



**CITY OF PUNTA GORDA, FLORIDA  
REGULAR CITY COUNCIL MEETING MINUTES  
WEDNESDAY, JANUARY 18, 2012 9:00 A.M.**

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

**CITY EMPLOYEES PRESENT:** Dave Drury, Finance; Rick Keeney, Public Works; Tom Jackson, Utilities; Phil Wickstrom, Human Resources; 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**

**St. Vincent de Paul Day**

**Councilmember Wallace** read the proclamation, which was accepted by Mr. Joe Sabatino.

**Citizen Presentation - City Water & Wastewater Systems**

Mr. Tom Jackson, Utilities Director, introduced former Utility employee, Mr. Bill Harper. Mr. Harper stated he wished to share information he had gleaned over his many years as an employee. He commented a utility system was necessary for a healthy municipality, adding he felt City Council lacked knowledge about the history of the utility system. He presented members with a book entitled "The History and Institutional Knowledge of the City of Punta Gorda Utility Systems", adding there were very few utility systems which had such a history.

**QUASI-JUDICIAL PUBLIC HEARINGS**

City Clerk Foster swore in all participants for the following quasi-judicial proceedings. City Attorney Levin provided a detailed description of the quasi-judicial process, adding unsworn statements or correspondence could not be the basis of Council's decision.

**AMEND SE-02-11- Request by Steve Nelson, Agent for Stock Development, to amend the previously approved Special Exception SE-02-11, pursuant to Chapter 26, Section 16.8(o), to install lighting on three existing tennis courts at a tennis**

**club facility located at 92 Vivante Boulevard in a General Multi-family 15 Units per Acre (GM-15) zoning district.**

City Attorney Levin presented the request to amend the special exception.

Ms. Teri Tubbs, Zoning Official, displayed an aerial photograph of the subject location, as delineated in the agenda material, stating the original special exception request was to allow non-resident members. She explained in order to accommodate evening tennis, this request was to allow lighting on three of the four remaining courts. She mentioned no lighting was proposed for the tennis court located closest to 90 Vivante Boulevard so as to ensure no light glare to the residents of same. She advised the applicant had agreed to self imposed conditions such as hours the court would be lighted. She concluded staff had no objections to the request but had received a number of e-mails expressing residents' concerns, primarily from those in Building #90. She advised staff and the Planning Commission recommended approval contingent upon the special conditions outlined in the agenda material.

Mr. Steve Nelson, applicant's agent, confirmed all courts were originally intended to be lit but were not due to cost; however, the applicant never indicated the courts would not be lit. He mentioned all units at Vivante were sold with the exception of a portion of Building #99. He announced Stock Development (Stock), applicant, had exclusively acquired the nearby tract of land known as Trevi, which would be the final stage of the Vivante development and would consist of up to 189 additional units, adding those residents would also have access to the subject tennis courts, thus increasing the need for lighting same. He expressed Stock's willingness to work with the community, thus the basis for agreeing to light only three additional courts as opposed to all four as originally planned. He listed the following concessions offered to concerned residents: (1) players would be encouraged to use the tennis courts located furthest from nearby Building #90; (2) stop all tennis activity at 9:00 p.m.; (3) limit the number of night-time tennis leagues to 2 per week. He clarified these concessions were not a formal part of this petition, explaining it was felt operating times were more appropriate for the community to establish.

**Mayor Albers** confirmed the lighting had been approved on the original building plan. He then inquired if this request would be required if no special exception to allow non-resident tennis players had been issued.

Ms. Tubbs responded affirmatively, explaining the approval of the special exception indicated no changes to the terms could be made without Council's approval.

**Councilmember Wallace** confirmed the intent was to end tennis playing at 9:00 p.m.

**Councilmember Keesling** requested a description of the relationship between the residents' association and Stock Development.

Mr. Nelson responded the developer was in control of the master association until 90% of the units were sold at which time it would be turned over to the residents. He responded there were other associations within the community such as a building association and a community association.

**Councilmember Goldberg** confirmed each court's lights would be individually controlled, asking where the controls would be located.

Mr. Nelson responded they were located on each court, adding they also had a timer to automatically shut off after a period of time. He responded there was a master timer which shut all lights down at a designated time.

City Attorney Levin inquired if the condominium documents indicated lighted tennis courts would be provided.

Mr. Nelson responded with uncertainty.

