



City of Pompano Beach, Florida

CITY COMMISSION MEETING MINUTES

MARCH 23, 2010

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REGULAR ITEMS – CONTINUED

MOTION: To remove Item 20 from the table.

P.H. 2010-30; ORD. NO. 2010-: TAPE 1 – 7,679 ITEM 20

AN ORDINANCE AMENDING SECTION 155.005 OF CHAPTER 155, "ZONING CODE", OF THE CODE OF ORDINANCES OF THE CITY OF POMPAÑO BEACH, FLORIDA, BY REZONING PROPERTY LYING NORTH OF NW 8TH STREET, SOUTH OF NW 10TH STREET, WEST OF NW 3RD AVENUE AND EAST OF NW 4TH AVENUE WITH A PORTION NORTH OF NW 10TH STREET FROM RS-4 (SINGLE FAMILY RESIDENTIAL) TO RPUD (RESIDENTIAL PLANNED UNIT DEVELOPMENT) TO RPUD (RESIDENTIAL PLANNED UNIT DEVELOPMENT); PROVIDING FOR CONFORMANCE TO AN APPROVED MASTER PLAN; PROVIDING FOR AN ALLOWABLE NUMBER OF UNITS; PROVIDING FOR AN EFFECTIVE PERIOD OF APPROVAL; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

The Ordinance was read by title only.

MOTION: To adopt the Ordinance upon first reading.

Names of Commrs.	M	S	V Y	V N
<u>ROLL CALL</u>				
Burrie			X	
Dockswell			X	
Hardin	X		X	
Poitier			X	
Brummer		X	X	
Fisher			X	
<u>ROLL CALL</u>				
Burrie			X	
Dockswell			X	
Hardin	X		X	
Poitier			X	
Brummer		X	X	
Fisher			X	



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Gordon B. Linn, City Attorney, advised this item is quasi-judicial in nature; and if anyone wishes to testify on this matter, they must be sworn and may be subject to cross-examination by the City Commission or any other interested party. The individuals addressing the City Commission must state his or her name for the record, whether he or she has been sworn and understands the rules which governs these proceedings. However, City staff would make its presentations first, followed by the applicant and then any other person who wishes to speak. The Applicant will be given an opportunity for rebuttal. After the Applicant's concluding remarks, the hearing will be closed and the City Commission will then deliberate.

Mary L. Chambers, City Clerk, placed under oath all individuals, including staff, addressing the City Commission in this matter.

Gordon B. Linn, City Attorney, stated that previously, this exact rezoning appeared before the City Commission, but the request was denied. Subsequently, an Appeal, known as a Petition for Writ of Certiorari, was taken and the court agreed that the City did not have competent substantial evidence in denying the rezoning request. Therefore, this matter is back before the City Commission to decide the rezoning request in compliance with the court's decision.

In addition, Mr. Linn stated that he provided the City Commission with a transcript of the previous proceedings for its consideration tonight. Any determination that the City Commission makes, a consideration must be given to that transcript. Also, if desired, the City Commission has the discretion to take in only new evidence tonight, other than consideration of the transcript. He then questioned whether the City had any new evidence to present.

Robin Bird, Development Services Director, replied no.

Michael W. Moskowitz, Esquire representing the Applicant, 800 Corporate Drive, Suite 500, Fort Lauderdale, FL 33334, stated that he was present just to address the procedure that Attorney Linn outlined, so that they could preserve their objection for the record. He said that he does not believe that new evidence could be taken or the City Commission has that discretion. However, he does believe that the only action this Commission can take, is to act on the record before it is closed.



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Names of Comms.			V	V
	M	S	Y	N

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In addition, Mr. Moskowitz stated that yesterday, they filed a pleading that Mr. Linn is aware of. "A motion, which sets forth that argument." Naturally, this issue is decided in the State of Florida. However, there is a case by the Florida Supreme Court, Broward County vs. G.B.V. International, Ltd., 2001 Florida Supreme Court case, Cite as: 787 So.2d 838, that also dealt with a zoning matter and a Writ of Certiorari, et cetera. He then provided City Attorney Linn with a copy of that case.

Furthermore, the Court said, "When the order is quashed, as it was in this case, it leaves the subject matter, that is, the controversy pending before the tribunal, commission, or administrative authority, as if no order or judgment had been entered, and the party stand upon the pleadings and proofs as it existed when the order was made with all the rights of all parties to proceed further as they may be advised to protect or obtain the enjoyment of their rights under the law in the same manner and to the same extent which they might have proceeded had the order viewed not been entered." Basically, that means, once the Writ of Certiorari is granted, it comes back before the City Commission the moment in time before they took the action that the court has reversed.

