



**City Commission Regular Meeting
Tuesday, February 11, 2020 at 6:30 PM
Minutes**

1. OPENING OF MEETING

A. Call to Order

Having been duly advertised as required by law, the regular meeting of the City Commission of the City of New Smyrna Beach, Florida, was held on Tuesday, February 11, 2020 at the City Hall Commission Chamber, 210 Sams Avenue, New Smyrna Beach, Florida 32168.

Mayor Russ Owen called the meeting to order at 6:30 PM.

Present: Mayor Russ Owen, Vice Mayor Michael Kolody, Commissioner Randy Hartman, Commissioner Jason McGuirk and Commissioner Jake Sachs.

Also present were City Attorney Carrie Avallone, City Manager Khalid Resheidat, Police Chief Mike Coffin, CRA/Economic Development Director Tony Otte, Assistant City Manager Brian Fields, Leisure Services Director Nancy Maddox, Finance Director John McKinney, Community Resource Coordinator Irma Terry, Assistant to the City Manager and Public Information Officer Phil Veski, Assistant City Clerk Jeri Hall and City Clerk Kelly McQuillen.

2. INVOCATION/PLEDGE OF ALLEGIANCE

Police Department Chaplain Pete Carter gave the invocation. Mayor Owen led those present in the Pledge of Allegiance.

3. APPROVAL OF THE AGENDA

Mayor Owen reported a request from the applicants regarding Item 8B. Public Hearings, Special Use Exception Application SR44 and Sugar Mill Drive (Borrow Pit) to postpone the item for sixty (60) days to be placed on the April 14, 2020 City Commission Agenda for consideration.

Motion:

Commissioner Hartman moved to postpone the item for sixty (60) days to be placed on the April 14, 2020 City Commission Agenda for consideration. Vice Mayor Kolody seconded the motion, and the motion was denied 1-4, with Commissioner McGuirk, Commissioner Sachs, Commissioner Hartman and Mayor Owen voting no.

The item was moved up to the first item on the agenda as consideration for the large amount of citizens in attendance for this specific item.

1. Conduct a Quasi-Judicial Public Hearing on a proposed Special Exception Use of Borrow Pit for vacant property located on the south side of SR 44 at Sugar Mill Drive.

A Quasi-Judicial Hearing was conducted to consider the approval of Special Use Application SR44 and Sugar Mill Drive Borrow Pit.

Assistant City Manager Brian Fields and Chief Planner Jeff Gove were administered the oath, by the City Attorney. They outlined their professional and educational qualifications. As no citizens questioned their credentials, Mr. Fields and Mr. Gove outlined the proposed application, which if adopted, would allow for the Special Exception Use of a Borrow Pit for vacant property located on the south side of SR44 at Sugar Mill Drive.

All of City Commissioner's disclosed ex-parte communications. They have all had communications with Mark Watts, Attorney.

Commissioner McGuirk asked for clarification for the Department of Transportation (DOT) plans.

Mr. Gove confirmed that the DOT did correspond, but that they answered questions vaguely.

Commissioner Sachs asked if they considered the old gas stations and the possibility of leaking gas at that location.

Mr. Gove stated that the applicants can address that, but they were told that the old tanks were removed and that the site was certified clean.

Commissioner Hartman asked if the site plan application would be presented before City Commission.

Mr. Fields stated that it would not have to be brought before City Commission, but that it could be a stipulation.

Attorney Glenn Storch requested that the City Staff Report from December 9, 2019 would be entered into evidence as well as the PowerPoint Presentation he provided for the agenda item on tonight's meeting.

Mr. Lawson Lamar, Borrow Pit Operations Manager, was administered the oath, by the City Attorney and testified that he has operated several borrow pits in Florida. He explained dewatering procedures. He clarified that they would not strip site in advance; therefore eliminating dust transfer.

Vice Mayor Kolody asked if they were using the gas station property.

Mr. Storch stated it would not be used. He stated that they were able to take the old gas station down and that there would be an easement placed across that property.

Vice Mayor Kolody commented on the environmental affect, schematics, and wetlands stating that he had not heard any professional testimony that eludes to the easement and gas station being taken down.

Mark Watts, Attorney, commented on possible impacts. He stated they would maintain the fifty-foot setback. He commented on dewatering issues. He commented on stipulation agreements and stated that the City did not have any permits there.

