

**CITY COUNCIL MEETING
September 9, 2009**

**APPROVED BY
September 23, 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 9, 2009 at 8:30 a.m.

Present: Mayor Wayne Poston; 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 Staci Cross, Information Technology Director.

Press: The Herald and The Bradenton Times.

The meeting was called to order by Mayor Poston.
Ecumenical invocation was led by Pastor Shirley Baucom, Kingdom Life Christian Church.
Pledge of Allegiance was led by Mayor Poston.

Councilman Gallo was excused from the meeting.
Carolyn Moore was excused from the meeting.

PROCLAMATIONS

TRIBUTE TO HEROES DAY PROCLAMATION – September 11, 2009

LIVESTRONG DAY PROCLAMATION – October 2, 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 August 12, 2009.
- b) Resolution 09-51-SHIP reconstruction contract, 917 21st Street East.
- c) Resolution 09-61 – SHIP 2009 Annual Report.
- d) Resolution 09-62 – High-Speed Passenger Rail Project Proposal.
- e) Resolution 09-63 - FRDAP Grant Application 17th Avenue Park with memorandum.
- f) Resolution 09-64 – FRDAP Grant Application Glazier Gates Park with memorandum.
- g) 2009 JAG Awards – Recovery Act and Annual Allocation.
- h) H1N1 Medical Process.
- i) Public Event – Tribute to Heroes, Friday, September 11, 2009.
- j) Public Event – Taste of Manatee, Saturday & Sunday, November 7-8, 2009.
- k) Public Event – Downtown Bradenton Craft Festival, Saturday & Sunday, February 13 & 14, 2010.
- l) Public Event -Addendum to previously approved Mainly Art, Saturday, October 17, 2009.
- m) Request Street Parking Reservation Permit.
- n) Budget Adjustments.
- o) Resolution 09 – 65 – Eastside Wastewater Transmission System Improvements.

Mayor Poston stated that Mr. Jon DeLuzio had requested to remove (Item b) from the Consent Agenda. He requested a motion from council to remove this item. No one made the motion the issue remained on the Consent Agenda.

Mr. Callahan referred to (Item l) an Addendum to the Mainly Art public event which had previously been approved by council and stated that the applicant had requested holding Yoga classes on the north portion of the City Hall lawn during the event. He recommended the request not be granted during the Christmas decoration display due to safety concerns about guide wires and electrically connections.

Mr. Callahan referred to (Item k) the Downtown Bradenton Craft Festival and recommended approval of the request subject to details being worked out with the marina regarding parking issues. He stated should details not be worked out, this issue would come back to council.

MOTION TO APPROVE THE CONSENT AGENDA with Items a through o subject to the recommendations made by Carl Callahan was made by Councilwoman Barnebey, seconded by Councilman Roff and passed 4-0 for approval. Councilman Gallo was excused from the meeting.

BUSINESS/ADVERTISING, PETITIONS, HEARINGS AND COMMUNICATIONS

SECOND of THREE READINGS for PROPOSED ORDINANCE NO. 2907 / 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 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 to anyone wishing to speak on this ordinance please come forward. No one came forward, the public hearing was closed.

MOTION TO APPROVE the second of three readings and to set the third reading and public hearing of proposed Ordinance 2907 for September 23, 2009 was made by Vice Mayor and Councilman Smith, seconded by Councilwoman Barnebey and passed 4-0. Councilman Gallo was excused from the meeting.

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**SECOND READING of PROPOSED ORDINANCE NO. 2908 PUBLIC HEARING FOR ADOPTION**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRADENTON, FLORIDA, AMENDING CHAPTER 34 OF THE CODE OF ORDINANCES OF THE CITY OF BRADENTON, FLORIDA, BY REDUCING THE NUMBER OF FALSE ALARMS RESPONDED TO BY THE POLICE DEPARTMENT FOR WHICH A FEE IS CHARGED FROM THE FOURTH SUCH FALSE ALARM TO A SECOND FALSE ALARM; PROVIDING AN EFFECTIVE DATE.

