

**CITY OF PUNTA GORDA, FLORIDA
REGULAR CITY COUNCIL MEETING MINUTES
WEDNESDAY, JUNE 5, 2019, 9:00 A.M.**

COUNCILMEMBERS PRESENT: Carey, Cummings, Matthews, Prafke, Wein

CITY EMPLOYEES PRESENT: Kristin Simeone, Finance; Rick Keeney, Public Works; Tom Jackson, Utilities; Phil Wickstrom, Human Resources; Joan LeBeau, Urban Design; Pamela Davis, Police; Ray Briggs, Fire; City Attorney Levin; City Manager Kunik; City Clerk Smith

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

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

PROCLAMATION/PRESENTATIONS

National Garden Week

Councilmember Matthews presented the proclamation, which was accepted by Ms. Mary Yeomans, Punta Gorda Garden Club President.

Introduction of Board/Committee Member Nominees

Ms. Valerie Colbert announced she was a nominee for the Historic Preservation Advisory Board.

NOTE: City Council recessed and reconvened as the Community Redevelopment Agency (CRA) (see corresponding minutes).

PUBLIC HEARINGS

GA- 01- 19 – An ordinance of the City of Punta Gorda amending the City of Punta Gorda Police Officers’ Retirement System, restated pursuant to Ordinance 1644-10, amending Section 8, Disability; amending Section 17, Miscellaneous Provisions; amending Section 28, Deferred Retirement Option Plan; amending Section 29, Reemployment After Retirement; providing for severability of provisions; repealing all ordinances in conflict herewith and providing an effective date.

FIRST READING

City Attorney Levin read the ordinance by title.

Ms. Macalle Finkle, Paralegal, advised the proposed amendments had been forwarded to City Council by the Pension Board for adoption, drawing members’ attention to the statement of no impact from the Board’s Actuary.

Mayor Prafke called three times for public comment.

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

MOTION CARRIED UNANIMOUSLY.

Councilmember Wein **MOVED** approval of GA-01-19, **SECONDED** by Councilmember Matthews.

MOTION CARRIED UNANIMOUSLY.

GA- 02- 19 – An ordinance of the City of Punta Gorda amending and restating the City of Punta Gorda Municipal Employees’ Retirement System, adopted pursuant to Ordinance No. 1671- 11, as subsequently amended, by restating the City of Punta Gorda General Employees’ Retirement System; providing for codification; providing for severability or provisions; repealing all ordinances in conflict herewith and providing an effective date.

FIRST READING

City Attorney Levin read the ordinance by title.

Ms. Finkle advised the proposed amendments were for the General Employees’ Pension Board, noting a statement of no impact was received from the Board’s Actuary.

Mayor Prafke called three times for public comment.

Councilmember Wein **MOVED** to close the public hearing, **SECONDED** by Councilmember Cummings.

MOTION CARRIED UNANIMOUSLY.

Councilmember Wein **MOVED** approval of GA-02-19, **SECONDED** by Councilmember Carey.

MOTION CARRIED UNANIMOUSLY.

Quasi- Judicial Public Hearings

SE- 01- 19 – A Special Exception request by Kim Devine, Authorized Agent for 751 W Retta Esplanade FL, LLC, property owner, pursuant to Chapter 26, Section 16.8, Punta Gorda Code, to allow a Bed and Breakfast Inn, which is not located within the historic district or listed as a contributing structure, and will not be owner-occupied as required by Chapter 26, Section 4.8, Punta Gorda Code, to be located in a Neighborhood Residential 10 units per acre (NR- 10) zoning district as permitted by Special Exception pursuant to Chapter 26, Article 3, Section 3.7(f)(9), Punta Gorda Code; for the property addressed as 751 West Retta Esplanade, Punta Gorda, Florida.

City Clerk Smith swore in the participants.

City Attorney Levin read the request by title, noting an Intervenor had established a special interest in the proceeding. He explained the meeting procedures, which included cross examination of witnesses.

Mr. Michael Whittt, Hahn, Loeser & Parks, introduced himself as Attorney for the Intervenors, Mr. Craig Ivey and Ms. Janice Ivey.