Mr. Moskowitz, in explaining what occurred, stated that the City Commission passed the rezoning on first reading. However, on second reading, the City Commission heard the testimony, received all the evidence and then voted to deny the rezoning, but that action of denial has now been reversed. So, according to the Florida Supreme Court, they find themselves in the position they were one second before that vote was taken. And, as the transcript will reveal, what occurred is, the public hearing was closed, the evidence is in and this Commission must now act.

Finally, Mr. Moskowitz stated that obviously, they will participate in the process tonight, but wants to clarify that they object to the receipt of any new evidence by anyone. And, they would like to preserve their objection, regardless of the fact that they will continue to participate in the process.



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Mayor Fisher asked Mr. Linn if that was correct?

Mr. Linn replied no. He explained that there are other cases that lead to other reviews. Even as was stated here, in some situations, that would be a ridiculous position to be left in; saying that no evidence would be taken, because then, no decision could be made. Essentially, it all depends on the situation. That case just happens to fit this particular situation.

In addition, Mr. Linn stated that he has discussed this matter with other counsel and there is quite a good agreement that the City has a great deal of discretion on how it wants to proceed on it.

Joseph Wells, 789 Northwest 15th Place, Pompano Beach, FL 33060, questioned whether this item is for the rezoning of the property for a RPUD.

Mr. Linn replied yes.

Mr. Wells questioned whether the judge approved this appealed because the language the City Commission used was wrong.

Mr. Linn replied no. However, he made reference to it, but the final decision was based upon the fact there were no competent substantial evidence found in the record, which supported the denial of the rezoning.

Mr. Wells said, "If the City Commission wants to deny this, they must have evidence."

Mr. Linn stated, "They must have competent substantial evidence to support the denial."

Mr. Wells questioned whether the City Attorney could fight this, to support the City Commission's decision.

Mr. Linn replied, "If there is some great new evidence that you are going to present."



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Mr. Wells stated that on February 23, 2010, the City Commission tabled this item. Then, there was no new notice to inform the public that this item had been tabled. Additionally, the City's ordinance states that a 4'x4' rezoning notification sign must be posted on the property; however, the sign posted is only 2'x2' and questioned whether that was new evidence.

Mr. Bird replied that the City used the same size signs for all rezonings; therefore, it should be in compliance with the City's notice. The City's notice requirements also states that they do not necessarily have to have the appropriate size sign.

Altanese Campbell, 921 Northwest 5th Avenue, Pompano Beach, FL 33060, stated that she did not have any new evidence. However, she maintained that for two years, they have been coached by Ms. Miskel and the group wanted to do different things for them to obtain their support. However, they still oppose the rezoning.

In addition, Ms. Campbell stated that it was noted to the purchaser that this property was in a single-family district. However, the purchaser indicated that they could have the property rezoned.

Mr. Linn stated that the City Commission upheld the denial. However, the judge, in reviewing the record of that proceeding, did not support that denial.

Mayor Fisher asked Ms. Campbell if there were offers given to her to support the rezoning?

Ms. Campbell replied yes.

Mayor Fisher asked what were the offers?

Ms. Campbell replied they were taken to Lyons Road to see the villas they have constructed and offered a meal. However, after eating the meal, she still opposed the rezoning.



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Mayor Fisher questioned whether those kinds of actions are acceptable; i.e., to take neighbors out to dinner to try and influence their decision.

Mr. Linn replied, "If it had been one of you that would have been improper. But they do not get to really vote."

Lillian Orr, 901 Northwest 5th Avenue, Pompano Beach, FL 33060, stated, "The new evidence is, in her heart, I am hoping that it remains the same, zoned for single-family homes." The new evidence is, I am asking you, as I did in the past to please consider the same answers you gave before; to consider us again in the same position. The new evidence is, I am believing God that you are going to have a heart and see our way."

Marguerite Luster, 632 Northwest 20th Street, Pompano Beach, FL 33060, opposed the language that states, "We are going to do a portion north of Northwest 10th Street." She said they need to define the northwest portion.

Mr. Linn stated that this caption is just to put people on notice that some action is taking place in that area. The exact legal description location is, in fact, defined in the ordinance.

