

CITY COUNCIL  
CITY OF BONITA SPRINGS  
WEDNESDAY, JULY 15, 2015  
9:00 A.M.  
CITY HALL  
9101 BONITA BEACH ROAD  
BONITA SPRINGS, FLORIDA 34135  
MINUTES

I. CALL TO ORDER:

Mayor Ben L. Nelson, Jr. called the meeting to order at 9:00 A.M.

II. INVOCATION:

Pastor Jeff Chitwood, with Anchor Christian Church, furnished the invocation.

III. PLEDGE OF ALLEGIANCE:

Mayor Nelson led in the Pledge of Allegiance.

IV. ROLL CALL:

Mayor Nelson and all Council Members were in attendance, except for Council Member Steve Slachta.

V. PUBLIC COMMENT ON AGENDA ITEMS:

VI. PROCLAMATIONS AND PRESENTATIONS:

A. WELCOME CHILDREN FROM CATHOLIC CHARITIES SUMMER CAMP PROGRAM.

Mayor Nelson next welcomed the children from Catholic Charities Summer Camp Program.

B. APPROVE A GUARANTEED MAXIMUM PRICE OF \$15,648,000 FOR CONSTRUCTION OF THE DOWNTOWN IMPROVEMENT PROJECT, AND DIRECTION TO STAFF AS TO HOW TO PROCEED. (GREENSHEET NO. 15-07-0221)

9:15:15 am City Manager Carl Schwing addressed this agenda item as set out in the Greensheet. Today they are presenting a Guaranteed Maximum Price (GMP) for the downtown project. The project has been in the works for a number of years, starting with a revenue sharing agreement with Lee County for them to share with the costs of one-half, including debt service, but up to \$16,000,000. The GMP presented today is for \$18.6 million. The actual number is \$15.6 million. The project that was originally addressed in the RFP was for a budget of \$16 million, which is what the City is in agreement with Lee County on. Anything above and beyond that, is going to be costs to the City. Over time the project has grown, in terms of scope and distance. The property north of Imperial has been included, as have underground utilities. Overall, it's a larger project that has been fully vetted before the community, but the number is \$18.5 million. He further addressed the difference in costs, which also is for engineering of about \$1.5 million and underground utilities, of \$1.5 million. Overall, the reason for the higher price is because of the scope of the project is larger.

9:18:06 AM Matt Feeney, Public Works Director, addressed the history of the project to date, including workshops held, project plans, etc. Discussion followed on drainage, the additional area included, costs, meetings held, etc. Council discussion followed on drainage, budgeted costs, etc.

PUBLIC COMMENTS:

9:59:45 am Alex Grantt stated that he feels should stay as close to budget as possible, and suggested several cost saving measures.

10:02:41 AM Fred Forbes expressed his support for the project. He addressed revisions/updates made to the project.

10:05:21 AM Martha Simons addressed the underground utilities. She also suggested trees on Front Street. She feels most important thing that needs to be done is drainage. She also feels the bridge is important, as well as wide sidewalks, and underground utilities. The more decorative items can be done later.

10:08:44 AM Deborah Maclean feels medians need to be removed, but supports the project moving forward.

10:09:27 AM Ron Pure suggested putting together an impact fee program for developers to offset the costs involved. He supports the bridge.

10:12:49 AM Kathy McGrath expressed her support for the project, and informed Council of people who have told her how excited they are about this project and are looking forward to it.

10:13:55 AM Ben Hershenson expressed his support for the project, inclusive of the roundabouts, medians, etc.

10:17:22 AM Christine Ross with the Bonita Springs Area Chamber of Commerce, feels City Staff has done an amazing job. She also commended Wright Construction. She supports moving forward.

