

**CITY OF PUNTA GORDA, FLORIDA  
REGULAR CITY COUNCIL MEETING MINUTES  
WEDNESDAY, JANUARY 18, 2017, 9:00 A.M.**

**COUNCILMEMBERS PRESENT:** Cummings, Keesling, Matthews, Prafke, Wein

**CITY EMPLOYEES PRESENT:** Dave Drury, Finance; Rick Keeney, Public Works; Tom Jackson, Utilities; Phil Wickstrom, Human Resources; Teri Tubbs, Urban Design; Tom Lewis, Police; Ray Briggs, Fire; City Attorney Levin; City Manager Kunik; City Clerk Smith

**Mayor Keesling** called the meeting to order at 9:00 a.m.

Invocation was given by Mr. John Burrage, followed by the Pledge of Allegiance.

**Introduction of Board/Committee Member Nominees.**

Mr. Brad Gamblin introduced himself as a nominee for an Alternate seat on the Historic Preservation Advisory Board.

Ms. Linda Wein introduced herself as a nominee for an Alternate seat on the Planning Commission.

**PUBLIC HEARINGS**

**Quasi-Judicial Public Hearings**

**CCSP-01-17 – Petition for Special Permit under the provisions of Section 6-6(j), Punta Gorda Code, to install a boat lift canopy, which is not a permitted structure under Section 6-6(d), Punta Gorda Code, on an existing boat lift and dock at Park Hill Estates Lot 134, a/k/a 10101 Burnt Store Road, Lot 134, Punta Gorda, Florida 33950.**

**Owner/Petitioner: Daniel Bernard**

**Charlotte County Parcel ID: 412329281901**

City Clerk Smith swore in the participants.

Ms. Macalle Finkle, Paralegal, advised City Council was reviewing this request as the regulating authority since the location was neither in the Punta Gorda Isles (PGI) or Burnt Store Isles (BSI) Canal Maintenance Assessment District (CMAD).

Mr. Bob Nikula, Project Manager, explained the request, noting City Code Section 6-6(d) was silent relative to installation of a boat lift canopy; therefore, staff had no authority to approve the applicant's request. He concluded staff did not recommend favorable consideration of the application based on non-conformance with City Code 6-6(f) and 6-6(j)(4)c and d.

**Councilmember Prafke** stated there were several boat structures in the Alligator Creek channel.

Mr. Nikula displayed an aerial view of the location, as delineated in the agenda material, pointing out the approximate center line and noting the 25 foot offset was shown in either direction. He stated the footprint of the canopy was also indicated by a bold line on the overhead graphic.

**Councilmember Matthews** confirmed the permit for the boat lift was granted by Charlotte County but was not in compliance with City Code. She clarified it was a non-conforming structure.

City Attorney Levin stated City Code did not permit these types of boat covers.

Mr. Nikula clarified the Code was silent regarding boat covers as a use or structure.

City Attorney Levin stated the applicant was requesting a Special Permit to allow something which would otherwise not be permissible in the Code, adding even if the cover did not obstruct navigation, it would not be approvable under the Code and would require City Council review.

**Councilmember Wein** inquired if the pilings would have to comply with City Code if same had to be replaced due to aging.

Mr. Nikula replied affirmatively.

**Councilmember Wein** inquired if repair or replacement of the lift would need to comply with City Code if damaged during a storm.

Mr. Nikula replied such a request would need to be reviewed by the Building Division to determine the extent of the damage and whether the lift could be reconstructed, adding reconstruction would have to conform with City Code.

**Councilmember Prafke** stated the applicant informed her there would have been no problem if a cover was installed prior to annexation.

Mr. Daniel Bernard, applicant, distributed a written statement, as delineated within the agenda material. He expressed confusion about the process as City Code Section 6-6 applied to platted canals in PGI and BSI; however, his home was located on Alligator Creek South, which was maintained by Charlotte County and was not platted. He explained there was little boat traffic due to the shallow depth of the channel, adding there was nothing on the other side of the canal nor would there ever be. He concluded his structure was not impeding navigation. He reiterated City Code 6-6(d) referenced non-platted waterways, stressing he was only asking for an accessory for an existing boat lift.