Johnny Jones, 2651 Northwest 5th Street, Pompano Beach, FL 33069, stated, "As new evidence, this is not in conformity with this City's plan." He also indicated that the City Commission should ensure that the buildings that are constructed in all of our neighbors are in conformity with the surrounding structures.

Bonnie Miskel, Esquire, Siegel, Lipman, Dunay, Shepard & Miskel, LLP, 5355 Town Center Road, Suite 801, Boca Raton, Florida 33486, stated that there has been no new evidence presented to the City Commission this evening. She said they actually had an expert that they were going to present to the City Commission with new evidence; however, he is simply going to confirm what the judge concluded.



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In addition, Ms. Miskel stated that the only new document that the City Commission received that they did not have on September 23, 2008, was an order by Judge Thomas Lynch granting certiorari. She then read the following pertinent part of that order:

“The responding Commission argues that the petitioner did not meet its burden of showing that the rezoning request...”

Mr. Linn stated, “This is not new evidence. There is no argument here.” He said this is only to take in new evidence.

Ms. Miskel stated that the entire record they are speaking to was part of the September 9, 2008 and September 23, 2008 meetings. Also, the City Commission’s backup includes the transcripts of those meetings as well as the Judge’s order.

Mayor Fisher asked which counselor actually took this to a higher court level?

Mr. Miskel replied, “Mr. Moskowitz.”

Comr. Dockswell stated that his interpretation of the community’s concern was that, they viewed townhouses like apartments and apartments like transient living. And that they did not want to see the quality of their single-family neighborhood deteriorate. So, he was looking for and Ms. Miskel was providing an assurance that her client would be willing to include in the condo documents declarations that would be filed with the County that would commit her client to disallow the purchaser to rent in the first year and only allow one rental per year thereafter. He said this was in an effort to assure the community that they would have the same kind of owner-occupied single-family residents as regular single-family would and questioned whether that was still her intent. He also asked if they would have those documents filed prior to the second reading.



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Ms. Miskel replied, "Yes." In fact, she has a new covenant, in which she tried to incorporate some of the other concerns that were raised that evening that she would be pleased to leave with the City Commission for consideration prior to the next meeting. However, the document would have to be modified to include the term of the lease. Meanwhile, they will work with Mr. Bird and Mr. Linn's office to ensure finalization of the form for the City Commission. Certainly, within a few days, prior to the next meeting. Nevertheless, she asked, "Will there be a next meeting?" Because she does not believe that, any decision was made on that point when Mr. Moskowitz raised that question initially.

Gordon B. Linn, City Attorney, replied yes. In fact, he told Mr. Moskowitz that there would have to be two hearings because the State law requires two readings for the issuance of a new ordinance. However, at the second hearing, he does not anticipate there will be any evidence taken. Nonetheless, there must be two hearings for this new ordinance.

Ms. Miskel stated that they would commit to revising and finalizing it, prior to the City's next meeting.

Comr. Burrie stated that one of the residents said, "She wanted us to think with our hearts." However, the City Commission did think with their hearts the first time, but the Judge at the Broward County Circuit Courthouse did not think that their hearts were in the right place, or it was not right because the Petitioner had proven, clear and convincing evidence. In addition, the City's Planning and Zoning Board indicated that the Petitioner met all the criteria. So, while they really do not want to make this vote tonight, they have to.

Mayor Fisher questioned whether they would commence building right away or within two to three years.

Ms. Miskel replied that the zoning was approved for 18 months; so, something must commence prior to that 18-month period. Otherwise, they will have to return to the City Commission with another Master Plan. Hopefully, the market will improve and they will have some reason to commence sooner than later.



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Finally, Ms. Miskel stated that one year and a half ago, the Petitioner intended to be “coming out of the ground” within 18 months, but at this point, they are unsure. However, they recognize that there are zoning limitations.

Mayor Fisher questioned whether the Flex Units expired on May 27, 2010.

Ms. Miskel replied, “Unless, they are otherwise extended.” Nevertheless, they are talking with staff about a stay on that day.

Comr. Poitier abstained from voting on the item because of his living proximity to the subject property, which is located directly across the street from his residence.

