerns.

City Attorney Levin explained the two issues which must be addressed were the disability issues and drainage concerns, adding since no competent testimony had been made to demonstrate the drainage concerns had been addressed, if a continuance was granted, it would be advisable for the applicant to bring an engineer to testify to same.

Mayor Albers pointed out relocating the walkway adjacent to the house would move same out of the drainage easement.

Councilmember Goldberg stated same would pose an unnecessary cost to the applicant if the drainage concerns could be satisfied.

Mr. Rubin mentioned the length of the drainage area was 120', adding their walkway was located in approximately half of same. He pointed out the exorbitant cost of hiring an engineer to address the drainage issue.

Councilmember Freeland pointed out the City Engineer inspected same and had indicated there were no drainage issues. She opined it would be unnecessary to require Mr. Rubin to employ another engineer based upon staff's review and approval.

City Attorney Levin commented the City's Engineer would be required to testify, voicing concern with not having knowledge of the extent of investigation performed by staff and if staff testified they did not foresee a drainage problem which later arose, a liability had been created to the City.

Councilmember Keesling stated she would be more comfortable with a continuance. Mr. Rubin asked if there was any manner of the engineer testifying through another method so as not to have them have to come to the meeting.

Mayor Albers pointed out there were many local engineers which could be used.

Councilmember Keesling suggested the drain installer may have an engineer who could address the concerns.

Councilmember Goldberg explained expert testimony was not required but may enhance approval odds.

Ms. Teets commented hearing from the installers would be beneficial as they would be able to address the depth question.

Mr. Jack Palmer stated he felt the walkway was an aesthetic enhancement, pointing out moving the sidewalk next to the house would cover the same amount of space. He stated he did not feel same would be an improvement as the same amount of pervious area would exist.

Discussion ensued with regard to the abutting property owner's concerns and request for continuance.

Councilmember Keesling **MOVED** to continue V-04-11 to February 1, 2012, **SECONDED** by Councilmember Wallace.

VOTING AYE: Keesling, Wallace, Goldberg, Albers.

VOTING NAY: Freeland.

MOTION CARRIED.

ORDINANCE/RESOLUTION

No Public Hearing Required

CP-03-11 - An Ordinance of the City of Punta Gorda, Florida, adopting an Amendment to the City of Punta Gorda Comprehensive Plan 2025 for the purpose of updating the Capital Improvements Element to be consistent with 2011 Legislative Changes to Chapter 163, Florida Statutes; providing for conflict and severability; and providing an effective date.

SECOND READING

City Attorney Levin read the ordinance by title.

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

MOTION UNANIMOUSLY CARRIED.

Z-01-11 - An Ordinance of the City of Punta Gorda, Florida, rezoning property generally described as 3225 Tamiami Trail, Punta Gorda, Florida, as more particularly described on Exhibit "A" attached to this ordinance, from Commercial-Intensive/County (CI/County) to Highway Commercial/City (HC/City); providing for conflict and severability; and providing an effective date. SECOND READING

City Attorney Levin read the ordinance by title.

Councilmember Freeland **MOVED** approval, **SECONDED** by Councilmember Keesling.

MOTION UNANIMOUSLY CARRIED.

CONSENT AGENDA

Councilmember Freeland pulled Item B-1, stating she was in favor of the resolution; however, she wished to mention how important the municipal pensions were to Punta Gorda and many other Florida cities. She opined the unfunded mandates driven by the Legislature were driving up the cost of funding the pension plans, providing information as to the aspects the Florida League of Cities was focusing on.

Councilmember Goldberg **MOVED** approval of the consent agenda, **SECONDED** by Councilmember Wallace.

MOTION UNANIMOUSLY CARRIED.

A. City Clerk's Department

1. Approval of Minutes: Regular Meeting of December 7, 2011

B. City Manager's Department

1. A Resolution of the City Council of the City of Punta Gorda, Florida, supporting police officer and firefighter pension plan and disability presumption reforms to make the plans sustainable, sound and secure for current and future police officers and firefighters.

C. Legal Department

1. Invoice of Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A. for services rendered by David M. Levin, Esq. through December 7, 2011.
2. A Resolution of the City Council of the City of Punta Gorda, Florida, imposing a Municipal Special Assessment for Demolition and Nuisance Abatement Services performed at 24368 Airport Road, Punta Gorda, Florida, in accordance with Chapter 9A, Punta Gorda Code
3. A Resolution of the City Council of the City of Punta Gorda, Florida, imposing a Municipal Special Assessment for Unsafe Building Abatement Services performed at 327 Boca Grand Boulevard, Punta Gorda, Florida, in accordance with Chapter 7, Punta Gorda Code

UNFINISHED BUSINESS

Discussion regarding existing changeable copy sign regulations in the City.

Mayor Albers stated there was a listing of the code regulations, opining Council did not wish to amend same, thus further discussion was unnecessary.