City Attorney Levin advised the Intervenor’s request was timely filed.

Ms. Lisa Hannon, Zoning Official, entered the staff report, as delineated in the agenda materials, into the record by reference. She summarized the request, noting the property was not located within the historic district nor was it owner occupied. She read into the record the four criteria which must be met in order for a special exception to be approved as well as staff's findings and conclusions. She stated staff recommended approval of SE-01-19 contingent upon conditions related to licensure, food service, signage, maximum of eight guest rooms, use limited to existing structures, limited hours for pool operation, employee residing on site, and no special events open to the public. She noted the Development Review Committee and the Planning Commission recommended approval. She concluded the applicant had agreed to the limitation of eight guest rooms as well as having an on-site live-in manager.

City Attorney Levin advised since the property was corporately owned, the corporate entity must provide a full-time employee as a full-time occupant of the bed and breakfast to satisfy the requirement that the facility be owner occupied.

Councilmember Matthews inquired as to limiting the number of guests in each room.

Mr. Holden Gibbs, Fire Operations Chief, responded occupational load was limited to the structure rather than each particular room.

Mr. Whitt confirmed the application was for a commercial for-profit enterprise to be run from a home. He questioned whether occupational load was determined by square footage or by bedroom.

Mr. Randall Cole, Chief Building Official, replied same was based on square footage and use of each area, adding areas were totaled to determine an aggregate number.

Mr. Whitt inquired if staff considered the future land use language in Section 1-4 of the Comprehensive Plan.

Ms. Joan LeBeau, Urban Design Manager, replied in the affirmative, noting based on the condition and size of the home as well as buffering around the home, staff felt the request was reasonable.

Mr. Whitt argued staff had no basis to back up the statement that the property was vacant. He then questioned whether there was sufficient parking for guests in the rear of the home.

Ms. Hannon explained there were two three-car garages, adding there were also spaces in between the street and the garage; thus, the requirement was met.

Mr. Jason Green, Weiler Engineering, inquired whether parking required separate calculations for visitors, employees and others or whether same was based on a simple calculation based on square footage.

Ms. Hannon replied same was based on use, adding the bed and breakfast requirement was one space per guest room.

Mr. Green confirmed that was because generally parking calculations on the whole were inclusive and accounted for other visitors and users of the property. He then inquired if the bed and breakfast was a permitted use within the existing zoning district for the property.

Ms. Hannon replied it was a permitted use in the Neighborhood Residential (NR) zoning district if it met the four criteria.

Mr. Green then provided a review of his background and qualifications. He displayed a boundary survey, as delineated in the agenda material, and reviewed the four criteria which must be met for approval of a special exception application, testifying as to the manner in which the proposed bed and breakfast met those requirements. He requested the previously submitted application which provided commentary on those points along with staff's findings and recommendations be recognized for the record as part of his testimony. He displayed a site plan which indicated available parking spaces and circulation, stating same demonstrated a minimum of 12 vehicles could fit on the site without on-street parking. He stated a traffic analysis indicated the measured impacts were insignificant to the surrounding public street network. He pointed out the applicant had offered to reduce the number of guest rooms to eight, to limit pool hours and to maintain the existing residential character of the building and site. He distributed a list of conditions and safeguards proposed by the applicant, as delineated in the agenda material, which addressed operations, deliveries, lighting and landscaping as well as security. He concluded it was his expert opinion the application, the process, the proposed use and development were all consistent with the Land Development Regulations and the Comprehensive Plan, adding the proposed conditions and operations mitigated the public's concerns and provided a reasonable protection of public health, safety and welfare. He stated the operation by a local company in maintaining the site and residential character sufficiently addressed questions and concerns raised throughout the public hearing process, concluding based on substantial and competent evidence, he requested approval of the special exception.

Mr. Whitt questioned the statement made that the owner was local, inquiring if the operation would be owned, operated and controlled by Fishermen's Village.

Mr. Green replied in the affirmative.

Mr. Whitt questioned what local company would operate the bed and breakfast.

Ms. Devine replied 751 W Retta Esplanade, LLC.

Mr. Whitt inquired what entity controlled that company.

