

CITY OF PALM BAY, FLORIDA

SPECIAL COUNCIL MEETING 2020-38

Held on Thursday, the 29th day of October 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 6:02 P.M.

ROLL CALL:

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

CITY STAFF: Present was Laurence Bradley, Growth Management Director.

Proposed Procedures for Case CP-10-2019 and Case CPZ-10-2019 (Councilman Bailey).

The City Attorney advised that Councilman Bailey had proposed the following procedures for Council's consideration:

Case CP-10-2019

- Applicant's Presentation - thirty (30) minutes
- Staff's Presentation - thirty (30) minutes
- Aggrieved or Adversely Affected Person's Presentation - thirty (30) minutes
- Public Comment - three (3) minutes per person
- Applicant's Rebuttal - ten (10) minutes

Case CPZ-10-2019

- Applicant's Presentation - thirty (30) minutes
- Staff's Presentation - thirty (30) minutes

- Aggrieved or Adversely Affected Person's Presentation - thirty (30) minutes
- Public Comment - five (5) minutes per person
- Applicant's Rebuttal - ten (10) minutes

Cross examination would be limited to fifteen (15) minutes per witness.

The time limits may be modified by the City Council on its own motion or upon request of a party to the proceedings. The request shall detail the modified time desired and the subjects to be discussed during the additional time. A request for a modification of time should be considered by the City Council to assure all parties have an opportunity to participate without irrelevant, immaterial, or unduly repetitious evidence, undue repetition and delay. Witnesses may be called during presentation and rebuttal.

There were no public comments.

Motion by Mr. Bailey, seconded by Mr. Anderson, to approve procedures establishing time limits for Case CP-10-2019 and Case CPZ-10-2019.

Ms. Smith asked if Council preferred to have the attorneys cross examine any comments from the public or that questions would be directed to Council to cross examine. Council concurred that the attorneys would cross examine the public.

Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

PUBLIC HEARING(S):

1. Ordinance 2019-43, amending the City's Comprehensive Plan Future Land Use Map to change the designated use of property located west and adjacent to Dixie Highway, in the vicinity between Kingswood Drive and Robert J. Conlan Boulevard, from Industrial Use and Commercial Use to Bayfront Mixed Use (21.83 acres)(Case CP-10-2019, MLEF2-1, LLC), final reading. (REHEARING) (CONTINUED FROM SCM - 10/06/20)

The City Attorney read the ordinance in caption only. Councilmembers announced ex parte communications.

The public hearing was opened.

Attorneys Cole Oliver and Keith Poliakoff, as well as other representatives for the applicant, presented the request to Council. Mr. Poliakoff said that he considered FAR

Chemical Research (FAR) as a participant to the proceeding and not a party pursuant to the City's Code of Ordinances (Code). He said there would be a one hundred-foot (100') buffer between the properties and expert testimony would confirm that even with the recent explosion on FAR's property, which occurred on the property line, the off-site debris field was only twenty (20) feet. Mr. Poliakoff said that if FAR agreed to pursue no further litigation, the applicant would agree to split the cost for a seven hundred (700) linear foot, twelve-foot (12') foot high Florida Department of Transportation wall between FAR and the proposed site.

Mr. Bailey said it was mentioned that there would be Class A apartments. He asked the class levels and if Class A was the highest level. Mr. Poliakoff said that was misstated as the class levels applied to commercial buildings. He said these would be market rate apartments equivalent to the Aqua Apartments at Northshore. Mr. Bailey asked the distance of the closest residence to FAR. Jake Wise, CEG Engineering and expert witness for the applicant, answered that there were properties located immediately to the north of the property. Mr. Bailey asked if there was a one hundred-foot (100') buffer from the property line to the existing residential properties. Mr. Wise responded that there was a public road right-of-way in between the properties in addition to the one hundred feet (100').

Attorney Cecelia Bonifay, Akerman and Associates and representative for FAR, as well as other representatives for the applicant, presented their opposition to Council. She noted her objection to all information submitted by MLEF that was irrelevant to the cases, such as real estate, FAR's history, etc., and stated the reasons that FAR was an aggrieved party. Ms. Bonifay said that neither request should be approved for the following reasons: the Bayfront Community Redevelopment (BCRD) Plan was never adopted as part of the City's Comprehensive Plan; the BCRD was inconsistent with the City's Comprehensive Plan; the project was not consistent or compatible with the City's Comprehensive Plan or Land Development Code; City Council was without authority to approve the land use amendment and rezoning without the recommendation of the Bayfront Community Redevelopment Agency (BCRA); the project was not contemplated within the BCRD Plan; and the project was inconsistent with the State of Florida Comprehensive Plan.

Carmen Rasnick, Professional Planner and expert witness for FAR, detailed the invalidity of the BCRD Plan with the Comprehensive Plan. She said the project could not serve as a transition between the commercial and industrial land uses, and reliance on non-confirming residences to justify the transition concept was improper. Ms. Rasnick provided further explanation as to why industrial was incompatible with residential and the numerous related inconsistencies.

