



**MINUTES**  
**CITY OF LAKE WORTH BEACH**  
**PLANNING & ZONING BOARD REGULAR MEETING**  
**CITY HALL COMMISSION CHAMBER**  
**WEDNESDAY, JANUARY 27, 2021 -- 6:28 PM**

**ROLL CALL and RECORDING OF ABSENCES:** Board members present in City Commission Chambers: Mark Humm, Laura Starr, Daniel Tanner, Juan Contin. Virtual Board member attendance: Chairman, Greg Rice; Vice-Chair, Anthony Marotta and Robert Lepa. Also present were: Andrew Meyer, Senior Community Planner; Erin Sita, Assistant Director for Community Sustainability; Pamala Ryan, Board Attorney; Sherie Coale, Board Secretary.

**PLEDGE OF ALLEGIANCE** Led by Daniel Tanner.

**ADDITIONS / DELETIONS / REORDERING AND APPROVAL OF THE AGENDA** None

**APPROVAL OF MINUTES:** None

**CASES:**

**SWEARING IN OF STAFF AND APPLICANTS:** Board Secretary administered oath to those wishing to give testimony.

**PROOF OF PUBLICATION**

- 1) 7-Eleven Proof of Publication- provided within the meeting packet.

**WITHDRAWALS / POSTPONEMENTS** None

**CONSENT** None

**PUBLIC HEARINGS:**

**Board Chairman:** Requests all parties to be cognizant of not repeating the same information and concerns. This will assist in keeping the meeting as short as can be reasonably expected. Presentations could be kept to about 15 minutes.

Brian Seymour Attorney for the applicant and Joshua Long for 7-Eleven, Thomas Baird and Alfred Malefatto (the latter two are attorneys for affected parties) agree to limit their presentations to that time frame.

**BOARD DISCLOSURE:** M. Humm received emails but did not follow up/respond. D. Tanner received a phone call and spoke with persons representing the developer. R. Lepa received emails but did not respond. A. Marotta did not respond to emails that were received. L. Starr did not respond to the two emails that were received. G. Rice received a vm from one applicant.

**Board Attorney, Pamala Ryan:** Gives a brief overview/ synopsis of how the project came to be before the Board again. Originally heard on July 15, 2020 an Appeal was brought to the

City Commission on December 15, 2020. The City Commission with one vacated seat and the Mayor recusing herself due to a conflict, was left with 3 votes. The only motion to successfully pass was to remand both the Conditional Use and Major Site Plan back to the Board to be heard again. The Variance was appealed to Circuit Court and continues to be outstanding. Some of the concerns were for the safety of pedestrians at the school crossing. The Board has a slightly different composition from when it was originally heard.

**UNFINISHED BUSINESS:** None

**NEW BUSINESS:**

- A. PZB Project Number 20-00500003:** Request by 1900 10th Ave, LLC, for consideration of a Major Site Plan and Conditional Use to construct a Vehicle Fueling/Charging Station, Single-Destination Retail, and Restaurant uses at 1900 10th Avenue North within the Mixed-Use West (MU-W) zoning district (7-Eleven). The subject project was heard on July 15, 2020, and appealed by an affected party to the City Commission which, after hearing, remanded the project back to the Planning and Zoning Board. The variance portion of the project was appealed directly to circuit court in accordance with the code.

**Staff Presentation:** A. Meyer gives a brief overview of the proposal and the intent of the Mixed-Use zoning district. Further it allows for some of the highest intensity uses, higher height limitations and commercial and vehicular uses outside of the City's Industrial zones. Although the preferred mix of uses is 75% residential 25% non- residential it is not a requirement that each site incorporate multiple uses.

