

**CITY COUNCIL MEETING
September 23, 2009**

APPROVED BY
October 14, 2009
CITY COUNCIL

The City of Bradenton City Council met in regular session in the City Hall Council Chamber, 101 Old Main Street, Bradenton, Florida on September 23, 2009 at 6:00 a.m.

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

City Officials: Carl Callahan, City Clerk and Treasurer; Claude Tankersley, Public Works Director; William Lisch, City Attorney; Mark Souders, Fire Chief; Michael Radzilowski, Police Chief; Tim Polk, Department of Planning and Community Development Director, and Carolyn Moore, Human Resources Director.

Press: The Herald and The Bradenton Times.

The meeting was called to order by Mayor Poston.
Ecumenical invocation was led by Pastor Jim LaDuke, Loving Hands Ministries.
Pledge of Allegiance was led by Mayor Poston.
Staci Cross, Information Technology Director was excused from the meeting.

PROCLAMATIONS

MTI DAY PROCLAMATION – SEPTEMBER 30, 2009

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 September 9, 2009.
- b) Budget minutes of September 9, 2009.
- c) Resolution 09-68–SHIP Housing Rehabilitation Tiller Contract, 201 24th Street N.E.
- d) Public Event- Request to change date for Walk and Wag-a-thon.
- e) Public Event- Veterans’ Day Parade, Wednesday, November 11, 2009.
- f) Public Event- Wedding at Rossi Park, Saturday, November 7, 2009.

MOTION TO APPROVE THE CONSENT AGENDA with Items a) through f) was made by Councilwoman Barnebey, seconded by Councilman Byrd and carried 5-0 for approval.

BUSINESS/ADVERTISING, PETITIONS, HEARINGS AND COMMUNICATIONS

THIRD READING OF PROPOSED ORDINANCE NO. 2907 PUBLIC HEARING FOR ADOPTION

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 DEVELOPMENT ACTIVITY AMENDMENT CP.08.0024) EVALUATION AND APPRAISAL REPORT (EAR) BASED AMENDMENTS TO THE COMPREHENSIVE PLAN, INCLUDING THE DESIGN ELEMENT, FUTURE LAND USE ELEMENT, TRANSPORTATION ELEMENT, COASTAL MANAGEMENT ELEMENT, HOUSING ELEMENT, PUBLIC FACILITIES ELEMENT, RECREATION AND OPEN SPACE ELEMENT, HISTORIC PRESERVATION ELEMENT, INTERGOVERNMENTAL COORDINATION ELEMENT, AND CAPITAL

IMPROVEMENTS ELEMENT; PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The public hearing was opened, anyone wishing to speak on this issue, please come forward.

Tom Cookingham, Planning and Community Development Assistant Director gave an overview of the EAR based amendments of the Goals and Objective policy and of the revised elements recommended by the Department of Community Affairs.

The public hearing was closed.

Tim Polk gave the Planning and Community Development staff report with staff recommendation for approval.

MOTION TO APPROVE Proposed Ordinance No. 2907 with the Planning and Community Development staff recommendation was made by Councilman Gallo, seconded by Vice Mayor and Councilman Smith and carried 5-0 for approval.

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**SU.08.0059 PUBLIC HEARING CONTINUED FROM SEPTEMBER 9, 2009**

Request of William Robinson of Blalock Walters Held & Johnson, agent for Episcopal Day Private School, owner, for a Special Use to allow a drive-through restaurant for the property located at 3816 Manatee Ave. West (zoned C-3).

The public hearing was opened, anyone in favor of the request please come forward.

Bill Lisch advised the Council that they were not arbitrators for a dispute over private easement rights and that the issue today was considering a special use for a site plan.

**Will Robinson**, requestor and attorney for St. Stephens Private School, property owner of Smoothie King, and **Bob Lombardo**, Lombardo, Foley & Kolarik, Inc., Consulting Engineers, Surveyors and Planners gave a brief background history of the previous owners at this same location having a drive-through window and displayed renderings of detailed site plans that clearly showed a drive-through window.

