

**SPECIAL CALL CITY COUNCIL MINUTES  
MONDAY, MARCH 2, 2009 9:30 A.M.  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**A) Roll Call**

Mayor Sabin Abell, present; Vice Mayor Tom White, present; Councilmember Debra Fromang, present; Councilmember Bill Fish, present and Councilmember Kevin Sawnick, present. **Also Present:** James Gabbard, City Manager; Charlie Vitunac, City Attorney and Tammy Vock, City Clerk

**B) PUBLIC HEARING – QUASI JUDICIAL HEARING**

- 1. The Vero Beach City Council will hear an appeal of a Planning and Zoning Board Decision. The appeal has been filed by Leonard Enterprises, LLC (Thomas Leonard) concerning a Planning and Zoning Board case heard on January 15, 2009. The Planning and Zoning Board approved renovation of the existing 41,000 square foot Modern Age Furniture Store into a Professional Office/Retail/Restaurant Complex consisting of two buildings containing a total of 37,223 square feet with associated landscape, drainage and access improvements.**

Mr. Charles Vitunac, City Attorney, stated for the record that his son is an attorney who works for Mr. Bruce Barkett's Firm. He advised both sides of the appeal of this and told them if they would like he would not participate in today's meeting. He stated that he would continue working to help the procedure run smoothly and if there is a point where he feels that there is a conflict Mr. Wayne Coment, Assistant City Attorney, would take over.

Mayor Abell read the appeal that they would be discussing at today's meeting.

Mr. Vitunac said that some Councilmembers were presented with a package by the Appellant. Technically that package was evidence that should be presented during today's hearing. He asked that the Councilmembers who received the package to acknowledge that and state if it has influenced their vote and if they could proceed with the hearing in good faith.

Mr. Sawnick said that he did receive the information. Once he learned that he should not have received it he put it aside. He reported that it would not influence him and any decisions that he makes would be from evidence presented at today's meeting.

Mr. Fish reported that he did receive the information. He reported that when the site was Modern Age Furniture he was there several times. As far as site visits, it is hard not to see it. He reported that he was able to proceed with today's hearing.

Mrs. Fromang reported that she received the information and she did read it. She did not know if the information would influence her any more than any of the other information that she has received. She reported that she has not made a specific site visit, but she could see it from her neighborhood.

Mr. White reported that he did not receive the information.

Mayor Abell reported that he did receive the package and read some of it. Once he learned that they should not have received the information he did not read any more. He reported that it did not have any more influence on him than the other information he has received.

Mr. Vitunac stated that the Appellee has the right to cross-examine anyone who received the ex-parte communication.

Mr. Barkett did not wish to cross-examine.

At this time, the City Clerk swore in all witnesses who would be testifying at today's meeting.

Mayor Abell explained that all exhibits, diagrams, photographs and similar physical evidence referred to during the testimony or which you would like the Council to consider must be marked for identification and kept by the Clerk until the time for appeal has expired.

Mr. Tim McGarry, Planning and Development Director, gave his presentation to the Council (please see his backup material on file in the City Clerk's office marked as Exhibit A and Exhibit B). He showed on the screen a map of the area and the site plan. He stated that the approved site plan called for redevelopment to a mixed-use development. The number of parking spaces would be increased from the current 77 spaces to 94 spaces. He reported that the FAR would be reduced from .692 to .628, which would be more into conformity. The open space would increase from 4.47 to 6.46, which would also bring it more into conformity. The access from Indian River Boulevard would be relocated to intersect at the Vero Beach Book Center. Staff found that the site plan was compliant with City Land Development Regulations, however the Appellant raised a significant issue at the Planning and Zoning Board meeting, which was a lack of parking. The Appellee's Engineering Consultant used the shared parking methodology of the Urban Land Institute (ULI), which is applied to mixed-use projects with different hours of operation and operating characteristics. Since the Planning and Zoning Board meeting, staff reviewed the records that were used by the Board of Adjustment for the Three Avenues project. He reported that there is an expert here for the Appellee to go over this in more detail. He explained that although the ULI methodology does not specifically identify the City's parking regulations, Section 63.03 (f) provides full authority for shared use of existing parking spaces both public and private if it is approved by the Planning and Zoning Board. He explained that the ULI methodology showed that the peak parking should be 117 spaces compared to the