10:18:32 AM Council Member McIntosh motioned approval of the Guaranteed Maximum Price and to enter into the amendment as reflected in the errata sheet; Council Member Martin seconded; and the motion carried 4-2 (Council Member Simmons and Lonkart dissenting)

VII. CONSENT AGENDA: (NOTE: ITEMS ON THE CONSENT AGENDA WILL BE CONSIDERED AS ONE UNLESS A SPECIFIC ITEM IS REMOVED BY A COUNCIL MEMBER FOR SEPARATE DISCUSSION.)

9:06:56 am Council Member Steve McIntosh pulled both items to request Staff furnish a brief overview of the Rebranding/Renaming of the Code Enforcement Department. Frank Cassidy furnished an overview of the proposal for item A., involving the Rebranding/renaming of Code Enforcement, and Tom Betts furnished a brief overview of the Tropical Fruit Tree Sale and program in item B.

A. APPROVE REBRANDING/RENAMING OF DEPARTMENT AS PRESENTED, TO NEIGHBORHOOD SERVICES. (GREENSHEET NO. 15-07-0218)

PUBLIC COMMENTS:

9:09:10 am Rick Steinmeyer expressed his support for the rebranding/renaming of the Code Enforcement Department.

Council Member McIntosh motioned approval of the Rebranding/Renaming of the City's Code Enforcement Department to Neighborhood Services; Council Member Peter Simmons seconded; and the motion carried unanimously.

- B. REQUEST APPROVAL OF A SPECIAL EVENT PERMIT AND CO-SPONSORSHIP FOR THE BONITA SPRINGS TROPICAL FRUIT CLUB FOR FRUIT TREE SALE AT RIVERSIDE PARK ON NOVEMBER 14, 2015 AND APRIL 23, 2016. (GREENSHEET NO. 15-07-0220)

9:11:55 AM Council Member McIntosh motioned approval of the Special Event Permit; Council Member Janet Martin seconded; and the motion carried unanimously.

VIII. PUBLIC COMMENT:

IX. PUBLIC HEARING TO CONSIDER ADOPTION OF THE FOLLOWING ZONING ORDINANCE (PUBLIC COMMENT LIMITED TO PARTICIPANTS OF THE ZONING BOARD MEETING OF JUNE 16, 2015))

- A. A ZONING ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A REQUEST TO AMEND A PORTION OF THE BURKHARDT COMMERCIAL PLANNED DEVELOPMENT (CPD) AS ESTABLISHED IN LEE COUNTY ZONING RESOLUTION NO. 96-042; AMENDING PARCELS E AND F TO ALLOW A SENIOR HOUSING FACILITY; ON LAND LOCATED AT 24080 S. TAMIAMI TRAIL AND 3440 & 3333 RENAISSANCE BLVD, BONITA SPRINGS, FL 34134; ON 17.41 +/- ACRES; PROVIDING FOR AN EFFECTIVE DATE. (GREENSHEET NO. 15-07-0219)

10:20:13 am City Attorney Audrey Vance read the title block of the Zoning Ordinance into the record and addressed revisions made. The effective date will be upon closing, which needs to occur within 180 days.

10:23:19 AM Jackie Genson, Community Development, furnished a brief overview of the request. Staff and the Applicant are in agreement on almost everything, except for one item relating to uses. They entail uses that the City has identified as uses they really do not want on the U.S. 41 corridor. The uses that Staff opposes are mobile home dealers and vehicle and equipment dealers. Because the uses can jeopardize the project, Council does not have to agree with Staff's recommendation to remove those uses.

10:25:15 AM Wayne Arnold, representing the Applicants, addressed consultants in attendance. This request entails an amendment to add the ship parcel. He furnished a PowerPoint presentation to address the request. They do not support the removal of the two uses. They are here to request approval to allow a senior housing development that will fit in with the neighborhood.

PARTIES OF RECORD:

10:29:08 AM Rick Steinmeyer questioned density of the brown areas on the PowerPoint. Mr. Arnold responded.

10:29:56 AM Bernard Cramer, a resident of Pelican Landing, addressed the land sight relating to some of the proposed buildings. They want to make sure that the residents in the area have an opportunity to see the plans, which they plan to present to them.