The site will occupy an unused parking lot with minimal landscaping, activate a corner and increase the tax base for the City of Lake Worth Beach. This would include approvals for the 4,730 square foot retail and restaurant building, including Laredo Taco, as well as the 3,520 square foot canopy structure sheltering the seven (7) fuel pump islands. The interior restaurant of 234 square feet will be dine in and take out. Parking will be to the rear of the property in compliance with the Major Thoroughfare guidelines. The landscape plan provides for a buffer and trees along 10<sup>th</sup> Avenue North. The proposal is consistent with the City Comprehensive Plan and Strategic Plan by increasing the tax base and the supply of jobs. As traffic and safety were previously voiced concerns the applicant provided a TPS (Traffic Performance Standards) letter, dated July 22, 2020, which states the project meets the standards. Conditioned that a right turn lane (east approach-deceleration lane) on approach to the project entrance on 10<sup>th</sup> Ave North be constructed and the driveway on Barnett Drive should be restricted to a right-in/right-out only configuration with a mountable table feature to prevent left-in/left-out movement. The applicant's justification statement suggests the corridor is primarily a commercial corridor with some industrial uses.

**Applicant Presentation**

Brian Seymour, of Gunster, Yoakley & Stewart, P.A.; applicant's attorney- provides more background detail mentioning that two City Commissioners supported the project, one was against.

Joshua Long, AICP of Gunster, Yoakley & Stewart, P.A. – Slides showing surrounding properties and states the vacant lot is not contributing to the tax base nor in appeal. The surrounding buildings bring no architectural qualities to the area as 7-Eleven is proposing. The customers are everyone in the community. Hopes it will serve as a catalyst for re-development to the area.

7-Eleven participates in many neighborhood outreach programs such as food banks, partnering with schools and local law enforcement. They are a leader in security and provide eyes on the

street which will increase security in the area. There will be an increase in the city tax base, despite not being the highest intensity of use that could be going there. It brings enhanced architecture to the area and a new electric customer for Lake Worth Utilities.

Regarding traffic performance: there will be pedestrian connections, a painted island, the new entrance on 10<sup>th</sup> Ave North is moved further away from Barnett Drive. An aerial slide shows the westbound from I-95 deceleration lane which will direct the traffic off of 10<sup>th</sup> and a right-in right-out from Barnett Drive. The project complies with Policy 1.1.1.6.. Regarding the concern that it doesn't include multiple type uses, it isn't required. Due to the small lot sizes in the area, it would be virtually impossible for new development or re-development to provide residential and non-residential uses on the lot and meet development standards. The zoning district allows for all 16 retail uses on the City's Use Table as well as 45 of 48 commercial uses on the Use Table.

### **Affected Party #1**

**Thomas Baird Attorney Representing Francisco Gil** – His client and tenants have been contributing to the economic base of the City for many years. The tenants of Mr. Gil's building will be affected by additional unwanted traffic with the addition of a regional highway use. Particularly on Barnett Drive where they are currently faced with unreasonable delays. The level of service is unacceptable. Later testimony by Mr. Masoud Atefi will show the traffic at 10<sup>th</sup> Avenue North and Barnett Drive operates at a level "F" service. He will testify that according to Ms. Bernstein's report the traffic will be the worst.

**Francisco Gil (Sworn in at this point in time by Board Secretary)**- The proposal will have a significant impact on his tenants. He is the landowner of 12 acres with 40 different tenants. He has collected petitions of tenants ranging from small family businesses to larger, well-know tenants such as the Duffy's Restaurant headquarters.

**Dr. Bill Whiteford**-Former Director for PBC Zoning– The issue is not the size of the project but the mix of uses combined together on just over one acre of land. Not sure about the amount of time spent with the Design Guidelines resulting in only two-color choices. With a typical convenience store layout, it's a tight site and no amount of striping is going to prevent entry from Barnett. The proposal is not compatible with Comprehensive plan Policy 1.1.1.6 (Future Land Use Element) Policies 2.1.4.3 and 2.1.4.7 (Transportation Element) nor the zoning code Section 23.3-18 MU-W. Speaks to the "intent" of the policy being a mix of uses. Despite being referred to as preferred mix, the lack of mixed-uses undermines the entire premise of MU-W if interpreted or applied incorrectly. Gives an opinion on difference of multiple uses vs. mixed-uses.