Ms. Paula Diaz, Waterway Boatlift Covers, distributed pamphlets with pictures of sample covers, noting their company had pulled numerous permits with Charlotte County in the past; however, they were advised it was necessary to obtain a City permit

for Mr. Bernard's project. She stated the company had installed canopies in this area in the past and never experienced any problems.

City Manager Kunik pointed out the Waterway Boatlift Covers had pulled permits in unincorporated Charlotte County; however, Park Hill had been annexed into the City.

City Attorney Levin inquired if Waterway Boatlift Covers had previously installed canopies within the territorial limits of Punta Gorda.

Ms. Diaz replied in the negative.

Mr. Bernard reiterated only City Code 6-6(d) applied in this case. He stated he had paid \$450 for a special permit, noting the application indicated, "... Special Permit on a platted canal ...", reiterating Alligator Creek South was not platted.

Mr. Ray Rose, PGI Civic Association (CA), objected to any deviation from City Code regarding boat covers and canopies.

Mr. Allen Heibers stated he was Mr. Bernard's neighbor, adding he had obtained a permit from Charlotte County for his boat lift and a cover for his pontoon boat. He stated the subject area was unique as compared to the canals, adding the cover was a great asset to pontoon boat owners. He requested City Council approve the canopy, adding he was not aware of any objections by Park Hill residents.

**Mayor Keesling** called three times for public comment.

Councilmember Prafke **MOVED** to close the public hearing, **SECONDED** by Councilmember Matthews.

**MOTION UNANIMOUSLY CARRIED.**

**Councilmember Prafke** stated Park Hill was not a part of PGI or BSI and had their own standards, voicing concern with regard to imposing regulations on an area which was not part of the Special Residential Overlay (SRO) District. She commented this situation was similar to Emerald Point.

**Councilmember Wein** agreed Emerald Point had established their own standards, adding it was necessary to work with newly annexed communities and not require residents to undergo these special processes. He stated if the waterway was not going to be maintained by the City, was not within a CMAD and was reasonably segregated from same, it would behoove the City to keep an open mind with regard to existing standards in the community and to work with residents to establish mutually acceptable standards.

**Councilmember Matthews** agreed, adding if the City continued to annex properties, it was necessary for the City to make it easy for them to do so.

**Councilmember Wein** interjected it was necessary to avoid unacceptable encroachments into navigable waterways.

**Councilmember Cummings** opined it would be helpful if Council was provided with information regarding the differences between City and County regulations.

City Attorney Levin stated the rationale for City Council to grant the Special Permit was Park Hill's recent annexation, adding a new property owner had reasonable expectations, based on the regulations of the community prior to annexation, they would be allowed to have a boat cover. He noted Council would not be inclined to grant a special permit for such a request in other areas which had not been recently annexed and due to the prohibition of these types of structures.

Councilmember Prafke **MOVED** approval of CCSP-01-17 due to the unique nature of the situation as related by the City Attorney, **SECONDED** by Councilmember Wein.

**MOTION UNANIMOUSLY CARRIED.**

Discussion ensued regarding the establishment of mutually agreeable standards for Park Hill as well as future annexed properties.

City Manager Kunik stated the City had received a letter from Park Hill indicating they no longer desired to allow boat covers, opining City Council was asking staff to work with the residents to allow boat covers; however, that would be up to the community.

City Attorney Levin clarified City Council established policy; however, with regard to items which were not permissible within the City but were permissible within an annexation area, typically the activity which pre-existed the annexation could continue as a non-conforming use but could not be expanded or modified to any significant extent, adding when a particular use ceased, there was no longer the right to continue that use, such as in a case where a property was sold to a new owner who wished to install a boat lift. He stated the non-conforming use in that particular instance would expire upon a change of circumstances. He voiced concern with regard to allowing installation of a new structure which nobody else in the City was allowed to install, opining it would not be good policy to allow special permits or variances for any newly annexed area for structures which were prohibited in other areas of the City simply because they were previously part of the County. He stated grandfathering a pre-existing condition was reasonable; however, it would be difficult for City Council to deny the next person who requested a boat cover in that area, adding as more and more boat covers were allowed in that area, residents of other areas which had been in the City for a longer period might question why they were not also permitted to have a boat cover. He stated if boat covers were not a problem, the ordinance should be changed to allow same; however, if the City did not want boat covers, once annexation occurred, it was necessary to abide by the City's regulations.

