

**MINUTES
CITY OF LAKE WORTH BEACH
SPECIAL CITY COMMISSION MEETING
QUASI-JUDICIAL HEARING - 7-11 APPEAL
CITY HALL COMMISSION CHAMBER
THURSDAY, MAY 20, 2021 - 6:00 PM**

The meeting was called to order by Mayor Resch on the above date at 6:10 PM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

ROLL CALL: Present were Mayor Betty Resch; Vice Mayor Robinson and Commissioners Christopher McVoy and Kimberly Stokes. Also present were City Manager Michael Bornstein, City Attorney Christy L. Goddeau and City Clerk Deborah M. Andrea. Commissioner Sarah Malega was absent.

PLEDGE OF ALLEGIANCE: led by Commissioner Christopher McVoy.

NEW BUSINESS:

- A. Appeal by Thomas J. Baird, Esq. on behalf of 1920 10th Avenue, LLC and by Alfred Malefatto on behalf of Daniel Hiatt and Frederick Schmidt of PZB Project # 20-00500003, which included site plan and conditional use approvals to allow for the construction of a new vehicle fueling/charging station, single-destination retail, and restaurant at 1900 10th Avenue North (7-Eleven)

Mayor Resch read the title of the case into the record. She stated that the meeting was a quasi-judicial hearing to hear an appeal pursuant to section 23.2-17 of the city's code of ordinances and as had been stated in other cases, because this was an appeal, no new evidence would be taken, but the city, the appellant and the applicant would each have 10 minutes to make a presentation. She announced that thereafter, public comment would be allowed and then the commission would ask questions.

Mayor Resch asked if the commissioners had any ex-parte communications, personal investigations or campaign contributions to disclose.

Commissioner McVoy said that he had not received any campaign contributions but he had walked near the site with Mr. Hiatt.

Vice Mayor Robinson said that he had spoken with and walked the site with Mr. Hiatt and had not received any contributions.

Commissioner Stokes stated that she had nothing to disclose.

Mayor Resch said that had spoken with Dan Hiatt and she went to the site quite often.

Mayor Resch requested that those giving presentations or answering questions from the commission be sworn-in and before speaking to state their names, the name and address of the person on whose behalf they were speaking. Those giving testimony were sworn in by City Clerk Andrea.

Mayor Resch asked city staff to give its 10 minute presentation.

Erin Sita, Community Sustainability Assistant Director, announced that the applicant was Gunster, Yoakley & Stewart, P.A. on behalf of 1900 10th Ave, LLC with a request to construct a 7-Eleven retail store with quick-service restaurant and 7 fuel pumps (14 total fueling positions), a Major Site Plan for 4,730 square foot (sq. ft.) retail and restaurant building and 3,520 sq. ft. canopy structure with Conditional Use for a Vehicle Charging & Fueling Station (Vehicular Use), Single-Destination Retail (Retail Use), and Restaurant uses (Commercial Use). She stated that a variance of eight feet from the maximum building setback line to allow for a front setback of 40 feet from 10th Avenue North was not part of this appeal. She said that Thomas J. Baird, Esq. on behalf of Mr. Francisco Gil, manager of 1920 10th Avenue LLC, an affected party, was appealing a final order of the Planning and Zoning Board (PZB) to allow a 7-Eleven at 1900 10th Avenue North. She summarized the prior actions, stating that on July 15, 2020, the PZB voted 4-2 to approve project 20-00500003, including Major Site Plan, Conditional Use, and Variance, with staff recommended conditions and a Board recommended condition requiring the applicant to address school crossing safety and signage with city, Palm Beach County (PBC), and School District staff. She reported that, subsequent to the PZB approval of the project, the project was appealed to the city commission, the variance approval was appealed directly to the circuit court, the city commission heard the appeal at the December 15, 2020 city commission hearing which voted 3-0 to remand the project back to the PZB and again the variance was appealed to circuit court after the affected party, 1920 10th Avenue LLC, filed a writ of certiorari; the appeal was outstanding. She stated that the PZB reheard the application on January 27, 2021 and voted 5-2 to approve the application with conditions and the final order was issued on February 2, 2021. She iterated that the application was appealed again by Thomas J. Baird, Esq. on behalf of 1920 10th Avenue, LLC and a new appeal was filed by Alfred Malefatto on behalf of Daniel Hiatt and Frederick Schmidt. She spoke about the existing conditions and the conditions of approval required by each department and explained that while mixed-use projects were allowed on a single site, there was not a requirement in the comp plan that each site within the category incorporate multiple uses; there was a balance throughout the area.