10:31:07 AM Attorney Clay Brooker, representing the owners of Parcels A and B., which are located up in the front along U.S. 41, which are already developed. They are here because they joined in with the application, since their property is part of the Planned Development. They support the application, but they object to any

elimination of the uses on their property. Overall, they object to any changes in the land use regulations applicable to their parcels, but they are fully in support of the application.

10:32:31 AM Amanda Brock, representative for the owners of Parcels C, D and E, stated that they also support the project, but not the change to the uses as proposed.

10:33:16 am Council Member Mike Gibson motioned to approve the Zoning Ordinance, without the Staff recommendations relating to the limitations on the uses; Mayor Nelson seconded; and the motion carried unanimously. **ADOPTED ZONING ORDINANCE NO. 15-03**

X. PUBLIC HEARING:

- A. HOLD THE SECOND OF TWO PUBLIC HEARINGS TO DISCUSS THE CITY OF BONITA SPRINGS' COMMUNITY DEVELOPMENT BLOCK GRANT FY 2015-2016 PROGRAM AND THE 2015 ANNUAL ACTION PLAN. (GREENSHEET NO. 15-07-0213)

9:12:43 am Assistant City Manager John Gucciardo furnished an overview of this Agenda Item, explaining that Staff's recommendation is to use the CDBG funds for infrastructure projects, with the only difference this year is a recommendation for a joint public/private partnership with Pueblo Bonito to help them expand their facility. He concluded by addressing an inaccuracy in the Greensheet which indicates that Pueblo Bonito is in the Rosemary Park area; it's actually on Old 41 and serves as part of that community as well as other communities. Recommendations for use of the entire CDBG allocation for the current year, as well some carryover dollars that will include some Parks and Recreation projects, some public works projects, and the Pueblo Bonito project.

No public comments made.

9:14:04 am Council Member McIntosh addressed the Pueblo Bonito facility, which serves 90 children and provide afterschool programs that ensure and instill good values. It's a project well worth supporting and is a public/private partnership that will do the City a lot of good.

9:14:26 am Council Member McIntosh motioned approval of the final plan to use all of the available 2015-2016 funds for eligible activities; Council Member Gibson seconded; and the motion carried unanimously.

XI. SECOND READING AND PUBLIC HEARING OF THE FOLLOWING ORDINANCES (PUBLIC COMMENT ALLOWED)

- A. AN AMENDMENT TO BONITA SPRINGS LAND DEVELOPMENT CODE, CHAPTER 2, ARTICLE VI, DIVISION 2, AMENDING 2-190 AND 2-191 RELATING TO ROAD IMPACT FEES; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, INCLUSION IN CODE AND AN EFFECTIVE DATE. (GREENSHEET NO. 15-07-0214)

10:34:16 am City Attorney Vance read the title block of the Ordinance into the record.

10:34:35 am Council Member Lonkart motioned adoption of the Ordinance; Council Member McIntosh seconded; and the motion carried unanimously. **ADOPTED ORDINANCE NO. 15-16**

- B. AN AMENDMENT TO BONITA SPRINGS LAND DEVELOPMENT CODE, CHAPTER 4, AMENDING 4-1380 RELATING TO REQUIRED APPROVALS FOR EXCAVATION ACTIVITIES TO PROHIBIT WELL STIMULATION; PROVIDING FOR CONFLICTS OF

LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, INCLUSION IN CODE AND AN EFFECTIVE DATE. (GREENSHEET NO. 15-07-0216)

10:35:07 AM City Attorney Vance read the title block of the ordinance into the record, informing Council of a request she received from Attorney Ron Weaver for a continuance.

10:35:41 AM Attorney Ron Weaver, representing Collier Resources, began by requesting a continuance to October 21, 2015, 9:00 A.M., to allow them to meet with everyone to figure out a safe way to continue with respect to regulation as opposed to a ban on fracking. He explained that in addition to there being no science, he received an indication from the Conservancy that they would be willing to settle with them if they would agree to no fracking chemical. He further explained.