**Councilmember Prafke** questioned if Park Hill's association should be asked to inform their residents boat covers would be prohibited in the future.

City Attorney Levin responded it was up to the City to enforce its regulations, adding anything done by individual communities with respect to their particular rules could not trump the City's regulations. He stated City Council set policy and established regulations for City-wide application.

**Mayor Keesling** inquired if there were any discussions during the annexation process with regard to the Codes which would affect the Alligator Creek waterway.

City Manager Kunik replied there were discussions about what was and was not allowed in the City; however, boat covers were not specifically discussed.

City Attorney Levin stated while some City regulations expressly governed activities within platted canals, they also regulated activities in non-platted canals. He stated the impact of navigation would not be the deciding factor in this case, adding the most important criteria for this particular situation would be contained in Section 6-6(j)(4)d. He stated based on the fact that such items were prohibited elsewhere in the City, it would be difficult to say it would meet that criteria; however, this was a unique case. He stated if a neighbor applied for a canopy, they should be on notice approval might not be granted based on the fact the City had not opened the door for canopies throughout the City.

**Councilmember Matthews** suggested City Code be updated to address canal areas within City limits without seawalls.

City Attorney Levin stated staff had discussed rewriting Chapter 6, opining it could be added to the list of items to be addressed.

#### **CONSENT AGENDA**

A. Citizen Comments - Consent Agenda Items

None.

Councilmember Matthews **MOVED** approval of the Consent Agenda, **SECONDED** by Councilmember Prafke.

#### **MOTION UNANIMOUSLY CARRIED.**

B. City Clerk's Department

1. Approval of Minutes: Regular Meeting of November 16, 2016.
2. Approval of Minutes: Regular Meeting of December 21, 2016.
3. Approval of Minutes: Regular Meeting of January 4, 2017.

C. Urban Design Division

1. Approval of Quit Claim Deed for Any and All Interest the City may have to 321 West Retta Esplanade Alley (not platted).

2. Approval to Apply for the Gulf of Mexico Climate and Resilience Community of Practice Competition.

**Citizen Comments – Regular Agenda Items Only.**

Mr. Rose requested clarification on Item VIIA, voicing concern three feet was a considerable distance for an administrative variance.

Mr. Sam Castronovo voiced concern regarding an increase in the budget, opining the City needed to address any unfunded liability for the pension plan.

**BUDGET**

**Acceptance of Donation from the Harry Shapiro Charitable Foundation & Appropriation of Funds for the Fire Department Mural and Citizens Outreach/ Training.**

City Manager Kunik requested City Council accept the \$10,000 donation and appropriate funds for the City's share of the mural expense with any remaining balance to be used for citizen outreach and/or training.

Councilmember Prafke **MOVED** to accept the donation and appropriate funds for the City's share of the mural expense, **SECONDED** by Councilmember Wein.

**MOTION UNANIMOUSLY CARRIED.**

**Award of Master Agreement and Specific Authorization 1 for Phase 1 Services for Engineering/Design of the Jones Loop Force Main to Johnson Engineering of Fort Myers, FL.**

City Manager Kunik stated staff recommended award of the Master Agreement and Specific Authorization 1 for Phase 1 services to Johnson Engineering of Fort Myers, Florida.

Councilmember Prafke **MOVED** approval, **SECONDED** by Councilmember Wein.

**MOTION UNANIMOUSLY CARRIED.**

**FY 2017–2021 Long Range Financial Plan.**

Ms. Kristin Simeone, Financial Analyst, provided an overview of the Fiscal Year (FY) 2017-2021 Long Range Financial Plan, as delineated within the agenda materials. She drew members' attention to the General Fund Revenues and Expenditures, noting reserves would be used in FY 2017 and 2018; however, there would be a shortfall beginning in FY 2019. She stated based on current financial policies, the General Fund minimum reserve would be 7.5% in FY 2018. She drew members' attention to the Utilities OM&R Fund Revenues and Expenditures, noting in the budget book staff had indicated a 2% increase; however, FY 2017 currently included 4%, which had been retained for FY 2018, adding there was a small surplus in FY 2017, and reserves would be used in FY 2018 for the construction of the Jones Loop and Automated Meter

