



City of North Port

4970 CITY HALL BLVD
NORTH PORT, FL 34286

Meeting Minutes - Final City Commission Special Meeting

CITY COMMISSIONERS
Vanessa Carusone, Mayor
Linda M. Yates, Vice-Mayor
Christopher B. Hanks, Commissioner
Jill Luke, Commissioner
Debbie McDowell, Commissioner

APPOINTED OFFICIALS
Peter Lear, City Manager
Amber L. Slayton, City Attorney
Patsy Adkins, City Clerk
Kathryn Peto, Deputy City Clerk

Monday, February 5, 2018

9:00 AM

CITY COMMISSION CHAMBERS

Quasi-Judicial Procedure and Eminent Domain

MINUTES APPROVED AT THE 04-24-2018 MEETING.

CALL TO ORDER/ROLL CALL

The North Port City Commission Special Meeting was called at 9:05 a.m. in City Chambers by Mayor Carusone.

Present: Mayor Carusone; Vice-Mayor Yates; Commissioners Hanks, Luke and McDowell; City Manager Lear; City Attorney Slayton; City Clerk Adkins; Deputy City Clerk Peto and Assistant Police Chief Pelfrey.

The Pledge of Allegiance was led by the Commission.

1. APPROVAL OF AGENDA – COMMISSION

A motion was made by Commissioner McDowell, seconded by Commissioner Hanks, to approve the Agenda as presented. The motion carried by the following vote:

Yes: 5 - Mayor Carusone, Vice-Mayor Yates, Commissioner Hanks, Commissioner McDowell and Commissioner Luke

2. PUBLIC COMMENT:

There was no public comment.

3. DISCUSSION ITEMS:

A. [18-058](#) Eminent Domain Presentation

City Attorney Slayton provided a presentation regarding eminent domain.

Discussion ensued and subsequent to questions, the following answers were provided: (1) examples were provided pertaining to the indirect exercise of eminent domain by a government entity and clarification was provided that if the government is negatively affecting the property of an owner then a property owner can file a claim for damages from the government entity; (2) the difference was explained between a "quick-take" motion and a "slow-take" motion within the lawsuit when filing for eminent domain; (3) condemning property for a public purpose is not typically contested because the purpose is normally clear, but eminent domain is not designed for any government to invest in property or hold property for future use; (4) an example was provided of how the attorney's fees are calculated on behalf of the property owner; (5) the appraisal is required by a licensed appraiser, who should be chosen with care: [a] if the action goes to eminent domain, the credible/professional witness is the appraiser because the entire argument is about value; [b] if the property owner hires an appraiser, the government entity bears the cost of that appraisal fee; (6) the process of eminent domain may vary depending on the court's docket, but normally it can be resolved in a few months; (7) a property owner can initiate the sell and the government agency can also offer to buy properties outright; (8) the City follows State Statutes regarding the power to exercise eminent domain; (9) if the action goes to litigation, the City has the burden of proving: [a] that the property is needed; [b] that it is for a public purpose; [c] the fair market value for the property and if the value is contested, a court-appointed fact-finder makes the determination; (10) if the negotiation moves from an informal discussion to a formal legal action, the process may or may not have to start over depending on several factors, such as, how long the process has taken, and what preliminary authorizations were given to Staff within the Resolution; (11) after the actions were completed as stated in the Resolution, the issue may or may not have to come back to the Commission prior to filing a law suit, depending on what authorization was given to the City Manager in the Resolution; (12) there are State Statutes that address which public records are exempt during the eminent domain negotiation process, therefore, documents and information may be subject to the Sunshine Law and in some cases a shade meeting is held to discuss litigation; (13) following a concern regarding having a third party negotiate a price on behalf of the City, the issue will have to be researched but typically, everything requires transparency; (14) the court only considers the current fair market value of a property, not the original purchase price or its potential use; (15) further research is needed to determine if a moratorium can be placed on a single road; (16) after a consensus was requested to gather information regarding placing a moratorium for building on Price Boulevard, discussion ensued: [a] concern was stated that placing a moratorium on Price Boulevard stops the building process and it is unfair to block an individual's right to build, in order to reduce the City's purchase price; [b] information is needed regarding the scenarios of using a moratorium to acquire additional right-of-way and using a moratorium because there will be a future widening project.

There was a consensus to direct the City Attorney to provide a memo to the Commissioners as individuals containing information and research regarding the moratorium process. Once it is received, it can be brought up at a future Commission meeting.

Clarification was provided that the current Resolution was to obtain 16 lots for retention ponds and if Commission directed Staff to move forward with eminent domain, the process would start over. A copy of the Resolution will be emailed to the Commissioners.

Recess 10:04 a.m. - 10:24 a.m.