The public hearing was opened to anyone wishing to speak on this ordinance please come forward. No one came forward.

Chief Radzilowski gave a brief report about the heavy work load placed on officers in having to respond to over 3000 false alarm calls annually. He stated passing this ordinance would help reduce time consuming false alarms.

The public hearing was closed.

**MOTION TO APPROVE Ordinance 2908 was made by Councilman Byrd, seconded by Councilman Roff and passed 4-0 for approval. Councilman Gallo was excused from the meeting.**

**SECOND READING of PROPOSED ORDINANCE NO. 2909 PUBLIC HEARING FOR ADOPTION**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRADENTON, FLORIDA, REPEALING ORDINANCE NO. 2830 PREVIOUSLY ADOPTED JUNE 14, 2006, WHICH ORDINANCE NO. 2830 ESTABLISHED THE TIDEWATER PRESERVE COMMUNITY DEVELOPMENT DISTRICT; REPEALING THE ESTABLISHMENT OF SUCH DISTRICT; PROVIDING AN EFFECTIVE DATE.**

The public hearing was opened to anyone wishing to speak in favor please come forward.

**David Persson**, law firm of Hankin, Persson, Davis, McClenathen & Darnell representing the Tidewater Preserve Community Development District (CDD), gave an overview of the request to terminate the Tidewater Preserve CDD and the Maintenance Agreement for enhanced landscaping of a county-wide right-of-way.

Mr. Lisch recommended passing Ordinance 2909 contingent upon an assignment from the Tidewater CDD to the Homeowners Association with a meeting on September 16<sup>th</sup> which would officially transfer the responsibility of maintaining the right-of-way to the Homeowners' Association.

General discussion as to Manatee County's concern for maintenance of the right-of-way.

Anyone in opposition please come forward, no one came forward, the public hearing was closed.

Tim Polk stated the Planning and Community Development staff recommended approval of the request.

**MOTION TO APPROVE ORDINANCE 2909 with the recommendation made by the Planning and Community Development staff and City Attorney Bill Lisch subject to Manatee County consignment of the maintenance agreement was made by Vice Mayor and Councilman Smith, seconded by Councilman Roff and passed 4-0 for approval. Councilman Gallo was excused from the meeting.**

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AP.08.0002 PUBLIC HEARING CONTINUED FROM MAY 13, 2009

Request of William C. Robinson, Jr., agent for Melton H. Little and Scott B. Kallins, owners, to appeal the decision of the Architectural Review Board rendered on May 8, 2008 with regard to the demolition of the building known as The Bradenton Tabernacle, located at 725 Manatee Avenue West, Bradenton, Florida. (zoned C-1/UCBD).

Mr. Callahan stated the applicant had requested to extend the public hearing 60 days to the Council meeting on November 18, 2009.

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**SU.08.0059 PUBLIC HEARING CONTINUED FROM JULY 15, 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-thru restaurant for the property located at 3816 Manatee Ave. West (zoned C-3).

Request by the applicant to continue the public hearing to September 23, 2009.

**MOTION TO CONTINUE THE PUBLIC HEARING for SU.09.0059 to September 23, 2009 was made by Councilman Roff, seconded by Vice Mayor and Councilman Smith and carried 4-0 for approval. Councilman Gallo was excused from the meeting.**

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SU.09.0066 WARD 2 NEIGHBORHOOD 11.03 RS PUBLIC HEARING

Request of ALDI Florida LLC, owner, for a Special Use to construct a single story grocery store on the property located at 4705 Cortez Road (zoned C3).

The public hearing was opened anyone wishing to speak in favor please come forward.

Wiley Klice, representative for ALDI of Florida gave a brief overview of the request to remove some trees on the northern corner of the property causing hindrance and visibility of their sign. He stated the trees would be replaced per the city tree program.

Paul Blacketter, Benderson Development Company requested that the applicant sign off on an existing cross access easement as a stipulation for approval.

Wiley Klice stated that he was in agreement with the cross access easement and would diligently work to finalize this issue to keep the easement opened.

