

CITY OF PALM BAY, FLORIDA

REGULAR COUNCIL MEETING 2023-14

Held on Monday, the 1st day of May 2023, 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.

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

Reverend Steve Reeves, Cornerstone Assembly of God, Palm Bay, gave the invocation which was followed by the Pledge of Allegiance to the Flag.

ROLL CALL:

MAYOR:	Rob Medina	Present
DEPUTY MAYOR:	Donny Felix	Present
COUNCILMEMBER:	Kenny Johnson	Present
COUNCILMEMBER:	Randy Foster	Present
COUNCILMEMBER	Vacant	
CITY MANAGER:	Suzanne Sherman	Present
CITY ATTORNEY:	Patricia Smith	Present
DEPUTY CITY CLERK:	Terri Lefler	Present

Councilman Foster attended the meeting via teleconference.

CITY STAFF: Juliet Misconi, Deputy City Manager;

ANNOUNCEMENTS:

Deputy Mayor Felix announced the following vacancy and terms expiring, and solicited applications for same:

- 1. One (1) vacancy on the Youth Advisory Board (represents 'at-large student member' position).++**
- 2. Three (3) terms expiring on the Community Development Advisory Board (represents 'Real Estate Professional', 'Essential Services Personnel', and 'Employer within the City' positions).++**

AGENDA REVISIONS:

1. Ms. Sherman announced the following revisions:

A. Item 6, under Public Hearings: The conditions in Ordinance 2023-25 were revised relating to Jupiter Bay PUD final development plan.

B. Item 2, under New Business: The request for a mid-year budget workshop was changed to a Special Council Meeting for review and approval of the Fiscal Year 2021/2022 Annual Comprehensive Financial Report.

1. Ms. Smith announced that a memorandum was provided from outside legal counsel (Nabors, Giblin & Nickerson) relating to the City Council Seat 5 vacancy for Item 1, under New Business.

PROCLAMATIONS AND RECOGNITIONS:

The proclamations were read.

- 1. Proclamation: Kids to Park Day - May 20, 2023.**
- 2. Proclamation: National Day of Prayer - May 4, 2023. (Mayor Medina)**

PUBLIC COMMENT(S)/RESPONSE(S): (Non-agenda Items Only)

Individuals made general comments.

PUBLIC HEARING(S):

- 1. Ordinance 2023-11, updating the Comprehensive Plan Future Land Use (FLU) Element in its entirety (Case CP-3-2023, City of Palm Bay), final reading.**

The City Attorney read the ordinance in caption only. The public hearing was opened. Chris Dougherty, City's consultant, presented the request to Council.

Phil Corcoran, resident, participated in the plan process and added that a lot of the ideas presented by residents were not incorporated into the plan.

The public hearing was closed.

Motion by Mr. Johnson, seconded by Deputy Mayor Felix, to adopt Ordinance 2023-11. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea.

- 2. Ordinance 2023-23, rezoning property located in the vicinity south of Malabar Road, east of Interstate-95, and west of Babcock Street from LI (Light Industrial and**

Warehousing District) and CC (Community Commercial District) to GC (General Commercial District) (6.459 acres) (Case CPZ23-00001, Babcock & Malabar, LLC), final reading. (Quasi-Judicial Proceeding)

The City Attorney read the ordinance in caption only. The public hearing was opened. Shubham Desai, Bowman Consulting and representative for the applicant, presented the request to Council. The public hearing was closed.

Motion by Mr. Johnson, seconded by Deputy Mayor Felix, to adopt Ordinance 2023-23. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea.

3. Ordinance 2023-24, rezoning property located in the vicinity south of Malabar Road, east of Interstate-95, and west of Babcock Street from CC (Community Commercial District) to GC (General Commercial District) (11.668 acres) (Case Z23-00002 (formerly Z-18-2023), Babcock & Malabar, LLC), final reading. (Quasi-Judicial Proceeding)

The City Attorney read the ordinance in caption only. The public hearing was opened. Shubham Desai, Bowman Consulting and representative for the applicant, presented the request to Council. The public hearing was closed.

Motion by Mr. Johnson, seconded by Deputy Mayor Felix, to adopt Ordinance 2023-24. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea.

4. Ordinance 2023-26, amending the Code of Ordinances, Chapter 170, Construction Codes and Regulations, Subchapter 'Building Code', by modifying the City's Administrative Amendments referencing the Florida Building Code (Case T23-00001, City of Palm Bay), final reading.

The City Attorney read the ordinance in caption only. The public hearing was opened and closed as there were no comments.

Motion by Mr. Johnson, seconded by Deputy Mayor Felix, to adopt Ordinance 2023-26. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea.

5. Ordinance 2023-15, vacating a portion of the rear public utility and drainage easement located within Lot 21, Block 1865, Port Malabar Unit 41 (Case VE-3-2023, Dominick Migliaccio), first reading. (CONTINUED FROM 04/06/23 RCM)

The City Attorney read the ordinance in caption only. The public hearing was opened. The applicant presented the request to Council. The public hearing was closed.