PUBLIC COMMENTS:

10:38:52 AM Martha Simons thanked Council Member Martin for bringing this Ordinance forward. She also thanked the City Attorney and City Manager for their work as well. She supports adoption of the Ordinance. She also thanked John and Karen Dwyer for stopping the construction of a nuclear power plant on land that is now developed with Bonita Bay.

10:41:30 AM Attorney David Guest, with Earthjustice, stated that he was here to support and represent City Council, if necessary, with respect to adoption of this Ordinance. There is no advantage in delaying this Ordinance.

10:44:23 AM Jennifer Hecker, with the Conservancy of Southwest Florida, was in attendance to express the Conservancy's support for adoption of the Ordinance.

10:48:06 AM Dr. Karen Dwyer expressed her support for adoption of the Ordinance. She read into the record a letter expressing her opposition to allowing fracking in the City. There needs to be a local ban on fracking.

10:51:18 AM Joe Mule', stated that he fought successfully to stop fracking in Collier County. He supports approval of the Ordinance and urged Council approve it.

10:54:11 AM Pamela Duran addressed negotiations she had with Mr. Jones of Collier Resources. She lives in fear that another permit will be issued to allow fracking in her neighborhood.

10:57:35 AM Dr. John Dwyer, a member of the Stone Crab Alliance, was in attendance to also express his support for the Ordinance.

11:01:34 AM Alex Grantt, stated he was a member of the American Chemical Society, who referenced an article on Fracking, the chemical used, etc. He strongly supports adoption of the Ordinance.

11:03:24 AM Dona Knapp stated she runs a small rental business, and has been fighting for years to put an end to fracking. Fracking has occurred on property 20 minutes from her house a few years ago. It's a question of when the pipelines will crack, making the land unusable.

11:06:49 AM James Duran Pinzon, a resident of Naples, came to support adoption of this Ordinance to prohibit of fracking.

11:08:00 AM Noah Kugler stated he was a professional geologist and addressed work with other entities, including the South Florida Water Management District. He also read into the record a letter he wrote relating to the fracking process.

11:12:02 AM Ray Judah applauded Council on the position they are taking today. He supports approval of the Ordinance to ban fracking.

11:15:21 AM Deborah Maclean requested that Council pass this Ordinance today.

11:16:01 AM Loretta Lynch Goldenberg was also in attendance to express her support for adoption of the Ordinance. She is proud that her City is standing up against fracking.

11:16:46 AM David Mica, with the Petroleum Council, referred to a letter he sent to City Council (copy in Clerk's file). He is opposed to adoption of the Ordinance for the reasons he addressed.

11:21:37 AM Nancy Turner stated that she owns property in an area that is part of the Bonita Preserve. She supports approval of the Ordinance.

11:24:19 AM Joe Staiger expressed concerns he had for future generations. He supports approval of the Ordinance.

11:25:53 AM Patti Whitehead, with the Responsible Growth Coalition, stated it's vitally important that Council pass this Ordinance.

11:28:28 AM Joel Strommen spoke in support to the adoption of the Ordinance.

11:29:25 AM John Scott with the Sierra Club which has over 1,700 members in four counties. He was here to let Council know that they have their full support. The Sierra Club's position on fracking is for a ban; not a regulation.

11:31:21 AM Pam Marabelli, with Preserve Our Paradise, agrees that there needs to be a ban on fracking.

11:32:41 AM Ralf Brooks, representing the Conservancy of Southwest Florida, thanked Council for bringing this Ordinance forward today. He addressed negotiations with Collier Resources. He submitted scientific studies and summaries, and asked that Council include the additional "whereas" clauses he suggested as part of the Ordinance.

11:36:56 AM Carolyn Gallagher commended City Council for bringing this Ordinance forward. She hopes it passes.

11:39:37 AM Rick Steinmeyer suggested that Council pass this Ordinance and revisit it within one year.

