



**MINUTES  
REGULAR CITY COUNCIL MEETING  
DECEMBER 7, 2009 AT 6:00 P.M.  
CITY HALL, 116 FIRST STREET,  
NEPTUNE BEACH, FLORIDA**

Pursuant to proper notice a Regular Meeting of the City Council of the City of Neptune Beach was held December 7, 2009 at 6:00 p.m. in the City Hall Council Chambers, 116 First Street, Neptune Beach, Florida.

Attendance

IN ATTENDANCE:

STAFF:

Mayor Harriet Pruette  
Vice Mayor Fred Lee  
Councilor Eric Pardee  
Councilor Kara Tucker  
Councilor John Weldon  
City Attorney Christopher White  
City Manager Jim Jarboe  
City Clerk Lisa Volpe, CMC

Community Development Director Amanda Askew  
Senior Activity Center Director Leslie Lyne  
Director of Finance Steve Ramsey  
Director of Public Safety David Sembach  
Director of Public Service Leon Smith

Order Call/Pledge

Mayor Pruette called the meeting to order at 6:00 p.m. and asked City Attorney Chris White to lead the pledge of allegiance.

**AWARDS / PRESENTATIONS / RECOGNITION OF GUESTS**

Mr. Kenny Weeks, Manager of the Walmart Store located at Beach Boulevard and Hodges Boulevard, stated the store selected Jarboe Park to be the recipient of a \$20,000 grant for park improvements.

Mayor Pruette thanked Mr. Weeks and asked him to work with City Manager Jarboe on the improvements.

**APPROVAL OF MINUTES**

Moved by Lee, seconded by Tucker.

Minutes

Motion: **TO APPROVE THE FOLLOWING MINUTES:**

**NOVEMBER 2, 2009 REGULAR CITY COUNCIL MEETING**  
**NOVEMBER 16, 2009, SPECIAL CITY COUNCIL MEETING**  
**NOVEMBER 16, 2009, WORKSHOP CITY COUNCIL MEETING**

Roll Call Vote:

Ayes: 5 – Lee, Pardee, Tucker, Weldon, Pruette  
Noes: 0

**MOTION CARRIED**

**COMMUNICATIONS AND CORRESPONDENCE**

Mayor Pruette thanked staff for Christmas in the Park.

**CITY MANAGER REPORT**

City Manager Jarboe reported the following:

- The Jacksonville Sherriff's Office and the Department of Environmental Protection were investigating the dumping behind the Penman Plaza shopping center.
- The Public Service Department was working on the nitrogen issue.
- The Public Service Department was working with the Code Enforcement Officer conducting inspections to prevent grease from entering the sewer system.
- The Town Center Christmas Tree Lighting and Christmas in the Park events were a success.
- The Ish Brant Beautification Committee was working with the City of Jacksonville to beautify Florida Boulevard.

**COMMENTS FROM THE PUBLIC**

Rick Duncan, 407 McCollum Circle, favored Resolution No. 2009-18, designating Ish Brant Park.

Susan Moore, 401 McCollum Circle, favored Resolution No. 2009-18, designating Ish Brant Park.

Kerry Chin, 227A Margaret Street, Chair of the Planning and Development Review Board, explained the reasoning of the Planning and Development Review Board in relation to the variances requested by Penman Plaza.

**CONSENT AGENDA / NONE**

**VARIANCES**

V09-13  
Penman Plaza

V09-13, VARIANCE REQUEST FOR PENMAN PLAZA, 1209, 1223 AND 1301 ATLANTIC BOULEVARD: The request is for the Penman Plaza Shopping Center expansion to vary Sections 27-229, Lot Coverage Requirements, Section 27-455, Minimum Landscape Requirements, Section 27-457 Landscaping Requirements for Vehicular Use Areas, Section 27-540 Off Street Parking, and Section 27-459 Landscaping Buffer.

Carlos Asensio, 3715 Northside Parkway, Atlanta, Georgia, Flagler Construction Management, Penman Plaza Manager, introduced himself to the Council and responded to the Council.

