

**CITY COUNCIL MINUTES
SPECIAL MEETING**

OCTOBER 28, 2010

Mayor Joe LaCascia called the meeting to order at 6:10 p.m.

ROLL CALL

Mayor Joe LaCascia, Vice Mayor Trudy Block, Councilor Nancy Adorno, Councilor Mike Blethen-absent, Councilor Don Kimsey, City Attorney Tom Cloud and City Clerk Patricia Jackson.

A quorum was established and Mayor LaCascia turned the meeting over to Tom Cloud.

PUBLIC HEARINGS

ORDINANCE 1268, AN ORDINANCE OF THE CITY OF POLK CITY, FLORIDA, RESCINDING ORDINANCE 1206 AND ADOPTING REMEDIAL AMENDMENT 10-2R TO THE COMPREHENSIVE PLAN OF THE CITY OF POLK CITY, FLORIDA, SPECIFICALLY INCORPORATING POLICY 6.3 AND POLICY 8.8.3 INTO THE FUTURE LANDUSE ELEMENT OF THE COMPREHENSIVE PLAN OF THE CITY PROVIDING FOR DEVELOPMENT OF A FUTURE URBAN DEVELOPMENT BOUNDARY AND CREATING SITE SPECIFIC POLICIES FOR PARCEL NUMBERS 242701-000000-012010 and 242701-000000-012020; AND DESIGNATING APPROXIMATELY 98.81 ACRES AS BPC-X, BUSINESS PARK CENTER-X APPROXIMATELY 26.17 ACRES AS CC-X, CONVENIENCE CENTER-X, AND APPROXIMATELY 8.13 ACRES AS CON-X, CONSERVATION-X; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

Attorney Cloud read Ordinance 1268 in short title. At this time Jennifer Codo-Salisbury gave Council a brief overview of Ordinance 1268 (a copy of the overview is made a part of these minutes), and advised Council following the October 12, 2010, meeting the State of Florida signed the Stipulated Settlement Agreement.

At this time Attorney Cloud advised Comprehensive Plan Amendments are considered to be quasi legislative proceedings and there has to be an orderly presentation and an orderly process followed. Once staff makes their presentations, applicants should be allowed to make their presentation, and time should be allowed for rebuttal, as well as any other parties that would like to speak. Council can allow for time limits, but it would be his recommendation not to set a time limit; however, Council has a right, through the Mayor, to move it along if the presenters drag it out. Applicants should be allowed to make their presentations first.

Mayor LaCascia then invited the applicants to speak (there are two). Attorney Cloud asked they come forward one at a time and identify themselves for the record.

Attorney Mike Gallaher, Peterson & Myers, P.A. came forward to address council on behalf of his client, Coles Property, LLC (Teri Davidson was in the audience). He advised in regards to the evidence the Remedial Stipulated Settlement Agreement has already been signed, and there is an approved binding agreement with DCA, and notwithstanding the fact Council may hear testimony regarding the substance of the remedial amendments for the settlement agreement, we are here tonight to approve the ordinances, which approves the settlement agreements. He advised he stands on record of what has been done; however he reserves the opportunity to respond to public comments.

Discussion then took place regarding the record data analysis and original Plan Amendments that were placed into the record as part of the process between staff (CFRPC), Attorney Cloud and Attorney Gallaher.

Attorney Clayton Bricklemyer, who is representing his client concerning the "PBC-X" portion of the property, addressed Council and echoed what Attorney Gallaher said. He advised it is a very large record, and this project started in 2007. It has been thoroughly picked over by all parties involved, including the Department of Community Affairs, and this, tonight, is the end result. He also asked to reserve any other comments he may have for later.

City Attorney Cloud asked who presents Polk City Associates, LLC; Attorney Bricklemyer advised he did.

At this time Mayor LaCascia announced it is now open to any other parties. Councilor Kimsey asked if it would be appropriate for Council to put off their decision until after the election (referendum concerning Amendment 4). City Attorney Cloud advised he would not recommend doing that. Councilor

Adorno asked about making a decision before the referendum versus after the referendum. City Attorney Cloud discussed "Amendment 4" with City Council, and how it would relate to this case.

At this time, Celeste Deardorff, who is a Planning Manager for the City of Lakeland, addressed Council. She advised she has not been party to the stipulated agreement or amendments; however, if it is adopted, it would not be in effect for 21 days; City Attorney Cloud advised that is correct. Mrs. Deardorff advised she just saw the public notice regarding the property in question; she was able to get information from Jennifer Codo-Salisbury and appreciates it. Mrs. Deardorff expressed she has serious concerns with this project, and would have preferred to have been involved two years ago. At this time Mrs. Deardorff went over the concerns she has with the subject property and what is proposed, i.e. Proposed Convenience Center, Adequate Services such as concurrency, water and wastewater and traffic issues (a copy is included and part a part of these minutes). She feels that inaccurate assumptions were used for this parcel. After further discussion, Mrs. Deardorff asked Council to defer their action and let them be included (including DOT). Further discussion took place with Mrs. Deardorff addressing her concerns.

Mayor LaCascia asked if anyone else would like to speak. City Attorney Cloud advised it would be appropriate to allow staff (Jennifer Codo-Salisbury) and the applicants to comment on what has been said, and then to allow Mrs. Deardorff to reply; however, at some point you have to make a decision to close the public hearing and take action, or keep the public hearing open and not take action. There are some questions he has; he thinks he knows how it works out, but not sure. He suggested to Attorney Gallaher and Attorney Bricklemyer when it comes their turn, they may want to state what parameters they think we are under with the Stipulated Settlement Agreement in regard to adoption. He noticed a 60 day period for adopting it, but he also noticed there is a provision that we're not obligated to exercise our police power. That tells him there is a window of opportunity to adopt these remedial amendments under this agreement, and something the Council needs to consider very seriously is that you signed the agreement

with the very best intentions, but a party to the amendment was not a party to the party; it is something the parties could not have anticipated and yet the process requires all those being considered. He would like for their input on this.

At this time Jennifer Codo-Salisbury, Central Florida Regional Planning Council, advised this is a Comp Plan Amendment. When the Amendment was adopted it did not have site-specific limitations on it, and it was approved with a maximum potential development possible. When we worked with the State on the Stipulated Settlement Agreement, we did have to provide data and analysis, which led us to the infrastructure that would be planned to support the development. That is where we got the 1.5 million square feet for a Business Park Center and 270,000 square feet for a Convenience Center. When the property was annexed from Polk County in 2007, which predates all of us here, Polk County had a Land Use on this property as well, and the Convenience Center property we are talking about had a Convenience Center Land Use designation in Polk County. When you send a Comprehensive Plan Amendment to the State, the State requires that you look at the Land Use today and its maximum development potential, and you show what it is proposed to be. We are in the Green Swamp Area of Critical concern. Under Polk County's Plan there was a Future Land Use which had a comparable amount of square feet which allowed Convenience Center before the City annexed the property and had a Future Land Use Amendment come before it because one of the requirements when you do annex property you must assign a Future Land Use designation to it, which is why the Convenience Center is looking at a 270,000 square foot maximum potential. It is a requirement by the State that you look at what the potential was in the County, or what the Land Use is today versus what is being proposed. City Attorney Cloud asked if the County referred to that as a Convenience Store; Jennifer advised it was Convenience Center. Discussion then centered on the square footage and acreage ratio – square footage comparable to what was allowed in Polk County. When City Attorney Cloud asked about the label of Convenience, Jennifer advised that predates her; however, the City does not have another non-residential Land Use category, and they were being respective of the Land Use in Polk County. Lengthy discussion followed concerning the Polk County Land Use Designation of Convenience Center versus what the assumptions that were made and what the Convenience Center Designation in the County is today (those involved in discussion were Mrs. Deardorff – City of Lakeland, Jennifer Codo-Salisbury and City Attorney Cloud). Discussion also centered on the impacts between residential and non-residential, warehouses, traffic, Business Park Center, and the Green

