

CITY COUNCIL MEETING April 13, 2011

The City of Bradenton City Council met in regular session in the City Hall Council Chamber, 101 Old Main Street, Bradenton, Florida on April 13, 2011 at 8:30 a.m.

Present: Mayor Wayne Poston; Councilman Ward I Gene Gallo; Councilwoman Ward II Marianne Barnebey; Vice Mayor and Councilman Ward III Patrick Roff; Councilman Ward IV Bemis Smith and Councilman Ward V Harold E. Byrd, Jr.

City Officials: Carl Callahan, City Clerk and Treasurer/Chief of Staff; Claude Tankersley, Public Works Director; William Lisch, City Attorney; Chuck Edwards, Fire Chief; Michael Radzilowski, Police Chief; and Tim Polk, Department of Planning and Community Development Director.

The meeting was called to order by Mayor Poston.
Ecumenical invocation was led by Pastor Tom Winter, Elwood Park Baptist Church.
Pledge of Allegiance was led by Councilman Gallo.

PROCLAMATIONS

2011 Commuter Services Day Proclamation – April 13, 2011
2011 National Osteopathic Medicine Week Proclamation – April 17-23, 2011
2011 National Arbor Day Proclamation – April 29, 2011
2011 Child Abuse Prevention Month Proclamation – April, 2011

PRESENTATIONS - None

Mr. Callahan administered the oath to any individuals who wished to speak on any non-agenda items and during the public hearings.

CITIZEN COMMENTS

No one came forward.

CONSENT AGENDA

- a) Minutes of March 23, 2011.
- b) **Resolution 11-20** Adoption of CDBG Substantial Amendment.
- c) **MB.11.0050** Request for a one-year extension of time for Magnolia Lakes, 415 48th Street Court East.
- d) **Resolution 11-21** Appointing **Patrick Gallagher** to the Tree & Land Preservation Board.
- e) **2011 National Arbor Day** Project Request for the use of Woodbury Tree funds to improve four medians on 3rd Street West between 6th Avenue West and 3rd Avenue West in a re-design project for 2011 National Arbor Day in partnership with the Tree & Land Preservation Board, Keep Manatee Beautiful, and Manatee River Garden Club.
- f) Public Event request Sexual Assault Awareness Day, Wednesday, April 20, 2011.
- g) Public Event request Children's Egg Hunt, Saturday, April 23, 2011.
- h) Public Event request Cinco de Mayo, Thursday, May 5, 2011.
- i) Public Event request Music Fest 2011, Saturday, May 14, 2011.
- J) Public Event request Party on the Plaza, Saturday, May 21, 2011.
- k) Public Event request July 4th Celebration, Monday, July 4, 2011.
- l) Public Event request Downtown Hanukkah Celebration, Monday, December 12, 2011.
- m) Execution of CBIR Grant LP6777 Amendment 1 for an agreement to reallocate funding from dredging to property acquisition./SK

MOTION TO APPROVE Consent Agenda items a, b, c, d, e, f, g, l and m and remove items h, i, j and k for discussion was made by Vice Mayor and Councilman Roff, seconded by Councilman Smith and passed 5-0.

General discussion about complaints from downtown residents about problems being experienced during and after downtown evening events. It was suggested that louder bands be scheduled to play early and/or be placed at the Manatee Avenue stage. It was stressed that the city had an ordinance prohibiting glass bottles from being used on the streets as it had been noted that people were bringing coolers, and visiting their cars frequently.

MOTION TO APPROVE Consent Agenda item h/Cinco de Mayo was made by Vice Mayor and Councilman Roff, seconded by Councilman Byrd and passed 5-0.

MOTION TO APPROVE Consent Agenda item i/Music Fest with a stipulation that the event end at 11 p.m. instead of midnight was made by Vice Mayor and Councilman Roff, seconded by Councilman Byrd passed 5-0.

MOTION TO APPROVE Consent Agenda item j/ Party on the Plaza with a stipulation that the event end at 11 p.m. instead of 11:30 p.m. was made by Councilwoman Barnebey, seconded by Councilman Byrd and passed 5-0.

MOTION TO APPROVE Consent Agenda item k/4th of July with a stipulation that the band would stop playing early enough to allow clearing of Old Main Street prior to the start of the fireworks scheduled to begin at 9 p.m. was made by Councilwoman Barnebey, seconded by Councilman Byrd passed 5-0.