Lengthy discussion: The improved site plan showing ingress and egress easements with the circulation of traffic flow in correlation with the 39<sup>th</sup> Street traffic light, the cross access easement between Smoothie King and Smitty's, the eastside parking spaces, and Manatee County's standard for a 4-car stacking of cars for the drive-through lane.

Anyone in opposition to the request please come forward.

**Patricia Petruff**, attorney representing the property owner of Smitty's Pub & Grill gave an overview of a site plan that if approved, would take away all her clients property rights within his own easement. She encouraged the Council to follow the Planning and Community Development staff recommendation to allow a stand-alone drive-through lane which would require eliminating the eastern most parking spaces.

Lengthy discussion: Traffic flow, several easements, east side parking spaces. Placing too much on a small piece of property. Stacking of more than 4 cars causing traffic congestion.

**Reginald Mesimer**, Professional Engineer, President of Mesimer & Associates, Inc., St. Petersburg, Fl. displayed photographs depicting the various easements of the subject property and of an aerial view of two different Dunkin Donuts establishments in other cities showing more than 4 car stacking in the drive-through lanes at any given time of day.

**Robert Fletcher**, Real Estate Appraiser and Professional Planner, Bass & Associates, Sarasota, FL, referred to the basic site plan in the packet labeled Plan B. He gave an overview of the layering of uses on an already intensified use of a small site. He stated this site was illegally non-conforming, as it normally required 21 spaces, and the Smoothie King site had 12 spaces with off-site parking.

Mr. Fletcher recommended approval to follow the Planning and Community Development staff recommendations.

Discussion: The traffic flow and the south bound traffic lane to exit out of Smitty's.

**Richard Parham**, Real Estate Appraiser with Calhoun, Callister and Parham, Tampa, FL, gave an overview of an independent analysis done on the Smoothie King, Smitty's and St. Stephen's properties which had reached the conclusion that if the special use was approved, it would result in a negative impact in market value for Smitty's.

Ms. Petruff stated there were 3 easements, the north south easement between the two buildings and the east/west easement behind the building. She referred to an easement "increase" which was not relevant to this issue but was a replacement easement which had at one time been a shopping center that was now blocked and part of the new middle school building.

**S.J. Catalino**, co-owner of Smitty's property, referred to a concrete wall to the west of the Smoothie King building which had been there for 17 years which suddenly was no longer there. He stated this was the cause of a lot of the traffic flow problems when combined with the discovery that the east side parking spaces were protruding 3-7 feet out onto the cross access easement. This protrusion had not caused problems in the past, but would now cause problems should a stacking lane be approved.

**Kevin Hennessey**, Lewis Longman and Walker, Bradenton, FL, representing the Smoothie King tenants, distributed hand-outs showing approved site plan permits for preexisting businesses and gave a historical overview of the pick-up or a drive-through window which has existed. He referred to traffic directional signs placed by Mr. Catalino, which caused the traffic circulation problems.

Mr. Hennessey stated that the Council did not have the right to interpret the easement issue and whether it infringed on the stacking lanes or parking spaces. The Council should only determine that the special use permit would clear up the record as history clearly indicated that the drive-through was compatible as it had been there for decades.

**Hugh Miller** and **Ron Allen**, supporters of St. Stephens Private School and Smoothie King, stated they supported the Planning Commission decision to approve the special use permit which would improve and enhance the current traffic flow pattern.

**Kim Dumas** and **Dave Cotrone**, co-owners of the Smoothie King franchise, stated the only reason they had leased this building was because of the drive-through window. The building itself was larger than they needed, but they justified the high rent by the business generated by the drive-through.

**Will Robinson**, in rebuttal, distributed a binder of photographs showing a lack of intensity throughout the day and stated the majority of the problem was when the cars entered from the west. He stated the problems would be fixed by the proposed site plan which would benefit both parties.