Swamp. Under Business Park, 1.5 million square feet is potential, not a guarantee; phase I of the site plan for the Business Park is for 554,000 square foot. A detailed concurrency analysis would have to be done, and it does include water and wastewater. Discussion continued with discussion of the Cardinal Hill WWTP, the development taking place with Walt Williams Road and USF as it pertains to DOT and traffic (there is no anticipated traffic being generated by Polk City with this Land Use Plan for that roadway). Jennifer advised the State of Florida scrutinized every environmental aspect with regard to site development when looking at the settlement agreements. Attorney Gallaher spoke about having debates with friends and colleagues and recognizing you have difference of opinions – he understands the City of Lakeland has to look out for the City’s best interest. Municipalities have goals and interest that come into conflict; if you want to see growth and development you have to chart your own course. The City of Lakeland will look out for the City of Lakeland – he was not here when this was originally proposed. Discussion then centered on the Land Uses available in Polk City and what prior staff and Council used and the process that took place back then. The Settlement Agreement that has been done includes a text amendment that is specific to the site. City Attorney Cloud asked if it was a separate policy. Jennifer then read Policy 8.8.3; discussion followed concerning square footage and County versus City. Attorney Gallaher advised if the remedial agreement is not adopted tonight, the outcome would be that the property would have the same Land Use the County has now; the City has a different Land Development Code. In regard to his client, the only result is his client finally getting a Land Use designation. Discussion then followed concerning concurrency and the process, as well as Amendment 4. Attorney Gallaher advised that in regard to the City’s exercise of their police powers, it is entirely up to the Council. Attorney Gallaher then went over what his client’s original concept was when wanting to develop this property. Attorney Clayton advised he was not here for the initial passage of this; however, he thinks it is very important to do this tonight because of Amendment 4; a lot has been done on this project – the City Council had hearings on these Amendments and the City’s Planning Commission also had meetings. The Notice procedures were followed and advertised; he feels it has been well reviewed. Mrs. Deardorff asked if the City has zoning, and she was advised yes. More discussion took place regarding Polk County versus Polk City on this property (zoning and land use). Jennifer advised this Amendment is based on twelve months of dialog with DCA; Rebecca Jetton has done extensive review of this and DCA will be partners with the City in

the Comp Plan Update. Mayor LaCascia advised an incredible amount of time and effort went into this; if we send this back it would jeopardize the body of work as a whole. Mrs. Deardorff advised the City of Lakeland does not pretend to tell the City of Polk City what to do; she has no objection to the Business Park other than the traffic study. The Stipulated Agreement, Phase I, allows for construction.

Jennifer advised there were two Settlement Agreements that were approved October 12, which resulted in the Remedial discussions we are having now (two step process). Jennifer advised the second Remedial Stipulated Agreement is for the Site Plan of the Business Park Center, which was not found in compliance. The Stipulated Settlement Agreement is for Phase I and is site-plan specific. This is a separate item and is subject to Ordinance. Mrs. Deardorff's concern is with the 1.5 million square feet in the Stipulated Agreement. Jennifer explained the Stipulated Agreement for the Site Plan only allows up to 554,000 square feet; if it is anything greater, it would have to go through the complete site plan review process. Mrs. Deardorff asked for direct notice in the future—she still has questions, but appreciates the clarifications. Councilor Kimsey asked about responsibility regarding infrastructure. City Attorney Cloud advised if the City approves, the City would have to provide water and sewer, drainage, police, fire, etc. He advised approval of plans does not obligate the City; the State ultimately assumes responsibility. If the services are not available, the City cannot issue a development order. Attorney Gallaher advised it is on-site drainage and is the responsibility of the party that would be building. He then went over the process regarding stormwater. Councilor Kimsey then discussed wastewater and Cardinal Hill; Attorney Gallaher advised in the future you will have to answer if you have the ability to provide services. Mayor LaCascia asked how far down the road before the development order comes forward; he was advised it is on the agenda after this issue is resolved (Phase I). Jennifer advised the Site Plan is for 554,000 square feet. When asked for a date commencement, Attorney Brickley advised one has not be set – other agencies still have to sign-off on the project. Discussion followed on the proposed project, the economy and possible outcome with Amendment 4. Mrs. Deardorff conceded concurrency as addressed, and asked that prior to development of anything greater than 554,000 square feet shall be provided to her – no one had a problem with that.