P.H. 2010-33; ORD. NO. 2010-24: TAPE 1 – 7,679 ITEM 21

AN ORDINANCE AMENDING CHAPTER 155, “ZONING CODE,” OF THE CODE OF ORDINANCES OF THE CITY OF POMPAÑO BEACH, FLORIDA, BY AMENDING SECTION 155.003, “DEFINITIONS,” TO PROVIDE FOR THE DEFINITIONS OF FAMILY DAY CARE HOME AND LARGE FAMILY CHILD CARE HOME AND AMENDING THE DEFINITION OF HOME BASED BUSINESS; BY AMENDING SECTION 155.157, “RS-1 SINGLE-FAMILY RESIDENCE DISTRICT,” SECTION 155.158, “RS-2 SINGLE-FAMILY RESIDENCE DISTRICT,” SECTION 155.160, “RS-3 SINGLE-FAMILY RESIDENCE DISTRICT,” SECTION 155.162, “RS-4 SINGLE-FAMILY RESIDENCE DISTRICT,” AND SECTION 155.163, “RD-1 TWO-FAMILY RESIDENCE DISTRICT,” TO ALLOW LARGE FAMILY CHILD CARE HOMES AS A SPECIAL EXCEPTION USE IN SOME RESIDENTIAL DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

The Ordinance was read by title only.



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REGULAR ITEMS – CONTINUED

MOTION: To adopt Ordinance No. 2010-24 upon second and final reading.

Robin M. Bird, Development Services Director, stated that he received a request from a citizen to obtain approval to expand her in-home family daycare, which they are operating legitimately within the Code of Ordinances definitions. However, because of several inquiries to include the city commission, staff had researched and found that the City's definition of "in-home family daycare" was slightly different from the Florida Statutes. Since then, staff has mirrored the statutes and incorporated the definition of a large family daycare in the proposed ordinance.

In addition, staff has established a Special Exception Use in the same residential district where in-home family daycare is permitted. As well as amended the definition of the definition of home occupation. The Planning and Zoning Local/Local Planning Agency has approved the proposed ordinance.

Reverend Marguerite Luster, 682 Northwest 20th Court, Pompano Beach, FL, questioned the impact the proposed ordinance would have on the tax base of the City, whether it would enhance or reduce property values. Furthermore, when she purchased her home, it was with the understanding that it would be a residential single-family district, not a business district.

Finally, Luster stated that she is not opposed to the Home Base Day Care Program, but rather the City redefining the definition of "Family Day Care Home" to allow Large Family Child Care Home as a Special Exception.

Names of Commrs.	M	S	V Y	V N
<u>ROLL CALL</u>				
Burrie		X	X	
Dockswell				X
Hardin	X		X	
Poitier			X	
Brummer			X	
Fisher			X	



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Names of Commrs.	M	S	V Y	V N

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REGULAR ITEMS – CONTINUED

Mayor Fisher requested that Mr. Bird highlight the action to be taken regarding this matter.

Mr. Bird explained that the term “large family daycare” is almost a misrepresentation and does not mean there will be twenty (20) or more children going in and out of the facility, creating heavy traffic in the area. Additionally, staff reviewed this proposal and individually objected to it. The Planning and Zoning Board/Local Planning Agency initially objected to it as well. Nevertheless, persistence of the applicant ensued; although, she was very understanding and accommodating to staff.

In addition, Mr. Bird stated that the applicant, in this case, has requested to expand a maximum of ten (10) children in a home to a maximum of twelve (12). He also explained that a special exception use in the Large Family Daycare requires the applicant acquire a license from the State and have a good history of operating within the neighborhood. They must have also operated a small daycare of up to a maximum of ten children for two years prior to requesting a state license. The applicant must, then have a two-year trial period in the neighborhood before requesting a special exception from the City. And notice of that special exception is given to the surrounding neighbors prior to approval.

Angela Fogle, Gentle Hugs Childcare, 2729 Northwest 6th Street, Pompano Beach, FL 33069, stated that she is a family childcare provider and the parking concern is unfounded and explained why.

While it is true, her facility provides for both teen and adult mothers, many other facilities do not accept the young babies that her facility accommodates.



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Willie L. Lawson, III, 510 East McNab Road, Pompano Beach, FL, as past chair of Northern Business Council, stated that they work hard in terms of trying to get businesses created in the City of Pompano Beach. He understands the rules and regulations as it relates to childcare facility, but the concern here is cost. Furthermore, Family Central has a fixed price and require a certain minimum age.

Oftentimes, if there is more than one child/sibling, it becomes very expensive, particularly, if the parents fall within a certain income guideline. So, there is a little gap because a family does not make enough money to afford childcare. Therefore, there is a need for the small family childcare.

