

**MINUTES
CITY OF LAKE WORTH BEACH
SPECIAL CITY COMMISSION MEETING
QUASI-JUDICIAL HEARING - DOKA
CITY HALL COMMISSION CHAMBER
TUESDAY, MAY 11, 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 Sarah Malega, Christopher McVoy and Kimberly Stokes. Also present were City Manager Michael Bornstein, City Attorney Christy L. Goddeau and City Clerk Deborah M. Andrea.

PLEDGE OF ALLEGIANCE: led by Vice Mayor Herman Robinson.

NEW BUSINESS:

- A. Appeal by Alfred Malefatto, Esq. on behalf of Marlin Industrial Park Owners Association of PZB Project # 20-01400035 commonly referred to as “Umdasch/Doka,” which included site plan, sustainable bonus and conditional use approvals to allow for the construction of a +/-47,000 square foot distribution facility and repair and maintenance uses within the Industrial Park of Commerce (I-POC) zoning district

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 Malega stated that both parties had emailed her and she had thanked them for their input but she had only spoken with Daniel Hiatt on the phone and she had not received any campaign contributions.

Commissioner McVoy said that he might have received a contribution from one party and had spoken with the appellants and the applicants.

Commissioner Stokes stated that she had not received any campaign contributions but did a site visit with Daniel Hiatt and had a zoom meeting with the applicants.

Vice Mayor Robinson said that he had spoken with Dan Hiatt and the team from Doka.

Mayor Resch said that she had not received any campaign contributions but had met with Dan Hiatt at the site and had spoken with him an additional time.

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 property and the property owner on whose behalf they were speaking. Those giving testimony were sworn in by City Clerk Andrea.

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

Erin Sita, Community Sustainability Assistant Director, announced that the item was for an appeal of the project referred to as “Umdasch/Doka” located at 2209 7th Avenue North. She gave the background of the request to the Planning & Zoning Board (PZB), stating that the subject property was currently vacant and undeveloped until the 1950s when land was cleared on the southern end and used as a landfill until the late 1970s after which the property became overgrown and remained undeveloped until 2011. She announced that the property had remained undeveloped and the applicant, Lisa Reves of Saul, Ewing, Arnstein and Lehr, applied on behalf of Umdasch Real Estate USA, Ltd. for entitlement approval to develop the subject site with a +/-47,000 square foot distribution facility and repair and maintenance uses. She iterated that the application included a Major Site Plan for the development of an industrial building in excess of 7,500 square feet, a Sustainable Bonus Program Incentive to gain an increase in building height to 31 feet and a Conditional Use Permit to establish “distribution facility” and “repair and maintenance – major” uses greater than 7,500 square feet. She stated that at the January 9, 2021 Planning and Zoning Board meeting, staff presented a summary of the attached staff report, which contained the review of the proposed plans, documentation and materials provided by the applicant for consistency with the applicable standards found in the City of Lake Worth Beach’s Land Development Regulations (LDRs), Comprehensive Plan and Strategic Plan and the PZB approved the project by a vote of 7-0 for approval with conditions. She spoke about the quasi-judicial process from Section 23.2-17(b) of the city’s code outlining the process for appealing decisions of the PZB and HRPB to the city commission, which required the appealing party to submit a basis of appeal.

Mayor Resch asked the appellant to give its presentation.

Alfred Malefatto, Esq. of Lewis, Longman & Walker, on behalf of Marlin Industrial Park Owners Association (Appellant) announced that he had spoken with Commissioner McVoy. He said that the Appellant was appealing approval of the project because the board’s denial of the Appellant’s request to continue the hearing did not follow the requirements of the city’s code and the Applicant failed to meet its burden to show by competent substantial evidence that the project met all the site qualitative design standards and conditional use requirements of the city’s code. He stated that the corporation was not registered to do business in the State of Florida at the time of the PZB hearing and there should have been a right to uphold the continuance. He said that the site was not designed to mitigate adverse impacts of the noise and dust that would be created.

Mayor Resch asked the applicant to give its presentation.

