



CITY OF NORTH MIAMI BEACH
City Commission Special Meeting
Julius Litman Performing Arts Theatre
17011 N.E. 19th Avenue
North Miami Beach, FL. 33162

Tuesday, November 10, 2020

Mayor Anthony F. DeFillipo

City Manager Esmond K. Scott

Vice Mayor Barbara Kramer

Commissioner McKenzie Fleurimond

City Attorney Weiss Serota Helfman Cole and Bierman,

Commissioner Michael Joseph

Dan Espino

Commissioner Phyllis S. Smith

Commissioner Fortuna Smukler

City Clerk Andrise Bernard, CMC

Commissioner Paule Villard

City Commission Meeting Minutes

1. ROLL CALL OF THE CITY OFFICIALS

The Regular Commission Meeting was called to order at 6:52 p.m. Present at the meeting in the Theatre were Mayor Anthony F. DeFillipo, Vice Mayor Barbara Kramer, Commissioner McKenzie Fleurimond, Commissioner Michael Joseph, Commissioner Phyllis S. Smith, Commissioner Fortuna Smukler, and Commissioner Paule Villard. City Manager Esmond Scott, City Attorney Dan Espino, and City Clerk Andrise Bernard were also present.

2. PLEDGE OF ALLEGIANCE was led by the Mayor and Commission.

3. PUBLIC COMMENT

City Attorney Espino announced that the public comments are a continuation of the last meeting which was a Public Hearing.

Mayor Anthony F. DeFillipo opened the meeting for **PUBLIC COMMENT**.

City Clerk Andrise Bernard read the rules of public comment and the following individuals made comments via Zoom on the record:

1. David Templar
2. Tony Stabenow
3. Liliana Korn Custy
4. Bruce Lamberto
5. George Mihas
6. Eric Isicoff
7. Margo Berman

8. Carlos Nunez
9. Ruth Abeckjerr
10. Mubarak Kazan
11. Tammy Fox-Isicoff
12. Stefanie Sass
13. Diane Frazer
14. Eliane Ribeiro
15. Samantha Schmitz
16. Liz Chibnik
17. Jose Bribiesca
18. Patricia Ellis
19. Clarita Piana
20. Azucena Fragoso

The meeting was closed for **PUBLIC COMMENT**.

4. QUASI-JUDICIAL

4.1. Ordinance No. 2020-07 (Second and Final Reading) Zoning and Land Development Code Amendments Related to Intracoastal Mall (Justin Proffitt, AICP, Director of Community Development)

AN ORDINANCE OF THE MAYOR AND COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA AMENDING THE ZONING AND LAND DEVELOPMENT CODE OF THE NORTH MIAMI BEACH CODE OF ORDINANCES, BY AMENDING CHAPTER XXIV “ZONING AND LAND DEVELOPMENT CODE” ARTICLE V “ZONING USE DISTRICTS,” SECTION 24-58 “MIXED USE (MU) DISTRICT” TO UPDATE REGULATIONS TO THE MIXED-USE DISTRICT, SECTION 24-58.7 “EASTERN MIXED-USE WATERFRONT DISTRICT (MU/EWF)” TO PROVIDE FOR AND UPDATE REGULATIONS AND REGULATING PLANS; PROVIDING FOR CODIFICATION; SEVERABILITY; CONFLICTS; AND EFFECTIVE DATE.

City Attorney Dan Espino reviewed the procedures for the quasi-judicial legislation items and reminded the Commissioners to remain visible on the zoom call for this portion of the meeting. He announced that the Commission can continue their discussion from the October 20, 2020 meeting, that everything is already established on the record, that other information can be added on the record, and that some Commissioners have written Jennings disclosures since the last meeting until now. He announced that the two quasi-judicial items could be heard together, and that there was a request for deferral from the applicant, but the Commission can proceed with a decision if they want, and that there were also some Ordinance text adjustments.

City Clerk Andrise Bernard explained the Jennings Disclosure requirement of naming the individuals with whom the item was discussed and the subject matter of any communication regarding the item.

Commissioner Fleurimond disclosed the individual names to whom he spoke and confirmed that he can make a decision regarding this item based on the substantial competent evidence presented at this meeting.

Commissioner Joseph disclosed the individual names to whom he spoke and confirmed that he can make a decision regarding this item based on the substantial competent evidence presented at this meeting.

Commissioner Smith disclosed the individual names to whom she spoke and confirmed that she can make a decision regarding this item based on the substantial competent evidence presented at this meeting.