planned 94 spaces. The nonconformity would be improved, however the Appellant said Section 64.27 of the Code states that the parking situation be a nonconforming structure. Mr. McGarry said that definition was a Section of the Code that only deals with after a hurricane. Therefore, he did not think that was material. The Planning and Zoning Board found that the proposed parking met the intent of Section 63.02 of the Code and approved this with one condition, which was outlined in staff's report. They also added the addition of telemarketing. He stated that staff tried to mediate the issue with Modern One representatives and with Mr. Leonard. He reported that Modern One was willing to offer some concessions in reduction in intensity and additional parking spaces, but were insufficient to meet Mr. Leonard's concerns. Since then Modern One submitted a compromised site plan (on file in the City Clerk's office). He explained that they agreed to reduce the floor space for professional office to 9,900 square feet. The proposed squash court would now be self-storage. The compromised site plan adds five additional parking spaces and they would keep the same access location. They also have discussed four diagonal parking spaces on the street. This project is now more compatible with its neighbors. He felt that the compromised plan was more preferable than the plan that was approved by the Planning and Zoning Board. He said that they will see how these types of projects are going to work and the applicant might come back with future changes. He reported that staff recommends approval. He requested that the staff report and the previous staff reports and Planning and Zoning records be entered into the record (Exhibit A – staff's report, Exhibit B – application and backup material).

Mr. Fish asked how many parking spaces were proposed.

Mr. McGarry answered 99 spaces on site and four diagonal spaces off site in the City's right-of-way.

Mrs. Fromang asked if the City received any complaints about parking at the Three Avenues from people who have adjoining properties.

Mr. McGarry answered no. He said that their big complaint is that there is not any cross access.

Mr. McGarry reported that he did not have any witnesses to present today.

Mr. Chuck Garris, Attorney representing the Appellant, asked Mr. McGarry when his office was made aware that the new site plan was going to be presented.

Mr. McGarry said that he was made aware of it one week prior to the agenda going out.

Mr. Garris asked Mr. McGarry if he furnished a copy to him.

Mr. McGarry reported that a copy was given to Mr. Leonard.

Mr. Garris asked if a copy was furnished to anyone else other than Mr. Leonard.

Mr. McGarry reported that it went out with the agenda package.

Mr. Garris was not sure why this was not an ex-parte correspondence.

Mr. Vitunac explained that the City was not a party.

Mr. Garris said yes, but it was presented by the Appellee as something new and he has not had the opportunity to review and comment on it. He said that it was now subject to today's hearing.

Mr. Vitunac thought that this was discussed during mitigation.

Mr. McGarry said that the extent of what is proposed was not quite the extent of what they discussed during mediation. During mediation the Appellee was willing to go to less office space.

Mr. Vitunac asked Mr. McGarry if he was stating that Modern One proposed a smaller project during mediation, which was rejected and this compromised one is an increase.

Mr. McGarry answered yes. He stated that he did discuss this issue with Mr. Leonard after he received these materials.

Mr. Garris said that on February 20<sup>th</sup> Mr. McGarry indicated that more materials were forthcoming. He asked Mr. McGarry if he received additional documentation other than what they have before them.

Mr. McGarry answered no. He explained that he only received what was provided to him on the site plan.

Mr. Garris asked Mr. McGarry if he counted the parking spaces when he received the site plan.

Mr. McGarry answered yes. He said that there were 99 parking spaces on the site plan.

Mr. Garris asked how many compact parking spaces were on the site plan.

Mr. McGarry did not recall.

Mr. Garris asked Mr. McGarry to count the number of compact parking spaces on the site plan.

Mr. McGarry counted 25 compact parking spaces.

Mr. Garris asked how many were indicated on the site plan.