He requested approval of the special use permit as it would enhance both properties. He stated that numerous changes had been or would be made: a raised island to redirect traffic, relocation of the FPL transformer, and the dumpster, a "No Stacking Beyond this Point" sign, and enhanced striping and other signage which would make it unnecessary to eliminate the eastern parking spaces as they had been on site since the mid-1990's and drive-through lane would follow the county's stacking standard.

**Bob Lombardo**, in rebuttal, referred to a similar scenario at the Dunkin Donuts located west of this site. He stated that there should not be any drive-through issues, and with the proposed site improvements, any issues as brought forth today should be cleared up.

The public hearing was closed.

Tim Polk gave the Planning and Community Development Staff Report with the following recommendations:

STAFF RECOMMENDATION FOR THE (June 17, 2009) PLANNING COMMISSION: APPROVAL with the following stipulations:

1. Remove the five parking spaces located on the east side of the building.
2. Re-align the dumpster so it was out of the cross-access easement and remove the improvements around the dumpster area that encroach into the easement.
3. The dumpster must be sprinkled.
4. A cross-access parking agreement must be provided by St. Stephens's Episcopal Day Private School for the subject property for 14 parking spaces.
5. Relocate the FPL transformer to the north side of the 24-foot wide vehicular use area that runs east to west on the north side of the building.

PLANNING COMMISSION RECOMMENDATION (June 17, 2009) with the following stipulations:

1. Re-align the dumpster so it was out of the cross-access easement and remove the improvements around the dumpster area that encroach into the easement.
2. The dumpster must be sprinkled.
3. A cross-access parking agreement must be provided by St. Stephens's Episcopal Day Private School for the subject property for 14 parking spaces.
4. Relocate the FPL transformer to the north side of the 24 foot wide vehicular use area that runs east to west on the north side of the building at the cost of the St. Stephens Episcopal School as agreed during the Planning Commission meeting. (The cost of reconnection of all parties currently connected to the transformer was also the expense of Episcopal Day Private School as agreed.)

CITY COUNCIL ACTION (July 15, 2009): Continued issue to the September 9, 2009 meeting to allow further review of the revised plan and based on recommendations made by Manatee County received July 14, 2009.

AMENDED STAFF RECOMMENDATIONS:

1. Remove the six parking spaces on the east side of the building.
2. Relocate the dumpster as depicted on the site plan identified as "City of Bradenton Exhibit S."
3. Provide a cross-access parking easement, agreement or lease between St. Stephens's Episcopal Day Private School and Smoothie King.
4. Relocate the FPL transformer to the north side of the future 24 foot east/west cross access easement once said easement was relocated to allow for the independent drive through lane on the north side of the building. The cost of reconnection of all parties currently connected to the transformer was at the expense of St. Stephens's Episcopal Day Private School as previously agreed to by both parties.
- ~~5. The north/south easement between the buildings would accommodate two way traffic and signage would be installed to depict such two way traffic.~~
6. The applicant must apply for a site improvement permit based on City of Bradenton "Exhibit R" depicting removal of the small curbed landscape area northwest of the building. The site improvement plan must also depict drainage flow and replacement landscaping equal to the square footage removed.

Bill Lisch referred to a report by Mr. Bass, of Bass and Associates, which implied the city implemented site plans. He stated that for clarification the city did not implement site plans.

Councilwoman Barnebey stated she had observed traffic at Smoothie King and Smitty's for a period of time and stated she saw a lot of cars using the drive-through and observed several traffic issues which concerned her. She stated that she would base her decision on the land use basis, and since the drive-through was a very important part of Smoothie King, she would support the staff's amended recommendation of removal of the parking spaces on the east side.

Vice Mayor and Councilman Smith stated he could not support Councilwoman Barnebey's motion based on what had been presented today. He stated the angled parking spaces were not unheard of with cars backing out into a drive-through lane. He stated that the proposed site plan changes would significantly improve the current traffic issues at the site.

**MOTION TO APPROVE SU.08.0059 with the Planning and Community Development staff amended recommendation with five stipulations was made by Councilwoman Barnebey, seconded by Councilman Byrd and failed 3-2 with Councilman Gallo, Councilman Roff and Vice Mayor and Councilman Smith voting in opposition.**

Councilman Roff stated that these buildings had been built too closely together with a lot going on in a small piece of property. He stated that the St. Stephen's proposed special use plan would improve the issues on this small parcel.