BUSINESS/ADVERTISING, PETITIONS, HEARINGS AND COMMUNICATIONS

SECOND READING OF PROPOSED ORDINANCE 2929/TC CP.10.0029 PUBLIC HEARING

AN ORDINANCE OF THE CITY OF BRADENTON, FLORIDA, MAKING CERTAIN FINDINGS OF FACT; PROVIDING FOR AMENDMENT TO THE CITY OF BRADENTON COMPREHENSIVE PLAN (LARGE SCALE ACTIVITY CP.10.0029) PROVIDING FOR TEXT AMENDMENTS RE-ESTABLISHING THE LEVEL OF SERVICE STANDARDS FOR SCHOOLS IN THE PUBLIC SCHOOLS FACILITY AND CAPITAL IMPROVEMENTS ELEMENTS, PROVIDING FOR CONSISTANCY WITH THE STATE COMPREHENSIVE PLAN; PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The public hearing was opened, anyone who wished to speak in favor please come forward. No one came forward.

Anyone who wished to speak in opposition, please come forward. No one came forward. The public hearing was closed.

Tim Polk gave the Planning and Community Development staff report with authorization for adoption by the Department of Community Affairs with staff recommendation for approval.

Councilwoman Barnebey stated she would abstain from voting as there was a continuing conflict with her husband legally representing the school board.

MOTION TO APPROVE ORDINANCE 2929, CP.10.0029 with the recommendations made by the Planning and Community Development staff and Planning Commission was made by Vice Mayor and Councilman Roff, Councilman Byrd and passed 4-0. Councilwoman Barnebey abstained from voting.

SECOND READING OF PROPOSED ORDINANCE 2930/RS LU.10.0029 PUBLIC HEARING

AN ORDINANCE OF THE CITY OF BRADENTON, FLORIDA, PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR ADOPTION OF A FORM-BASED CODE LAND USE REGULATIONS (FBC); PROVIDING FOR TRANSECT DESIGNATIONS; PROVIDING FOR ARTICLES FOR IMPLEMENTATION, INCLUDING GENERAL PROVISIONS, NEW COMMUNITY SCALE PLANS, INFILL COMMUNITY SCALE PLANS, BUILDING SCALE PLANS AND URBAN STANDARDS, ARCHITECTURAL STANDARDS, THOROUGHFARE STANDARDS, LANDSCAPE STANDARDS, LIGHTING STANDARDS, LIGHT IMPRINT STORMWATER MANAGEMENT, SUSTAINABILITY, PUBLIC ART, DEFINITIONS AND APPENDICES; PROVIDING FOR REPEAL OF PROVISIONS OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The public hearing was opened, anyone who wished to speak in favor please come forward.

Those speaking in support of the FBC:

Dave Feagles, Florida Neighborhood Plant Society (FNPS), supportive on usage of native plants and the dangers of using invasive plants with special consideration of exotic plants in Florida; **Bob Egolf** submitted and read a letter from **Karen Fraley**, Around the Bend Nature Tours LLC in support of the FNPS position of keeping the plant lists; **Laurel Schiller**, Florida Native Plant Nursery and Landscaping, supported the usage of native plants that were suited to local conditions; **Rick Fawley**, Fawley Bryant Architects, supported the FBC as it was not restrictive in nature but gave flexibility to those who were in the creative field; **Alan Prather**, representative for Tropicana Products, District 1 was supportive of the entire system but not necessarily the adoption of the code.

Anyone who wished to speak in opposition, please come forward.

Bill Galvano, as a property owner and an attorney representing two property owners, Donna Riggs and Vicki Vitato, spoke in opposition to the FBC. He stated the current FBC document was too restrictive and micro-regulated such issues as operability of windows, where mulch was produced and its source, lighting based on the circadian rhythms and impact on plant light, and cultural art contributions on private property.

Mr. Galvano cautioned the city and referred to Florida Statutes Chapter 70, Bert Harris Act, which warned of possible challenges from existing property owners. He stated the FBC could disenfranchise the voters by pulling Council out of the decision making process.

Discussion and questions as to ADA requirements under the visitability clause. Current height requirements currently allowing eight stories would change to three stories and by using incentive bonus points to increase the height to five stories. Incentive bonus points could be obtained by using workforce housing or green (leed) standards.

Andrew Georgiadis, DoverKohl Consultant, explained the visitability clause and stated this was a suggestion as to what could be done and was not mandatory.

Greg Porges, attorney representing himself and a property owner had concerns about the possibility of deterring people from renovating their existing buildings.

Alan Buskirk representing himself and **Allen Prewitt** of the City of Bradenton Planning Commission submitted and read a letter in opposition to the FBC. They had concerns regarding the verbiage within the document. Take "shall" out of the document. The applicant was required by law to perform this obligation with exemptions granted only by the Planning Commission and PCD Director. This code would keep development out of the affected areas of Bradenton. They had four primary concerns.

