

CITY OF WEST PALM BEACH
OFFICE OF THE CITY CLERK
REGULAR CITY COMMISSION MEETING
JULY 28, 2008

The City Commission of the City of West Palm Beach met in regular session on Monday, July 28, 2008 at 4:13 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 4:22 p.m.], Commissioner William Moss, Commissioner Isaac Robinson, Jr., Deputy City Administrator Dorritt Miller, Deputy City Attorney Nancy Urcheck, 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.

ADDITIONS/DELETIONS/REORGANIZATION OF AGENDA:

Deputy City Administrator Dorritt Miller announced that items #4 and #5 will be heard on August 11, 2008.

4. The Mayor announced that without objection, item #4, & 5. Presentation of 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 item #5, Presentation of Resolution No. 268-08 authorizing and approving the "Face of the City" for Clear Lake Overlook, would be continued to August 11, 2008.

27. The Mayor announced that without objection, item #27, Ordinance No. 4137-08 a request by Ron Kolins of Greenberg Traurig, PA, on behalf of Trinity 1515 LLC, for a rezoning from Multifamily High Density (MF32) Residential to Residential Planned Development (RPD) to construct The Modern, a residential condominium building containing 84 units and associated amenities at 1515 South Flagler Drive, on approximately 2.05 acres, would be continued to August 11, 2008.

PRESENTATIONS AND AWARDS OF MERIT:

1. Presentation by Executive Director of the Palm Beach County League of Cities Mr. Jamie Titcomb regarding the League's purpose and its vision – Mr. Titcomb [a] thanked the City for its involvement in the League; [b] noted that Commissioner Moss is a former president of the League and Commissioner Robinson is currently serving as Second Vice President to the League's Board of Directors; [c] made a presentation regarding an overview of the League's functions; [d] spoke about the home rule initiative; and [e] thanked staff for their support of the League.
2. Presentation by Bonnie Jensen of Hanson, Perry & Jensen, P.A. regarding "The State of the Pension Funds" of the City of West Palm Beach – Ms. Jensen [a] made a presentation regarding the West Palm Beach Firefighters' and Police Pension Funds [b] acknowledged the contributions of the Firemen's Pension Board of Trustees and the Police Pension Board of Trustees; and [c] responded to Commission questions. Commissioner Mitchell asked for a copy of the City's investment policy.
3. Presentation of Resolution No. 338-08(F) and presentation of a donation check – Parking Systems Administrator Sue Olley made a presentation and responded to Commission questions. Officer Jeremy Banks made a presentation regarding the Police Athletic League. The Mayor presented the donation check to Mr. Banks, who accepted the check with thanks. It was moved by Commissioner Robinson, seconded by Commissioner Muoio, to adopt Resolution No. 338-08(F) amending the Fiscal Year 2007/2008 General Fund budget to recognize Parking Meter donation revenue for the Palm Beach Boat Show on Sunday, March 30, 2008, and appropriating funds for a donation to the Police Athletics/Activities League (PAL); and thereafter it was voted as follows: Ayes: Commissioners Douglas, Mitchell, Moss, Muoio and Robinson. Motion therefore carried unanimously.

CONSENT CALENDAR:

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

6. Minutes of the Regular City Commission Meeting held June 16, 2008 and Minutes of the Special City Commission Meeting held June 18, 2008.
7. Minutes of the Special City Commission Meeting held June 23, 2008.

8. Resolution No. 333-08 approving a Sublease Amendment with Palm Beach County to reflect the agreed design modifications to the Police helicopter hanger.
9. Resolution No. 314-08(F) amending the Fiscal Year 2007/2008 Miscellaneous Trust Fund budget to authorize appropriations from the State, Federal, and Treasury Law Enforcement forfeiture receipts for law enforcement equipment and programs.
10. Resolution No. 323-08 authorizing application for a grant of thirty eight thousand three hundred sixty four dollars (\$38,364.00) from the U.S. Department of Justice, Justice Assistance Grant (JAG) program.
11. Resolution No. 301-08(F) establishing appropriations within the Fleet Management Fund budget to provide for additional fuel costs.
12. Resolution No. 304-08 authorizing the assessment of City liens in the total amount of \$9,548.88 for unpaid demolition charges.
13. Resolution No. 303-08 authorizing the assessment of City liens in the total amount of \$39,460.51 for unpaid water, sewer, and stormwater service for the month of April 2008.
14. Resolution No. 329-08 approving a First Amendment to the Grant Agreement with the Palm Beach Metropolitan Planning Organization (MPO) for the design, permitting and construction of water taxi docks in Currie Park.
15. Resolution No. 320-08 approving amendments to the local housing assistance plan (LHAP) for the period 2006 - 2009 and Resolution No. 321-08(F) providing for the budgetary allocation of SHIP funds for the period July 1, 2008 - June 30, 2009 supporting activities identified within the LHAP.
16. Resolution No. 334-08 appointing an Affordable Housing Advisory Committee for the State Housing Initiatives Partnership Program.