Councilor Weldon questioned why the applicant was asking for changes to the variances that were previously approved by the Council last year.

Mr. Asensio replied the site plan was revised after it was presented to prospective tenants. The changes were due to a strong need for additional parking on the westside of the site. The site plan was also reevaluated and the percentages of landscape area were different from the previously approved variance request.

Councilor Weldon asked Mr. Asensio if the developer would consider relocating the landscape area from the western side to the eastern portion of the property.

Mr. Asensio stated relocating the landscape to the eastern side would create a problem due to the Winn Dixie lease. The Winn Dixie lease was signed in 1986 before the new ordinances were in place.

Councilor Weldon was concerned about the request to reduce the landscape buffer along Atlantic Boulevard from six feet to three feet. This would further decrease the required green space and increase the impervious surface on the site.

Mr. Asensio explained they did not want to disrupt the asphalt parking area that was currently in place nor did they want to disrupt the traffic pattern. They felt the landscaping design for the three foot buffer would be sufficient.

Councilor Weldon asked if the proposed parking areas would be impervious.

Mr. Asensio responded they shifted them from pavers to asphalt because they were concerned that truck traffic would destroy the pavers creating an operational maintenance problem for the owners.

Councilor Weldon asked if they could place the pavers in lieu of asphalt in a different location on the site.

Mr. Asensio stated they could place pavers for 20 parking spaces towards the Tire Kingdom site.

Mayor Pruette stated the Planning & Development Review Board recommended denial of the variance request to reduce the landscape area. The Board recommended approval for the parking with the condition that the parking spaces be pervious.

Councilor Tucker questioned where the handicap spaces would be located on the site.

Mr. Asensio replied the two handicap spaces and the ramp that were currently in place would remain.

Councilor Tucker was concerned how the trucks would be entering and exiting the center.

Mr. Asensio explained they envisioned the trucks entering along the back of the site off of Penman Road and exiting onto Atlantic Boulevard.

Councilor Pardee asked Mr. Asensio if the owner and developer would consider the recommendations and the stipulations placed on the variance requests by the Planning & Development Review Board.

Mr. Asensio stated the owner would like to maintain the existing three feet buffer on Atlantic Boulevard. He added when the center was purchased in 1980 the site was complete asphalt.

Councilor Pardee asked if there were plans for additional buildings on the site. Mr. Asensio replied "no."

Mayor Pruette stated she agreed with the Board's decision to deny the variance request to reduce the six foot perimeter landscape to three foot.

Vice Mayor Lee asked if the owner would consider making other parking spaces on the site pervious material in exchange for the asphalt parking spaces on the west side of the site.

Councilor Weldon added the city was being asked to sacrifice green space as well as a substantial increase in impervious surface in exchange for nothing from the owner.

Vice Mayor Lee stated the city would be getting a vibrant shopping center in return.

City Manager Jarboe stated that a motion needed to be on the table before discussion.

Mayor Pruette suggested the Council consider each variance request separately.

Councilor Pardee asked Community Development Director Askew to explain each variance request to the Council.

Variance Request  
for Lot Coverage

Mr. Askew explained this request was to increase the maximum lot coverage. The Council previously approved a variance request to increase the maximum lot coverage to 80.9% in lieu of 75%. This request was not as intrusive because they were now proposing a maximum lot coverage of 79.6%.

Moved by Weldon, seconded by Lee.

Motion: **TO APPROVE THE RECOMMENDATION OF THE PLANNING & DEVELOPMENT REVIEW BOARD RELATED TO SECTION 27-229-1 VARIANCE TO INCREASE THE MAXIMUM LOT COVERAGE RESULTING IN A 79.6% TOTAL LOT COVERAGE FOR THE PROJECT.**

Roll Call Vote:

Ayes: 5 – Lee, Pardee, Tucker, Weldon, Pruette

Noes: 0

**MOTION CARRIED**

Variance Request  
for Gross  
Landscape Area

Mayor Pruette stated the Planning & Development Review Board recommended approval of the variance request to reduce the gross landscape by 2.7%.