Transportation Policy-The intersection of 10<sup>th</sup> Avenue North and Barnett Drive is not a major intersection. Barnett Drive provides direct access to Lake Worth Middle School. Mentions case law of Pinecrest Lake vs. Shidel (Martin County) resulting in a project being torn down due to not being in compliance with the City Comprehensive plan. The project will add to congestion in the area and so will not support the Conditional Use criteria.

**Masoud Atefi, Masoud & Associates**- The traffic review by the county, which was revised by the consultant and staff may not have received. Barnett Drive will continue to experience F level service with 170 seconds of delay. Even so the report continues to show that it does not meet County service levels.

- A crash analysis by PBC for a period of three years 1.1.2018-1.12.2021 indicates 69 accidents in the area with school children.

- The driveway operations are concerning with 30 cars per hour exiting to the east from the 10<sup>th</sup> Ave N entrance. Has concerns with the queue backing up to the west estimated to be at 580 feet per cycle near Detroit Street.
- The queue of traffic exiting from Barnett Drive onto 10<sup>th</sup> Ave North, can be as long as 750 feet. This makes it difficult in each cycle with 30 vehicles exiting and 30 entering. Thought the impact of coronavirus would lessen the traffic.
- Problematic is that there is no left-turn exclusive signal. When he was with the county he investigated a 15-foot row acquisition to add a left turn. Does not know what happened that it did not occur. Reviewed for the county for 15 years, would require improvements if he was with the county. Since 2011- Proportionate share has been in effect. County TPS put the ball in the court of the municipalities.

**Board Attorney states the 30 minutes for presentation have been reached or exceeded.**

**Bill Whiteford requests additional time for more slides– granted.**

## **Affected Party #2**

### **Alfred Malefatto attorney representing Mr. Daniel Hiatt and Mr. Frederick Schmidt**

The traffic at Barnett Dr and 10<sup>th</sup> Avenue N. will affect the value of the property and accessibility for the clients and tenants.

Frederick Schmidt- Resident of the city. Believes this is the trifecta of school, traffic and quagmire. Not surprised at the statistics revealed by the traffic review. Please deny.

Daniel Hiatt-most of these WaWa types of sites are on 2.5 acres. States his tenants in Marlin Commerce Park south off Boutwell Road have trouble getting to I-95. 10<sup>th</sup> Avenue North has been out of concurrency for 23 years. The large FedEx facility is there as well as American Ambulance. When school is back in session in eight months it will be chaos.

Alfred Malefatto wraps up stating this is not a mixed-use project, it is 100 % commercial retail. Believes the transportation policy was not properly reviewed, was overlooked or disregarded. Because the project is not consistent with the Comprehensive Plan it should be denied.

**Public Comment:** Manny Benitez – 1848 Aragon Avenue- American Fastners Project. Too much congestion to side street. (Read into the record).

Dr. Archie Kleopfer- veterinarian at this location for 31 years. Prostitution and drugs from Dixie Hwy have spread to the area. Mention is made that he has witnessed fights of school age children in front of his business. He loves the community and Aragon Avenue and cares for the pets of homeless people who are in the area. Would like look into the eyes of his 80-year old grandmother when she visits with her cat and ensure her safety. Believes the subject property will be an attractive nuisance, crime will follow. Against the proposed use.

Joe Basile– subject property owner. Questions when it became the right of local property owners to tell another property owner what they can and cannot do. The traffic problem cannot be solved. 7-Eleven has top-end security. He also spoke to the affected party Francisco Gil before the project became common knowledge. There are no well-kept, attractive buildings (maintained) in the area. They too are investors. The area needs new life and as developers do, they are investing in the City. Traffic could be much worse if they build the maximum allowed, it could be much worse than what 7-Eleven will produce.

**Public Comment is closed.**

**Brian Seymour, Attorney for applicant**

#### Questions for Masoud Atefi

- Has the traffic study been revised? **Response:** According to a call received from Quasi Bari, the study of record at the time the presentation was assembled was a revised study.
- Does the crash data area extend up to 1,000 feet from the location? **Response:** Yes.
- There are not 69 crashes at this site, 3 are southbound on Barnett Drive.