John Smith, Drexel University and Civil Environmental Engineer, was administered the oath, by the City Attorney and testified that he has operated several borrow pits in Florida. He commented on recharging the wetlands outside of the excavation pit. He commented on a deep ground water aquifer.

Mayor Owen opened the Quasi-Judicial Public Hearing.

Mayor Owen asked for a show of hands of those in favor of the application.

Five residents raised their hands in favor of the application.

Ellen Darden, 6325 River Road, commented on private property rights and upholding constitutional rights that the City Commission promised to uphold.

Chad Erickson, New Smyrna Beach resident, stated that he liked the fact they were getting rid of the gas station, adding buffers and eliminating housing.

Kelly DeSoto, 3500 South Atlantic Avenue, commented that he felt the reservations, but by listening to the evidence and doing research, shared that he liked the idea of a future development would be deferred and that they were reducing development in the future.

Nell Rodriguez, New Smyrna Beach resident, was undecided. He lived in the Glen Oaks division and stated they had a severe flooding issue in their community. He did not think they would have a problem with flooding. He wanted to go on record to request that SJRWM would look at the flooding issues of his neighborhood and adjacent properties to be considered. He stated the entire neighborhood was in jeopardy of flooding.

Mayor Owen asked for a show of hands in opposition of the application.

Approximately forty (40) residents commented in opposition of the application.

Marvel Richards, 1099 Clubhouse Boulevard, commented on living with this every single day. She commented on having a lot of construction out there. She commented on the traffic impact. She stated that she did not see the benefit to the City. She addressed Mr. Storch and told him that there was no fill needed at the hospital. She commented on the twenty-one conditions. She urged City Commission to vote no.

Roberta Gibson-Minor, 2839 S. Osceola Court, commented on the speed limit in front of the parcel being 55 MPH. She commented on the amount of accidents in that area. She commented on this does not meet criteria for an exception, as it was detrimental to their health.

Claudia Vanderhorst, 562 Aeolian Drive, commented on speaking at the Planning and Zoning Meeting to bring attention to the issue. She commented on the interference with the basic enjoyment of the community. She asked the City Commission to vote no and be heroes.

Bryon White, New Smyrna Beach resident, commented on speaking previously regarding the Beacon Apartments. He recalled his comments during those meetings and stated those facility would be marketing towards retirees. He stated that the marketing showed differently today and asked the Commission to consider those.

Joe Falutka, Venetian Bay Neighborhood, thanked the Commission for what they had done and stated they have been good stewards. He commented on this project taking us below a Dunlawton project and stated they had concerns. He commented on considering the gateway. He asked to look more long term.

Mike Shulsky, New Smyrna Beach resident, commented on the growth of New Smyrna Beach over the years and stated the traffic concerned him the most. He commented on the heavy weight of the trucks and stated that

from spring to fall, traffic is already backed up to Venetian Bay. He stated they do not want to start digging holes when there might be a fatality.

David Bruce, 228 Live Oak Lane, commented on communities never remaining the same, getting either better or worse. He commented on one of the factors being trust and he hoped that the information they were sharing with them tonight.

James Lurch, 630 St. Andrews Circle, reminded the Commission on the traffic issues.

Mr. Fields provided a couple closing comments.

Mr. Storch thanked the Commission and appreciated allowing them to conduct the hearing up front. He stated that they would consider comments. He pointed out the flooding issue and stated that perhaps they would consider a larger lake to help with the flooding.

Mayor Owen closed the Quasi-Judicial Public Hearing.

Vice Mayor Kolody asked when the five-year window would begin.

Mr. Storch stated after the site plan was approved it would begin and the permit issuance from St. Johns River Water Management District (SJRWDM).

Vice Mayor Kolody stated his concern was that if the economy downturns, that a maximum timeframe would be added as a stipulation.

Mr. Fields reiterated a stipulation from Staff to clarify.

Vice Mayor Kolody wanted to ensure holidays were added to item 6B.

Mr. Storch stated they would do that.

Vice Mayor Kolody commented on the silk fence.

Mr. Storch stated they could stipulate to that.

Vice Mayor Kolody asked if they would be willing to set a special exception bond, requiring that an inspector would be onsite for at least one hour a day for the length of the project.