B. [18-059](#)**Quasi-Judicial Procedure**

Mayor Carusone provided an overview of the item.

Discussion ensued: (1) following a question, it was noted that the quasi-judicial procedures needed to be updated to reflect the difference between a regular public hearing and a quasi-judicial hearing; (2) it was suggested that some issues require clarification such as making sure both sides get equal time; (3) after it was noted that the definition portion does not mention the City's Hearing Officer, it was stated that when there is a Hearing Officer, he is the presiding body therefore, no individual presides.

There was a consensus to include a re-write notating that a presider can be a Hearing Officer or a Special Magistrate.

A motion was made by Commissioner McDowell, seconded by Luke, to suspend the Commission Procedure Rules for this meeting. The motion carried by the following vote:

Yes: 5 - Mayor Carusone, Vice-Mayor Yates, Commissioner Hanks, Commissioner McDowell and Commissioner Luke

Discussion continued: (1) it was stated that "competent and substantial evidence" does not require expert evidence and often does not have expert testimony, and does not need to be added to the definitions; (2) regarding ex parte communication: [a] the reason for disclosure is so that an aggrieved party can address anything that was discussed; [b] if the court finds that an individual did not comply appropriately with the ex parte disclosure, then all of that information would be presumed as prejudicial and the person is no longer impartial. The law allows governing bodies to invoke the procedure to take away the presumption that it was prejudicial; [c] any time an issue is brought forward and the Commission is applying facts to the City Code, it will be classified as quasi-judicial in nature; [d] if the disclosure is not correct and the resulting determination is that it is prejudicial, that could hamper the process but there is no criminal aspect and it is not an Ethics Code issue; [e] it was noted that there is no definition of ex parte communication in Florida Statutes (F.S.), but there is a provision in Chapter 286.0115 to remove the presumption of prejudice from ex parte communication with local public officials.

SECTION 2-81 Notice procedures for aggrieved or adversely affected persons.

Discussion ensued: (1) after citing F.S. 163.3215(2) which states "the term 'aggrieved or adversely affected party' means any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources." it was stated that Article III of the City Code, defines Aggrieved or adversely affected person as: "The alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in the community."; (2) referencing a five-day notice requirement for aggrieved persons, it was stated that the Commission can direct Staff to research if Case Law exists on that topic, but it is presumed that amount of time is to provide notice and to ensure an individual meets the criteria of an aggrieved or adversely affected person; (3) it was stated that the advertisement requirement for quasi-judicial Ordinances is 10 days prior to the meeting, for Planning & Zoning Advisory Board quasi-judicial issues the advertisement requirement is 15 days prior to the Board meeting and it was noted that not all notices require letters to adjacent property owners. Additionally, aggrieved parties are given the same rights are any other party in a quasi-judicial matter.

There was a consensus to direct Staff to review Case Law for aggrieved parties for procedures and notices.

Discussion continued (1) clarification was provided that although a person has not qualified as an aggrieved or adversely affected party, they can still speak at the hearing, but they would not have the additional rights of cross-examination and they would be limited to the three-minute time-frame for Public Comment; (2) in regard to the two Ordinance hearings and the five-day deadline to qualify for an aggrieved party to submit notice, it was requested to research applicable legislation to see if there are any provisions addressing the issue.

There was a consensus to direct the City Attorney to find out the legal requirement in Case Law for filing and deadline to be used for an aggrieved party.

SECTION 2-82 Quasi-judicial matters. (b) For quasi-judicial matters requiring more than one reading.

Discussion ensued: (1) after it was suggested to remove paragraph (b) because of the City's procedures regarding Ordinances; (2) it was stated that once a hearing is closed and comments are made, there is an ability to reopen the hearing but it would have to be noticed and advertised; (3) it was noted that the City Charter requires two readings of an Ordinance and mirrors State Statutes; (4) it was suggested to have the City Attorney bring back information regarding what types of things of a quasi-judicial nature would require two readings; (5) it was stated that quasi-judicial meetings are governed by notice; the opportunity to be heard; and an impartial decision-maker.

There was a consensus to direct the City Attorney to look into Section 2-82(b), and see if it's legally obligated on behalf of the Commission and how it applies to the Commission's process regarding quasi-judicial hearings.

SECTION 2-83 Procedures for quasi-judicial proceedings

Discussion ensued: (1) following a brief discussion, it was stated that after providing notice, the opportunity to be heard and an impartial decision maker, the intricacies of how that is done is determined by the Commission; (2) it was noted that leaving the process as a broad direction, the presiding officer can decide how the meeting will proceed and that more due process can be provided in a meeting but not less; (3) it was suggested to direct the City Attorney to review the procedures to have a concise sequence in the order.

SECTION 2-83 (a) 1-4 Guidelines for conducting quasi-judicial hearings

Discussion ensued regarding: (1) assigning time limits to the presentations was suggested at 20 minutes each and if more is needed, additional time may be requested; (2) rebuttal at five minutes each; (3) closing statements at five minutes each; (4) after a question, clarification was provided that a public commentator is not present as a witness and their comments should not be weighed as evidence; (5) the distinction was provided between rebuttal statements and closing arguments; (6) granting the applicant a final opportunity to make a statement; (7) after a concern that Florida Statutes Chapter 286.0115(2)(a) is unclear, City Attorney Slayton will review the language during the recess and report her findings.

Recess 12:00 p.m. - 12:53 p.m.

Discussion continued: (1) after reviewing Florida Statutes Chapter 286.0115, the ex parte disclosure process, to remove the prejudice, it was stated that although some of the procedures seem unclear and potentially conflicting, there is no case law that has interpreted or analyzed the statute, but there are some Attorney General Opinions that opine that the process adopted by the municipalities should include the four-step disclosure statements; (2) it was stated that there are other references that address cross-examination and swearing in of witnesses, including non-aggrieved persons, which

can be reviewed in light of the requirements required in the City's quasi-judicial Ordinance; (3) the following concerns were expressed regarding public comment: [a] swearing-in all potential speakers at the beginning of the procedure is sufficient vs. signing a statement on the Public Comment Card; [b] a public comment could potentially become testimony and given weight in the consideration process, yet they need not be sworn as a witness, not required to be subject to cross-examination, and not required to be qualified as an expert witness, and the decision-making body shall assign weight and credibility to such testimony as it deems appropriate.

There was a consensus to stick with the manner in which the Commission is currently practicing for sworn testimony by anyone wishing to speak on the subject as it pertains to quasi-judicial hearings; including removing the portion regarding the Public Comment Card.

THE FLOW CHART

Discussion ensued: (1) it as suggested to start with the Introduction, which includes announcements and participants wishing to speak will be sworn in; (2) the next stage is the Ex Parte Disclosures.

There was a consensus to pattern Section 2-83 after the Flow Chart, starting with the Introduction and Ex parte Disclosures.

Discussion continued: (1) it was suggested that Presentations consist of: [a] a 20-minute presentation by the Applicant; [b] Commission questions to the Applicant; [c] a 20-minute presentation by Staff; [d] Commission questions to Staff; [d] additional questions from the Commission to Staff or the Applicant; (2) it was stated that prior to Commission questions to the Applicant, Staff should be given rebuttal time to question the Applicant after the latter's presentation; and the same should follow for the Staff presentation; (3) it was noted that guidance from the Supreme Court from 1993 states that the landowner has the burden of proving the property is consistent with the Comprehensive Plan and complies with all the procedural requirements. Thereafter, the burden shifts to the city staff to demonstrate the opposite and as long as that order is followed, there will be consistency in the procedures; (4) other suggestions included: [a] Commission questions should come after both sides finish their presentations and rebuttals; [b] the aggrieved party could be allowed the same time frame to speak; [c] there could be more than one Aggrieved party, depending on the matter; [d] based on the Supreme Court reference regarding burden shifting, it was recommended that the hearing should proceed in order of the Applicant's presentation first, followed by Staff's presentation; [e] the decision-making body may allow public comment and also determine the amount of credibility which the testimony deserves.

There was a consensus to proceed with Presentations in the order of the Applicant, Staff and then Aggrieved party for 20 minutes each, after which they each have five minutes for questions or rebuttal, in that same order and directed at whom ever they wish.

There was a consensus that after the Applicant, Staff and Aggrieved party presentations/questions/rebuttals, Public Comment follows.

Discussion continued: (1) the public hearing procedure should be broad enough to allow the Chair to facilitate the process based on circumstances; (2) it was suggested that Commission questions should follow public comment, then closing statements for five minutes for each party; (3) after a statement that, currently, only the Applicant is afforded time for closing statements, the legality of the closing argument parameters could be reviewed by the City Attorney; (4) it was suggested that the Closing Statements shall consist of the Aggrieved party, Staff, then the Applicant, with each being given five minutes; followed by closing the Public Hearing; then the Motion, followed by

Commission deliberation; and lastly the vote.

There was a consensus that the Applicant Presentation will go first; second the Staff Presentation; third the Aggrieved Party Presentation; all of which have 20 minutes to present. The Applicant, then Staff, then Aggrieved Party each have five minutes to rebut. After that is Public Comment; then Commission Questions. After that there is a five-minute Closing Statement from the Aggrieved Party, then Staff, then the Applicant. the Commission will close the Hearing; a motion is made; Deliberation and then a vote.

