

**CITY OF PALM BAY, FLORIDA**  
**SPECIAL COUNCIL MEETING 2020-30**

Held on Thursday, the 10<sup>th</sup> day of September 2020, at the City Hall Council Chambers, 120 Malabar Road, SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Office of the City Clerk, City Hall, Palm Bay, Florida.

Pursuant to Section 286.011, Florida Statutes, and Executive Order 20-69, this public meeting was conducted via communications media technology (teleconference/video conference).

The meeting was called to order at the hour of 6:00 P.M.

**ROLL CALL:**

<b>MAYOR:</b>	William Capote	Present
<b>DEPUTY MAYOR:</b>	Kenny Johnson	Present
<b>COUNCILMEMBER:</b>	Harry Santiago, Jr.	Present
<b>COUNCILMEMBER:</b>	Jeff Bailey	Present
<b>COUNCILMEMBER:</b>	Brian Anderson	Present
<b>ACTING CITY MANAGER:</b>	Suzanne Sherman	Present
<b>CITY ATTORNEY:</b>	Patricia Smith	Present
<b>CITY CLERK:</b>	Terese Jones	Present

Ms. Sherman announced that the applicant had requested a continuance of Items 1 and 2, under Public Hearings, to Thursday, December 10, 2020, at 6:00 P.M.

Mr. Bailey said the item had been tabled once and three of the councilmembers would no longer be on Council in December. He felt Council owed it to the residents to consider the requests and asked that the applicant state the reasons for the continuance.

Mayor Capote felt that both parties had rights and asked the City Attorney to provide input. Ms. Smith said that due process rights should be afforded as the applicant may have reasons that would prohibit them from presenting their cases, and Council should consider those reasons.

Robert Schwerer, attorney representing the applicant, read the request for continuance letter into the record. He said that an administrative appeal hearing had been filed by Ken Smith seeking to rescind the plat of a minor subdivision recorded by the applicant. He said that although the cases on tonight's agenda and the appeal hearing were independent of each other, there would be unnecessary confusion, distraction and substantial discussion required unless Mr. Smith's appeal was heard first by City Council.

Mr. Schwerer added that the continuance would allow for the applicant's representatives and experts to reconsider matters specifically relating to the rezoning issue with City staff, which discussions were intended to lend clarity and provide the City Council with additional information for consideration when the land use and rezoning matters returned for formal hearing. He said there was nothing being proposed tonight that would prejudice the neighbors. He added that he was not available until December due to various trials.

Ms. Smith said that as Council had heard the reasons for seeking a continuance, it was Council's discretion to grant the continuance. There were three factors to consider to determine if Council abused its discretion: a) whether the movant suffered injustice from denial of the motion; b) whether the underlying cause for the motion was unforeseeable by the movant and whether the motion was based on dilatory tactics, and c) whether the opposing party would suffer prejudice and injustice if the motion was granted.

Mr. Bailey asked if the administrative appeal and tonight's cases were related. Ms. Smith answered in the negative. Mr. Bailey said it was stated by Mr. Schwerer that Council must grant the continuance. Ms. Smith said she could not rule in place of Council's decision, but Council had to consider the three factors as stated. Mr. Bailey said that in his discussions with Ms. Smith, it was stated that it was not mandatory. He said the public needed to be aware that this was not something that Council must do. Council only had to consider the request based on the parameters. Mr. Bailey said he did not feel there was any real prejudice to moving forward, there was no rebuttal from either side, and the appeal hearing, and these cases did not affect one another. He felt it was a delay tactic to hold off until December.

Mr. Santiago asked for clarification on the three factors of abuse of discretion. Ms. Smith explained the factors. Mr. Santiago asked Mr. Schwerer if he was available on any other dates. Mr. Schwerer responded that his availability was extremely limited due to out-of-state trials and depositions. He said that Mr. Smith used the tactic of filing the administrative appeal at the last minute when he had sixty (60) days to do so. The applicant was not made aware of the appeal hearing until September 1<sup>st</sup>. He said that Mr. Smith was attempting to relate all of the cases and this was one of the circumstances that was unforeseeable. There was no prejudice to the opposition.