Mr. Dave Contarino stated his opposition related to the fact only 15 to 19 homeowners were participants in the tennis association, adding the majority of people using the courts were not residents. He asserted the majority of tenants were opposed to lighting the remaining courts. He advised he lived in Building #90, stating the existing lights were an impact on his lifestyle. He stated he had offered to eliminate his opposition if the developer would agree to restrict lighted courts on Friday through Sunday, which was not agreed to. He reiterated the additional lighting would be an invasion of his property and reduced the property value of units in Building #90.

Mr. Donald Orr stated his unit was near the tennis courts, adding he was the Captain of his building. He stated although he was not a tennis player, he had received no objection to same from residents of his building. He pointed out the development was marketed as a tennis community, thus there was no objection to additional lighting.

Mr. Dennis Massengil questioned the cost and who would pay for same. He further questioned whether nonresident tennis players would assist with paying for the additional lighting.

**Mayor Albers** responded those questions should be addressed by the association board.

Mr. Mark Hoskins stated there was no reason not to approve the request as same was good for the community. He stated the majority of residents were in favor of the request, adding the tennis courts were an integral part of the desired active lifestyle of the community. He pointed out very few units faced the tennis courts, adding Mr. Contarino purchased his unit facing the tennis courts with two of them already lighted

and the conduit in place for the remaining courts. He then stated the condominium documents allowed for the lighting, thus the City should not interfere with same.

Mr. Joe Gemento pointed out the intent was always to light all of the courts as the conduit was in place during construction. He stated he had been told Vivante was intended to be a tennis community primarily for residents which was changed by the special exception. He stated if the lights were approved, additional non-residents would be playing tennis. He voiced opposition to additional lights, adding he was happy with the program as it was currently being maintained. He further stated the residents would bear the cost, concluding if a special exception was necessary it should not be allowed.

Ms. Tubbs provided a description of the Code's requirements for special exceptions.

Discussion ensued with regard to the initial SE-02-11 request.

Mr. Steve Bryan stated he owned a unit in Building #90, voicing objection to additional lighting or night usage of the courts. He stated the condominium regulations prohibited nuisances and any uses which were an annoyance to residents, asserting additional lighting and tennis play would be an annoyance in his case. He stated none of the documents he had been privy to mentioned lighted courts, but rather only tennis courts. He objected to the additional costs, requesting members vote against the request to protect individual property rights.

Ms. Patty Belvin stated there were many beginning tennis players at Vivante, adding same was a major reason she enjoyed being a resident of Vivante. She pointed out only one member of her league was not a resident.

**Mayor Albers** pointed out cost and ongoing maintenance was not an issue to be considered in the special exception, but rather by the condominium association.

Mr. Don Orr stated he felt the opposition should not be considered as they purchased a unit in a tennis community and then objected to same.

Mr. Donald Holton stated he owned a unit in Building #90, adding he had specifically purchased in that building as it allowed him to watch tennis.

Mr. Bryan stated he was aware of the existing lights when he purchased his unit; however, he was not informed of the intent to have additional lights.

**Councilmember Goldberg** confirmed Mr. Bryan had not inquired of his salesperson about the possibility of additional lighting.

Mr. Bryan acknowledged he had not.

Mr. Charlie Cheek commented Vivante was approximately 90% sold and was a thriving community. He pointed out Vivante had always been intended to be a tennis community, adding only one building was at issue.

Mr. Contarino reiterated his attempts to negotiate with Mr. Nelson had resulted in unacceptable concessions.

Ms. Theresa Jenkins commented condominium ownership was limited to a particular unit with all other amenities being shared with other residents. She stated many more units had been sold which provided for more residents and a more active community than when early purchasers lived in the community. She pointed out compromises had been made to assuage the oppositions from Building #90.

**Councilmember Wallace** confirmed the lights had always been intended, questioning why a special exception was necessary since the infrastructure was already in place.

Mr. Nelson responded same was based upon the conditions of the initial special exception to allow non-resident use of the courts.

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

**MOTION UNANIMOUSLY CARRIED.**

**Mayor Albers** commented management of the condo association would be turned over to the residents at 90% sell out, thus allowing the residents to regulate the use of lights.

Councilmember Goldberg **MOVED** approval with no conditions.

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

Councilmember Keesling **MOVED** approval with a 9:00 p.m. curfew on the use of lights, **SECONDED** by Councilmember Freeland.

Discussion ensued with regard to future implications of the time limit in relation to the special exception process.

**MOTION UNANIMOUSLY CARRIED.**

**NOTE: A short break was called at 10:16 a.m.**

**SE-05-11 - A Special Exception request by Thomas J. Martin, Agent for Punta Gorda Senior Living, LP, pursuant to Chapter 26, Sections 16.8(o), Punta Gorda Code, to amend the previously approved Special Exception SE-08-94, to expand the existing Adult Congregate Living Facility by adding an additional building to accommodate up to an additional 30 units at the Palms of Punta Gorda, 2295 Shreve Street, which is located in a General Multi-Family, 15 units per acre (GM-15) zoning district.**

City Attorney Levin presented the request for special exception.