Mr. Storch would agree to this.

Commissioner Hartman asked about the Advent Health Property. He asked about the gas station buffer zone completion date.

Mr. Storch stated the buffer zone completion would be included in the site plan.

Commissioner Hartman asked if they would consider changing the operational hours from 7am to 9am.

Mr. Lamar stated that yes, they would change the hours.

Commissioner Hartman asked if they approve it, would DOT still deny this and could it be denied at the site plan process.

Commissioner McGuirk commented on traffic concerns.

Commissioner Sachs commented on taking an oath on protecting the health, wealth and safety of citizens and did not believe he would be doing that if he approved it.

Commissioner Hartman stated that the good outweighed the bad, but the bad was very concerning. He commented on concerns with the trucks leaving the site where they were.

Mr. Storch commented on a Corrective Use exception and stated if they did not fix it, it would be shut down.

Vice Mayor Kolody commented that he was not comfortable with some issues. He commented on B3 being a zone that did not accept special exceptions like this. He was concerned about the wetlands and mentioned the flat topography. He was not satisfied with the testimony provided. He commented on a technical concern with pond construction and the location of the soil boring.

Mayor Owen commented that he tried to respond to all of the emails he received. He thanked the citizens for attending the meeting tonight and being part of the Legislative Process. He commented on the health, welfare of citizens. He appreciated the efforts.

Motion:

Vice Mayor Kolody moved to adopt the Special Exception Use Application, as submitted. Commissioner McGuirk seconded the motion, and the motion was denied 0-5, with Mayor Owen, Vice Mayor Kolody, Commissioner Hartman, Commissioner Sachs and Commissioner Hartman voting no.

4. ANNOUNCEMENTS/PRESENTATION/RECOGNITIONS

A. Proclamation: Sister Cities

Mayor Owen and Commissioner Sachs presented the Sister Cities Proclamation to Historic Preservation Commission Chair Lianne Bennett and Southeast Volusia Historical Society Board of Directors Member Mark Rakowski.

B. Presentation of Solar Feasibility Assessment Report conducted by UCF's Florida Solar Energy Center

Maintenance Operations Director Faith Miller outlined a PowerPoint Presentation.

5. PUBLIC PARTICIPATION

Lillian Conrad, on behalf of the Canal Street Business Association, thanked City Staff and Commission for their time. She commented on three additional parking spaces if they took the stripes off an area.

Commissioner Sachs commented on fielding several complaints about the movie event. He asked her to fill him in on any objections.

Randy Herman, 108 Esther Street, voiced a concern about a rude construction crew working on a project. He stated it was a lively and in-depth discussions about drones and stated that Police Chief Coffin and staff did a good job with their presentation.

6. CONSENT AGENDA

- A. Consider the adoption of the City Commission Meeting Minutes from the regular meetings held on December 10, 2019 and January 14, 2020.

Motion:

Vice Mayor Kolody moved to adopt the December 10, 2019 and January 14, 2020 regular meeting minutes, as submitted. Commissioner Hartman seconded the motion, and the motion carried unanimously.

- B. Consider a request for the approval of a small, unmanned aerial system (sUAS) program using Police Department Impact Fee funding.

Motion:

Vice Mayor Kolody moved to approve the purchase of a small-unmanned aerial system program using Public Safety Impact Fee funding. Commissioner Hartman seconded the motion, and the motion carried unanimously.

- C. Consider the Acceptance of a Corrective Warranty Deed and Corrective Drainage Easement from TT of New Smyrna, LLC.

Motion:

Vice Mayor Kolody moved to approve the Corrective Warranty Deed and Corrective Drainage Easement from TT of New Smyrna, LLC. Commissioner Hartman seconded the motion, and the motion carried unanimously.

- D. Consider the approval of a Tri-Party License Agreement For 10th Street at Grade Railroad Crossing.

Motion:

Vice Mayor Kolody moved to approve the License Agreement 10th St. Railroad Crossing. Commissioner Hartman seconded the motion, and the motion carried unanimously.

- E. Consider the approval to award TSI Disaster Recovery, LLC the contract for ITB 21-19-MO Esther Street Park Beach Access Extension or Replacement.