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

PUBLIC HEARING:

17. Public Hearing and Second Reading of Ordinance No. 4147-08 – Commissioner Moss stated that he would abstain from discussing and voting on item #17 due to a conflict of interest. [Please refer to Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officials attached to and incorporated into the

minutes]. It was moved by Commissioner Robinson, seconded by Commissioner Douglas, to adopt Ordinance No. 4147-08 a City-Initiated request to establish the Corporate Way Overlay District for the purposes of permitting professional and medical office uses as defined within the Zoning and Land Development Regulations within the Palm Beach Business Park. The approximately 27 acre park is located northeast of the 45th Street/Interstate 95 interchange, west of the South Florida Water Management District C-17 canal and includes all properties with a Corporate Way street address; thereupon Ordinance No. 4147-08 was read into the record by title; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Mitchell, Muoio and Robinson; Abstention: Commissioner Moss [please refer to Form 8B, "Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers" attached hereto]. Motion therefore carried unanimously.

18. Public Hearing and Second Reading of Ordinance No. 4158-08 – It was moved by Commissioner Robinson, seconded by Commissioner Douglas, to adopt Ordinance No. 4158-08 addressing seven (7) scrivener's errors in Ordinance No. 4095-07 which was passed by the City Commission on May 5, 2008; thereupon Ordinance No. 4158-08 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.
19. Public Hearing and Second Reading of Ordinance No. 4159-08 – Assistant City Attorney Lisa Conforti [a] announced that notifications of renewals regarding business taxes for rental properties will be sent out if this Ordinance passes; [b] handed out copies of the notices for the Mayor and Commissioners to view; and [c] responded to Commission questions. Police Chief Delsa Bush responded to Commission questions. Commissioner Douglas commended staff for their effort in notifying residents of this matter. It was moved by Commissioner Robinson, seconded by Commissioner Mitchell, to adopt Ordinance 4159-08 creating Chapter 54 (Offenses), Article XII (Sexual Offender and Sexual Predator Residence Prohibition) and establishing regulations governing and regulating sexual offenders and sexual predators residing in the City; thereupon Ordinance No. 4159-08 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.
20. Public Hearing and Second Reading of Ordinance No. 4160-08 – The Mayor announced that without objection, Ordinance No. 4160-08 amending Chapter 74 (Solid Waste), Article I (In General), and Article IV (Enforcement) of the City Code to declare the dumping of litter and/or refuse in the City to be a public nuisance,

establishing requirements to further control public nuisances relating to solid waste, littering and prescribing penalties and remedies for noncompliance, was continued to the August 11, 2008 City Commission Meeting.

21. Public Hearing and First Reading of Ordinance No. 4112-08 – Parking Systems Administrator Sue Olley made a presentation and responded to Commission questions. Commissioner Douglas expressed her opinion that mobile food vendors should not be permitted on the Tent Site due to the heavy traffic in that area. Deputy City Attorney Nancy Urcheck responded to Commission questions. Commissioners Douglas and Moss suggested continuing this item and revising the Ordinance to allow the current vendors to choose their location preferences. Public comments: Laura Leiva, Tony Napoli, Terrell Evans of the All American Grill, Desiree and Miguel Johnson of the Island Rhythm Grill, Stuart Hymson of Subway and Vanessa Scott of The Veggie Submarine. It was moved by Commissioner Douglas, seconded by Commissioner Muoio, to continue to the August 25, 2008 City Commission Meeting Ordinance No. 4112-08 creating a Downtown Mobile Food Vendor Franchise program to regulate the conduct of business on public streets and sidewalks by peddlers and mobile food vendors in the downtown area and enlarging the boundaries of the downtown area subject to the franchise program; thereupon Ordinance No. 4112-08 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.
22. This item was discussed after item #26.