Motion by Mr. Johnson, seconded by Deputy Mayor Felix, to approve Ordinance 2023-15. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea.

6. Ordinance 2023-25, granting approval of a Final Development Plan for a proposed mixed-use subdivision to be known as ‘Jupiter Bay PUD’ on property located at the northwest corner of Jupiter Boulevard and Brevard Avenue (24.69 acres) (Case FD23-00001, Sachs Capital Group, LP, and Identical Investments, LLC), first reading. (Quasi-Judicial Proceeding) (CONTINUED FROM 04/20/23 RCM) (AGENDA REVISION)

The Planning and Zoning Board recommended approval of the request, subject to the comments in the Land Development Division Staff Report and the following items:

- A preliminary subdivision plat and a boundary and title opinion;
- Updated Traffic Impact Study, if required, prior to site plan approval;
- The construction of an emergency access at Brevard Avenue and a 185-foot ingress right-turn lane and 210-foot ingress left-turn lane;
- Fully engineered construction drawings; and
- The technical comments generated by the Development Review Staff shall be observed and incorporated into the engineered construction drawings.

The City Attorney read the ordinance in caption only. The public hearing was opened. Bruce Moia, MBV Engineering and representative for the applicant, presented the request to Council.

Bill Battin, resident, was not pleased to see rural residential property disappear in addition to losing the golf course; however, he was glad that the developer made concessions, especially the expansion of Jupiter Boulevard.

The public hearing was closed.

Motion by Mr. Johnson, seconded by Deputy Mayor Felix, to approve Ordinance 2023-25.

Mr. Foster encouraged the developer to work with the area schools should there be traffic issues.

Mayor Medina agreed with the condo aspect of the project but was still concerned about density and traffic. He preferred to have at least half-acre lots but appreciated the concessions made by the applicant.

Motion carried with members voting as follows:

Mayor Medina	Nay
Deputy Mayor Felix	Yea
Councilman Johnson	Yea
Councilman Foster	Yea

7. Request by Sachs Capital Group, LP, and Identical Investments, LLC, for preliminary subdivision approval of a proposed mixed-use development, consisting of 236 residential units and 30,000 square feet of commercial retail, to be known as ‘Jupiter Bay PUD’, which property is located at the northwest corner of Jupiter Boulevard and Brevard Avenue, in PUD (Planned Unit Development) zoning (24.69 acres) (Case PS23-00001). (Quasi-Judicial Proceeding) (CONTINUED FROM 04/20/23 RCM)

The Planning and Zoning Board recommended approval of the request, subject to the following being addressed prior to final plat approval and City staff signing the Mylar:

- Fully engineered construction plan and drawings for review;
- Boundary and title opinion shall be approved by the City Surveyor;
- A signed and sealed topography survey is required for review and approval; and
- The technical comments generated by the Development Review Staff shall be observed and incorporated into the engineered construction drawings.

The public hearing was opened. Bruce Moia, MBV Engineering and representative for the applicant, presented the request to Council. The public hearing was closed.

Motion by Mr. Johnson, seconded by Deputy Mayor Felix, to approve the request for preliminary subdivision approval.

Motion carried with members voting as follows:

Mayor Medina	Nay
Deputy Mayor Felix	Yea
Councilman Johnson	Yea
Councilman Foster	Yea

8. Consideration of a Development Agreement with KB Home Orlando, LLC, pertaining to a development project known as 'Gardens at Waterstone Phases 2 and 3'. (FINAL HEARING SCHEDULED FOR 05/18/23 RCM)

CONSENT AGENDA:

All items of business under the 'Consent Agenda' heading were enacted by the following motion:

Motion by Deputy Mayor Felix, seconded by Mr. Johnson, that the Consent Agenda be approved as presented with the removal of Item 10 from consent. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea.

1. Adoption of Minutes: Meeting 2023-07; March 16, 2023.

The minutes, considered under Consent Agenda, were approved as presented.

2. Adoption of Minutes: Meeting 2023-08; April 6, 2023.

The minutes, considered under Consent Agenda, were approved as presented.

3. Award of Bid: Culvert pipe replacement, Unit 50 - IFB 28-0-2023 – Public Works Department (Timothy Rose Contracting, Inc. - \$1,151,537).

Staff Recommendation: Approve the award for culvert pipe replacement (Unit 50) with Timothy Rose Contracting, Inc. (Vero Beach), in the amount of \$1,151,536.75.

The item, considered under Consent Agenda, was approved as recommended by City staff.

4. Award of Proposal: Disaster debris monitoring services – RFP 25-0-2023 – Public Works Department (Witt O'Brien's – only implemented during emergency event).

Staff Recommendation: Approve the award for disaster debris monitoring services with Witt O'Brien's (Houston, TX), which would be implemented only in the event of an "emergency" situation, for a one-year term, renewable by the Procurement Department for four (4) additional one-year terms.

The item, considered under Consent Agenda, was approved as recommended by City staff.