General discussion: Saving as many trees as possible and a stipulation to keep the cross access easement open.

Anyone wishing 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 the following recommendations:

STAFF RECOMMENDATION: APPROVAL with the following 3 stipulations:

1. The stand of oak trees on the east side, the 19" oak tree in the northwest corner, and the 24" oak tree on the south side would be preserved and properly barricaded during construction.
2. The four oak trees proposed on the south side would be strategically planted so growth would not be inhibited by the existing trees on the adjacent property.
3. To the extent possible, the applicant would work with the abutting property owner to the west to obtain a cross-access easement between the properties.

PLANNING COMMISSION RECOMMENDATION (August 19, 2009): Approval by a vote of 5 to 1, with the following 5 stipulations:

1. ~~The stand of oak trees on the east side,~~ the 19" oak tree in the northwest corner, and the 24" oak tree on the south side would be preserved and properly barricaded during construction.
2. The four oak trees proposed on the south side would be strategically planted so growth would not be inhibited by the existing trees on the adjacent property.
3. To the extent possible, the applicant would work with the abutting property owner to the west to obtain a cross-access easement between the properties.
4. The prototype and coloring scheme of the facility would be similar to that of the Sandlake store located in Orange County.
5. The applicant would work with City staff to ensure that the replacement trees or equivalent of replacement costs would remain on site.

ADDITIONAL STAFF RECOMMENDATIONS: Staff was requesting that City Council reinstate the previous staff recommendation #1 to include preservation of the oak stand.

CITY COUNCIL ACTION: APPROVAL with the following five (5) stipulations:

1. The stand of oak trees on the east side, the 19" oak tree on the northwest corner and the 24" oak tree on the south side would be preserved and properly barricaded during construction.
2. The four oak trees proposed on the south side would be strategically planted so growth would not be inhibited by the existing trees on the adjacent property.
3. The approval was contingent upon a cross-access easement between the subject property and the property to the west.
4. The prototype and coloring scheme of the facility would be similar to that of the Sandlake Orlando store.
5. The applicant would work with City staff to ensure that the replacement trees or equivalent of replacement costs would remain on site.

Lengthy discussion regarding the cross access easement and the preservation of trees.

MOTION TO APPROVE SU.09.0066 with the recommendations made by the Planning and Community Development staff and Planning Commission with five (5) stipulations was made by Councilwoman Barnebey, seconded by Councilman Byrd and passed 4-0 for approval. Councilman Gallo was excused from the meeting.

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**SU.09.0067 WARD 5 NEIGHBORHOOD 7.03 RS PUBLIC HEARING**

Request of Sherod Haliburton, agent for Central Community Redevelopment Agency, owner, for Special Use approval of a day care center located at 530 Martin Luther King Avenue East (zoned R2A/R1D).

The public hearing was opened, anyone wishing to speak in favor please come forward, no one came forward.

Anyone wishing 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 the staff and Planning Commission recommendation for approval with the following 3 stipulations:

1. DRC Comments referenced above would be complied with.
2. Student enrollment is limited to 20. An increase in enrollment may be permitted if parking was increased or documentation was provided which indicates that additional parking spaces were not necessary.
3. Provide landscape materials in the buffer between the parking area and the right of way.

**MOTION TO APPROVE SU.09.0067 with the recommendations for approval made by the Planning and Community Development staff and Planning Commission with three (3) stipulations was made by Councilman Byrd, seconded by Councilwoman Barnebey and passed 4-0 for approval. Councilman Gallo was excused from the meeting.**

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

Tim Polk

**Securing of structure at 309 10th Street West and recovery of costs.**

**Volker Reiss**, Compliance Manager requested to secure the "Pink Palace" located at 309 10<sup>th</sup> Street West and gave an overview of the legal process to notify any interested parties that this issue would

be brought forth today. He stated that six bids had been received with the lowest bid at \$12,700 to secure the building. He stated a lien would be placed on the property to reimburse the city's expense.

No discussion followed.