Councilman Byrd suggested not doing anything, but letting the two parties battle it out in court.

Each council member stated that this issue was a big mess and it was a shame that Smoothie King and Smitty's could not work things out between themselves.

Councilman Gallo commented about the absent of the owner of Smitty's not present at this meeting and made the following motion:

**MOTION TO APPROVE SU.08.0059 with the amended Planning and Community Development staff recommendation with stipulations, 2, 3, 4 and 6 was made by Councilman Gallo, seconded by Vice Mayor and Councilman Smith and passed 3-2 for approval.**

**CLARIFICATION FOR THE RECORD, THE APPROVED SU.08-0059 REQUEST WITH AMENDED STAFF STIPULATIONS 2, 3, 4 AND 6, RENUMBERED AS FOLLOWS:**

1. Relocate the dumpster as depicted on the site plan identified as "City of Bradenton Exhibit S". Provide a cross-access parking easement, agreement or lease between St. Stephens's Episcopal Day Private School and Smoothie King.
2. Relocate the FPL transformer to the north side of the future 24 foot east/west cross access easement once said easement is relocated to allow for the independent drive through lane on the north side of the building. The cost of reconnection of all parties currently connected to the transformer is at the expense of St. Stephens's Episcopal Day Private School as previously agreed by both parties.
3. The applicant must apply for a site improvement permit based on "City of Bradenton Exhibit R" depicting removal of the small curbed landscape area northwest of the building. The site improvement plan must also depict drainage flow and replacement landscaping equal to the square footage removed.

**NEW BUSINESS BY DEPARTMENT HEADS, CITY ATTORNEY AND COUNCIL**

No new business.

## COUNCIL REPORTS

**Councilman Gene Gallo, Ward I:** Nothing to report.

**Councilwoman Marianne Barnebey, Ward II:** Reminded everyone of Manatee Glens' "Walk for Life" suicide prevention fundraiser which would be held this weekend.

**Councilman Patrick Roff, Ward III:** Congratulated Bonni Bakes of the Village of the Arts for being the owner of the first restaurant to utilize the "Doggy Dining" ordinance.

**Vice Mayor and Councilman Bemis Smith, Ward IV:** Reminded everyone that "Country Night" a fundraiser for Manatee Children's Services, would be held on October 3, 2009.

**Councilman Harold Byrd, Jr., Ward V:** Nothing to report.

**Mayor Wayne Poston:** Nothing to report.

## DEPARTMENT HEADS

**Carl Callahan:** Reminded Council of the Shade meeting after the adjournment of this meeting.

**REQUEST TO AUTHORIZE MAYOR POSTON to accept \$544,500 from the Energy Efficiency Conservation Block Grant (EECBG) award offered by the Department of Energy.**

\$490,050 to install solar panels at City Hall, and the Water and Waste Water Treatment Plant.  
\$ 54,450 used for grant administration.

**MOTION TO APPROVE the request to authorize Mayor Poston to accept \$544,500 EECBG award was made by Councilwoman Barnebey, seconded by Councilman Gallo and passed 5-0 for approval.**

**Chief Souders:** Nothing to report.

**Staci Cross:** Excused from the meeting.

**Chief Radzilowski:** Stated that in the Thursday, September 24, 2009 newspaper, FDLE would release their crime statistics for the first half of this year with the city crime rate down 10% as of June 30, 2009.

He stated he had met briefly with Manatee County Sheriff Brad Steube to discuss working together to assist each other as their law enforcement staff was also down from what was needed for public safety.

**Claude Tankersley:** Nothing to report.

**Tim Polk:** Nothing to report.

**Bill Lisch:** Nothing to report.

**Carolyn Moore:** Nothing to report.

## ADJOURNMENT

There being no further business, Mayor Poston adjourned the meeting at 9:15 p.m.

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