1. Safety- Lack of communication with the Fire Department and the Public Works Department. 2. The Form Based Code as presented dictated to private property owners as to what

their property should look like. 3. Green Initiative/Landscaping: Required conformity to environmental standards far beyond reasonable reality. 4. Unreasonable public art requirements on private property.

Mac Carroway, representing the Florida Nursery, Growers and Landscape Association (FNGL) voiced his concerns about the restrictive plant list and the list to encourage a recommended plant list. The association was supported sustainability in urban landscape but believed there was room for both types of plants, native and non-native plants.

Caleb Grimes stated in general, the FBC made it easier to know what could be built with requirements going through administratively with no issues. The document was not intended to keep someone from doing those things, but made it easier to make things that were acceptable.

Mr. Grimes voiced his concern that if there was a special use which did not fit the criteria of the FBC there was no opportunity for the special use to come before council. That the special use request would go back administratively by an appeal to the Planning Commission or Architectural Review Board and possibly onto Circuit Court.

MOTION TO CONTINUE THE PUBLIC HEARING of Ordinance 2930 to May 11, 2011 was made by Councilman Smith, seconded by Councilman Byrd and passed 5-0.

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**SU.11.0085 WARD 3 NEIGHBORHOOD 1.01 RS PUBLIC HEARING**

Request of James Miller, agent for John Delesline, owner, to relocate a lounge across the street from 425 Old Main Street to 424 Old Main Street, zoned UC.

The public hearing was opened, anyone who wished to speak in favor please come forward. No one came forward.

Anyone who wished to speak in opposition, please come forward. No one came forward. The public hearing was closed.

Tim Polk gave the Planning and Community Development staff report for SU.11.0085 with staff recommendation for approval with 4 stipulations:

1. Maximum occupancy shall be determined by the Fire Marshal.
2. Prior to occupancy code compliance as required by the Building Official and Fire Marshall shall be completed.
3. Hours of operation would be the same as those mandated by the State of Florida in accordance with the alcoholic beverage licensed.
4. Architectural Review Board approval would be required for exterior renovations.

Planning Commission recommended (March 16, 2011) approval with 6 stipulations:

1. Maximum occupancy shall be determined by the Fire Marshal.
2. Prior to occupancy code compliance as required by the Building Official and Fire Marshall shall be completed.
3. Hours of operation would be the same as those mandated by the State of Florida in accordance with the alcoholic beverage license.
4. Provide a plan for outdoor seating prior to the City Council meeting.
5. No cooking or parking was permitted in the alley.
6. Clean the sidewalks on a weekly basis.

APPROVED BY  
April 27, 1011  
CITY COUNCIL

**MOTION TO APPROVE SU.11.0085 with the recommendations made by the Planning and Community Development staff and Planning Commission with 6 stipulations was made by Vice Mayor and Councilman Roff, seconded by Councilman Smith and passed 5-0.**

**AB.11.0017 WARD 3 NEIGHBORHOOD 1.01 RS PUBLIC HEARING**

Request of James Miller, agent for John Delesline, owner, to transfer the existing 4-COP License (beer, wine and liquor consumption on premises) from 425 Old Main Street to 424 Old Main Street, zoned UC.

The public hearing was opened, anyone who wished to speak in favor please come forward. No one came forward.

Anyone who wished to speak in opposition, please come forward. No one came forward. The public hearing was closed.

Tim Polk gave the Planning and Community Development staff report for AB.11.0017 with staff recommendation for approval with 4 stipulations:

- 1. Maximum occupancy shall be determined by the Fire Marshal.
- 2. Prior to occupancy code compliance as required by the Building Official and Fire Marshall shall be completed.
- 3. Hours of operation would be the same as those mandated by the State of Florida in accordance with the alcoholic beverage licensed.
- 4. Architectural Review Board approval would be required for exterior renovations.

Planning Commission recommendation (March 16, 2011) approval with 6 stipulations:

- 1. Maximum occupancy shall be determined by the Fire Marshal.
- 2. Prior to occupancy code compliance as required by the Building Official and Fire Marshall shall be completed.
- 3. Hours of operation would be the same as those mandated by the State of Florida in accordance with the alcoholic beverage license.
- 4. Provide a plan for outdoor seating prior to the City Council meeting.
- 5. No cooking or parking was permitted in the alley.
- 6. Clean the sidewalks on a weekly basis.