Ms. Tubbs displayed an aerial photograph of the subject location, as delineated in the agenda material, stating this was a request to construct an addition to the existing ACLF to facilitate 30 additional, "supported dwelling units" (40 beds). She noted

sufficient land existed to support the addition, adding staff supported the request. She explained it was felt the proposal was needed within the community, concluding no concerns or complaints had been submitted. She reported staff and the Planning Commission recommended approval.

Mr. Thomas Martin, applicant, stated he was available for questions.

**Councilmember Keesling** inquired if additional parking was proposed.

Mr. Martin responded 15 additional parking spaces would be constructed.

**Mayor Albers** called three times for public comment.

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

**MOTION UNANIMOUSLY CARRIED.**

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

**MOTION UNANIMOUSLY CARRIED.**

**SE-06-11 - A Special Exception request by Casey Jo Kennedy, agent for Souls Harbor Church of God, pursuant to Chapter 26, Section 16.8, Punta Gorda Code, to allow a child care facility to be located at 425 W. Helen Avenue, in a Neighborhood Residential 15 units per acre (NR-15) zoning district; as such use requires Special Exception approval pursuant to Chapter 26, Section 3.7.(f)(6), Punta Gorda Code.**

City Attorney Levin presented the request for special exception.

Ms. Tubbs displayed an aerial photograph of the subject location, as delineated in the agenda material, stating the proposed child care facility would provide child care services and would be licensed to serve approximately 74 children, ages 6 weeks to 12 years of age. She noted the building was existing and had adequate parking as well as an area for an outdoor playground. She confirmed the playgroup area would be fenced as required. She pointed out the property was located directly behind Cross Trails Shopping Center, located at 615 Cross Street, adding adequate roads existed for the traffic to and from the site. She concluded no adverse effects were anticipated; thus, staff and the Planning Commission recommended approval of the request.

**Mayor Albers** inquired if adding a for-profit business to a tax exempt entity would change the tax exempt status.

City Manager Kunik responded same would be up to the Property Appraiser.

Ms. Casey Jo Kennedy, applicant, advised the daycare business was leasing the property from Soul's Harbor Church of God.

**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 Goldberg.

**MOTION UNANIMOUSLY CARRIED.**

**ORDINANCE/RESOLUTION**

**No Public Hearing Required**

**GA-01-12 - An Ordinance of the City of Punta Gorda, Florida, amending Chapter 23, "Traffic", Article II, "Parking Areas", Punta Gorda Code; amending Section 23-13, providing reserved parking spaces for tenants of the Lashley Park Municipal Marina; 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.**

**GA-02-12 - An Ordinance of the City of Punta Gorda, Florida, amending Chapter 6, "Boats, Docks and Waterways", Punta Gorda Code, amending Article I, Section 6-6, replacing references to the Code Compliance Division Right-of-Way Permitting Section with Building Division; amending Chapter 20, "Streets and Sidewalks", Punta Gorda Code, amending Section 20-1, replacing references to the Code Compliance Division Right-of-Way Permitting Section with Building Division; 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.**

**A Resolution of the City Council of the City of Punta Gorda, Florida dividing the City of Punta Gorda into five (5) City Council districts subsequent to the 2010 Census.**

City Attorney Levin read the resolution by title.

**Mayor Albers** stated three map options had been provided as requested by members at the last meeting.

Councilmember Freeland **MOVED** approval utilizing Option F, **SECONDED** by Councilmember Goldberg.

**Councilmember Goldberg** commented he still preferred Option A, which was considered at the previous meeting as being the most viable.

Mr. Larry Friedman stated as a Punta Gorda Isles (PGI) resident he had no stake in his comments; however, residents of Burnt Store Isles (BSI) and the southern portion of the

City should consider same. He stated with the City's at-large voting the districts were meaningless with the exception of candidate residency. He provided background information on previous City Council composition in relation to the various neighborhoods in that there were no residents from the southern portion of the City on City Council. He pointed out the selected option would further dilute the representation from the southern area, adding several of the discounted options provided the opportunity of having two representatives from the southern portion of the City.

**Councilmember Freeland** interjected same had been pointed out to the residents of BSI who had attended the previous meeting, adding same had been rejected.