Mr. Askew explained this request was to reduce the gross landscape area to 17.3% in lieu of the required 20%. The Council previously granted a variance to allow a reduction to 16.4%. This was also an improvement from the previously granted variance request.

Moved by Pardee, seconded by Lee.

Motion: **TO APPROVE THE RECOMMENDATION OF THE PLANNING & DEVELOPMENT REVIEW BOARD AND APPROVE THE SECOND VARIANCE FOR SECTION 27-44(b) GROSS LANDSCAPE AREA.**

Roll Call Vote:

Ayes: 4 – Lee, Pardee, Tucker, Pruette

Noes; 1 – Weldon

**MOTION CARRIED**

Variance Request  
for Signage

Mayor Pruette stated the Planning & Development Review Board recommended approval of the additional monument sign provided that the two existing non-conforming signs are brought into compliance prior to construction of the new sign.

Mrs. Askew explained this request was for an additional sign. The site has two existing signs, one on Atlantic Boulevard and one on Penman Road. The Code only allows one sign per development.

Moved by Weldon, seconded by Lee.

Motion: **TO DENY THE PLANNING & DEVELOPMENT REVIEW BOARD RECOMMENDATION ON VARIANCE FOUR RELATED TO THE ADDITIONAL MONUMENT SIGNS.**

Councilor Pardee asked how many parcels were included in this development.

Mrs. Askew replied there are three separate parcels. The Tire Kingdom has its own separate

parcel and they are allowed a sign. The Sonic is on a separate parcel and they are allowed a sign. The remainder of the property is one large lot.

Councilor Weldon stated there would also be signage on the building which could be viewed from the street. In fact the developer has requested replacing the hardwood trees with palm trees so the building signs could be better seen from Atlantic Boulevard. He found the request reasonable and would agree with the recommendation of the Planning & Development Review Board.

Mayor Pruette asked Councilor Weldon to withdraw his previous motion and state a new one with the stipulations recommended by the Planning & Development Review Board.

Moved by Weldon, seconded by Lee.

Motion: **TO APPROVE THE RECOMMENDATION OF THE PLANNING & DEVELOPMENT REVIEW BOARD WITH THE FOLLOWING EXCEPTIONS, TO APPROVE TWO MONUMENT SIGNS, ONE ON PENMAN ROAD, AND ONE ON ATLANTIC BOULEVARD AND BOTH OF THOSE SIGNS MUST BE BROUGHT INTO COMPLIANCE WITH THE EXISTING SIGN ORDINANCE.**

Councilor Pardee stated there was a potential for the building to become a two story in the future which would increase the need for additional signage. He asked City Attorney White how this would fit into the current sign ordinance.

City Attorney White advised the question before the Council was a request for a variance. A variance is to offer relief from the Code. If this building became two stories and needed additional signage they would need to request a variance.

Vice Mayor Lee suggested forwarding the subject of signage to a workshop meeting to discuss the issue of signage for a shopping center with fifty stores verses a shopping center with only five stores.

City Manager Jarboe clarified the Planning & Development Review Board has asked that the existing signs come into compliance with the Code before the additional monument sign is erected.

Roll Call Vote:

Ayes: 3 – Lee, Weldon, Pruette

Noes: 2 – Pardee, Tucker

**MOTION CARRIED**

Variance Request  
for Landscape  
Area

Mayor Pruette stated this variance request was to reduce the perimeter landscape area to three feet from six feet. The Planning & Development Review Board has recommended Council deny the variance.

Mrs. Askew explained the Code requires a nine foot perimeter landscape area. The applicant was previously granted a variance from the Council to reduce the perimeter landscape area from nine feet to six feet. This request would reduce the perimeter landscape area from six feet to three feet.

Moved by Weldon, seconded by Lee.

Motion: **TO ENDORSE THE RECOMMENDATION OF THE PLANNING & DEVELOPMENT REVIEW BOARD TO DENY THE VARIANCE TO REDUCE THE PERIMETER OF THE LANDSCAPE AREA TO THREE FEET FROM THE AGREED SIX FEET.**

Councilor Weldon felt this variance request was an effort to reduce to the overall cost of redesigning the shopping center. He felt this was not adequate justification to vary the Code.