Reading system projects. She stated the Jones Loop project had been moved up from 2021, adding sewer impact fees would also be utilized for that project. She confirmed the planning number was \$2.5 million. She drew members' attention to the CRA Fund, noting there was a small surplus, which was being set aside in the event of a downturn or for early repayment of the loan. She reviewed the Sanitation Fund, which had a surplus, noting the automated packer system was still under consideration which could affect future budget numbers. She reviewed the Building Fund and Laishley Park Municipal Marina Fund, which were both doing well, noting the PGI and BSI Canal Maintenance Funds had a surplus most years; however, reserves would be utilized beginning in 2021 due to the loss of canal maintenance staging sites. She reviewed the 5 Cent Gas Tax and 6 Cent Gas Tax Funds.

**Councilmember Prafke** requested inclusion of more detailed information regarding the pension and its impact on the budget. She suggested Council also be provided with employee salary information showing how Punta Gorda compared to other cities, noting the Human Resources Manager had presented information in the past related to same. She voiced concern some of the documentation suggested a potential millage rate increase, adding City Council was accountable to the residents and needed to understand the reason for same.

**Mayor Keesling** pointed out City Council had requested a breakdown of the millage rate be included for projects requested by the community and the cost of same, adding the City was attempting to be transparent.

City Manager Kunik explained more detailed information would be included in reports provided during the budget process (April through July 2017).

Ms. Simeone drew members' attention to the Policy Update, questioning if City Council was still amenable to a minimum fund balance of 7.5%.

Councilmember Prafke **MOVED** approval of establishing an unassigned fund balance minimum of 7.5% of total fund appropriations for the General Fund and all other funds excluding the Utilities Fund, **SECONDED** by Councilmember Wein.

**MOTION UNANIMOUSLY CARRIED.**

Ms. Simeone reviewed the General Fund millage rate scenarios for FY 2018.

City Manager Kunik stated it was early in the budget process, and the forecast would change; however, it set the stage for any millage impact based on enhanced drainage services and not utilizing reserves. He stated this was a planning exercise which began the process, noting no decisions were being requested at this time.

Ms. Simeone reviewed the budget issues for the Sanitation Fund.

City Manager Kunik stated staff was requesting a decision with regard to developing a plan for automation, adding if Council decided not to move forward, it would be necessary to purchase new trucks. He questioned if Council desired to retain sanitation service in-house or if it should be out-sourced with the same level of service being provided, noting residents were satisfied with the level of service provided in-house.

Discussion ensued regarding the level of service provided in-house and the cleanliness of the City, with consensus to continue to provide sanitation services in-house.

Ms. Simeone reviewed the budget issues for the Special Use Reserve Fund.

City Manager Kunik stated staff recommended City Council give serious consideration to setting aside funds for the Ponce de Leon Park rebuild. He stated the Peace River Wildlife Center had begun fundraising, adding the design would not be complete for some time; however, staff felt both projects could be ready for construction by April 2018.

**Mayor Keesling** agreed with the City Manager's assessment, stating she was amenable to retaining proceeds from the Fishermen's Village sale in reserves until such time as the legal challenge was resolved. She recommended utilizing General Fund Reserves for the unfunded liability for the three pension plans, which would soften future impacts.

**Councilmember Wein** opined the fund should be left as is, adding funds should be appropriated on a case-by-case basis as needed, such as for the Ponce de Leon Park project. He suggested the funds be used for assets which would enhance the community, adding he agreed it was necessary to address the pension fund but not with these funds.

**Councilmember Prafke** stated she would like the pension plans to be considered since that was an option. She stated it was important for Gilchrist Park construction to be finished before the Ponce de Leon Park project began.

**Councilmember Matthews** agreed. She concurred it was necessary to resolve the legal issue before expending reserves and was in favor of considering the pension plan.