Mr. Friedman responded members did not have to abide by the BSI representatives, but rather consider whether same was appropriate for the City as a whole. He opined the residents of the southern portion had earned the right to have a second representative and if members agreed, they should vote to do so. He concluded voting otherwise was a disservice to BSI.

**Mayor Albers** stated the perception of not splitting a neighborhood was of no damage.

**Councilmember Wallace** pointed out District 5 was going to grow, suggesting same be tabled to gain additional input from the southern portion of the City.

**Mayor Albers** stated he had spoken to many residents in District 5 as he represented same, adding there had been no opposition to the proposed map.

**Councilmember Goldberg** stated while he agreed with Mr. Friedman, he was comfortable with going in the direction the residents wished to move.

**MOTION UNANIMOUSLY CARRIED.**

#### **CONSENT AGENDA**

**Councilmember Freeland** commented on the two grants being considered under Items D-1 and D-2, suggesting the entire grant application not be copied for members as same was unnecessary.

Consensus of members was to agree with a notation on the cover sheet as to the location of the entire document within the online agenda package.

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

**MOTION UNANIMOUSLY CARRIED.**

**A. City Clerk's Department**

1. Approval of Minutes: Regular Meeting of January 4, 2012

**B. City Manager's Department**

1. Letter to Florida Congressional Delegation – EPA Approval Needed for Florida's New Nutrient Criteria Rules
- C. Finance Department**
1. Amendments to the City's Financial Management Policies
  2. Transfer \$1,000,000 from Utilities Operation to Utilities Capital Improvement Program
- D. Police Department**
1. Edward Byrne Memorial Justice Assistance Grant
  2. Edward Byrne Memorial Justice Assistance Grants
- E. Legal Department**
1. Invoice of Allen, Norton & Blue, P.A. for services rendered in November 2011

#### NEW BUSINESS

#### Discussion regarding permitted accessory uses in the City Center and Neighborhood Center Zoning Districts.

Ms. Tubbs explained the code allowed for an accessory use of a stall or stand for outside sales of goods at street front in the City Center (CC) and Neighborhood Center (NC) districts; however, there was no indication of what type of stall or merchandise stand nor did it include any limitations as to how any accessory use should be associated with the primary use or if there were any limitations as to number. She advised staff had received inquiries related to two recently approved accessory uses allowing hotdog carts outside existing businesses from interested parties as to the intent of the code provision, thus she was seeking direction from Council.

**Councilmember Freeland** asked if the location outside the law office was for a particular event.

Ms. Tubbs responded negatively as an outside dining permit had been issued.

City Manager Kunik stated members of the Downtown Merchants Association (DMA) were questioning why these accessory uses were being allowed when they had nothing to do with the primary business, adding they also opposed the competition as there was limited financial outlay as opposed to that of the downtown businesses.

**Councilmember Keesling** inquired as to regulation.

City Clerk Foster advised proof of same was required prior to being issued a Local Business Tax Receipt.

**Councilmember Keesling** suggested same be allowed by special exception so as to determine if it was a proper use and had a nexus to the primary business.

**Mayor Albers** concurred, adding he was concerned with competition with local businesses. He mentioned a parking lot could accommodate multiple vendors.

City Attorney Levin stated he had researched regulation or prohibition of mobile vending throughout the community. He noted mobile food vending was quite popular within many larger cities, while many of the smaller, close-knit communities wished to prohibit same to protect the local businesses. He stated some communities were regulating the vendors in some locations such as parks, while prohibiting them in all other areas. He requested direction as to how members would like him to move forward in preparation of an ordinance.

**Mayor Albers** voiced support of allowing same by special exception.

**Councilmember Freeland** stated she felt rather than a special exception, the vendor should be related to the business.

City Attorney Levin stated there were ordinances which required a tie-in to the primary business or that required a setback from the primary business to which it provided competition. He stated a proliferation of mobile trucks could arise if same was not regulated.

**Councilmember Keesling** pointed out businesses were required to have a certain number of parking spaces which would be reduced if a mobile vendor was allowed to be in the parking lot. She stated restrooms were another consideration, thus she felt special exception was the proper mechanism.

**Councilmember Wallace** stated some businesses were allowed to place a table of merchandise in front of their business, which he approved of; however, he was not in favor of vending carts being located throughout the City.

**Councilmember Goldberg** pointed out many existing merchants were struggling, adding he felt it was the City's responsibility to protect their interests. He voiced opposition to a hotdog vendor in front of a law office as there was no connection.

City Attorney Levin suggested limiting vending carts in City parks, Council approved Farmer's Markets and Special Events or limiting same by special exception.

**Councilmember Freeland** suggested requiring a special exception for any vending carts which were outside of the areas suggested by the City Attorney.