Councilor Pardee felt it was unfair to make the developer change the perimeter landscape area because the shopping center was existing and was approved by the City in the 1980's. He felt, if they were demolishing the entire building and rebuilding from the ground, they should have to come into compliance with the Code.

Moved by Weldon, seconded by Lee.

Amended Motion: **TO AMEND THE MOTION TO CLARIFY THAT THEY ARE NOT REQUIRING THE APPLICANT TO DEFAULT TO THE REQUIRED NINE FEET OF LANDSCAPE BUFFER AREA. THEY ARE ONLY REQUIRING THEM TO COMPLY WITH THE PREVIOUSLY EXISTING VARIANCE WHICH WAS SIX FEET OF LANDSCAPE BUFFER ALONG ATLANTIC BOULEVARD.**

City Manager Jarboe stated the Council had to vote on the amendment before voting on the previous motion as amended.

Roll Call Vote for the amendment:  
Ayes: 4 – Lee, Tucker, Weldon, Pruette  
Noes: 1 – Pardee

MOTION CARRIED

Roll Call Vote on the Motion as Amended:  
Ayes: 4 – Lee, Tucker, Weldon, Pruette  
Noes: 1 – Pardee

MOTION CARRIED

Variance Request for Parking Spaces

Mayor Pruette explained this variance was for parking spaces. The Planning & Development Review Board has recommended approval to increase the maximum number of parking spaces to 56 with the condition that these parking spaces be pervious material with a friendly amendment to have the new parking spaces south of the Tire Kingdom made of pervious materials.

Moved by Weldon, seconded by Pardee.

Motion: **TO APPROVE VARIANCE #5 TO SECTION 27-540 TO INCREASE THE MAXIMUM NUMBER OF PARKING SPACES TO 56 OVER THE MINIMUM REQUIREMENT IN LIEU OF 30 SPACES OVER THE MINIMUM REQUIREMENT WITH THE STIPULATION THAT AN EQUIVALENT NUMBER OF SPACES OR AN EQUIVALENT SQUARE FOOTAGE OF PARKING AREA BE PAVED WITH PERVIOUS MATERIALS SO THAT WE END UP WITH THE SAME AMOUNT OF PERVIOUS VERSES IMPERVIOUS SURFACE.**

Councilor Weldon requested stated the pervious parking spaces be placed in the front of the shopping center. Mr. Asensio whether they were placed in the front or the rear of the property they would still be pervious. He felt it would not make a difference because it would still increase the pervious pavement on the site.

Vice Mayor Lee asked Mr. Asensio if he would agree to Councilor Weldon's stipulations.

Mr. Asensio replied they would accommodate 21 pervious parking spaces in the front of the parcel.

City Manager Jarboe stated the Planning & Development Review Board recommended a total of 36 parking spaces be pervious.

Mr. Asensio explained the asphalt pavement was already in place. They would have to tear out the existing pavement in order to put pavers in the front. He would agree to that if that was the motion.

Vice Mayor Lee asked if the Council was really going to make the developer tear out existing pavement.

Councilor Pardee felt this could be resolved by allowing them to get a certain amount of pervious parking spaces at any location on the site.

Councilor Weldon stated if an effort to move forward he would to agree to allow the pervious parking spaces to be placed anywhere on the site.

Moved by Weldon.

Amended Motion: **TO ALLOW THE PERVIOUS SPACES TO BE LOCATED ANYWHERE ON SITE.**

City Manager asked Vice Mayor Lee to withdraw the second to the original motion so that it would fail for lack of second and asked Councilor Weldon state a new motion.

Vice Mayor Lee withdrew his second to the original motion.

Moved by Weldon, seconded by Pardee.