Attorney Thu Pham, Akerman and Associates and representative for FAR, cited Section 163.370, Florida Statutes, which listed the powers of municipalities and community redevelopment agencies. She also cited sections from the BCRD Plan and explained how this project was not contemplated in the BCRD Plan. Approval of the requests would affect FAR's property rights which would implicate the Bert Harris Act and open the City to liability.

Dick Boskind, Boskind Development, Inc., submitted a virtual comment. He owned property that abutted the proposed site and opposed the requests. He suggested that, if approved, it should be limited Bayfront Mixed Use (BMU).

Mr. Bailey asked staff to address the comments about the cases not being presented to the BCRA pursuant to the BCRD Plan. Mr. Bradley said it was his understanding that the authority to review the zoning request lied with the Planning and Zoning Board which would make recommendation to City Council, not the BCRA. Mr. Bailey asked if the BCRD should have been adopted by resolution or ordinance. Ms. Smith said the BMU land use was adopted via ordinance and forwarded to the State for comment, as required. Mr. Bailey asked if the cited statute was relevant to the requests and if rezoning authority should have been given to the BCRA. Ms. Smith said the statute provided authority for municipalities to rezone property. She said there were certain issues that the City could not delegate. Although it was allowed, the City did not delegate authority for the BCRA to approve land uses.

Mr. Poliakoff and Brenda Yates, expert witness for the applicant, provided rebuttal to the aggrieved party's comments. Mr. Poliakoff stated his objection to the virtual comment as the individual was not present for cross-examination. He added that the City's Comprehensive Plan stated that compatibility was achieved by providing buffering and setbacks.

Mr. Bailey asked if the applicant would be agreeable to increasing the buffer beyond one hundred-feet (100'). Mr. Poliakoff said that a significant amount of property would be lost. The applicant had agreed to put in a full landscape buffer in addition to the one hundred-feet (100'), as well as erecting a twelve-foot wall if FAR agreed to split the cost. Mr. Bailey asked if the buffer could be increased where it was adjacent to residential. Mr. Poliakoff felt one hundred-feet (100') was more than enough as a residential structure was an additional 25-30 feet away from the property line. He did not want additional buffering to eat into the acreage of the property and cause a much less buildable area.

Mr. Anderson asked if the applicant would agree to pay the full cost of the wall. Mr. Poliakoff said the applicant would agree to same if FAR agreed to no further litigation.

The public hearing was closed.

Motion by Mr. Anderson, seconded by Mr. Santiago, to adopt Ordinance 2019-43.

Mr. Anderson felt this project fit the vision of the City. Mr. Santiago concurred and said the buffer was more than enough and there was no need for a wall. Deputy Mayor Johnson agreed with Councilmembers Anderson and Santiago.

Mr. Bailey felt the aggrieved party's arguments were lacking, but he would not support the request due to compatibility and he felt more buffering was needed.

Motion carried with members voting as follows:

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

2. Ordinance 2019-44, rezoning property located west of and adjacent to Dixie Highway, in the vicinity between Kingswood Drive and Robert J. Conlan Boulevard, from HC (Highway Commercial District) and HI (Heaving Industrial District) to BMU (Bayfront Mixed Use District) (21.83 acres)(Case CPZ-10-2019, MLEF2-1, LLC), final reading. (Quasi-Judicial Proceeding) (REHEARING) (CONTINUED FROM SCM - 10/06/20)

The City Attorney read the ordinance in caption only. The public hearing was opened.

Attorney Keith Poliakoff, representative for the applicant, presented the request to Council and asked that all evidence and testimony from Case CP-10-2019 be entered into the record for this item. Brenda Yates, Certified Planner and expert witness for the applicant, explained how the land use category and rezoning had to be consistent with each other, and that the project complied with the Code.

Mr. Bailey asked if any other zoning district would be consistent with the approved land use. Mr. Bradley answered in the negative.

Attorney Cecelia Bonifay, Akerman and Associates and representative for FAR, presented their opposition to Council and asked that all evidence and testimony from Case CP-10-2019 be entered into the record for this item. She reiterated that this was

not consistent or compatible and added that a Planned Unit Development (PUD) could be included with the land use. Ms. Bonifay said that if Council was truly concerned about the buffer, she felt that an exhibit should be included delineating the one hundred-foot (100') buffer.

Mr. Poliakoff cross-examined Ms. Rasnick. He asked if she was paid to be present at the meeting. Ms. Rasnick answered in the negative. Mr. Poliakoff asked the standard buffer between commercial and industrial. Ms. Rasnick said it would depend on the Code of the municipality. Mr. Poliakoff asked what she felt the buffer should be. Ms. Rasnick said it depended on the two uses. If it was a chemical company, she felt it should be 1,000 feet; if it was an office company, one hundred-feet (100') would be acceptable.

The public hearing was closed.

As Councilman Anderson had questions for staff, the public hearing was reopened. Mr. Anderson asked for confirmation that the applicant proposed that no residential structures would be placed within the one hundred-feet (100') buffer and it was recommended by staff as well. Mr. Bradley confirmed same.

The public hearing was closed.

Motion by Mr. Anderson, seconded by Mr. Santiago, to adopt Ordinance 2019-44. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

ADJOURNMENT:

There being no further business, the meeting adjourned at the hour of 8:03 p.m.

William Capote, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK