



MINUTES
SPECIAL CITY COUNCIL MEETING
FEBRUARY 26, 2007 AT 6:00 P.M.
CITY HALL, 116 FIRST STREET
NEPTUNE BEACH, FLORIDA

Pursuant to proper notice a Special Meeting of the City Council of the City of Neptune Beach was held February 26, 2007 at 6:00 p.m., in the Council Chambers, City Hall, 116 First Street, Neptune Beach, Florida.

Attendance

IN ATTENDANCE:

STAFF:

Mayor Richard A. Brown
Vice Mayor Harriet Pruette
Councilor Fred E. Lee
Councilor Eric Pardee
Councilor John Weldon
City Attorney Chris White
City Manager James Jarboe
City Clerk Lisa Volpe, CMC

Community Development Director Amanda Askew
Sergeant Adam Militello
Senior Center Director Leslie Lyne
Deputy City Clerk Karla Strait, CMC

Order Call

Mayor Brown called the special meeting to order at 6:00 p.m.

Lakeshore Village /
Wal-Mart

SETTLEMENT AGREEMENT BETWEEN LAKESHORE VILLAGE / WAL-MART AND THE CITY OF NEPTUNE BEACH: Mayor Brown explained the Council would hear public comments at the beginning of the meeting, limiting speakers to three minutes. He would then ask Special Magistrate Carlos Alvarez to give a briefing on the mediation process. The Council would then have discussion and vote.

Kris Matson, 540 Hopkins Street, thanked the Council for their efforts opposing the Wal-Mart development. She then asked Wal-Mart to reconsider their plans due to the loss of the John F. Kennedy Air Carrier from Mayport Naval Station.

Michael Aston, 1523 Summer Sands Drive, was unhappy with the settlement agreement and still concerned about crime issues. He felt the architecture was worst than previously submitted.

Ruth Holmes, Attorney, Rogers, Towers, & Bailey Law Firm, representing Aqua East Surf Shop, questioned whether or not the big box ordinance, the deed restriction, and placement of the building, were considered during mediation.

Steve Rosenbloom, 417 Beach Boulevard, Aqua East Board Member, stated Aqua East had incurred legal fees due to the deed restriction and the Aqua East was interested in how they would be effected by the decision.

Special Magistrate Carlos Alvarez explained his prior experience as a land use attorney has led him to now focus on mediation and arbitration of land use and environmental issues

known as Alternative Dispute Resolution.

He further explained after the Council denied the Lakeshore Village development order application on September 11, 2006, Lakeshore filed a Request for Relief on October 10, 2006. Both parties then agreed to the mediation process. An evidentiary hearing was held at the Florida Coastal School of Law beginning on November 30 and ending on December 1, 2006, where the issues of traffic and scale, mass, & bulk were discussed and evidence was presented from both parties. During the evidentiary hearing it was determined that traffic concurrency would not be considered an issue due to state laws and the mediation would focus on scale, mass, and bulk. In an effort to hear the concerns of the Neptune Beach residents Mr. Alvarez presided over a public hearing, November 30, 2006, at the Neptune Beach City Hall Council Chambers.

From there both sides agreed to go into mediation focusing on the scale, mass, and bulk issues and the concerns of citizens regarding, noise, crime, etc. The settlement agreement before the council for consideration tonight was agreed to be the best either side could do to meet each others' needs. The following are some of the terms and conditions agreed upon by both parties:

- The building would be placed toward the rear of the property. (See Exhibit A)
- The exterior appearance shall reflect the architectural elevations and renderings (See Exhibit B)
- The landscaping plan will include an on-site "pocket park", plantings and other features (See Exhibit C)
- Delivery hours will be prohibited between the hours of 10:00 p.m. and 6:00 a.m. with the exception of grocery deliveries commencing at 5:00 a.m.
- Delivery trucks will be allowed to remain on the property up to 12 hours before unloading and shall not be allowed to remain overnight.
- There shall be an 8-foot high screening wall designed to reduce noise along the western boundary of the property.
- For the first 3 months after the store's official grand opening Wal-Mart will hire an off-duty police officer to patrol the property for 8 hours a day, seven days a week.
- Wal-Mart will set aside a portion of its annual charity budget to sponsor at least one charity event in Neptune Beach each year.
- Wal-Mart will propose to extend Lemon Street to Penman Road for traffic improvements.
- Wal-Mart will propose to allow for an access connection adjacent to the east of the property.
- Wal-Mart shall propose to install a traffic signal device at the eastern most driveway entrance on the north side of the property.
- Wal-Mart shall pay to the City \$300,000.00 which shall be ear marked for costs associated with the development.