PUBLIC HEARING - QUASI-JUDICIAL:

-SWEARING IN OF WITNESSES

The Deputy City Clerk swore in all those persons having an interest in items #23, #24, #26 and #28. Deputy City Clerk Jennifer McDonald and Deputy City Attorney Nancy Urcheck clarified that item #25 was not quasi-judicial.

-DISCLOSURE OF EX-PARTE COMMUNICATIONS, IF ANY*

Commissioner Douglas stated that she [a] had had no ex-parte communications regarding items #23, #24 and #26; and [b] would base her decisions on the evidence and testimony to be presented.

Commissioner Moss stated that he [a] had had no additional ex-parte communications regarding items #23, #24 and #26; [b] had had ex-parte communication regarding item #28; and [c] would base his decisions on the evidence and testimony to be presented.

Commissioner Robinson stated that he [a] had had no additional ex-parte communications regarding items #23, #24 and #26; 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 communications regarding items #23 and #24; [b] had had no ex-parte communication regarding item #26; [c] had had ex-parte communication regarding item #28; and [d] would base her decisions on the evidence and testimony to be presented.

At this time Commissioner Robinson stated that he [a] had had ex-parte communication with the developer regarding item #28; and [b] would base his decision on the evidence and testimony to be presented.

Commissioner Muoio stated that she [a] had had no additional ex-parte communications regarding items #23, #24 and #26; [b] had had ex-parte communication regarding item #28; and [c] would base her decisions on the evidence and testimony to be presented.

At this time Commissioner Douglas stated that she [a] had had ex-parte communication with the attorney representing the applicant regarding item #28; and [b] would base her decision on the evidence and testimony to be presented.

23. Public Hearing and Second Reading of Ordinance No. 4146-08 – It was moved by Commissioner Robinson, seconded by Commissioner Mitchell, to adopt Ordinance No. 4146-08, a request by Dominick Agustino, of Landmark Construction, on behalf of Clear Channel Broadcasting, for a Major Amendment to the Congress Crossings Commercial Planned Development (CPD) to permit the installation of fencing, not to exceed eight (8) feet in height, within the required front setback on properties containing radio stations; thereupon Ordinance No. 4146-08 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.

24. Public Hearing and Second Reading of Ordinance No. 4148-08 – It was moved by Commissioner Robinson, seconded by Commissioner Douglas, to adopt Ordinance No. 4148-08 a request by Joseph Verdone and Lynda Harris of Carlton Fields, on behalf of Flagler Landing, L.P., for a Major Amendment to the Flagler Landing Residential Planned Development (RPD) to add an additional five (5) boat slips to an existing dock; thereupon Ordinance No. 4148-08 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.

25. Public Hearing and Second Reading of Ordinance No. 4154-08 –It was moved by Commissioner Robinson, seconded by Commissioner Moss, to adopt Ordinance No. 4154-08 approving a major amendment to the CityPlace Development of Regional Impact (DRI) to allow hotel uses on the Parcel No. 7 (Opera Place) of the DRI identified as the Babcock project; thereupon Ordinance No. 4154-08 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.
26. Public Hearing and First Reading of Ordinance No. 4157-08 – Senior Planner John Roach made a presentation and responded to Commission questions. It was moved by Commissioner Douglas, seconded by Commissioner Muoio, based on findings of fact and in compliance with Section 94-32, to approve Ordinance No. 4157-08 a request by James R. Brindell, Esq., of Gunster, Oakley & 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, Moss, Muoio and Robinson; Absent: Commissioner Mitchell. Motion therefore carried unanimously.
27. This item was continued. Please refer to Additions/Deletions/Reorganization of Agenda.