5. Contract: Well repair, maintenance and rehabilitation services, purchasing authority – Utilities Department (AMPS, Inc. – increase by \$139,000 (total of \$262,000)); and approve appropriation of funds on the next scheduled budget amendment (\$139,000).

Staff Recommendation: Approve the increase of \$139,000 in purchasing authority for well repair, maintenance and rehabilitation services with AMPS, Inc., for a revised total estimated annual expenditure of \$262,000; and approve the appropriation of funds on the next scheduled budget amendment in the amount of \$139,000.

The item, considered under Consent Agenda, was approved as recommended by City staff.

6. Contract: General contractor services for minor construction, purchasing authority – Parks and Facilities Department (multiple awarded vendors – increase by \$50,000 (total of \$125,000).

Staff Recommendation: Approve the increase of \$75,000 in purchasing authority for general contractor services for minor construction with multiple awarded vendors, for a revised total estimated annual expenditure of \$125,000.

The item, considered under Consent Agenda, was approved as recommended by City staff.

7. Consideration of City Council Flag Program nominee, Thomas Rebman. (Deputy Mayor Felix)

Staff Recommendation: Approve Thomas Rebman as a nominee for the City Council Flag Program.

The item, considered under Consent Agenda, was approved as recommended by City staff.

8. Consideration of submitting a grant application to the U.S. Department of Justice for the Fiscal Year 2023 Law Enforcement Agency De-Escalation Grants - Community Policing Development Solicitation.

Staff Recommendation: Authorize the submission of a grant application to the U.S. Department of Justice for the Fiscal Year 2023 Law Enforcement Agency De-Escalation Grants - Community Policing Development Solicitation.

The item, considered under Consent Agenda, was approved as recommended by City staff.

9. Consideration of reclassifying one (1) part-time Data Entry Clerk to a full-time Data Entry Clerk within the Building Department (\$13,820).

Staff Recommendation: Approve the reclassification of one (1) part-time Data Entry Clerk to a full-time Data Entry Clerk within the Building Department, in the amount \$13,820.

The item, considered under Consent Agenda, was approved as recommended by City staff.

10. Consideration of allocating General Fund Undesignated Fund Balance for a replacement drone for the survey team within the Public Works Department (\$15,000).

Staff Recommendation: Approve the use of General Fund Undesignated Fund Balance in the amount of \$15,000 for the purchase of a replacement drone for the Public Works survey team.

Bill Battin asked how much was spent on the previous drone and what would happen to the equipment now that it was unusable. Ms. Sherman responded that the cost for the original drone was approximately \$10,000 and would be sold through surplus process.

Motion by Deputy Mayor Felix, seconded by Mr. Johnson, to approve the use of General Fund Undesignated Fund Balance in the amount of \$15,000 for the purchase of a replacement drone for the Public Works survey team. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea.

11. Acknowledgement of the City's travel expenses for the second quarter of Fiscal Year 2023 (January 2023 - March 2023).

The item, considered under Consent Agenda, was acknowledged by City Council.

NEW BUSINESS:

1. Discussion of next steps regarding City Council Seat 5 vacancy. (AGENDA REVISION)

Ms. Smith presented the item to Council.

Ken Delgado, resident, felt there were a lot of details that were not being addressed and questioned how it was determined that the special election would not be held until November 2024.

Mayor Medina read the ballot language into the record. He felt the wording was misleading and also felt this would be considered an extraordinary vacancy. He asked the opinion of councilmembers of allowing the residents the opportunity to vote and have a special election. Mr. Johnson agreed with and supported legal counsel's opinion. Deputy Mayor Felix said he would not support having a special election prior to November 2024 because the Mayor purposefully missed the special meetings to fill the vacancy. Mr. Foster had no additional comments and said to wait until November 2024.

Mayor Medina asked if the City Attorney could seek an opinion from the Attorney General on moving forward with special election. Ms. Smith said the issue would have to be handled in court as the Attorney General could not invalidate the City Charter.

2. Consideration of scheduling a workshop meeting for May 2023. (AGENDA REVISION)

Council concurred to schedule a workshop meeting for Monday, May 22, 2023, at 6:00 p.m., for the review and approval of the Fiscal Year 21/22 Annual Comprehensive Financial Report.

COUNCIL REPORTS:

1. Mr. Johnson would be bringing forth an ordinance regarding the removal of at-large board members. He wanted to ensure the provisions were applied to all boards.

ADMINISTRATIVE AND LEGAL REPORTS:

There were no reports.

PUBLIC COMMENTS/RESPONSES:

1. Eileen Sepp, resident, felt the appointment process was corrupted and violated the Sunshine Law. She added that she attempted to contact Representative Randy Fine regarding his withdrawal of funding for Palm Bay. She felt an ethics violation should be filed against Representative Fine.

ADJOURNMENT:

There being no further business, the meeting adjourned at the hour of 8:09 P.M.

Rob Medina, MAYOR

ATTEST:

Terri J. Lefler, DEPUTY CITY CLERK