Motion:

Commissioner Hartman moved to award the TSI Disaster Recovery, LLC contract for ITB 21-19-MO. Vice Mayor Kolody seconded the motion, and the motion carried unanimously.

- F. Consider the approval of the purchase of one (1) 2020 Ford F-150 from Duval Ford, utilizing Florida Sheriff's contract pricing of \$32,347 for the Building Department.

Motion:

Vice Mayor Kolody moved to approve the purchase of a 2020 Ford F-150 for the Building Department. Commissioner Hartman seconded the motion, and the motion carried unanimously.

- G. Consider the approval of the Construction Contract Change Order for the City Hall Annex.

Motion:

Vice Mayor Kolody moved to approve the City Hall Annex - Construction Contract Change Order. Commissioner Sachs seconded the motion, and the motion carried unanimously.

- H. Consider the approval of a Road Closure Request from North Riverside Drive between Murray Street and Downing Street, intermittently for a duration of approximately two weeks to repair a large diameter sanitary sewer and to perform maintenance at the lift station located at Old Fort Park and within Riverside Drive.

Motion:

Commissioner Sachs moved to approve the North Riverside Dr. Roadway Closure. Commissioner McGuirk seconded the motion, and the motion carried unanimously.

- I. Approve a Special Event: Fat Tuesday Mardi Gras Parade and road closures of South Atlantic Avenue from Ocean Avenue to Flagler Avenue and Flagler Avenue from South Atlantic Avenue to Pine Street from 4:00 p.m. to 9:00 p.m.

Motion:

Vice Mayor Kolody moved to approve the Special Event: Mardi Gras Parade and Celebration 2020. Commissioner Hartman seconded the motion, and the motion carried unanimously.

- J. Approve a Special Event: Chamber Challenge 5K on Thursday, April 2, 2020 from 5:00 pm to 7:30 pm with associated street closures of Canal Street from Riverside Drive to Magnolia Street, Sams Avenue from Canal Street to the south side of the Chamber entrance to the Chamber parking lot and Magnolia Street from the South Causeway to Douglas Street.

Motion:

Vice Mayor Kolody moved to approve the Special Event: Chamber Challenge 5K. Commissioner Hartman seconded the motion, and the motion carried unanimously.

- K. Approve a Monthly Special Event: Flagler Avenue Wine Walk from 1:00 p.m. to 7:00 p.m.

Motion:

Vice Mayor Kolody moved to approve the Monthly Special Event: Flagler Avenue Wine Walk 2020. Commissioner Hartman seconded the motion, and the motion carried unanimously.

- L. Approve Special Event: Bike Week 2020 and beer garden March 1 - 23, 2020.

Motion:

Vice Mayor Kolody moved to approve the Special Event: NSB Harley Store Bike Week 2020. Commissioner Hartman seconded the motion, and the motion carried unanimously.

- M. Approve a Special Event: Music Fest in Christmas Park and a road closure of Live Oak Street from Canal Street to Downing Street, March 7, 2020, 10:00 a.m. - 6:00 p.m.

Motion:

Vice Mayor Kolody moved to approve the Special Event: Music Fest in Christmas Park - March 7, 2020. Commissioner Hartman seconded the motion, and the motion carried unanimously.

- N. Approve a Special Event: Flagler Tavern's St. Patrick's Day Celebration and beer garden on March 17, 2020 from 10:00 a.m. until 9:00 p.m.

Motion:

Vice Mayor Kolody moved to approve the Special Event: Flagler Tavern St. Patrick's Day Celebration 2020. Commissioner Hartman seconded the motion, and the motion carried unanimously.

7. ADMINISTRATIVE ITEMS/NEW BUSINESS

- A. Formula Businesses Discussion

No action. Item was postponed by Commission consensus.

- B. Consider the approval of a License Agreement with Flagler Merchants.

CRA/Economic Development Director Tony Otte outlined a Flagler Avenue Business Association License Agreement.

Attorney Kenneth Bohannon, representing the Flagler Avenue Business Association, was present.

Motion:

Vice Mayor Kolody moved to adopt the Flagler Avenue Business Association License Agreement, as submitted. Commissioner Hartman seconded the motion, and the motion carried unanimously.

8. ORDINANCES - SECOND READING AND PUBLIC HEARINGS

- A. Conduct a Quasi-Judicial Public Hearing of Application No. CCSL-1-20, which if approved, would allow for the construction of a dune walkover attached to an existing wood deck east of the CCSL.