11:42:21 AM Attorney Ron Weaver reported that he has been authorized to inform Council that they will not apply for a permit for well stimulation within the next 90 days.

11:43:25 AM City Attorney Vance addressed an email she sent to City Council this morning addressing the studies that the Conservancy cited today. The studies relate to health and the consequences to the community on fracking. If adopted she would suggest making modifications within the next year to two years.

11:47:07 AM In response to Mayor Nelson, City Attorney Vance explained she would include the additional clauses the Conservancy referred to.

11:47:40 AM Council Member Martin stated she was not interested in a continuance. She believes its Council's duty to protect the citizens and wildlife from the potential contamination risks associated with well stimulation. It's also their responsibility to preserve and protect the public water supply. She motioned adoption of the Ordinance with the added recommendations of the Conservancy; Council Member Bill Lonkart seconded.

11:48:16 AM Mayor Nelson stated that based on the testimony, they will leave room for a composite index. Council Member Martin agreed.

Council Member McIntosh stated that the one question that was missed regards energy sustainability. Fracking does not lead to sustainable energy independence, which is the reason he will support the motion going forward today.

The motion passed unanimously. **ADOPTED ORDINANCE NO. 15-17**

- C. AN AMENDMENT TO BONITA SPRINGS LAND DEVELOPMENT CODE, CHAPTER 3, AMENDING 3-391 RELATED TO FIRE SAFETY; TO REQUIRE ADDITIONAL FIRE PROTECTION FEATURES FOR ZERO LOT LINE CONSTRUCTION; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, INCLUSION IN CODE AND AN EFFECTIVE DATE. (GREENSHEET NO. 15-07-0215)

11:57:24 AM City Attorney Vance read the title block of the Ordinance into the record.

11:58:12 AM Council Member Martin motioned adoption of the Ordinance; Council Member Simmons seconded; and the motion carried unanimously. **ADOPTED ORDINANCE NO. 15-18**

## XII. APPEALS:

- A. APPEAL FILED BY ATTORNEY MATT UHLE O/B/O THE COMMONS CLUB AT THE BROOKS, CASE NUMBER COM15-20693-BOS, AS A RESULT OF STAFF DENYING APPROVAL TO REMODEL THE KITCHEN FACILITY (GREENSHEET NO. 15-07-0212)

11:58:48 AM City Attorney Vance outlined the process for the appeal hearing. She next placed Attorney Matt Uhle and Greg Stuart under oath.

12:01:57 PM Mr. Stuart next presented the Appellant's case via his submittal (copy in Clerk's file).

12:17:39 PM In response to Council Member Simmons, Mr. Uhle explained that approval would permit them to comply with the health department regulations, i.e., sneeze guard, lighting, utility sink, etc. It would entail an after-the-fact permit.

12:22:42 PM John Dulmer, representing Staff, presented Staff's decision (see memorandum attached to Greensheet from John Dulmer, Community Development Director, to Arleen Hunter, Director of Development Services, dated July 7, 2015; copy in Clerk's file). The application entails an issue with the Comprehensive Plan, the uses permitted within the zoning district, FEMA regulations and the Florida Building Code. Today they are addressing the planning and zoning portion of that. He further explained.

## PUBLIC COMMENTS:

12:27:09 PM Terry Furhovden, asked that Council approve their requested appeal.

City Attorney Vance placed all those planning to speak, under oath.

12:31:04 PM Delores Brecker asked that City Council approve their request to allow them to have their facility.

12:33:12 PM Deborah Maclean suggested giving strong consideration to allowing this facility which would result in a reduction in traffic.

12:34:17 PM Rick Steinmeyer stated he believes the request should be denied.

12:35:24 PM Ron Saberton asked that Council approve their request.

12:37:25 PM Linda Tecco-Roach echoed comments made. They try to be good neighbors and keep the area clean. She hopes that Council will allow them to have their snack facility.

12:38:50 PM Bob Lienesch, a 10-year member of the Commons Club, suggested that City Council direct Staff to work together to work through the issues.