**Mayor Keesling** confirmed staff had sufficient direction to proceed.

#### **NEW BUSINESS**

#### **Discussion of Proposed Amendment to the Current Administrative Variance Provisions.**

Ms. Teri Tubbs, Urban Design Manager, explained staff would like to draft language to include a provision which addressed situations where there was an approved

foundation location survey but where a future survey identified setbacks which were non-conforming, adding administrative variances were only permitted for existing structures which had been issued a Certificate of Occupancy (CO) at least three years prior to any request for an administrative variance. She explained administrative variances were written in such a manner as to clear title for existing structures only.

Discussion ensued with consensus for staff to draft a Code amendment with input from the Planning Commission for Council consideration.

**Discussion of Council Policy regarding Process for Amendments to the City Code.**

Ms. Tubbs reported the Planning Commission (PC) had voiced concern decisions were being made by City Council without an opportunity for their input, adding the PC requested City Council consider amending its policy to allow the Commission to review proposed ordinance amendments and provide input prior to City Council review and discussion. She noted the policy had been amended several years earlier to reflect City Council would first decide whether staff should spend time on a particular topic or project.

**Mayor Keesling** opined the process had been working, pointing out there were times when City Council had to approve funding prior to consideration of moving forward with a particular project.

**Councilmember Cummings** concurred the current process was working.

**Councilmember Prafke** stated a review of the minutes of the PC indicated primarily one member was making comments regarding this issue. She inquired whether Councilmember Matthews felt progress had been impeded with the current process.

**Councilmember Matthews** stated PC members had questioned why they were consulted after City Council had already voted on a particular topic, acknowledging Council had only held a general discussion in order to give staff direction to move forward. She stated she understood the frustration as she had served on the PC; however, she understood both sides.

**Mayor Keesling** pointed out City Council had requested the PC's input on shade structures even though a decision had been made in one situation.

Ms. Tubbs confirmed staff had obtained input from the PC regarding shade structures, noting same would be presented to City Council at a future meeting.

**Mayor Keesling** stated City Council needed and valued the PC's input, adding she was unsure how to change the attitude that same was meaningless.

**Councilmember Matthews** clarified the PC felt their opinion should be obtained prior to City Council review.

**Councilmember Prafke** inquired what would make the process more efficient and effective.

City Manager Kunik stated from a practical standpoint, it was helpful for staff to know whether City Council desired to move forward with a particular project, adding ideas were not always flushed out, and the process of obtaining input from the advisory boards was used to do so.

**Mayor Keesling** concluded it was not necessary to make any changes to the process at this time.

**Councilmember Cummings** agreed, adding it was necessary to consider the best use of staff's time.

**Councilmember Matthews** suggested a representative from the PC attend City Council meetings to speak on their behalf, opining it would be helpful for City Council to have that input as part of their dialogue.

**Mayor Keesling** stated she was amenable to same.

**Councilmember Prafke** stated City Council and staff should also be cognizant that the initial discussion was only to decide whether to move in a certain direction, clarifying it was the PC's responsibility to conduct the research.

**Mayor Keesling** stated City Council also directed staff on how far to take the research on a particular project, pointing out much work was involved with some projects. She stated the PC needed to be able to gauge the depth of a project and determine how many resources to put behind it, recalling City Council had charged the PC with conducting extensive research regarding building height.

**Councilmember Wein** concurred with the idea of a PC representative attending Council meetings.

#### **RECOMMENDATION FROM CITY OFFICERS**

##### **CITY ATTORNEY**

#### **Florida Department of Health Bureau of Emergency Medical Oversight Administrative Complaint & Settlement Offer.**

City Attorney Levin advised City Council was responsible for approving litigation settlements, briefly reviewing the complaint, which involved the City being accused of violating a minor administrative provision. He stated the settlement agreement contained several provisions inappropriate to the circumstances, adding the agency attorney had refused to negotiate removal of same. He advised it was unlikely the City needed to worry about those settlement provisions; therefore, he recommended approval of the offer.

City Manager Kunik added the City was accused of being late in filing for renewal of its Advanced Life Support (ALS) license, reporting the City passed all the necessary inspections.

City Attorney Levin stressed the permit had not expired, and the City had filed its application within a reasonable time of expiration.

City Manager Kunik reported Fire Chief Ray Briggs had put procedures in place to avoid this situation in the future.

Discussion ensued regarding the settlement agreement provisions and the procedure for pursuing an appeal.