Ms. Devine responded Arciterra LLC, noting Mr. John Larramore was the member.

Mr. Whitt inquired as to the employer of the on-site resident manager.

Ms. Devine replied 751 W Retta Esplanade, LLC.

Mr. Whitt inquired if the applicant would agree that no weddings would be held on site.

Ms. Devine responded any wedding held on site would have to be very small.

Mr. Whitt stated his client was concerned about amplified sound and large group gatherings and parties of 30 or 40 people.

Ms. Devine replied she anticipated the sound coming from the bed and breakfast would be less than a typical family with teenage children.

Mr. Whitt presented the intervener's objection to the request, as delineated in the agenda material, requesting the proposal be denied as it did not meet the requirements for a special exception application. He asserted the noise from the operation was incompatible with a true residential use, opining it was a Fishermen's Village hotel. He displayed an aerial view of the property at 751 West Retta Esplanade and his client's property which was adjacent to same, attesting his client would be uniquely and adversely affected by the operation of the bed and breakfast.

Ms. Janice Ivey, Intervenor, testified she and her husband Mr. Craig Ivey purchased their property approximately one year previously, noting Ms. Devine occupied the residence at 751 West Retta Esplanade at the time. She explained the neighborhood was quaint and quiet, asserting after Ms. Devine moved out the home was occupied by various people and occasional late night music had awoken her. She stated noise, on-street parking and light emanating from the back of the building were concerns.

Mr. Whitt inquired if she was concerned about an impact to the value of her property.

Ms. Ivey replied affirmatively. She confirmed the location of her bedroom window as depicted on the aerial. She asserted she would not have purchased her home if the property next door was operating as a bed and breakfast.

City Attorney Levin advised Mr. Whitt was presenting an opening statement and argument rather than testimony/facts.

Mr. Green inquired if weddings were prohibited on Ms. Ivey's property.

Ms. Ivey replied in the negative.

Mr. Green inquired as to any prohibitions or limitations on amplified music or on-street parking.

Ms. Ivey replied in the negative.

Mr. Green inquired if there was a limitation on how many people could be in her house.

Ms. Ivey replied in the negative.

Mr. Green inquired whether there had been a professional analysis of value or harm to value related to her property.

Ms. Ivey replied in the negative.

City Attorney Levin announced after a short break, City Council would hear from the public.

NOTE: A short break was called at 10:58 a.m. at which time Councilmember Carey left the meeting.

Mr. Bob Federici stated he wished to ensure the property did not become a housing facility for Fisherman's Village employees.

Ms. Cathy Getz voiced concern regarding commercial creep into the residential neighborhood.

Ms. Suzanne McCormick objected to additional commercialization of the area.

Mr. Don McCormick voiced concern regarding guests bringing boats and other recreational vehicles.

Mr. Dennis Clark voiced concern subdividing the house into guest bedrooms would result in lower caliber neighbors, opining daily rentals should be prohibited. He stated the special exception should be forfeited if there were excessive code violations within a year.

Ms. Dawn MacGibbon opined the bed and breakfast did not meet the requirements, asserting Mr. Larramore had attempted to hide the property ownership. She stated this was a commercial use, adding Mr. Larramore had made purchase offers to other property owners on West Retta Esplanade, which was commercial encroachment in a residential neighborhood that would affect property values and quality of life.

Mr. Glen Martin voiced concern about safety issues related to increased traffic and parking in the area.

City Attorney Levin invited the Intervenor to present any rebuttal testimony and summary argument.

Mr. Whitt distributed copies of a Second Home Rider to the mortgage for the property located at 751 West Retta Esplanade, recorded at OR Book 4375, page 1564 of the Charlotte County Public Records, as delineated in the agenda material, explaining same required the borrower, 751 West Retta Esplanade, FL, LLC, a Delaware Limited Liability Company by its manager, Arciterra Companies, LLC in Arizona, signed by Jonathon M. Larramore as manager of Arciterra, to occupy and only use the property as borrower's second home. He opined the Rider on the mortgage killed the application. He asserted the proposal was for a hotel by the owner of Fishermen's Village. He then reiterated the argument that the property was not eligible for a special exception as it

did not meet all of the approval criteria, opining it was commercial creep and would result in degradation of the neighborhood. He requested denial of SE-01-19.