#### Questions for Dr. Whiteford

- Is your suggestion that a development at the maximum allowed for the site would produce less traffic/impact? **Response:** All things are not equal, smaller uses can generate more traffic as well as larger uses generating less.
- Regarding Transportation Policy, what is the objective to which the Policy relates? **Response:** unknown.

#### Question for Masoud Atefi

- Isn't an office use one of the highest generators of traffic? Would that not generate more traffic than 7-Eleven? **Response:** Office use has less pass-by traffic but would have more peak hour usage.
- With all things equal on a square footage basis, an office use with maximized peak hour traffic would be greater than now? **Response:** yes it would.

**Mr. Thomas Baird** has no questions for staff, applicants, affected parties or consultants at this time.

**Mr. Alfred Malefatto** allots his time to Masoud Atefi who asks if the City Engineer has reviewed the plans as the county puts the traffic burdens on the City?

**Staff:** E. Sita- The proposed plan has been reviewed by Mr. Brian Shields, the City Engineer. Conditional use approval criteria includes traffic review impacts to be equivalent to or less than permitted by right projects.

Mr. Malefatto questions **Lisa Bernstein, P.E.** to advise of the current Level of service at 10<sup>th</sup> Ave N. and Barnett Dr. **Response:** The PM peak without the proposed project would be Service Level D. It would be Service Level E with the project but only producing 3.6 seconds delay. The AM levels of service with and without the project would be Level E.

Brief discussion on order of testimony. Brian Seymour has rebuttal. Thomas Baird questions if it is time for closing arguments as he too has some.

#### **Board member questions to staff, applicants, affected parties and consultants**

R. Lepa to Applicants:

- Do you expect additional traffic will be generated or hoping the client base will come from existing traffic? **Response by Lisa Bernstein:** Pass by rate according to FDOT standards is 78 %; PBC has different standards which is 61 %. Well over half of the traffic going to 7-Eleven is already on the road so any increase in traffic is reduced by those percentages.
- Who will the clients be? Do you expect it to be school children or automobile traffic? **Response by property owner Nelson Garcia:** He met with school representatives earlier who are appreciative the project will keep the children on the same side of street rather than crossing to the south side of 10<sup>th</sup> Ave North.
- Regarding the westbound traffic turning right onto Barnett Drive and those accidents on Barnett Drive, how many happened during school hours? **Response by Masoud Atefi:**

He did not do an accident analysis meaning the time and cause. To clarify an earlier comment, 7-Eleven will generate 94 new AM peak hour trips and 94 new PM peak hour trips. States the existing condition analysis is meaningless with Covid impacts. Ms. Bernstein used 2018 volumes and grew it to 2022 which gives a failing level of service.

Brian Seymour objects as Mr. Atefi has already testified the report he is referring to is not the basis, that he does not have the updated report. The level of Service is E. **Response:** Mr. Atefi states he has the revised report in hand and which shows Level E, with a Level F on Barnett Drive.

- With regard the raised triangle at Barnett Drive, what can be done? **Response by Brian Seymour:** Various options were considered but ultimately the fuel truck needs to maneuver safely.

J. Contin to Dr. Whiteford:

- Regarding the Policy 1.1.1.6 discussing 75/25 split of mixed use residential/ non-residential, suggests that a “customary” use is different from a “preferred” use. The terminology would imply that the policy is not set in concrete. “Customary” is different from “preferred”. **Response:** He did not state *customary* but rather *preferred* as expressed in the staff report. Not saying that it isn’t set in stone. The intent at some point should be residential.

J. Contin: Finds it hard to imagine any residential construction on that corner. Understands there may be some further west; a hotel may be possible but not a residential component. **Response:** As with New Urbanist ideas, one can imagine a vertically integrated mixed use space with office on the lower level and residential above. Thinks this is the intended direction of the policy.