12:41:30 PM Jim Meppit stated that what they are requesting would allow them to continue to provide food and beverage services to members on site.

12:44:48 PM Pat McCourt addressed the history and Lee County approvals. The police have been called out on a number of occasions. The bottom line is that it is not a legal facility and should be removed.

Council Member Martin left the meeting at 12:48 P.M.

12:48:32 PM Marty Roach spoke opposed to the request, as it's an illegal facility. He is asking Council to deny the appeal.

12:50:46 PM Mayor Nelson stated that he doesn't believe they are turning it into a restaurant, or that it is causing any harm. He also feels it's an accessory use. He believes it's become an issue because it's on the beach.

12:52:41 PM Council Member McIntosh addressed the importance of the Village of Estero and the City working together; however, he can't support this. Council Members Gibson and Lonkart stated they also can't see approving this.

12:58:19 PM In response to Attorney Uhle, City Attorney Vance stated that both Greg Stuart and John Dulmer have been previously tendered as experts in land use and planning. Mr. Uhle continued that the issue has to do with the literal language and the definitions in the Land Development Code and the meaning of the term "limited recreational facility." He further explained, stating that they feel they are consistent with the Comprehensive Plan. With respect to zoning, the only question is does this after-the-fact permit create a situation where off-site recreational changes the character change the character of this use to a private club as defined in the Land Development Code. Unless the kitchen adds meeting facilities, the do not see it could meet that definition. Their position is that the character of the facility is not changing as a result of the after-the-fact permit with the few additional changes that would be made to comply with the health department.

1:00:46 PM Council Member Gibson motioned to uphold Staff's decision to deny.

City Attorney Vance clarified that the motion presented by Council Member Gibson and will prepare a Resolution.



Council Member Simmons seconded; and the motion passed 4-1 (Mayor Nelson opposed)  
**ADOPTED ZONING RESOLUTION 15-02**

XIII. CITY ATTORNEY'S REPORT. No items.

XIV. CITY MANAGER'S REPORT:

1:05:16 PM City Manager Carl Schwing thanked Staff on the great job they did with the City's Fourth of July celebration. Next he introduced Markela Ago, who is interning at Florida Gulf Coast University who has hopes of becoming a City Manager.

XV. MAYOR AND COUNCIL MEMBER ITEMS AND REPORTS.

1:06:29 PM Council Member Simmons commended everyone involved in the great Fourth of July event.

XVI. APPROVAL OF MINUTES: 06/15/15 & 07/01/15

Council Member McIntosh motioned approval of both sets of minutes; Council Member Gibson seconded; and the motion carried unanimously.

XVII. PUBLIC COMMENT:

1:08:39 pm Alex Grantt addressed passenger rail service.

1:10:02 pm Kathy McGrath echoes comments made regarding the great Fourth of July event. She also reminded everyone of the upcoming 2d Bonita Springs Film Festival.

1:11:08 pm Rick Steinmeyer thanked City Council for remodeling Old 41.

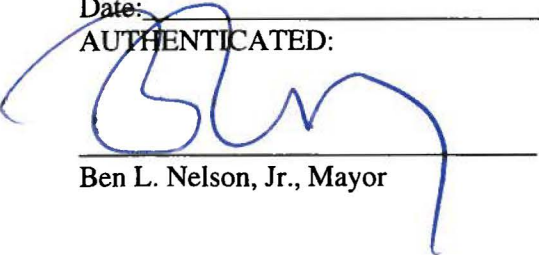
XVIII. ADJOURNMENT.

There being no further items to discuss the meeting adjourned at 1:11 P.M.

Respectfully submitted,

  
\_\_\_\_\_  
Debra Filipek, City Clerk

APPROVED:  
BONITA SPRINGS CITY COUNCIL:

Date: \_\_\_\_\_  
AUTHENTICATED:  
  
\_\_\_\_\_  
Ben L. Nelson, Jr., Mayor