Additionally, Mr. Lawson stated that he had the opportunity to observe the various activities in the surrounding area of Gentle Hugs Childcare, which is owned by the applicant, to include the traffic situation. He verified that the parking situation is more than adequate, as only five to six cars might be in the area at any one time. Therefore, he supports the proposed ordinance, as it is needed in difficult times like now.

Finally, Mr. Lawson encouraged the City Commission to approve the proposed ordinance with the appropriate supervision, because the State of Florida supervises the activities of home daycare centers. Moreover, the City needs to give business owners the opportunity to make money while providing a well needed service to the residents of the City.



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Names of Commrs.	M	S	V Y	V N

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Comr. Dockswell stated he objected to this item at the last meeting and feels strongly about it and wanted to articulate his objections more clearly. Notwithstanding, he read a paragraph, from Robin Bird's back-up Memorandum regarding the large family childcare homes. It says, "Staff surveyed several nearby cities including Fort Lauderdale, Wilton Manors, Hollywood and Lauderhill. Lauderhill was the only city surveyed that had a provision for large family childcare homes and this city strictly prohibited the creation of this use. The other cities did not address large family childcare homes in their codes, although Fort Lauderdale verbally said, they are prohibited."

Therefore, the way he sees this, some individuals who are very nice but persistent got some support from someone who is already in their daycare facility. The result of this process in the end is a far-reaching ordinance that affects RS-1, RS-2, RS-3 and RS-4, which are all the single-family home classifications there are in the City.

This means that upon adoption of this ordinance, any single-family homeowner in the City of Pompano Beach would be exposed to a person bringing an outside employee along with twelve kids to be in the house next door to them, every day. Therefore, he agrees with Reverend Luster that the residential areas are not zoned for businesses but for single-family living.

Furthermore, Comr. Dockswell felt that the homeowner as a caretaker of ten kids is already excessive. Therefore, we, like the other cities, in Broward County, if we have any reaction to this large family childcare home, should be emphatically rejecting it not making an over-reaching ordinance for the whole city just because we have one or two nice persistent people that have a compelling story to tell.



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Names of Commrs.	M	S	V Y	V N

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Finally, Comr. Dockswell stated that he would disallow this entirely, because we should not be looking for certain areas to do one thing and certain areas to do another thing. On the other hand, we do have the ability to put it in certain zoning codes and not another. Already, we are not including all the residential zoning codes even as it stands. His first choice, if the City Commission would support it, is to disallow this entirely. However, if the City was compelled by this one case, then he would at least ask that RS-1 and RS-2 residential codes be exempted from the ordinance.

Comr. Poitier stated that he spoke with Mrs. Fogle and what she was initially pushing to accomplish was that the greatest impact that could occur, is that a family daycare home could potentially be able to increase the number of children within the home by two.

As stated earlier this is a special exception and it will be for children that are related, with the same parent. Personally, he will vote for this as he thinks Mrs. Fogle worked hard in trying to get this approved. Moreover, she does a good job at her home taking care of the kids.

Comr. Hardin questioned whether a “special exception” is permanent.

Mr. Bird replied it is granted as long as the use continues. However, if there is a “discontinue to use” or a “change to use” then, the use is abandoned. It is not a non-conforming use; therefore, the rules for non-conformity do not apply. Nevertheless, they can abandon a special exception use.

Mayor Fisher clarified that the City currently allows ten children and they are expanding to twelve, which Mr. Bird confirmed.



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Further, Mr. Bird stated that staff does not desire to change the character of the neighborhood. So, once a request is submitted, staff reviews the criteria for the special exception, which requires that there be an existing need, and the use be compatible with the surrounding area, as well as, it cannot change the character of the neighborhood.

Comr. Dockswell questioned whether that meant permitting two additional kids along with an outside employee.

Mr. Bird replied yes.

P.H. 2010-35; ORD. NO. 2010-: TAPE 2 – 780 ITEM 22

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPAÑO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A FIRST AMENDMENT TO THE SERVICE CONTRACT BETWEEN THE CITY OF POMPAÑO BEACH AND CLARION ASSOCIATES OF COLORADO, LLC FOR A ONE-YEAR EXTENSION OF THE CONTRACT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

The Ordinance was read by title only.

MOTION: To adopt the Ordinance upon first reading.

ROLL CALL

Burrie		x
Dockswell		x
Hardin	x	x
Poitier		x
Brummer	x	x
Fisher		x