J. Contin: That may be so but no one has taken a bite of that.

J. Contin to Masoud Atefi:

- There were previous traffic issues with that street no one will deny. When looking at F Level service. From the testimony he has heard it is not significant enough to say it is backing up everything. **Response:** He has serious concerns at project driveways. Illustrated by service levels and queues backing up at signals. The 10<sup>th</sup> Avenue North queue eastbound will have vehicles wanting to left turn and merge. His primary concern is Barnett Drive during school hours, the queue extends 700 feet to the north towards the school.
- Were the issues from @ 12 years ago the same or exacerbated by the project? **Response:** Mr. Atefi recalls county discussion about adding a southbound turn at Barnett Drive. Has it been included or considered in the project?

Brian Seymour: It’s interesting that in Mr. Atefi’s years with the county it was never objected to. If the 15 feet were removed, it would make the site even smaller which is one of the objector’s objections. As the applicant would be open to signal timing solutions, suggests Ms. Bernstein provide more detail.

Lisa Bernstein, P.E.: Regarding the turn lanes at the Barnett intersection. Volumes without the project included are: Southbound from 10<sup>th</sup> Ave N onto Barnett Dr. there are 133 left turns; westbound from Barnett Drive onto 10<sup>th</sup> Ave N. there are 243 turns; South onto Barnett Dr from 10<sup>th</sup> Ave North there are 153 turns; and opposing through trips from north Barnett to south Barnett indicate 12 trips or vice versa (not at peak hour). This gives more time to the left

(eastbound) traffic coming off Barnett Drive. Realize that peak hour is 4-6 pm and school hour peak is at 2:00 pm.. The signals could be adjusted to give additional time.

J. Contin asks if it was something the applicant considered with that data? **Response:** states no due to Service level E so no adjustment to the timing was needed.

Brian Seymour states a signal timing analysis could be presented to Palm Beach County traffic to further look at the signal timing.

Mr. Atefi re-asserts his concern for the 700-foot queue lasting about ½ hour, the signal timing is flawed. The protected phasing is needed on the signal, then the intersection no longer operates at Level E.

#### **M. Humm has no questions of staff, applicant, affected parties or consultants**

A. Marotta to staff:

- In Mixed-Use zoning is it required to have residential?

Staff: W. Waters states prior to 2010 Mixed-Use in the City did not exist, the Future Land Use Element was requested to be updated. As he crafted it, wrote it and it was his vision, it appears he is being contradicted in the intent. Unique to Lake Worth Beach there are nine (9) use classifications within our own LDR's along with 3 categories of intensity. The City is culturally diverse and unique with a rich history. With three (3) different uses per the classifications in the LDR's, the project has met code. The statement about a residential use being optional was intentionally included as a possibility knowing the surrounding lots were small, and in that context are not conducive for residential. There is Artisanal Industrial and Industrial across the street. Residential has been encouraged further west, 1200 units will certainly change the mix in the area. Feels strongly about the project meeting the intent since he was the creator of the policy. He was charged with creating an elite vehicle for Lake Worth investment and that is what you are looking at now.

E. Sita mentions Policy 1.1.1.6 allows for 75/25 area wide.

- Does staff agree with the severity of the suggestion that a project be torn down if not in compliance with the Comprehensive Plan?

W. Waters in response to the case law incident and structure having to be torn down mentions that scenario would be unlikely, extremely remote. Unappreciated is the concierge service offered to all applicants that is unique to Lake Worth Beach to review challenges and constraints, development interests. Most projects are near what is required by code as well as right for any area prior to the initial submittal. This allows for the approval process to move along expediently once submitted, the quickest approval process in the region. This project has been around for nearly two years.

- The right to not be inundated with additional development was mentioned by an affected party? Is this a right enshrined in the law? P. Ryan: Does not believe Mr. Baird meant it that way, simply put Board responsibility is to follow the law.
- Future land use, as it is area wide not required - point understood.
- 75/25 % mix is area wide – point understood.
- Please clarify the distinct uses of the project. **Response:** It meets the vehicular use, retail use and commercial use all distinctly shown in the Use table.
- If it were a larger project permitted by right, would the traffic generated be much larger? **Response:** yes

A. Marotta to Ms. Bernstein:

- Can it be explained why Mr. Atefi is wrong? **Response:** The traffic is already on the road, would already be moving in that direction. Traffic finds its own way which is convenient to the driver. The applicant will look at the queues and signal timing. Sometimes a vehicle may wait one or two cycles but otherwise it is acceptable.