Discussion then focused on ensuring that the City of Lakeland has adequate opportunity and staff addresses concurrency, and providing notice – this will be taken care of. Mrs. Deardorff advised they would like to have a relationship with Polk City; they didn't have that in the past. She would like to see Polk City and Lakeland discuss annexation agreements, and would

like to be a party to drawing Urban Boundaries. City Attorney Cloud suggested as part of the text amendment, something is included concerning the City of Lakeland and notifications in the future. Concerning traffic studies; the City cannot issue development orders until adequate transportation models have been submitted. Mrs. Deardorff would like a copy of this recommendation as part of the approval. Councilor Adorno wanted to clarify that what we will do is from here forward we will start informing Lakeland when the City does this in the future. City Attorney Cloud advised it would be a Land Use Policy, and it would be incorporated into what the City is approving tonight; he read the language that he would be incorporating into the policy as follows: "8.8.3.b. Intergovernmental Cooperation with Lakeland. Prior to developing commercial uses in the preceding amendment referenced in policy 8.8.3.a and prior to exceeding 554,000 square feet in business park center likewise referenced, the City shall provide notice and standing to the City of Lakeland within its development order/site plan process to consider concerns of the City of Lakeland related to concurrency and other relevant issues." Vice Mayor Block asked Jennifer her thoughts; Jennifer would like assurances that Lakeland will also step forward with the same procedure to notify Polk City. Mrs. Deardorff suggested notices on all future land uses within a mile, and in a timely fashion. Vice Mayor Block wants to ensure coordinating with other surrounding cities; Jennifer would like time to look at exact distance.

There being no other discussion, Vice Mayor Block made a motion to accept Ordinance 1268 with additional language as read by Attorney Cloud; the motion was seconded by Councilor Adorno.

Roll Call: Councilor Kimsey-aye, Councilor Adorno-aye, Vice Mayor Block-aye, Mayor LaCascia-aye

4-eyes
0-nays

The motion carried.

ORDINANCE 1269, AN ORDINANCE OF THE CITY OF POLK CITY, FLORIDA, AMENDING APPROVAL OF THE ISSUED DEVELOPMENT ORDER FOR PHASE I OF THE POLK CITY BUSINESS PARK TO ALLOW FOR A 554,000 SQUARE FOOT WAREHOUSE/DISTRIBUTION BUILDING; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Attorney Cloud read Ordinance 1269 in short title. Mayor LaCascia asked if there were any staff comments and comments from the applicants.

Jennifer Codo-Salisbury advised this is addressing Phase I of the Business Park Center (she referred to page 7 in her handout showing the binding site plan); this was worked out with DCA and extensive care was given to minimizing wetland impacts. Also, the alignment with the roadway was given critical care, and the buffering.

Attorney Bricklemyer advised since there was some question as to this being approved the first time, he would like to get some type of final documentation. Jennifer advised the site plan is being approved by Ordinance by City Council, and once it is approved then we will sit down with staff and get a final sealed set.

Mayor LaCascia closed the public hearing and referred to Council for discussion and to take action. Councilor Adorno made a motion to accept Ordinance 1269; the motion was seconded by Mayor LaCascia.

Roll Call: Councilor Adorno-aye, Mayor LaCascia-aye, Councilor Kimsey-aye, Vice Mayor Block-aye.

4-eyes

0-nays

The motion carried.

The meeting was adjourned upon voice vote.

Patricia R. Jackson, City Clerk

Joe LaCascia, Mayor