A Quasi-Judicial Hearing was conducted to consider the approval of Application No. CCSL-1-20.

Assistant City Manager Brian Fields was administered the oath, by the City Attorney. He outlined his professional and educational qualifications. As no citizens questioned his credentials, Mr. Fields outlined the proposed application, which if adopted, would allow for the construction of a dune walkover attached to an existing wood deck east of the CCSL.

Vice Mayor Kolody asked the length of the walkover.

Mr. Fields stated it was 251 feet long.

Planner I Jake Baker was sworn in as an expert witness. He commented on dune walkover's that were near that location.

Commissioner Sachs asked about disruption to the dune system or native plants.

Mr. Baker confirmed that there would be no disruption.

Mayor Owen opened the Quasi-Judicial Public Hearing.

Lisa Martin, 618 South Pine Street, commented on an error in the staff report on the waiver of application on page 15.

Mr. Fields stated that the only re-plant that was required was for what was disturbed.

Mayor Owen closed the Quasi-Judicial Public Hearing.

Motion:

Commissioner McGuirk moved to adopt Application No. CCSL-1-20, as submitted. Commissioner Hartman seconded the motion, and the motion was approved 3-2 by majority vote, with Vice Mayor Kolody and Commissioner Sachs voting no.

- B. Ordinance No. 10-20: Conduct the Second Reading and Public Hearing of an Ordinance, which if adopted, would amend the Farmers Market Regulations under Article V.

City Attorney Avallone read Ordinance No. 10-20, the second time by title only.

Senior Planner Bob Mathen outlined the proposed ordinance, which if adopted, would amend the Farmer's Market Regulations under Article V.

Mayor Owen opened the public hearing. As no citizens wished to speak, Mayor Owen closed the public hearing.

Motion:

Commissioner Sachs moved to adopt Ordinance No. 10-20, as submitted. Vice Mayor Kolody seconded the motion, and the motion carried unanimously.

- C. Ordinance No. 37-19: Conduct the Second Reading and Public Hearing of an Ordinance, which if adopted, would amend the City of New Smyrna Beach Comprehensive Plan - Element XIV, Public Schools Facilities Element

City Attorney Avallone read Ordinance No. 37-19, the second time by title only.

Senior Planner Bob Mathen outlined the proposed ordinance, which if adopted, would amend the City of New Smyrna Beach Comprehensive Plan - Element XIV Public Schools Facilities.

Mayor Owen opened the public hearing. As no citizens wished to speak, Mayor Owen closed the public hearing.

Motion:

Vice Mayor Kolody moved to adopt Ordinance No. 37-19, as submitted. Commissioner Sachs seconded the motion, and the motion carried unanimously.

9. ORDINANCES - FIRST READING

- A. Ordinance No. 11-20: Conduct the Second Reading and Public Hearing of an Ordinance, which if adopted, would annex approximately 0.24 acres of land located at 132 Temple Street.

City Attorney Avallone read Ordinance No. 11-20 the first time, by title only. Mayor Owen reported that the Second Reading and Public Hearing would be conducted at the regular meeting on February 25, 2020.

- B. Ordinance No. 12-20: Conduct the Second Reading and Public Hearing of an Ordinance, which if adopted, would assign a City Future Land Use for property located at 132 Temple Street as part of an overall Annexation application.

City Attorney Avallone read Ordinance No. 12-20 the first time, by title only. Mayor Owen reported that the Second Reading and Public Hearing would be conducted at the regular meeting on February 25, 2020.

- C. Ordinance No. 13-20: Conduct the Second Reading and Quasi-Judicial Public Hearing of an Ordinance, which if adopted, would rezone designation for property located at 132 Temple Street as part of an overall Annexation application.

City Attorney Avallone read Ordinance No. 13-20 the first time, by title only. Mayor Owen reported that the Second Reading and Quasi-Judicial Public Hearing would be conducted at the regular meeting on February 25, 2020.

- D. Ordinance No. 14-20: Conduct the Second Reading and Public Hearing of an Ordinance, which if adopted, would annex approximately 0.27 acres of land located at 2201 Juanita Drive.