Mr. McGarry answered 27.

Mr. Garris reported that he counted 29 spaces. He explained that it was his point that this was something new that had to be reviewed in detail by staff and it was obvious that Mr. McGarry was having difficulty in counting the parking spaces, which he also had the same difficulty. That was the problem with this coming before Council without sufficient time to review the plan as presented.

Mr. Vitunac said that the Planning and Zoning Board approved a plan that was more intense than this one, which was the one being appealed. In the interim, Modern One reduced the impact of the plan that was approved, which would tend to be in favor of the bookstore.

Mr. Garris explained that his problem was that they have not had the chance to review this.

Mr. Vitunac asked Mr. Garris if he was aware that Mr. Leonard received a copy of the compromised plan.

Mr. Garris answered yes, but he was also advised in the Departmental Correspondence that there was going to be additional documentation.

Mr. Vitunac asked Mr. Garris if he was asking for a postponement.

Mr. Garris answered yes, if this was the documentation that was going to be considered today.

Mr. White asked Mr. Garris if Council agrees to postpone this, would there be any chance of the two parties coming to an agreement.

Mr. Garris said that was a possibility.

**Mr. White made a motion to postpone the public hearing.**

Mr. Barkett stated that he did not believe there were 29 compact parking spaces. He said that they thought they reached a compromise during mediation and then discovered the following day that the book center decided not to agree with the compromise. He said that they were not willing to renegotiate with the book center unless they come in with the authority to settle.

Mrs. Fromang asked Mr. Barkett if he wanted to proceed with the hearing based on the site plans that the Planning and Zoning Board approved and skip the compromised plan.

Mr. Barkett explained that the compromised plan was not ex-parte because it was submitted to the Planning and Development Department as a modification of their site plan. He said that they would be okay with postponing this hearing although he did not believe it would make a difference. He said that they would prefer to go with the site

plan that was approved by the Planning and Zoning Board because it gives them more office space. He stated that they have addressed the concern of the book center to the best of their ability.

Mr. Vitunac said that Mr. Barkett stated earlier that he might sit through another mediation if the book center had the authority to accept the mediation terms.

Mr. Barkett did not know if Mr. Gabbard or Mr. McGarry would be willing to go through another mediation. He stated that it was not his call that they would not go through another mediation, it was his client's call.

Mr. Vitunac said that there was a motion on the floor that has not been seconded. If Council wants to postpone the public hearing they would need to pick a time certain.

Mrs. Fromang requested to speak with the Appellant's expert.

Mr. Les Solin, Planning Consultant, introduced himself to the Council.

Mrs. Fromang asked Mr. Solin if Council took a one-hour recess, would that be enough time for him to review the plan.

Mr. Solin said that he would need more time. He explained that he would need to research the materials to compare the multipliers that they used.

**Mrs. Fromang seconded the motion to postpone the public hearing.**

Mr. Abell thought that they were here to review an appeal of the Planning and Zoning Board's vote. He did not see any need to delay this hearing.

Mr. White explained that his motion was to delay this hearing in order to give the Appellant time to review the compromised site plan.

Mr. White felt that they should postpone today's hearing to Monday, March 9, 2009 at 10:00 a.m.

Mr. Abell asked what they were appealing.

Mr. Barkett explained that the technical way to do this was to review Planning and Zoning decision and if Council likes the new plan they would make the new plan a condition of approval.

Mr. Garris explained that if Council does not like the site plan that the Planning and Zoning Board approved, then the new plan would not be allowed.

At 10:15 a.m. the Mayor declared a five-minute recess in order for Council to check their calendars.

Mayor Abell called the meeting back to order at 10:25 a.m.

Mr. Garris reported that both parties have agreed to mediate.

**Mr. White amended his motion to postpone the public hearing to Tuesday, March 10, 2009 at 9:00 a.m. and the motion passed unanimously.**

**Mr. White made a motion to adjourn today's meeting at 10:25 a.m. Mrs. Fromang seconded the motion and it passed unanimously.**

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