Councilmember Prafke **MOVED** approval of the settlement offer, **SECONDED** by Councilmember Cummings.

**MOTION UNANIMOUSLY CARRIED.**

### **BOARDS AND COMMITTEES**

#### **Announcement of Vacancies**

Building Board Alternate

City Clerk Smith announced the continuing vacancy.

Code Enforcement Board Alternate

City Clerk Smith announced the vacancy.

Planning Commission Alternate

City Clerk Smith announced the vacancy

Punta Gorda Isles Canal Advisory Committee

City Clerk Smith announced the continuing vacancy.

Utility Advisory Board

City Clerk Smith announced the vacancy.

#### **Nominations**

Historic Preservation Advisory Board Alternate

Councilmember Wein **MOVED** to nominate and appoint Mr. Brad Gamblin, **SECONDED** by Councilmember Cummings.

**MOTION UNANIMOUSLY CARRIED.**

**Mayor Keesling** inquired if previous applications were reviewed for interest in a particular board.

City Clerk Smith replied affirmatively, noting applicants for the PGI Canal Advisory Committee must reside in PGI. She reported the Recording Secretary was asked to announce the vacancy at the PGICAC meeting held the previous day, expressing hope that announcement would generate some interest.

**Councilmember Wein** stated he might know of someone who was interested in serving.

**Mayor Keesling** suggested advising the PGI CA.

### **POLICY AND LEGISLATION**

**KEESLING:** Reported she was unable to attend the Charlotte County Legislation Delegation meeting the following date; however, Vice Mayor Wein would be in attendance, and Mr. Jerry Paul would also speak on behalf of the City.

**PRAFKE:** Questioned if it was more important to attend the Legislative Delegation Meeting to show support versus attending service board meetings which were being held at conflicting times, adding she was inclined to attend the Legislative Delegation. City Manager Kunik stated the City typically followed the County and the Airport Authority but was near the beginning of the agenda.

Discussion ensued with consensus for Councilmembers to attend the Delegation meeting.

**MATTHEWS:** Reported she received a letter from a citizen requesting dogs be allowed in Ponce de Leon Park temporarily since Gilchrist Park was closed.

Discussion ensued with consensus not to make any change.

- Requested City Council consider drafting an ordinance to only allow parking on one side of the street in the SRO District, noting construction and contractor vehicles were being parked on both sides of the road.

Discussion ensued with consensus for Council to discuss the matter at a future meeting.

- Announced City Council had been invited to attend a Shark Tank event on March 30, 2017, from 5:30 p.m. to 8:30 p.m. at the Isles Yacht Club.

### **CITIZENS COMMENTS**

Mr. Charles Council, Planning Commission Chairman, stated the Commission took their responsibility seriously and wanted to contribute and be of value to the City Council, acknowledging there was a level of frustration in that some members felt they were not being included in the process. He stated he would relay Council's discussion to the members and would advise Council whether members were amenable to a representative attending future Council meetings to provide input.

Mr. Gamblin thanked City Council for the appointment to the Historic Preservation Advisory Board.

Mr. Rose voiced concern regarding making special exceptions for special districts which went beyond grandfathering, opining it could lead to compromises on other issues. He stated the PGICA desired to be more active with the City Council, adding

this was the first time he could recall where there was no active member of PGICA on City Council. He stated they would be reaching out to meet with individual Councilmembers. He introduced Mr. Arron Wagoner, PGICA President-Elect.

Mr. Harvey Goldberg stated there were times when urgent matters came before City Council due to a need by the public or some other need which required a quick response prior to being considered by the Planning Commission, adding same was understandable. He agreed it would be good to have a Planning Commission representative speak when certain matters were discussed by City Council, adding as a prior Councilmember, he gained much understanding of issues before the Planning Commission by attending the Planning Commission meetings to hear firsthand their comments on a particular matter of significance.

**Mayor Keesling** announced the State of the City luncheon hosted by the Punta Gorda Chamber of Commerce would take place on January 25, 2017, adding she would like to do one or two additional presentations, including one to be held in Council Chambers and one for the PGICA. She stated she would make an announcement when the dates were scheduled.

The meeting was adjourned at 11:13 a.m.

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Mayor

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City Clerk