For the Record Vice Mayor Pruette stated for the record she felt an indoor loading dock would lessen the noise from delivery trucks. She also voiced concern about the following: 1) the twelve hour parking allowance for truck deliveries, 2) hours required for an off duty police officer should be extended beyond the eight hours per day and 3) the upkeep of the required landscaping.

Mr. Alvarez responded that this would be the smallest Wal-Mart store ever built therefore an indoor loading dock was not possible. The screening walls surrounding the rear would help to abate the noises. The twelve hour parking allowance for truck deliveries was in the city's current code and Council could revise that if they so wished. His decision regarding the hiring of an off duty police officer was based on Public Safety Director David Sembach's recommendations.

Councilor Lee questioned if the hours of operation were discussed during the mediation. Mr. Alvarez responded the hours were 24/7 as in the Wal-Mart policy and their stores were only closed one day per year. Councilor Lee was concerned about Wal-Mart not adhering to the delivery hour rules. Mr. Alvarez replied in the event Wal-Mart did not adhere to the agreement the city would have to take action via code enforcement or court. Councilor Lee asked if Wal-Mart representatives were aware that the \$300,000 monetary contribution towards expenses for the development did not include their permitting fees. Mr. Alvarez replied "yes" they were aware of the additional permit fees. Councilor Lee was also concerned about the cooperation of the two property owners whose property would be necessary for the new traffic pattern.

Councilor Weldon objected to and questioned why only one member out of the five member Council was allowed to participate in the mediation process. He felt that the majority of the council was at a disadvantage because they were left out of the process.

Mr. Alvarez replied because communications during mediation were confidential the mediation could not be held in a public forum under the Florida Sunshine Law, thereby only one member of the council could participate. However, the City Manager, City Attorney, and Community Development Director were present during mediation to discuss the concerns of the absent council members.

Councilor Pardee was concerned the "pocket park" included on the Property could attract transients and become a problem with loitering. Mr. Alvarez responded if the park created a problem the council could vote to change the agreement and ask for it to be removed.

Mayor Brown thanked Mr. Alvarez for his time and efforts during the process and asked the Council to make a motion.

Moved by Pruette, seconded by Lee.

Motion: **TO APPROVE THE SETTLEMENT AGREEMENT.**

Councilor Lee asked City Attorney White what the risk would be to the city if the settlement agreement was not approved. City Attorney White responded that Lakeshore Village would most likely file a lawsuit. He could not determine the likelihood of success or expenses for either party. It would be up to the judge or jury to determine.

Councilor Pardee asked if the \$300,000 monetary contribution from Wal-Mart exceeded the costs associated with the Wal-Mart development what would become of the excess amount. Mr. Alvarez advised the \$300,000 figure was to ensure that it would cover expenses associated with the Wal-Mart development.

Councilor Lee asked if there was excess money did it have to be used for the development. Mr. Alvarez stated any excess amount could be used at council's discretion for the good of the city..

For the Record Councilor Weldon stated for the record he would vote "no" on the proposed Wal-Mart agreement for the following reasons:

1) The settlement disregards the substantial negative impact that this development will have on both traffic circulation and general quality of life in Neptune Beach.

2) The monetary contributions called for in the settlement set a particularly bad precedent for future development applications. Will the Council accept contributions from any future developer willing to pay for favorable changes to our Code?

This is a discouraging conclusion to a long contest between Wal-Mart and another small community that objects to its one-size fits-all business strategy and slash and burn legal tactics. The citizens of Neptune Beach deserve better.

There is, however, an important lesson contained in this settlement that I hope at least a majority of this Council will have absorbed. The development industry will continue to utilize every legal maneuver and negotiating tactic in the book to accomplish its financial objectives. By initially denying this development application, we fostered a better outcome than could otherwise have been expected. As stewards of his community, we must continue to resist development that is not in the best long term interests of our citizens.

Roll Call Vote:

Ayes: 4 – Lee, Pardee, Pruette, Brown

Noes: 1 – Weldon

MOTION CARRIED

Adjournment

There being no further business, the meeting adjourned at 7:25 p.m.

Richard Brown, Mayor

ATTEST:

Lisa Volpe, CMC, City Clerk

Approved: _____