Consensus of members was to direct staff to prepare an ordinance in that manner.

**Councilmember Goldberg** confirmed a precondition to a special exception to be related to the existing business would be included.

**Mayor Albers** inquired what was to be done with the existing two locations.

City Attorney Levin inquired how they were approved.

Ms. Tubbs responded same were approved under an outside dining permit, adding if the ordinance was changed it would be viewed as an existing non-conforming use.

City Attorney Levin opined same was not a vested right, thus the City could withdraw same, adding a time limit could be placed on same to soften the impact.

Consensus was to allow one year for the two existing uses to remain in business without being required to apply for a special exception.

City Manager Kunik requested direction with regard to outside vendors at parades.

**Mayor Albers** suggested that same not be allowed and the parade organizers be advised that same was not allowed. He pointed out same competed with local businesses.

**Councilmember Goldberg** inquired if same would apply to a mobile vendor who traveled with the parade.

City Attorney Levin stated regulating same was at the discretion of Council.

Consensus of members was to prohibit stationary vendors, while allowing the parade organizers to allow the mobile vendor as a part of the parade.

City Attorney Levin pointed out same could provide the potential of a child being hit by a parade vehicle in an attempt to reach the mobile vendor.

Consensus of members was to prohibit all vendors at parades.

Councilmember Freeland **MOVED** to issue a moratorium on mobile vending, **SECONDED** by Councilmember Goldberg.

**MOTION UNANIMOUSLY CARRIED.**

### **Discussion regarding the Waiver or Reduction of Park Rental Fees for Active Military Personnel**

City Manager Kunik stated although staff did not generally favor waiving fees, they felt active military personnel deserved the City's recognition for the sacrifices they have made, thus it was proposed to reduce or waive the fees, as denoted in the agenda material.

Consensus of members was to direct staff to prepare the necessary resolution to waive the fees up to \$150.

### **Proposal to establish interim office space for the Punta Gorda History Center, Inc. in the former Main Street Punta Gorda area**

City Manager Kunik reported staff had received a request to allow the use of the two offices formerly utilized by Main Street Punta Gorda (MSPG). He explained it had become clear that a number of private historical collections existed throughout the City, which prompted a search for a History Center to be located in the City. He advised in an effort to move forward, the PGHC was requesting use of the vacant office space on an interim basis to allow the group to raise funds, administrate the program and

locate a suitable permanent location to construct a History Center. He stated staff recommended approval until the City needed the office space.

**Councilmember Goldberg** stated he had been informed there would be no expense to the City.

Consensus of members was to approve same.

### **RECOMMENDATIONS FROM CITY OFFICERS**

#### **CITY MANAGER**

City Manager Kunik stated the proposed health clinic would be presented to members at their next meeting.

#### **BOARDS AND COMMITTEES**

##### **Announcement of Vacancies**

Punta Gorda Isles Canal Advisory Committee

City Clerk Foster announced the continuing vacancy.

#### **POLICY AND LEGISLATION**

**ALBERS:** Mentioned December 7, 2012 would be the City's 125<sup>th</sup> anniversary of its incorporation, asking if members wished to commemorate same in some manner. He suggested same be given consideration for discussion at a future meeting.

**KEESLING:** Reported the Hands Across the Harbor event was being held on January 21, 2012 in Bayshore Live Oak Park, with same to benefit the Charlotte Harbor Environmental Center (CHEC). She provided detailed information on same.

**FREELAND:** Reminded those in attendance of the Strategic Planning Questionnaire which was on the City's website.

- Mentioned a legislative bill which would prohibit local governments from giving a local vendor preference during the bidding process, opining same infringed on the City's Home Rule Power.

City Attorney Levin stated same was only related to State funded projects.

#### **CITIZENS' COMMENTS**

Mr. Charlie Council, BSI, voiced appreciation to members for listening to their concerns related to redistricting.

Ms. Rhonna Gaines commented on the Martin Luther King (MLK) celebrations held the previous weekend.

Mr. Gene Murtha, PGHC, thanked members for allowing them to utilize the City offices. He commented on the need for the History Center, adding he felt same would be an asset to the City.

Mr. Steve Fabian commented on the Long Range Financial presentation at the previous meeting and the decision to leave the holiday lights up for a longer period of time in

response to a request from downtown businesses, adding he was opposed to same based upon cost.

Mr. Don McCormick stated the South County Coalition was not afforded the opportunity to review and discuss the proposed redistricting maps, suggesting a public hearing be incorporated in the City's Charter for future years.

The meeting was adjourned at 11:45 a.m.

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Mayor

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City Clerk