L. Starr questions to Lisa Bernstein, P.E.

- What is the posted speed on WB 10<sup>th</sup> Ave North? **Response:** 35 mph is the posted limit.
- Show the drawing depicting the deceleration lane and explain the logic of cars slowing as they crest the hill from I-95. **Response:** The artist's rendering shows a deceleration lane in front of the business, as the radius to enter the property is generous and one shouldn't have to come to a complete stop. The deceleration allows drivers to slow down prior to reaching the entrance.

L. Starr question for affected party Mr. Schmidt

- Are there Ambulances to the north of the subject property? **Response:** yes

Chairman G. Rice clarifies they are for transportation services only, not emergency services therefore they are able to wait at the light.

D. Tanner to Lisa Bernstein, P.E.

- With 94 peak hour trips am and 94 peak hour trips pm., how much of that count is attributed to Barnett or 10<sup>th</sup> Ave North as it leaves the property? **Response:** L. Bernstein states distribution is a combination of 47 inbound and 47 outbound trips which is low on Barnett, 2% on Southbound Barnett, the bulk of the traffic is on 10<sup>th</sup> Ave North.
- Is the applicant mitigating their contribution to the traffic? **Response:** No mitigation is required by the county as standards are not exceeded.

D. Tanner to Staff: Comment/clarify the responsibility of the City with regard to the traffic issues.

Staff: Palm Beach County controls 10<sup>th</sup> Avenue North and intersections, there is an overall plan to widen to six (6) lanes with a middle turn lane. It is already on the County Capital Improvement Plan. Additionally FDOT is planning another improvement extending west to Detroit Street. Much traffic passes through from western communities to access I-95.

- What, if anything, are the affected parties doing (petitioning) with the county to resolve this issue with traffic.

Thomas Baird: additional southbound left turn lane onto Barnett Drive. Suggests Board condition this project to address the safety issue. The Board is responsible for shaping this project.

Daniel Hiatt: For 27 years has been told the traffic would be corrected. With the last FDOT improvement, a ten (10) foot portion was taken on both the north and south sides of 10<sup>th</sup> Ave North supposedly for the purpose of an additional lane. As it turns out it is only for the children crossing I-95.

D. Tanner: Unfortunately the entirety of traffic issues cannot burden this project.

L. Starr: Is there even room for another lane on the south side?

D. Hiatt: Has always been told the taking would be on the north side.

J. Contin to Applicant

- Was there consideration given to having electric charging stations for the bonus? **Response:** No, there were no charging stations considered.



Chairman Greg Rice

If there is vacant or underdeveloped land around, one can be guaranteed it will be developed at some point and bring traffic. The only thing change you can depend upon is change itself.

**Public Hearing closed at 9: 20 PM**

Anthony Marotta: Although a gas station is not the first choice of business type to go there, Board is not here to decide what goes on a property. If staff erred in their assessment, the only issue is the traffic impact, which is not substantial considering the impact a larger project permitted by right could bring to the area.

The affected parties have failed to prove through substantial competent evidence or the requirements of the mixed-use district that the project should be denied.

**Motion:** A. Marotta moves to approve PZB 20-00500003 with staff recommended conditions based upon the competent substantial evidence presented in the staff report, including data and analysis and testimony presented at this hearing; J. Contin 2<sup>nd</sup>.

**Vote:** J. Contin, aye; D. Tanner, aye; R. Lepa, aye; A. Marotta, aye; G. Rice, aye; L. Starr, nay; M. Humm, nay. Motion passes 5/2.

**PLANNING ISSUES:** None

**PUBLIC COMMENTS** (3 minute limit) None

**DEPARTMENT REPORTS:** None

**BOARD MEMBER COMMENTS:** None

**ADJOURNMENT: 9:24 PM**