**MOTION TO INSTRUCT STAFF to move forward to secure the structure located at 309 10<sup>th</sup> Street West at the bid amount of \$12,700 was made by Councilwoman Barnebey, seconded by Councilman Roff and passed 4-0 for approval. Councilman Gallo was excused from the meeting.**

## COUNCIL REPORTS

The council gave their condolences to Mayor Poston in the passing of his mother.

**Councilman Gene Gallo, Ward I:** Excused from the meeting.

**Councilwoman Marianne Barnebey, Ward II:** Stated the Manatee Literacy Council would be holding its annual Spelling Bee on Saturday, September 19<sup>th</sup> at the Elks Club. She stated she would be the emcee of the event.

**Councilman Patrick Roff, Ward III:** Stated that the Old City Hall site on 15<sup>th</sup> Street West had been obtained by Manatee County and would now be readied as, the work site for the Wares Creek flood project.

Councilman Roff stated he had been informed that the city was in receipt of \$1 million for the 9<sup>th</sup> Avenue Wares Creek Bridge Replacement Project.

**Vice Mayor and Councilman Bemis Smith, Ward IV:** Thanked the Public Works and Utilities Department for using the CDBG funds to pave streets in his ward.

**Councilman Harold Byrd, Jr., Ward V:** Sent his condolences to the family of the teenage girl who was killed in a senseless act of violence, which seems to be following a disturbing trend in the community. He stated the community intended to work with others to try and to find a solution to end this type of violence.

**Mayor Wayne Poston:** Thanked everyone for their thoughts, prayers, cards and messages of condolence in the passing of his mother who lived to be 97 years old.

Mayor Poston requested that Claude Tankersley give an overview of how the temporary site of the MCAT transit station location on 13<sup>th</sup> Street West had functioned.

Mr. Tankersley stated that during last weekend's street closure on 12<sup>th</sup> Street to allow a crane to be brought in to replace air conditioning units on the Manatee County Courthouse, he had driven past the site on 13<sup>th</sup> Street between 6<sup>th</sup> Avenue and 8<sup>th</sup> Avenue to observe the bus and traffic flow. He stated the transit process had been orderly with plenty of room for traffic and buses. He stated there were four lanes to work with, so there may be the possibility that two lanes be kept open for traffic.

Discussion: That the Council had previously approved the endorsement of the MCAT station on 13<sup>th</sup> Street West pending the design of the station. That the location would tie in with other elements of the concept of the Tampa Bay Area Regional Transportation Authority (TBARTA) movement.

Reminded everyone of the Tribute to Heroes event to be held Friday, September 11, 2009, beginning with a ceremony at 9:30 a.m. at Rossi Park Memorial and followed by a luncheon in the Bradenton Municipal Auditorium.

## DEPARTMENT HEADS

**Carl Callahan:** Reminded everyone of the first budget public hearing to take place this evening at 5:01 p.m.

**REQUEST BY Old Main Street Merchants to hold the Get Down Downtown events on the third Thursday of each month starting September 17, 2009 through June 10, 2010.**

**MOTION TO APPROVE THE REQUEST by Old Main Street Merchants to hold the Get Down Downtown events from September 17, 2009 through June 10, 2010 was made by Vice Mayor and Councilman Smith, seconded by Councilwoman Barnebey and passed 4-0 for approval. Councilman Gallo was excused from the meeting.**

**Tim McCann**, Public Information Officer, gave an overview of the requirements by the Florida Recreational Development Assistance Program (FRDAP) Grants Program to hold four public hearings for the improvements to the 17<sup>th</sup> Avenue Park and Glazier Gates Park.

**Chief Souders:** Nothing to report.

**Staci Cross:** Nothing to report.

**Chief Radzilowski:** Nothing to report.

**Claude Tankersley:** Recognized Terry Bailey in the audience, the representative from Southwest Florida Water Management District (SWFWMD).

**Tim Polk:** Nothing to report.

**Bill Lisch:** Nothing to report.

**Carolyn Moore:** Excused from the meeting.

## ADJOURNMENT

There being no further business, Mayor Poston adjourned the meeting at 10:00 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.