Consensus of members was to agree.

Fair Share Impact Fee Update Report

City Manager Kunik stated the report incorporated direction by members to allocate transportation impact fees based on vehicle miles of travel, adding the projected revenue over the next five years was anticipated to yield 3.5% of growth related Capital Improvement Projects needs for both parks and roads. He advised staff recommended approval of the report and to move forward with adoption through the public hearing process.

Mayor Albers commented the majority of changes were in non-residential. He stated he still did not understand the difference between a daycare and an elementary school; however, he felt the consultants had investigated same.

Councilmember Goldberg stated he preferred the new methodology that had been proposed; however, he would agree to the amended report.

Mayor Albers stated staff would be following up on the proposed new methodology.

Councilmember Goldberg **MOVED** approval for staff to move forward with an ordinance adopting the rates, **SECONDED** by Councilmember Freeland.

MOTION UNANIMOUSLY CARRIED.

NEW BUSINESS

Construction conflicts between Harborwalk West Zone7 and Downtown Flooding Phase II

Mr. Dennis Murphy, Growth Management Director, explained staff had found a possible conflict between the two plans in that it appeared significant pipe work would be installed along the north side of Retta Esplanade and through Gilchrist Park which would conflict with construction of the Harborwalk area pertaining to the street parking along Retta Esplanade and the courtyard between the pavilion and new restroom building. He provided the following options: delay bidding of Harborwalk until Downtown Flooding design and construction plans were complete in July, 2012 which would allow staff to identify portions of each plan to be split or combined as logic would dictate; attempt to identify areas of conflict from earlier stages of design while proceeding with other portions of the Harborwalk project or construct Harborwalk as designed and to retrofit same to install the stormwater pipes if funding

was granted from the Federal Emergency Management Agency (FEMA). He advised staff recommended the first option.

Consensus of members was to agree with the delay proposed in the first option.

City Manager Kunik added Gilchrist Park would be reopened for event rentals during the delay.

RECOMMENDATION FROM CITY OFFICERS

CITY MANAGER

Discussion of Agreement with Punta Gorda Boat Club for access to boat basin.

City Manager Kunik stated discussions had been underway with the Boat Club to allow access to the boat basin for possible dredging and location of floating docks. He explained an amendment to the lease would be necessary.

Mayor Albers added the City would also assume liability for anyone crossing the property to access the docks. He stated a riprap seawall surrounded the boat basin, adding should dredging cause any damage, the City would be responsible for repair. He complimented the Boat Club on the cooperative manner the discussions enjoyed.

Consensus of members was to direct the City Attorney to amend the lease.

CITY ATTORNEY

City Attorney Levin reported progress with negotiations with Best Western with regard to the Harborwalk. He then stated the attorney who represented the Code Enforcement and Building Boards had resigned.

CITY CLERK

Appointment of Community Redevelopment Agency (CRA) Member

City Clerk Foster announced Mr. John Chalifoux had withdrawn his name from consideration after the agenda material was prepared, thus the only interested party was Ms. Jane Sturges, current member. She advised the Charlotte County Board of Commissioners had endorsed Ms. Sturges' reappointment at their December 13, 2011 meeting.

Councilmember Freeland **MOVED** to reappoint Ms. Sturges, **SECONDED** by Councilmember Goldberg.

MOTION UNANIMOUSLY CARRIED.

BOARDS AND COMMITTEES

Announcement of Vacancies

Punta Gorda Isles Canal Advisory Committee

City Clerk Foster announced the vacancy.

Nominations

Building Board

Councilmember Goldberg **NOMINATED** all interested parties.

POLICY AND LEGISLATION

ALBERS: Wished all in attendance a Merry Christmas and Happy New Year.

KEESLING: Stated the Southwest Florida Regional Planning Council would be negotiating with their new Director at their meeting the following day.

GOLDBERG: Presented former Councilmember Larry Friedman with a plaque recognizing his time as the City's representative on the Metropolitan Planning Organization (MPO).

- Commented on proposed legislation in Washington D.C. which would dramatically affect the MPO's composition and structure in Punta Gorda as same was based upon population. He emphasized the negative impact on Charlotte County and Punta Gorda as it would remove the ability to have input on projects and how Federal funding would be allocated. He stated same would infringe on the City's Home Rule Powers, adding local MPO's could not take a stand, thus he recommended the City adopt a resolution to be provided to State Legislators.

FREELAND: Reported additional slots existed for the upcoming Citizens' Academy, urging those who were interested to apply.

CITIZENS' COMMENTS

Mr. Roger Strube commented he was on the Charlotte Harbor Regatta Committee and had assisted in construction of the floating docks which would be utilized first in Lashley Park for the upcoming regatta and then relocated to the Boat Club basin.

The meeting was adjourned at 10:38 a.m.

Mayor

City Clerk