Discussion ensued: (1) the intent for flexibility in the procedures is to afford more due process and the record should demonstrate that the Code was followed; (2) after it was stated that pre-submission of materials is pertinent to documentary evidence submitted in advance and the City Attorney can look at evidence requirements and report back.

There was a consensus to direct the City Attorney to look at the evidence requirements for the Aggrieved Parties.

Discussion continued: (1) subsequent to a concern, it was stated that the Code Enforcement Hearing Officer and Magistrate follow the same quasi-judicial procedure as the Commission; (2) clarification was provided that not all public hearings are quasi-judicial but all quasi-judicial hearings are all public hearings; (3) a brief discussion ensued regarding the role of the attorney in a quasi-judicial hearing: [a] typically an attorney acts as an advocate; [b] they cannot settle or bind an agreement without their client's authority; [c] in a non-court setting a non-attorney has to file a written Notice of Representation document proving his authority; [d] the power to bind the party's decision comes between the attorney and the party; [e] typically, the Notice of Representation granting authority is not notarized; [f] the Power of Attorney document is signed by the person granting the agency; typically, it is notarized is not normally signed by the person receiving the authority.

There was a consensus to require everyone to be sworn in, including the Attorney.

Discussion continued: (1) subsequent to a concern pertaining to Section 2-84 Ex parte Communication (b)(3) Investigations and Site Visits, it was stated that individual investigations, site visits and expert opinions sought must be disclosed as ex parte communication on the record and if not disclosed, it will be deemed as prejudicial; (2) following a question, it was stated that the hearsay rules of evidence don't apply to this administrative hearing necessarily, however there are evidentiary standards that do apply that are stated in Section 2-83 and it was recommended to leave them in; (3) City Attorney Slayton will organize Section 2-83 for ease of access; (4) after it was noted that Florida Statutes 286-012 allows a member to abstain from voting, it was suggested not to require more than what the State requires and City Attorney Slayton will look into this.

A motion was made by Vice-Mayor Yates, seconded by Commissioner Luke, to direct the City Attorney to bring back a draft Ordinance reflecting all the consensus and actions of the Commission today on the quasi-judicial proceedings; to come back by April. The motion carried by the following vote:

Yes: 5 - Mayor Carusone, Vice-Mayor Yates, Commissioner Hanks, Commissioner McDowell and Commissioner Luke

4. PUBLIC COMMENT: 2:21 p.m. - 2:23 p.m.

Bill Goetz: cultural resources monitoring is needed for Little Salt Spring.

Following Public Comment, it was stated that Commissioner McDowell will contact him and City Manager Lear will investigate the issue and will update the Commission.

5. COMMISSION COMMUNICATIONS:

Commissioner Luke: (1) requested the Commissioners send a letter of support to Mr. Lowrie of Little Salt Spring; (2) Proposal 61 was defeated and recommended to resend the letter to the entire Constitution Revision Commission Board.

There was a consensus to resend Proposal 61 letter to the entire 37-member Constitution Revision Commission.

Commissioner McDowell: (1) the Community Health Action Team (CHAT); (2) requested that the City Manager to reach out to Sarasota Memorial Hospital; (3) noted that the Visit Sarasota Guide Map had the City of North Port on the back and would like to contact the appropriate Visit Sarasota representative about the Sarasota County Guide Map because North Port is not on the front and our paw park is not listed on the map.

There was a consensus to direct the City Manager to reach out to the Sarasota Memorial Hospital to make a presentation to the North Port City Commission where questions may be asked based on their presentation.

There was a consensus to have Commissioner McDowell work with Staff regarding the issues that are not equitable, and Staff will address the items at the Visit Sarasota Committee Meeting.

Commissioner Hanks: Nothing to report.

Mayor Carusone: Nothing to report.

Vice-Mayor Yates: stated that Proposal 95 failed at the Committee level and it was requested to send a letter in opposition to the legislation.

There was a consensus to send a letter regarding opposition to Proposal 95, and that City Manager Lear to send a letter to that effect, signed by the Mayor.

6. ADMINISTRATIVE AND LEGAL REPORTS:

City Attorney Slayton: will schedule an Executive Session regarding the pending law suit between the City and Sunshine State pups.

City Manager Lear: Nothing to report.

City Clerk Adkins: Nothing to report.

7. ADJOURNMENT:

Mayor Carusone adjourned the North Port City Commission Special Meeting at 2:36 p.m.

City of North Port, Florida

By: _____
Vanessa Carusone, Mayor

Attest: _____
Patsy C. Adkins, MMC, City Clerk

Minutes approved at the City Commission Regular Meeting this ____ day of _____, 2018.