Mayor Resch asked the first appellant to give its presentation.

Thomas J. Baird, Esq. on behalf of 1920 10th Avenue, LLC gave a presentation stating the reasons the appellant opposed the development. He said that the comp plan designated the property as mixed use west, but that the project was not complimentary to the existing businesses and would not work in synergy with the office uses to reduce traffic, but would direct traffic to Barnett Drive and 10th Avenue North which were already over capacity. He reported that two experts had been presented at the PZB, Dr. William Whiteford, a Planning Professor at UF, Planning Consultant and the Director of Zoning at PBC for many years and Mr. Masoud Atefi, an expert in transportation planning and the Supervisor of the PBC Traffic Engineering Division for 15 years. He iterated that Dr. Whiteford's findings were that the application was not consistent with the comp plan, specifically the land use and traffic, as it was 100% commercial retail, not a mix of two or more uses and the intersection is not a major one. He said that Dr. Whiteford testified that the application did not meet the criteria for a conditional use because the proposed project would increase traffic congestion in the area and adversely affect the viability of commercial redevelopment on the established neighboring commercial properties. He iterated that Mr. Atefi testified that the intersection at Barnett Drive and 10th Avenue North failed because

traffic backed up there and the left turn heading east was unsafe; he showed the three years of crash analysis done by PBC for the intersection and stated that to make the intersection close to safe and allow it to function, a turn lane would have to be added to the property by the developer. He announced the legal consequences: city cannot approve development that was not consistent with its plan's policies, approval of a project that was not consistent with the policies of the comp plan exposed the city to a lawsuit from the businesses which have formed its economic base for many years, PZB's decision was not based on competent substantial evidence and did not comply with the essential requirements of law because it was not consistent with comp plan policies, did not meet the criteria in the zoning code nor the conditional use criteria in the Code.

Mayor Resch asked the second appellant to give its presentation.

Alfred Malefatto, Esq. of Lewis, Longman & Walker, on behalf of Daniel Hiatt and Frederick Schmidt, iterated the city's transportation policy stating that heavy traffic generating land uses shall be carefully considered before permitting along Tenth Avenue North immediately west of I-95 and vehicle charging and fueling stations such as the proposed 7-Eleven were high intensity vehicular uses according to the city's Code. He stated that careful consideration of the introduction of a high intensity vehicular use to a congested area that included a school and related pedestrian activity should conclude that the proposed use at the location was not consistent with the policy. He said that the project was a repetitive use, not a mixed use and was therefore inconsistent with the comp plan's policy to have a mix of uses that was primarily residential.

Mayor Resch asked the applicant to give its presentation.

Brian Seymour, attorney at Gunster, Yoakley & Stewart, P.A., relayed the approvals at issue, a major site plan and conditional use permit for the development of a 4,730 sq. ft. retail/restaurant building and a 3,520 sq. ft. fuel canopy over 7 fuel pumps (14 positions). He went over the approval process timeline beginning in November 2019 and the issues on appeal: the Standard of Review indicated that there was more than enough evidence to support the approval by the PZB, that the application was consistent with policy as there was not a requirement that each site within the mixed use category incorporate multiple uses, the project was consistent with traffic requirement as only 4% of the maximum peak hour trips and was approved by PBC and the project was consistent with mixed use west zoning which included moderate intensity and higher intensity commercial. He stated that he brought a traffic engineer to the hearing while the appellants only brought people who discussed unapproved traffic studies.

Mayor Resch asked if there were any public comment cards.

City Clerk Andrea said that there were no public comment cards.

Mayor Resch asked the commissioners if they had any questions for staff, the applicant, or the appellants, reminding them that only questions for clarification on the issues could be asked, no new information would be allowed.

Commissioner Stokes said that she had questions about the conflicting traffic studies and asked how the trip figure had been determined.

Mr. Baird replied that most of the traffic would come off of I95.

Mr. Seymour introduced Lisa Bernstein, engineer, who said that the revised traffic study was approved by PBC. She stated that there would be some traffic coming from I95, but much would be traffic passing by from vehicles already on the road; the study was done by the Institute of Transportation Engineers.

Mayor Resch asked about the left hand turn heading east.

Ms. Bernstein responded that westbound traffic would stop when the light turned red, there was not much traffic on Barnett and the morning flow would be lower than in the afternoon.

Mr. Baird stated that Ms. Bernstein was providing new testimony.

Mr. Seymour replied that the traffic study was presented at the hearing.

City Attorney Goddeau stated that Ms. Bernstein should be asked for clarification on the record below.

Commissioner McVoy asked if the traffic study contained any assumptions.

Ms. Bernstein answered that the information was based on data provided by PBC and FDOT; she had used her engineering judgment.

Mayor Resch asked if the traffic level was F and asked if there was consideration to add a right turn lane or not having an exit onto Barnett Drive.

Mr. Seymour responded that the level was currently E and would remain so. He stated that a right turn lane did not meet the traffic engineering requirements and there would be a right into the 7-11 and then a right out.

Ms. Sita replied that there would be a mountable curb for a truck, in from Barnett and out to 10th Avenue North.

Ms. Stokes said that there should be discussion about adding a signal at the location.

Mr. Seymour responded that crash data would be considered, but a light was not warranted.

Mayor Resch asked if there had been any changes in what had been presented between the first and second approvals and what would happen if the variance was remanded.

William Waters, Community Sustainability Director, said that the only condition added was to improve the pedestrian safety for the school children.

Mr. Baird answered that there had not been any careful consideration by the PZB.

Mr. Seymour stated that the project could not be done without the specific variance.

Mayor Resch asked staff about the 75%/25% balance in the mixed use west zoning.

Mr. Waters responded that the mixed use land use was changed to area-wide, but because there were so many non-conforming sites, the sentence was added to the LDRs stating that a single site did not have to have a mixture of uses. He explained that use categories were created in 2013 and the project was a three-type use project. He iterated that the goal was for the area to have 75% residential and 25% commercial.

Mayor Resch stated that the biggest concern was the traffic that would be created on Barnett Drive and asked what other uses there could be on the site to produce less or more traffic.

Mr. Waters answered that the overall trip number would be far exceeded by other uses such as residential or offices.

Commissioner McVoy expressed concern about the level of traffic and opined that there were many assumptions. He asked about the traffic flow.

Mr. Waters answered that Dunkin Donuts would not exist at the location as they would not have any business if Commissioner McVoy's assumption were true.

Discussion ensued about the traffic on Barnett Drive.

Mayor Resch reported that the city had little control over 10th Avenue North and nothing could be done until the road was widened. She asked City Attorney Goddeau for guidance.

City Attorney Goddeau replied that the commission would consider if there was substantial and competent evidence presented on the record below to the PZB to allow for the approval of the project. She clarified that the commission could not consider if they approved of the project themselves.

Commissioner Stokes asked if the criteria had been checked.

City Attorney Goddeau stated that the project was a conditional use and the criteria would have to be satisfied from the comp plan and LDRs; staff's analysis was that the criteria had been met.

Mayor Resch if the project was considered a heavy use.

Mr. Waters replied that the project would be considered a medium use.

Discussion ensued regarding the conditional uses.

Mr. Baird addressed the competent and substantial evidence question by Commissioner McVoy and opined that competent and substantial evidence was presented to overturn the project and the commission could do so.

Commissioner Stokes stated that the commission could consider if the PZB was biased and did not consider the evidence.

Mayor Resch stated that the public could comment, but that public comment could not be considered in the decision.

Archie Kleopfer spoke about the traffic backup heading west on 10th Avenue North in the morning.

City Attorney Goddeau stated that Daniel Hiatt was represented by counsel who had spoken on his behalf and could not make a public comment, nor could the other parties.

City Clerk Andrea read the comment submitted by the following:

Jason Sjaardema, a business owner in the area of the subject site, wrote in favor of the development.

Vice Mayor Robinson stated that it would not be an easy decision but the project was approved twice; the commission would decide if PZB exercised careful consideration to move the project forward and was acceptable. He said that many projects were not perfect.

Mayor Resch said that it was not the commission's job to second guess the PZB and its hands were tied in many ways.

Commissioner McVoy disagreed and said that it was the commission's job to look out for the community.

Commissioner Stokes said that no project could be approved on 10th Avenue North because of the traffic.

City Attorney Goddeau said that the decisions regarding the did not necessarily reflect the reality.

Action: Motion made by Vice Mayor Robinson and seconded by Commissioner Stokes to uphold the decision of the PZB.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor Robinson and Commissioner Stokes. NAYS: Commissioner McVoy. ABSENT: Commissioner Malega.

ADJOURNMENT:

The meeting adjourned at 7:44 PM.

Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, Interim City Clerk

Minutes Approved: July 20, 2021