Motion: **TO APPROVE THE FIFTH REQUESTED VARIANCE SECTION 27-540 INCREASING THE MAXIMUM NUMBER OF PARKING SPACES TO 56 SPACES OVER THE MINIMUM REQUIREMENT IN LIEU OF 30 SPACES OVER THE MINIMUM REQUIREMENT WITH THE STIPULATION THAT AN EQUIVALENT AMOUNT OF PAVEMENT TO THE 36 SPACES IN QUESTION WILL BE PAVED WITH PERVIOUS MATERIALS ANYWHERE ON THE PROPERTY.**

Roll Call Vote:

Ayes: 5 – Lee, Pardee, Tucker, Weldon, Pruette  
Noes: 0

**MOTION CARRIED**

Mayor Pruette called a recess at 7:25 p.m. and reconvened the meeting at 7:30 p.m.

PDRB09-18  
Penman Plaza

**PDRB09-18, DEVELOPMENT ORDER FOR PENMAN PLAZA ASSOCIATES, 1209, 1223, AND 1301 ATLANTIC BOULEVARD:**

Moved by Lee, seconded by Tucker.

Motion: **TO APPROVE PDRB09-18 PENMAN PLAZA ASSOCIATES BASED ON VARIANCES AS APPROVED.**

Councilor Pardee suggested that Council workshop the sign ordinance. He felt this was a unique situation because the shopping center was located on a corner lot and had three entrances.

Roll Call Vote:

Ayes: 5 – Lee, Pardee, Tucker, Weldon, Pruette  
Noes: 0

**MOTION CARRIED**

ORDINANCES

Ord. No. 2009-13 ORDINANCE NO. 2009-13, CHAPTER 18, ABANDONING OR PRIVATE USE OF PUBLIC PROPERTY, SECOND READ AND PUBLIC HEARING: AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF NEPTUNE BEACH, FLORIDA ADDING CHAPTER 18 SECTION 18-5 ABANDONING OR PRIVATE USE OF PUBLIC PROPERTY.

Mayor Pruette read Ordinance No. 2009-13 by title only and opened the public hearing.

Michael Aston, 1523 Summer Sands Drive, favored the ordinance.

There being no further comments from the public, the public hearing was closed.

Councilor Weldon stated he and Mayor Pruette would like to reinsert the language regarding a "super majority vote" back into the ordinance.

Moved by Weldon, seconded by Pruette.

Substitute Motion: **TO APPROVE ORDINANCE 2009-13 AMENDING THE CODE OF ORDINANCES OF THE CITY OF NEPTUNE BEACH ADDING CHAPTER 18 SECTION 18-5 ABANDONING OR PRIVATE USE OF PUBLIC PROPERTY INCLUDING THE ORIGINAL LANGUAGE OF THE ORDINANCE THAT IS CURRENTLY STRICKEN IN THE EXAMPLE WE HAVE IN FRONT OF US READING "THEREFORE LEGISLATION AUTHORIZING THE ABANDONMENT, CLOSURE OR VACATING OF CITY PROPERTY OR RIGHTS OF WAY SHALL REQUIRE A SUPER MAJORITY VOTE OF THE CITY COUNCIL. THE THIRD PARAGRAPH AS WELL THIS SECTION SHALL NOT APPLY TO THE LEASING OF PUBLIC PROPERTY OR RIGHTS OF WAY NOT TO APPROVALS BY THE CITY MANAGER OF RESIDENTIAL DRIVEWAY ACCESS TO PUBLIC STREETS.**

City Manager Jarboe stated that would be substitute motion whether than an amendment. Vice Mayor Weldon asked that his motion be made a substitute motion.

Vice Mayor Lee was concerned that a super majority vote would allow two Council members the ability to deny a motion.

Councilor Weldon stated the State of Florida required matters relating to money and public resources be subject to a super majority vote. He felt the same should apply to all public resources which included rights of way and public property.

Vice Mayor Lee suggested amending the Ordinance adding language that it would also take a "super majority vote" to reverse the decision.

Moved by Weldon, seconded by Lee.