Commissioner Smukler disclosed the individual names to whom she spoke and confirmed that she can make a decision regarding this item based on the substantial competent evidence presented at this meeting.

Commissioner Villard disclosed the individual names to whom she spoke and confirmed that she can make a decision regarding this item based on the substantial competent evidence presented at this meeting.

Vice Mayor Kramer disclosed the individual names to whom she spoke and confirmed that she can make a decision regarding this item based on the substantial competent evidence presented at this meeting.

Mayor Anthony F. DeFillipo disclosed the individual names to whom he spoke and confirmed that he can make a decision regarding this item based on the substantial competent evidence presented at this meeting.

The Mayor brought the item back for reconsideration, and shared that it was the decision of the Commission to continue meeting until late into the evening until 2:00 am, he doesn't feel that there was full participation at the meeting from what he saw on the zoom meeting screen, he was not convinced that all of his questions were answered regarding the traffic study and the project density, and wanted all of the questions answered. After the meeting, he met with staff to ensure that all his questions were answered regarding the multiple ingress and egress points, the hotel, financial impacts, reviewed the 2015 meeting, asked if a Texas U-Turn was required, and went through the comprehensive plan. He asked when there are inconsistencies between the comprehensive plan and the zoning code, if deference is given to the comprehensive plan, and City Attorney Espino responded that staff tried to interpret them consistently and that the comprehensive plan sets out the framework for the zoning code. The Mayor also asked staff about the 30-year agreement, which he reported is standard in City agreements and has used for other developers, but that it does not mean that it will take 30 years to build the project.

Vice Mayor Kramer asked if the vote is for a land use approval, and City Attorney Espino responded that it is a zoning matter, so that the jobs, revenue, and economic activity from the project should not be used as the primary basis for the Commission's decision. Her major concern with the project is the traffic, she doesn't think that 36th Avenue will relieve the traffic, thinks people will use 35th with the closest, fastest light and three turn lanes, and that 36th Avenue won't be convenient for people. She thinks that the Texas U-Turn option was discussed when the land was first purchased, that the developer should pay for it, thinks it should have been further discussed, doesn't think the City negotiated sufficiently for the Eastern Shores residents, and that the developer is taking advantage of the City. She feels that the 2015 Commission expected the project to have multiple access points, and not just another lane; shared that the police substation was not requested by the Police Chief or the City and should not be used as in lieu of impact fees, wants police officers to drive around Eastern Shores, and doesn't see the fire station benefiting the City but that it benefits the County. She thinks that the guard house presented is the same size as what is already there, so it would only add a benefit if it is larger or nicer; that only \$100,000 is proposed for artwork; that a boat slip was requested; she doesn't know if the canal will be dredged; and doesn't want for the project to be decided administratively.

Mayor DeFillipo was told that the police substation will be used as a marine patrol office to arrest or detain individuals. City Manager Scott feels that the Police Department does not need a substation at this time but would prefer a slip to patrol the area.

Commissioner Joseph asked why a police substation is required in the code. Justin Proffitt, Community Development Director, read the 2015 police substation code requirement, and shared that the applicant has agreed to provide a marine patrol mooring docking station, if it is approved by DERM (Department of Environmental Resources Management), or else the developer would pay the police impact fees. City

Attorney Espino shared that Phase I site plan approval and any significant, materials changes will return to the Commission, except for minor, administrative changes, and that the mooring docking station property is already City owned land and not in the canal.

Commissioner Smukler feels that the project issues should have been addressed in a workshop, is concerned that the developer is not paying impact fees, that the City has to pay maintenance and insurance fees which are a benefit to the developer and those residents, feels that the agreement terms were not negotiated well, and that there are no seawalls in Phase 1 for the boat to be parked; asked if the City has an agreement with Marina Palms; and that the boat slip should be located in a good spot or be close to the substation.

Justin Proffitt, Community Development Director, responded that the City is paying for common area maintenance and insurance fees, that the agreement includes a section for the boat slip to be placed in an optimum location, that the developer pays the difference between the capital improvement fees and the impact fees, and thinks it could be done in the future. City Attorney Espino explained the rationale for the police substation maintenance and insurance fees if a police substation were built anywhere else in the City, and that the Commission could remove the capital improvement fees provision and collect the impact fees instead.

Commissioner Smith asked for the Ordinance changes to be read into the record. Mayor DeFillipo asked if there's anything else the developer can add for art projects. Justin Proffitt, Community Development Director, shared that the zoning code and district does not require a minimum public art benefit, and that the applicant is planning on having public art in the project.

Commissioner Smith wants for the item to be voted down and return when it is in compliance with the 2015 ingress and egress requirement, and that the approval of the additional units was predicated upon the multiple entrance requirement.

The Mayor and Commission took a recess at 9:21 p.m.

The Mayor and Commission reconvened at 9:26 p.m.

Commissioner Smith asked if there's another road on 35th Avenue west to get out of the shopping center onto State Road 826, and that it might the time to extend the bridge to 34th Avenue as was done in Hallandale to go underneath. She feels that the development could be built and that it may sit vacant, that the developer is going to want to get as much as he can from the project for as little as possible, that the developer has the resources to properly implement the project, she doesn't want to alienate a good portion of North Miami Beach residents who pay about 38% of the taxes, she feels that this project required a workshop, thinks the City should wait to see if the developer gets access to the canal before proceeding, and wants for the courts to interpret any discrepancy.

Justin Proffitt, Community Development Director, shared that the medium cut on 35th Avenue will remain in place, that all the existing access points will stay the same, with no restrictions onto Mr. Grossfeld's property.

Commissioner Villard feels that most of the residents are in favor of the project but are concerned about traffic. She watched the entire last meeting online and thinks it's a great project with adequate access points for the residents. She asked the applicants for financial support for the Martin Luther King Jr. and Uleta Parks.

Justin Proffitt, Community Development Director, reviewed that the goal was to keep the public informed about the Planning and Zoning Board and City Commission public hearings, and TRAD (Technical Review of Application for Development) meetings, with the comments and documents posted online, meeting noticing, and he reviewed the Code requirement for multiple access points with direct east west access to and from State Route 826 so as not to overburden 35th Avenue.

Commissioner Fleurimond applauded the Mayor for taking a second look at this item. Commissioner Fleurimond also spoke to staff about the police substation and the police boat dockage, and was satisfied with the responses, and he also spoke to the City Attorney about private property lending itself to public uses, and who could enforce rules and regulations about loitering.

City Attorney Espino read the two text amendments, of having the buffer area off 35th Avenue as a “may” rather than a “shall” provision and having the police marine patrol substation tied to the feasibility of a mooring area behind the tot lot.

MOTION to approve Ordinance No. 2020-07 (Second and Final Reading), as amended, and subject to the two new provisions outlined above, made by Commissioner Fleurimond, seconded by Mayor DeFillipo.

Commissioner Smukler about the liner building amendments and if new drawings need to be made for it, and Justin Proffitt, Community Development Director, responded that no new drawings are needed as it will be further defined during the site review process.

Roll Call Vote

Fleurimond – **Yes**; Joseph – **Yes**; Smith - **No**; Smukler – **No**; Villard – **Yes**; Kramer – **No**; DeFillipo – **Yes**

MOTION PASSED 4-3 Commissioners Smith, Smukler, and Vice Mayor Kramer voted no.

4.2.Ordinance No. 2020-08 (Second and Final Reading) Approving Master Development Agreement and Conceptual Master Plan Request by Dezer Intracoastal Mall, LLC (Justin Proffitt, AICP, Director of Community Development)

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, PURSUANT TO SECTION 24-214 OF THE CITY’S ZONING AND LAND DEVELOPMENT CODE, APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY AND DEZER INTRACOASTAL MALL, LLC FOR A MIXED-USE PROJECT, KNOWN AS “INTRACOASTAL MALL,” ON A ±29.08 ACRES PARCEL OF LAND, GENERALLY LOCATED AT 3501 SUNNY ISLES BOULEVARD, 3745 NE 163 STREET, AND 3909 NE 163 STREET, IN THE MIXED-USE EASTERN WATERFRONT ZONING DISTRICT; APPROVING A CONCEPTUAL MASTER DEVELOPMENT PLAN FOR A PHASED DEVELOPMENT PROGRAM, CONSISTING OF A MAXIMUM OF 2,000 MULTIFAMILY RESIDENTIAL UNITS, 200,000 SQUARE FEET OF OFFICE SPACE, 375,000 SQUARE FEET OF COMMERCIAL SPACE, AND 250 HOTEL ROOMS, WITH MODIFICATIONS SUBJECT TO AN EQUIVALENCY MATRIX, ALONG WITH CORRESPONDING UNDERGROUND INFRASTRUCTURE, ±8.0 ACRES OF PUBLICLY ACCESSIBLE OPEN SPACE, AND PUBLIC SERVICES IMPROVEMENTS, ROADWAY IMPROVEMENTS AND SURROUNDING STREETScape; PROVIDING FOR EFFECTIVE DATE OF THE DEVELOPMENT AGREEMENT; PROVIDING FOR RECORDATION; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Vice Mayor Kramer reiterated that the 36th Avenue road intersection will be constructed prior to the commencement of Phase I including demolition, subject to FDOT approval, and MOT (Maintenance of Traffic) Plan shall require construction traffic to use NE 36th Avenue, and not 35th Avenue, as the main ingress and egress to the project. Justin Proffitt, Community Development Director, responded that the MOT Plan is submitted to the City, with inspections and monitoring done throughout the construction. City Attorney Espino shared that if the applicant does not comply with the listed conditions that they could not get the building permit, and that the item would return to the Commission if the applicant doesn't receive FDOT approval.