City Attorney Avallone read Ordinance No. 14-20 the first time, by title only. Mayor Owen reported that the Second Reading and Public Hearing would be conducted at the regular meeting on February 25, 2020.

- E. Ordinance No. 15-20: Conduct the Second Reading and Public Hearing of an Ordinance, which if adopted, would assign a City Future Land Use for property located at 2201 Juanita Drive as part of an overall Annexation application.

City Attorney Avallone read Ordinance No. 15-20 the first time, by title only. Mayor Owen reported that the Second Reading and Public Hearing would be conducted at the regular meeting on February 25, 2020.

- F. Ordinance No. 16-20: Conduct the Second Reading and Quasi-Judicial Public Hearing of an Ordinance, which if adopted, would rezone designation for property located at 2201 Juanita Drive as part of an overall Annexation application.

City Attorney Avallone read Ordinance No. 16-20 the first time, by title only. Mayor Owen reported that the Second Reading and Quasi-Judicial Public Hearing would be conducted at the regular meeting on February 25, 2020.

- G. Ordinance No. 17-20: Conduct the Second Reading and Public Hearing of an Ordinance, which if adopted, would amend the CPA to change the City FLU from High Density Residential to Commercial.

City Attorney Avallone read Ordinance No. 17-20 the first time, by title only. Mayor Owen reported that the Second Reading and Public Hearing would be conducted at the regular meeting on February 25, 2020.

- H. Ordinance No. 18-20: Conduct the Second Reading and Quasi-Judicial Public Hearing of an Ordinance, which if adopted, would rezone vacant land north of Canal Street to B-3 Highway Service District.

City Attorney Avallone read Ordinance No. 18-20 the first time, by title only. Mayor Owen reported that the Second Reading and Quasi-Judicial Public Hearing would be conducted at the regular meeting on February 25, 2020.

- I. Ordinance No. 19-20: Conduct the Second Reading and Public Hearing of an Ordinance, which if adopted, would authorize the Utilities Commission of the City of New Smyrna Beach to Issuance up to \$85 million in Utilities System Revenue Certificates (Bonds).

City Attorney Avallone read Ordinance No. 19-20 the first time, by title only. Mayor Owen reported that the Second Reading and Public Hearing would be conducted at the regular meeting on February 25, 2020.

10. BOARDS AND COMMISSIONS

No action.

11. MAYOR AND COMMISSION REPORTS

Commissioner Sachs commented on the lagoon. He asked staff to consider for all major outfalls for stormwater that they include baffle boxes. He commented that they were the technology of the day. He commented on irresponsible growth. He commented on the Law of Diminishing Returns. He commented on a carrying capacity.

Commissioner McGuirk commented on the Indian River Lagoon National Estuary Program and stated that the turnout was phenomenal and stated that City Engineer Kyle Fegley did a great job fielding questions at the event. He commented on the video streaming issue and that the kinks should have been worked out by now. He commented on a petition in support of a stop sign. He asked for their support on a stop sign in that area.

Motion:

Commissioner McGuirk moved to install a stop sign on the corner of Faulkner Avenue and Louise. Commissioner Sachs seconded the motion, and the motion was unanimously approved.

Commissioner Hartman commented on the Water Symposium and being able to tap into resources if they tap into SJRWMD. He commented on SJRWMD possibly providing funds for this. He mentioned the compliments that were received regarding the playground equipment at Pettis Park. He thanked staff.

Mayor Owen commented on the Strategic Planning Workshop. He thought that knowing the strategic plan would help in budget preparation and he encouraged Commissioners to talk to staff if they would like to see it moved before budget and not after. He commented on permits and stated that there was a time delay in issuing permits and mentioned New Smyrna Beach has a reputation for being slow in permit issuance. He commented on panhandling and stated the perception was that this problem was building in the community. He provided an update on the Investment Committee and stated that the meetings were recorded and provided a summary of the committee initiatives. He apologized for offending Joel Paige in a previous meeting. He requested that staff included a panhandling discussion at a future meeting.

12.CITY MANAGER'S REPORT

No action.

13.CITY CLERK'S REPORT

No action.

14.CITY ATTORNEY'S REPORT

No action.

15.ADJOURNMENT

As there was no further business to discuss, Mayor Owen declared the meeting adjourned at 10:27 PM.