**REORDERED AGENDA:
PUBLIC HEARING:**

22. Public Hearing and Resolution No. 332-08 – Finance Director Randy Sherman made a presentation and responded to Commission questions. Deputy City Attorney Nancy Urcheck and Interim Fire Chief Phillip Webb responded to Commission questions. Commissioner Moss stated that he serves on the governing board for Saint Mary’s Hospital. Deputy City Attorney Nancy Urcheck stated that there is not a conflict of interest and therefore Commissioner Moss does not need to abstain from voting. Public Comments: Sal Faso, President of the Chamber of Commerce of the Palm Beaches Dr. Dennis Grady, C. E. Newbauer, Gregg Weiss, Barbara Rutberg, Elizabeth Smiley, Michael Cleveland, Valerie Luster, Hannah Barnes, Patrick Franklin of the Urban League of Palm Beach County, David Potter, Al Vazquez of the Parker Ridge Neighborhood Association, Susy Diaz, Larry Stout, Vincent Trapani, Jeffrey Viselli, Hank Baleric, Thomas Myers, Sean Jackson, John Revson, Scott Lewis, Michael Docsh and President of West Palm Beach Association of Fire Fighters Thomas Sheppard. Assistant Fire Chief Kenneth

Jones Responded to Commission questions. Commissioner Robinson stated that he could not support this assessment. Commissioner Moss stated that he is in favor of this assessment. Commissioner Muoio [a] stated that she is willing to increase the millage; [b] suggested doing away with the fire assessment fee; and [c] suggested that the Finance Department come back with a proposal. Commissioner Mitchell stated that she concurs with Commissioner Muoio's comments. It was moved by Commissioner Mitchell, seconded by Commissioner Robinson, to continue to the August 25, 2008 City Commission Meeting and to fine tune the assessment and look at alternative options, Resolution No. 332-08 the final assessment resolution for the City-wide fire services assessment, approving the method of apportionment, approving the assessment rates and approving the final assessment roll; and thereafter it was voted as follows: Ayes: Commissioners Mitchell, Moss, Muoio and Robinson; Nays: Commissioner Douglas. Motion therefore carried unanimously.

[The meeting was recessed at 8:26 p.m. and reconvened
at 8:38 p.m.]

PUBLIC HEARING - QUASI-JUDICIAL [CONTINUED]:

-SWEARING IN OF WITNESSES

The Deputy City Clerk swore in all those persons having an interest in item #28.

28. Public Hearing and Resolution No. 133-08 – City Urban Designer Ana Maria Aponte [a] made a presentation; [b] responded to Commission questions; and [c] stated her credentials for the record. Deputy City Attorney Nancy Urcheck and Willy Bermello of BAP Development, Inc. responded to Commission questions. Greg Kino, representing the applicant, made a presentation and responded to Commission questions. Traffic Engineer for the Opera Place Project Joaquin Vargas and Eddie Llamas of BAP Development, Inc. [a] submitted their credentials for the record; [b] made presentations; and [c] responded to Commission questions. Traffic Engineer Brian Collins provided his credentials for the record and responded to Commission questions.

[The Mayor left the meeting at 9:55 p.m. and returned
at 9:56 p.m.]

Public comments: Land Use Attorney representing the City Palms project Scott Backman, John Kim of McMahon Transportation Engineers and Planners, Inc. provided his credentials for the record, Howard Pincus, on behalf of the 610 Clematis Street Condominium Board, John Revson and President and Treasurer of the 610 Clematis Condominium Board Lenore Newbold. Attorney

Daniel Pelz of Daniels, Kashtan, Downs, Robertson and McGirney, P.A., representing the applicant, made a presentation and responded to Commission questions. Planning Director Charles Wu expressed his concerns regarding the entrance to the hotel. It was moved by Commissioner Muoio, seconded by Commissioner Mitchell, to continue to the August 11, 2008 City Commission Meeting Resolution No. 133-08 regarding a Level III Site Plan approval for the Opera Place project which will include a 250 room hotel, 350 residential units, 317,633 square feet of office space, 57,710 square feet of retail space, and 1,538 parking spaces, with a total area of 1,073,846 square feet. The project is located between Lakeview Avenue and Iris Street, Quadrille Boulevard and Dixie Highway; and thereafter it was voted as follows: Ayes: Commissioners Douglas, Mitchell, Moss, Muoio and Robinson. Motion therefore carried unanimously.

ADJOURNMENT:

There being no further business to come before the Commission, the meeting was adjourned at 11:04 p.m.

APPROVED:

PRESIDING OFFICER

ATTEST:

CITY CLERK

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