Commissioner Smith suggested using the language "to the complete exclusion of and not near to 35th Avenue".

Commissioner Fleurimond wants to ensure that there is no construction traffic going through 35th Avenue. He asked about the private properties that act with a public use and wants to give the City the first right of refusal for enforcement. Justin Proffitt, Community Development Director, responded that the issue will need to be ironed out with the developer in the future since it requires public access to private roads and that the matter will return to the Commission. Commissioner Fleurimond asked if site plan approvals can have a workshop before coming before the Commission in the future. City Attorney Espino shared that workshops currently don't exist in the Code but that the Code could be amended for future site plan procedure approvals. Mayor DeFillipo would like to have such an Ordinance presented to the Commission at the next meeting.

MOTION to approve Ordinance No. 2020-08 (Second and Final Reading), as amended, made by Commissioner Joseph, seconded by Commission Villard, subject to the conditions included that were read into the record.

Commissioner Smukler shared that the guardhouse design could be up to 14 years old and asked for clarification about the language. Justin Proffitt, Community Development Director, shared condition 9 that clarified that the design would have flexibility that will go to the advisory board and then the City Commission. She feels that the guardhouse could take up to 7 years to complete, that the Commission could hypothetically could not approve it, and she asked if the funds could be placed into an escrow fund and let the advisory board decide if they want to build it sooner rather than later, and that it's not complicated to get a bid for the guard house. Justin Proffitt, Community Development Director, shared that there will be road improvements, and that we don't know the total cost of the improvements at this time.

Commissioner Smith wants to talk about a bond and not leaving the City with a shell. She asked what is included in condition 10, termination of existing declaration of restrictions. Justin Proffitt, Community Development Director, responded that it references 1985 site plan restrictions from the original shopping center related to business operations, parking sharing and improvements to 35th Avenue that are unrelated to what they will be doing in the future. Commissioner Smith feels that it's been like pulling teeth to work with this developer and that she wants to suggest the language "amended or only if needed" in case something does apply. She feels that the City should be getting more than an arch or two from the developer, and that they must provide for free parks and a certain amount of free parking, and wants to ensure there is a bond to ensure the construction project is completed. City Attorney Espino shared that the City doesn't bond out the construction of the vertical improvements since they are private property construction, and that other components within the City jurisdiction are bonded. She asked what happens if they dig out the canal and then they don't finish it, and City Attorney Espino reviewed the possible options. She asked about impact fees since it is a public park with green space. Justin Proffitt, Community Development Director, shared that Eastern Shores does not have adequate park space, so the project requires in the new mixed zone a large amount of a minimum open space and green plus a waterfront promenade as capital improvement credits towards the park impact fees, and that there will be on-street parking, garage guest parking, garage

commercial parking that examined at the site plan approval phase, along with any possible public parking fees, and that the residents will walk to the park. She feels that the City works for the developer, with so few regulations and so little on the table for the City for a project of this magnitude.

Roll Call Vote

Joseph – **Yes**, Smith - **No**, Smukler - **No**, Villard - **Yes**, Fleurimond - **Yes**, Kramer - **No**, DeFillipo - **Yes**

MOTION PASSED 4-3 Commissioners Smith, Smukler, and Vice Mayor Kramer voted no.

5. ADJOURNMENT

There being no further business to come before the City Commission, the meeting was adjourned at 10:54 p.m.

Motion to adjourn made by Commissioner Joseph, seconded by Mayor DeFillipo.

Voice Vote

MOTION PASSED 5-2. Commissioners Smith and Smukler voted no.

ATTEST:

(SEAL)

Andrise Bernard, CMC, City Clerk