Neil Schiller, Esq., of Government Law Group, Attorney for Umbasch/Doka, requested that the commission uphold the PZB’s unanimous decision to approve the application. He showed an aerial map of the site in the Boutwell Park of Commerce, spoke about Umbasch/Doka’s history and showed photographs of other projects. He displayed the site plan which indicated a two-story office building, one-story maintenance and warehouse,

outdoor enclosure, open air canopy, dumpster enclosure and lake. He went over the landscape plan, access and buffers with a six foot chain link fence on one side, a six-foot pre-cast concrete wall on the other side and separate egress for cars and trucks and showed renderings of the building. He dispelled why the appeal should be denied including that the appellant had been granted a continuance, that the site circulation and building placement would mitigate adverse impacts to the appellants and 40 conditions had been agreed to, city staff determined that the site was not open to the general public, there would be a maximum of 15 trucks a day with normal business hours and 40 of 40 criteria met conditions of the comp plan. He announced that jobs would be brought to the city and the project would generate \$41,666 in ad valorem taxes in 2020 and much more once operating due to personal property taxes.

Mayor Resch asked if there were any public comment cards.

City Clerk Andrea read the comments submitted by the following:

Elise Crohn wrote in opposition to the project.

Mayor Resch disclosed that she had received a video from Ms. Crohn, which would not be considered as it was not part of the previous record.

City Attorney Goddeau iterated that public comment was allowed but could not be used to determine the outcome of the appeal as it was not part of the previous hearing.

Peter Detore wrote in opposition to the project.

Thomas Cleary wrote in opposition to the project.

City Clerk Andrea stated that following would read their own comments on zoom:

Carolyn Zara said that the project was not compatible with the residential neighborhood she lived in nearby.

Christina Morrison requested that the development be denied as it was incompatible with the other businesses in the Park of Commerce.

Mayor Resch asked if the commissioners had questions for staff, the applicant or the appellant and reminded them that clarification could be sought on the issues but they should not ask for new information.

Vice Mayor Robinson asked about the business hours and about the landscaping by the fence.

Mr. Schiller responded that normal business hours were 8 AM to 3 PM Monday through Friday, moving to starting at 7 AM during the warmer months and work would end at noon if there was work on Saturday. He iterated that the intent was to have landscaping incorporated with fencing to make the property attractive.

Commissioner Stokes asked how the created dust would be mitigated to not affect the surrounding area.

Gerard Wright, Branch Manager, answered that the Pompano Beach facility had a lot of dust because it was on raw ground and went everywhere. He said that the only dust created would be enclosed in the warehouse and disposed of and that the ground would be paved.

Mayor Resch inquired if the large garage doors would be open.

Mr. Wright responded that the building had been shifted and the door facing the neighborhood would be closed.

Commissioner McVoy stated that a concrete block building would be necessary to mitigate noise, not an aluminum building, and expressed doubt that the doors would be closed in a building without air conditioning.

Mr. Schiller replied that extremely large fans would be installed to cool the employees and the door on the east would be opened to move the forms out; the building was placed west to be as far from the neighbors as possible.

Commissioner McVoy disagreed with the response.

Commissioner Malega stated that businesses with fans still had their doors open for cooling. She inquired about the usage of the empty space and bringing jobs to LWB and said that according to the city's noise ordinance, work could not begin until 8 AM.

Mr. Wright replied that the empty space would be used for storage, there would be 25+ jobs in that location and they would not begin work until 8 AM to comply with the code.

Commissioner Stokes asked about the run off and what types of chemicals were used.

Mr. Wright stated that no chemicals were applied, only cleaning products were used.

George Balaban, Engineer, explained how the wastewater was treated and said that the runoff would never connect to the canal; the wastewater would not interchange with the sanitary sewer.

Commissioner McVoy said that the building was close to the residences on the canal, but the residents had thought it would be an office and then were disqualified as affected parties due to timelines. He asked how the city was doing with notifications.

Mr. Schiller responded that notices were sent to residents, the project was a public record and he only remembered one person from the neighborhood participating in the hearing.

Commissioner Malega inquired what the administrative use meant on the application.

Mr. Schiller stated that the use issue did not come up at PZB.

Commissioner Malega stated that there needed to be better public notice regarding uses.

Mayor Resch asked how long the company had been in Pompano and if the facility there would close.

Mr. Wright responded that the Pompano facility had been in Pompano for seven years and would close.

Mayor Resch asked if the applicant had any questions for city staff or the appellant.

Commissioner Stokes asked about the administrative use and what light industrial use meant.