City Attorney Levin stated the applicant had 15 minutes for rebuttal testimony and summation.

Mr. Green stated the comments by the public had not addressed the criteria required to be met; thus, they were not substantial and competent evidence. He stated first and foremost was the quality of the neighbor, adding City Council could revoke the special exception if there were substantial nuisances. He objected to the assessment that Berry and Dolly Streets were dangerous, opining the streets and neighborhood were safe to walk through. He stated it was factually inaccurate that the Special Exception could not be approved, stressing the Intervenor's attorney had made misleading statements about how the Code applied, including Conditions of Approval which was an administrative approval not tied to nor applied to the special exception criteria. He stated it needed to be clear that City Council had the ability to consider this special exception and to establish conditions deemed to be necessary. He stated the applicant had offered conditions as they had an interest in ensuring the comfort of their guests. He pointed out the Intervenor had offered no professional expert testimony. He concluded the bed and breakfast would live harmoniously with neighbors, adding the character of the property and the project blended well with the residential neighbors.

Councilmember Matthews questioned whether the applicant would agree to only allow passenger cars on the property.

Mr. Green replied affirmatively.

Councilmember Matthews inquired whether a minimum stay would be established.

Mr. Green replied in the negative.

Mayor Prafke inquired as the Second Home Rider.

Mr. Green replied it was not City Council's responsibility to implement rules and regulations on a mortgage, adding same was not part of the criteria and not relevant to the occupancy.

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

MOTION CARRIED UNANIMOUSLY.

City Attorney Levin agreed the Rider was a private agreement and it was up to the lender to enforce same. He then drew members' attention to the four criteria which must be met.

Councilmember Cummings stated bed and breakfasts were specifically placed in neighborhoods for the purpose of cementing the residential nature, opining this was the most comfortable controlled manner that the City had available to preserve same.

Councilmember Wein concurred.

Councilmembers Matthews agreed provided conditions were put in place.

Mayor Prafke disclosed she had met with Ms. Devine and had spoken to Mr. Ivey regarding this request, adding she agreed with members' comments and would suggest penalties be put in place to control the situation.

Councilmember Matthews disclosed she met with Ms. Devine and talked to Mr. Ivey. City Attorney Levin noted there had been litigation over the years over what constituted a passenger vehicle, adding he understood Council's concern to be related to trailers and RVs that might be associated with guests. He suggested the condition be "no trailers or RVs may be parked on the premises." He noted staff's conditions and those offered by the applicant should be included in the motion.

Ms. Hannon read the conditions into the record as follows: all state and local licenses be obtained prior to operation; food service limited to guests and not advertised to the general public as a restaurant; signage limited to building marker sign; maximum of 8 guest rooms, special exception use limited to existing structures in the current exterior configuration, with exception of pool deck and cage which could be expanded; hours of operation limited for pool, on-site owner residency full time; no special events open to the public; parking or storage of trailers, RVs or boats upon the premises prohibited.

Mayor Prafke inquired if guest check-in could be restricted to the front entrance.

Mr. Green responded that was the intent.

Mayor Prafke requested same be included with the conditions.

Mr. Green inquired if a Chamber ribbon cutting would be prohibited.

Discussion ensued with consensus to allow for a one-time special event for the Chamber ribbon cutting.

Ms. Hannon read the applicant's special conditions into the record, as delineated in the agenda materials.

City Attorney Levin requested "and late arrivals" be added to the section titled "Deliveries", clarifying same would be limited to the front entrance. He also requested the conditions be amended to state all outdoor lighting shall be directed away from neighboring properties.

Consensus was to do so.

Councilmember Wein disclosed he had met with the applicant.

City Attorney Levin advised it was not possible to specify penalties, adding violations of the Code and enforcement of the conditions would be accomplished through Code Enforcement as well as via revocation of the special exception.

Councilmember Cummings disclosed he met with Ms. Devine and Mr. Ivey.

City Attorney Levin confirmed there were no further clarifications or additions with respect to the conditions.

Councilmember Matthews **MOVED** based upon the evidence and testimony provided at the public hearing, including but not limited to the staff report, application, applicant's submissions, submissions by the intervener, we find that the special exception request satisfies the criteria for approval and shall be approved with the conditions that have been read into the record by staff and the applicant as amended, **SECONDED** by Councilmember Cummings.

MOTION CARRIED UNANIMOUSLY.

CONSENT AGENDA

A. Citizen Comments - Consent Agenda Items

None.

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

MOTION UNANIMOUSLY CARRIED.

B. City Clerk's Department

1. Approval of Minutes: Regular Meeting of May 15, 2019

C. City Manager's Department

1. Local Option Sales Tax Committee

D. Legal Department

1. Monthly Litigation Report

E. Police Department

1. Memorandum of Understanding (MOU) with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for eTrace Internet Based Firearm tracing Application

2. Revised Adult Pre-Arrest Diversion Program (APAD) Memorandum of Understanding (MOU)

F. Utilities Department

1. A Resolution of the City Council of the City of Punta Gorda, Florida, accepting a Bill of Sale and Release of Liens/Affidavit of No Liens from GH&G Punta Gorda, LLC., and Warranty from A.T. Construction Management, Inc. for wastewater

- collection facilities serving Wawa Punta Gorda located at 26415 Indian Trail Drive; providing for conflict and severability; and providing an effective date.
2. A Resolution of the City Council of the City of Punta Gorda, Florida, providing non-exclusive easements to Florida Power & Light Company (FPL) for the construction, operation and maintenance of overhead and underground electric utility facilities for the Reverse Osmosis Water Treatment Plant Facility at 37800 Washington Loop Road; authorizing the City Manager to execute the easements and all other documents required by FPL related to Work Request #8651026 and Work Request #8622859; and providing an effective date.

Citizen Comments - Regular Agenda Items Only

None.

BUDGET

First Home Site Historical Marker

Ms. LeBeau explained staff was requesting an appropriation in order to purchase a replacement for the First Punta Gorda Home Site historical marker.

Councilmember Cummings **MOVED** approval of the sign purchase with the City seal and appropriation of funds, **SECONDED** by Councilmember Matthews.

MOTION UNANIMOUSLY CARRIED.

FY 2020- 2024 Utilities Capital Improvements Program and FY 2020 Utilities Operations Fund Budget Status Update

Ms. Kristin Simeone, Finance Director, presented the referenced items, as delineated in the agenda materials, stating the Utility Advisory Board had recommended approval of same. She displayed the Utilities Construction Fund Proforma FY 2020 – 2024, noting same was balanced with revenues or reserves. She drew members' attention to the Recurring \$1.12 Million Renewal and Replacement (R/R) Projects, noting in FYs 2020 and 2021 only \$920,000 was budgeted as Watermain R/R funds would be utilized for the Taylor Road and Solana watermain projects. She reported funding for the Wastewater Treatment Plant Improvements would be restructured as the project was moving forward, adding future figures could be amended based on proposed engineering options. She briefly reviewed funding for Water Projects, pointing out detail sheets had been provided for same. She displayed the Utilities Operations Fund Proforma, noting the revenue assumptions were standard with staff estimating 5% growth and no rate increase. She concluded with a review of Expense Assumptions.

City Manager Kunik commented only a portion of the \$3.9 million in grant funding would be received from the Southwest Florida Water Management District (SWFWMD), adding staff would provide an update in June.

Award of Agreement to Quality Enterprises USA, Inc. of Naples, FL for construction of the Alligator Creek Pedestrian Bridge

Ms. Anne Heinen, Procurement, explained an Invitation to Bid for construction of the pedestrian bridge over North Fork Alligator Creek resulted in 4 responses, noting the total lump sum cost of the project was \$797,905 with partial funding through the SUN Trail Agreement with the Florida Department of Transportation (FDOT). She stated staff was requesting approval of a contingency budget of \$10,000 for unforeseen construction conflicts or errors on plans, noting the project timeline was 180 consecutive calendar days after issuance of a notice to proceed. She concluded staff recommended award of the Agreement to Quality Enterprises USA, Inc. of Naples, Florida, noting FDOT concurred with same.

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

MOTION UNANIMOUSLY CARRIED.

Purchase Chairs for Dais in Chambers

City Clerk Smith explained it was necessary to purchase replacement chairs for the dais in Council Chambers, noting same were in poor condition. She stated she was seeking approval to expend up to \$4,500 utilizing Council Contingency Funds.

Councilmember Matthews **MOVED** approval, **SECONDED** by Councilmember Cummings.

MOTION UNANIMOUSLY CARRIED.

UNFINISHED BUSINESS

Historic District Initiative Engineering Infrastructure Analysis Update

Ms. Joan LeBeau, Urban Design Manager, noted the improvement strategy for the Milus Street/Ida Avenue area of concern included the following actions: 1) request FPL to install three new streetlights on existing poles; 2) request FPL to replace all lenses/fixtures on existing street lights; 3) schedule tree trimming; 4) replace all decorative streetlight bulbs in the surrounding area. She stated after the improvements were complete, staff would reevaluate the conditions outlined in the report and bring back to City Council any additional improvement recommendations.

RECOMMENDATION FROM CITY OFFICERS

CITY MANAGER

City Manager Kunik reported the remaining City funds would be reviewed at the June 19, 2019 meeting. He outlined the July 3, 2019 agenda items.

CITY ATTORNEY

City Attorney Levin recalled he had previously mentioned a potential conflict in the Plattner foreclosure, requesting City Council consider approval of the waiver of the

conflict. He stated if that action was taken he would request a Shade meeting be scheduled to follow the June 19, 2019 meeting.

Discussion ensued regarding the waiver.

Councilmember Wein **MOVED** approval to execute the conflict waiver, **SECONDED** by Councilmember Cummings.

MOTION UNANIMOUSLY CARRIED.

Councilmember Wein **MOVED** to hold a shade meeting at 1:00 p.m. on June 19, 2019, Council meeting, **SECONDED** by Councilmember Cummings.

MOTION UNANIMOUSLY CARRIED.

CITY CLERK

Florida League of Cities Voting Delegate

City Clerk Smith stated as in past years the FLC was requesting the City to designate one voting delegate for the Business Meeting held during the Annual Conference.

Consensus was for Mayor Prafke to serve, with Councilmember Matthews serving as Alternate.

BOARDS AND COMMITTEES

Announcement of Vacancies

Police Officers' Pension Board

Planning Commission (2)

Utility Advisory Board (2)

Punta Gorda Housing Authority - Resident Commissioner

City Clerk Smith announced the vacancies.

Nominations

Planning Commission Alternate

Councilmember Matthews **NOMINATED** all interested parties, requesting staff to verify whether the nominees were year-round residents.

Appointments

Historic Preservation Advisory Board

Voting forms were distributed.

City Attorney Levin announced Ms. Valerie Colbert had received the most votes and was thus appointed to the Board.

POLICY AND LEGISLATION

PRAFKE: Announced she would be participating in the Southwest Florida League of Cities Advocacy Group meeting on Tuesday, June 18, 2019.

- Reported Mr. Mitchell Austin would be making a presentation on June 18, 2019, at 5:00 p.m. at the Charlotte Harbor Event & Conference Center related to preliminary feedback from Dover, Kohl & Partners.
- Invited everyone to the Pickleplex ribbon cutting at 5:30 p.m. on June 24, 2019.

CITIZENS COMMENTS

Ms. Sheila Jaeger stressed pickleball in Gilchrist Park was harmful to residents, adding evidence to that effect had been submitted to the City. She opined the harm done to the Park was self-evident, adding the acoustic fence was hideous and so far had been ineffectual.

Mr. David Klingerman inquired as to the condominiums which would be part of the public hearing at the June 19, 2019 meeting.

Ms. Finkle replied Water Garden Condominiums, Lime Terrace and Admiral's Point.

Mr. Klingerman stated he was a condominium owner in Clipper Cove Village but did not own a boat slip, asserting he was being assessed but did not receive a benefit from the Buckley Pass project. He concluded he had presented pertinent documents to City staff regarding same as required.

The meeting was adjourned at 12:54 p.m.

Mayor

City Clerk