**MOTION TO APPROVE AB.11.0017 with the recommendations made by the Planning and Community Development staff and Planning Commission with 6 stipulations was made by Vice Mayor and Councilman Roff, seconded by Councilman Gallo and passed 5-0.**

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SU.11.0087 WARD 4 NEIGHBORHOOD 7.03 RS PUBLIC HEARING

Request of Ella Powell, agent for Kenneth Weber, owner, for special use approval to operate a day care center at 202 3rd Avenue East, zoned UCBD.

The public hearing was opened, anyone who wished to speak in favor please come forward.

Ella Powell requested approval of the day care center and was present to answer any questions.

Anyone who wished to speak in opposition, please come forward.

The public hearing was closed.

Tim Polk gave the Planning and Community Development staff report with the staff and Planning Commission recommendations with the following stipulations:



Staff recommendation: APPROVAL of the proposed Special Use, with the following 4 stipulations:

1. Lighting would be provided as recommended by the Police Department.
2. All Fire and Building Code requirements as specified by the Fire Marshal and Building Official would be addressed prior to occupancy of the facility.
3. The "overflow" parking area would be improved in 12 months. Pervious material such as rock or paver block should be utilized for the parking, and landscaping would be installed in accordance with code requirements.
4. Plant materials or opaque fencing would be installed around the playground area.

PLANNING COMMISSION RECOMMENDATION (March 16, 2011): APPROVAL with the following 4 stipulations:

1. Lighting would be provided as recommended by the Police Department.
2. All Fire Department comments and requirements would be addressed prior to occupancy of the facility.
3. The "overflow" parking area would be improved in 12 months. Pervious material such as rock or paver block should be utilized for the parking, and landscaping would be installed in accordance with code requirements.
4. Opaque fencing at a height of 6 feet would be installed around the playground area, subject to state approval.

Mayor Poston asked that with any landscaping stipulation the wordings of "to be maintained" be added.

MOTION TO APPROVE SU.11.0087 with the recommendations made by the Planning and Community Development staff and Planning Commission with 4 stipulations was made by Councilman Smith, seconded by Councilman Gallo and passed 5-0.

NEW BUSINESS BY DEPARTMENT HEADS, CITY ATTORNEY AND COUNCIL

FIRST READING OF PROPOSED ORDINANCE 2931

AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE CITY OF BRADENTON, AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION TO APPROVE the first reading and set the second reading of Proposed Ordinance 2931 for April 27, 2011 was made by Vice Mayor and Councilman Roff, seconded by Councilman Byrd and passed 5-0.

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**BUDGET ADJUSTMENT OVER \$10,000**

**MOTION TO APPROVE the budget adjustment to the General Fund was made by Councilman Gallo, seconded by Councilwoman Barnebey and passed 5-0.**

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SOUTH FLORIDA MUSEUM request for a temporary 10th Street closure in front of the museum to unload an exhibit either on Thursday, April 21st or Friday, April 22nd.

MOTION TO APPROVE the South Florida Museum request was made by Councilwoman Barnebey, seconded by Councilman Smith and passed 5-0.

APPROVED BY
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COUNCIL REPORTS

Councilman Gene Gallo, Ward I: Nothing to report.

Councilwoman Marianne Barnebey, Ward II: Encouraged everyone to partake in a Manasota Art fundraiser for the Manasota Association of Retarded Citizens on April 16th.

Vice Mayor and Councilman Patrick Roff, Ward III: Reported on Saturday, April 16th the bi-annual Wares Creek Cleanup would be held.

Vice Mayor and Councilman Roff stated that Verizon had retrieved a 4 inch copper cable from Wares Creek which probably paid for the operation to pull it out in preparation of the soon to be Wares Creek Flood Control Dredging.

Councilman Bemis Smith, Ward IV: Nothing to report.

Councilman Harold Byrd, Jr., Ward V: Reported on the complaint made by Alice Payne at the March 23, 2011 Council meeting regarding housing placement. Councilman Byrd submitted a background documentation provided by the housing staff, which had done a thorough review of the case and determined that Ms. Payne had a misunderstanding as to the proper process she needed to follow to receive SHIP funds.

Mayor Wayne Poston: Received a notification regarding legislation cuts and that the CDBG funds had not been cut as badly as anticipated.

Mayor Poston stated that the Bradenton Marauders opening game had been attended by 2200 people.

Mayor Poston announced April was DeSoto Festival month with lots of events going on, to be finalized with the Grand Parade on Saturday, April 30th.

DEPARTMENT HEADS

Carl Callahan stated the department heads would hold a workshop immediately following the meeting.

ADJOURNMENT

There being no further business, Mayor Poston adjourned the meeting at 11:15 a.m.

NOTE: This is not a verbatim record. An audio CD or DVD recording of the meeting is available for a fee upon request.