Ms. Sita replied that the project was noticed and advertised as a conditional use process, not an administrative one. She said that there was a sufficiency letter sent to the applicants informing them of anything missing from the application.

Mr. Waters explained that higher traffic industrial uses were moved to the Park of Commerce (I-POC) and lower traffic industrial uses were moved to Florida East Coast railway track in 2013. He stated that there were much higher uses that were allowed in the I-POC and could trigger the conditional use process.

Commissioner Malega asked if the traffic at I-POC fell under the traffic performance standards.

Mr. Waters responded that it did not.

Mayor Resch asked if there were any questions for the appellant.

Commissioner Stokes asked about the odor that was mentioned.

Mr. Malefatto answered that there would be odor from the truck fumes and the breaking up of the concrete.

Mayor Resch asked if the appellants had been represented by counsel at the hearing.

Mr. Malefatto stated that there was no counsel and the continuance was just a postponement due to a lack of quorum.

Mayor Resch opined that the appellant had rights and expressed concern that they were unrepresented and had not been granted a continuance thereby being denied due process.

Vice Mayor Robinson said that he had witnessed the PZB hearing and nothing new was learned since that meeting; he would make a motion to uphold the decision.

Mayor Resch closed the public hearing and asked the commissioners to discuss the request.

Action: Motion made by Vice Mayor Robinson to uphold the decision by the Planning & Zoning Board. **Motion died for lack of a second.**

Commissioner Malega said that she was torn about making a decision as she saw the merits of both sides.

Commissioner Stokes stated her frustration that had a continuance been granted, the issue would only have been delayed a month, but now the commission was put in a bad position.

Action: Motion made by Commissioner McVoy and seconded by Commissioner Stokes that based on the lack of due process, the appeal be remanded back to PZB.

Vice Mayor Robinson said that the land had been vacant for a very long time and he opined that PZB would reach the same conclusion in six months, which would hold up the project.

Commissioner Stokes asked if the item could be fast tracked when it went back to PZB.

Mr. Waters said that should the issue be remanded, it would be a new application and would not be heard until August by PZB and then it would not come back to the commission for an appeal until November.

Commissioner Malega asked Mr. Malefatto what could be done to make his clients happy.

Commissioner Stokes spoke about continuing the appeal to allow for negotiations. She said that the Lake Worth Waterkeeper did not have any environmental concerns about the project and had not seen any evidence about environmental impacts.

Mr. Malefatto said that he would speak to the developer about making changes that would be acceptable.

City Attorney Goddeau said that it would be within the commission's discretion to continue the appeal to allow for the parties to resolve their issues.

Mayor Resch asked Mr. Malefatto if he would be amenable.

Mr. Malefatto replied that he would have to confer with his clients.

The meeting recessed at 7:52 PM and reconvened at 8:04 PM.

Mayor Resch announced that there had been a request for clarification regarding the construction of the building.

Mr. Wright clarified that the overhanging canopy at the back of the building was structural steel and the actual building was steel column with pre-cast concrete panels.

Mr. Malefatto reported that he spoke with his clients who would be amenable to negotiating, but would not give up their due process.

Commissioner Stokes asked how the issue would be resolved.

City Attorney Goddeau responded that if the appeal were remanded, the application would be a new one going forward and would have to go through the full process. She stated that the matter could be continued to allow for time to reach an agreement.

Mayor Resch opined that inconvenience was not a reason to deny due process.

Commissioner McVoy said that he would amend his motion to speed the process up.

Vice Mayor Robinson stated that noise and dust could be subjective and PZB's decision

should be upheld.

Action: Motion amended by Commissioner Malega and seconded by Commissioner Stokes to continue the appeal for two weeks until May 25, 2021, to see if the parties could come to a meeting of the minds, with the understanding that the commission would vote on the appeal at that time.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor Robinson and Commissioners Malega, McVoy and Stokes. NAYS: None.

Discussion ensued regarding a date for the continuance.

Vote on original motion: Voice vote showed: AYES: Mayor Resch, Vice Mayor Robinson and Commissioners Malega, McVoy and Stokes. NAYS: None.

ADJOURNMENT:

Action: Motion made by Commissioner McVoy and seconded by Commissioner Malega to adjourn the meeting at 8:16 PM.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor Robinson and Commissioners Malega, McVoy and Stokes. NAYS: None.

Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, Interim City Clerk

Minutes Approved: July 20, 2021