Mr. Santiago was inadvertently disconnected from the virtual meeting.

Mr. Anderson said the process had gone on for far too long but understood the legal ramifications if the continuance was not granted. He felt it was unfair to the residents.

Deputy Mayor Johnson said that he understood each councilmember's point of view, but the Charter Officers should not be making the decisions for Council. He said that the affected residents should be kept in the loop and to move forward with the continuance.

Mr. Bailey said that the applicant had every obligation to be prepared to move forward tonight. He said that Mr. Smith's appeal was not related to these cases and he did not agree with tabling the cases for another three months.

Mr. Bailey asked if the public would be allowed to speak. Mayor Capote said it was a request to continue, not to discuss the cases on the agenda. It was Council's decision to permit comments. He did not feel that a continuance would hurt anyone or that there was an issue with the new Council considering the items and making the final decision.

Mr. Santiago rejoined the meeting at this time.

Mr. Bailey called a Point of Order and questioned if public comments were to be heard. He said a public comments agenda heading was reflected on the agenda. Mayor Capote said there would be no public comments as the cases were not being heard. Mr. Bailey appealed the ruling of the Mayor and said that Council had to vote on the appeal.

Deputy Mayor Johnson asked for clarification regarding public comments. Ms. Smith said the request for continuance was a procedural issue and was essentially an agenda revision which had always been considered prior to the actual agenda item. She added that Councilman Bailey's appeal to Mayor Capote's ruling was correct and required a vote from Council, but public comments were not required on a procedural issue.

Motion by Mr. Bailey to reverse the decision of Mayor Capote and allow for public comment. He said that the Mayor and City Attorney were wrong, and this was not an agenda revision. He said the continuance should have been heard under the item, therefore allowing for public comment prior to the agenda items. Ms. Smith clarified that special meetings differed from regular meetings in that public comments could only be heard on the specific agenda item, and as there were no items to be considered, there should be no public comments. The motion died for lack of a second.

Motion by Mr. Santiago, seconded by Deputy Mayor Johnson, to continue Ordinances 2020-47 and 2020-48 to a special meeting on December 10, 2020, at 6:00 P.M.

Mr. Santiago understood why the applicant wanted to continue the cases, but felt it was owed to both parties that the cases be considered by the same governmental body, and not placed on the new Council. However, he supported the request.

Motion carried with members voting as follows:

Mayor Capote	Yea
Deputy Mayor Johnson	Yea
Councilman Santiago	Yea
Councilman Bailey	Nay
Councilman Anderson	Yea

**PUBLIC COMMENT(S)/RESPONSE(S): (Speakers are limited to 3 minutes)**

Public Comments were addressed under the request to continue above.

**PUBLIC HEARING(S):**

**1. Ordinance 2020-47, amending the City’s Comprehensive Plan Future Land Use Map to change the designated use of property located at the southeast corner of Babcock Street and Plantation Circle from Single Family Residential Use to Commercial Use (3.86 acres)(Case CP-4-2020, West Pointe Babcock, LLC), only one reading required. (CONTINUED FROM RCM 08-06-20)**

The item was continued to a special meeting on December 10, 2020, at 6:00 P.M.

**2. Ordinance 2020-48, rezoning property located at the southeast corner of Babcock Street and Plantation Circle from RR (Rural Residential District) to CC (Community Commercial District) (3.86 acres) (Case CPZ-4-2020, West Pointe Babcock, LLC), first reading (Quasi-Judicial Proceeding). (CONTINUED FROM RCM 08-06-20)**

The item was continued to a special meeting on December 10, 2020, at 6:00 P.M.

**ADJOURNMENT:**

There being no further business, the meeting adjourned at the hour of 6:42 p.m.

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William Capote, MAYOR

ATTEST:

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Terese M. Jones, CITY CLERK