Amendment: **TO AMEND ORDINANCE 2009-13 TO INCLUDE BOTH PARAGRAPHS PREVIOUSLY STRICKEN AND TO MODIFY THE SECOND PARAGRAPH WHICH CURRENTLY READS "THEREFORE LEGISLATION AUTHORIZING THE ABANDONMENT, CLOSURE, OR VACATING OF CITY PROPERTY OR RIGHTS OF WAY SHALL REQUIRE A SUPER MAJORITY VOTE OF THE COUNCIL IN ORDER TO REVERSE THIS DECISION ON THE PART OF THE CITY COUNCIL A SUPER MAJORITY VOTE IS REQUIRED.**

City Attorney White recommended inserting the following change: "Any change to the voting requirements would have to be done by a super majority vote."

Moved by Weldon, seconded by Lee.

Amendment to the amendment: **THE SECOND SENTENCE WOULD READ "ANY CHANGES TO THE VOTING REQUIREMENTS OF THIS ORDINANCE WOULD REQUIRE A SUPER MAJORITY VOTE."**

Roll Call Vote on the two Amendments:  
Ayes: 4 – Lee, Tucker, Weldon, Pruette  
Noes: 1 – Pardee

**MOTION CARRIED**

Moved by Weldon, seconded by Pruette

Motion: **TO ADOPT THE ORDINANCE AS AMENDED.**

Roll Call Vote:  
Ayes: 4 – Lee, Tucker, Weldon, Pruette  
Noes: 1 – Pardee

**MOTION CARRIED**

Ord. No. 2009-14 **ORDINANCE NO. 2009-14, AMENDING CHAPTER 2, ADMINISTRATION, POLICE OFFICERS RETIREMENT SYSTEM, SECOND READ AND PUBLIC HEARING: AN ORDINANCE OF THE CITY OF NEPTUNE BEACH AMENDING CHAPTER 2, ADMINISTRATION, ARTICLE V, EMPLOYEE BENEFITS, DIVISION 4, POLICE OFFICERS' RETIREMENT SYSTEM, SECTIONS 2-345 THROUGH 2-349.25, INCLUSIVE OF THE CODE OF ORDINANCES OF THE CITY OF NEPTUNE BEACH; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.**

Finance Director Steve Ramsey explained the Ordinance needed to be changed in accordance with new legislation.

Mayor Pruette read Ordinance No. 2009-14 by title only and opened the public hearing.

There being no comments from the public, the public hearing was closed.

Moved by Weldon, seconded by Pardee.

Motion: **TO APPROVE ORDINANCE NO. 2009-14 AMENDING CHAPTER 2 ADMINISTRATION POLICE OFFICERS RETIREMENT SYSTEM.**

Roll Call Vote:  
Ayes: 5 – Lee, Pardee, Tucker, Weldon, Pruette  
Noes: 0

**MOTION CARRIED**

**OLD BUSINESS / NONE**

**NEW BUSINESS**

Res. No. 2009-17 **RESOLUTION NO. 2009-17: A RESOLUTION APPOINTING MEMBERS TO THE BOARD OF APPEALS.**

Due to the absence of Mr. McLeod the Resolution was forwarded to the January regular meeting.

Consensus: **FORWARD TO THE JANUARY REGULAR MEETING.**

Res. No. 2009-18     RESOLUTION NO. 2009-18: A RESOLUTION OF THE CITY OF NEPTUNE BEACH HONORING ISH BRANT AND DECLARING A NAMESAKE PARK.

Moved by Weldon, seconded by Lee.

Motion:     **TO APPROVE RESOLUTION 2009-18, RESOLUTION OF THE CITY OF NEPTUNE BEACH HONORING ISH BRANT AND DECLARING A NAMESAKE PARK.**

Roll Call Vote:

Ayes:        4 – Lee, Tucker, Weldon, Pruette

Noes:        1 – Pardee

MOTION CARRIED

**OPEN DISCUSSION**

Adjournment        There being no further business, the meeting adjourned at 8:00 p.m.

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Harriet Pruette, Mayor

ATTEST:

Lisa Volpe, CMC, City Clerk

Approved: