

The Special Meeting of the City Council of the City of Panama City Beach, Florida, conducted on March 27, 2014.

ROLL

MAYOR GAYLE F. OBERST

COUNCILORS:
JOHN REICHARD
RICK RUSSELL
JOSIE STRANGE
KEITH CURRY

CITY MANAGER:
MARIO GISBERT
CITY CLERK:
HOLLY J. WHITE
CITY ATTORNEY:
DOUG SALE

Mayor Oberst called the meeting to order at 12:42 P.M., with all the Council, the City Manager, City Clerk and City Attorney present.

ITEM 1 HEARING FOR THE APPEAL OF THE PLANNING BOARD'S APPROVAL OF THE MOPED/SCOOTER CONDITIONAL USE REQUEST AT 12616 FRONT BEACH ROAD.

Mr. Sale said this was an Appeal by a putative adversely affected party and he explained that the Council would need to determine if the Appellant was an adversely affected party and recommended that the Council entertain a "mini Hearing" in order to allow the Appellant to present evidence indicating that they believed themselves to be an adversely affected party, and when the Council was satisfied with the testimony, a motion could be made and if it was in favor of the Appellant, the Hearing could go forward. If the decision was against the Appellant, then give the courtesy of allowing the Appellant to finish the testimony.

Mr. Leonard said the notice requirements for the Appeal had been satisfied by the sign on the property and an ad in the News Herald. He added that the party making the Appeal and the original Applicant were notified of this Hearing.

For the Jennings Disclosures, Councilman Reichard visited the property as well as some of the properties owned by the Appellant, but had not spoken with anyone. Councilman Russell said he knew the property location and had spoken with Mr. Gisbert and Mr. Leonard to get general information about the Planning Board's decision. Mayor Oberst said she knew the property location and spoke with Staff in general asking about the Appeal and who made it. Councilwoman Strange said she knew the property location and talked with Staff on the same information as the Mayor. Councilman Curry said he knew the property location and talked with no one. Mr. Sale asked both parties if they wanted more details about the Staff conversations. There was none. Councilman Reichard added that he had spoken with Mr. Leonard with the same basic conversation.

Mr. Leonard said this was a request for a Conditional Use to locate a scooter rental operation in a CH Zoning District at 12616 Front Beach Road and Mr. Adi Rahatlev, known as the King of Scooters, made the original application before the Planning Board. Mr. Leonard identified the location on the map and said it had previously been a t-shirt business. No additions were planned for the building and the parking lot would be redone to allow the thirty-five (35) scooters. The Planning Board considered the application on February 10, 2014, and approved the request by a vote of seven to zero (7-0) with conditions that were: installation of fencing around the training area, limiting the operation to thirty-five (35) scooters, and a restriping of the parking lot to alleviate the non-conforming status of the previous parking lot allowing vehicles to back out into the right-of-way. The Planning Board entered their Order on February 14, 2014. On February 21, 2014, the Order was appealed. Included in the Packet for this meeting were the Conditional Use criteria, the Appeal, the Planning Board Order, Staff Report, original Application, and Planning Board Minutes. He entered that Packet into the record.

At this juncture, witnesses who wished to testify and present competent substantial evidence were sworn. Mr. Sale asked if anyone objected to Mr. Leonard testifying without first being sworn; there were no objections.

Mr. Leonard continued that the restriping was started and would not be completed until the Conditional Use was approved in case the Council wanted to add additional conditions.

Mr. Sale said at this point, the Applicant was required to present information or evidence indicating that she was an adversely affected party. At the request of the Mayor, he also explained the definition of an adversely affected party and gave an example. He explained that this affected party must have an interest protected by the Code, either by the LDC or the Code of Ordinances. He added that the party's interests must be materially affected to a greater degree than the public at large.

Ms. Colleen Swab, 13416 Front Beach Road, said she currently had a business located at 12526 Front Beach Road and that she was concerned about her customers and their safety. With her shop running thirty scooters and the new shop running thirty scooters and the two shops being less than 75' apart, she feared that the scooters would collide or add to the congested area. She said that area was already so congested that there were issues of bikes being ridden on the shoulders of the roadway. She added that she was concerned with the Applicant's other store being less than one-half mile away and another twenty-five scooters out front and forty-five scooters in back. Ms. Swab said she was concerned about her customers running into his customers due to the close proximity and that she thought this was an adverse effect. She said her business had been in operation for thirty years and they knew how to train the people. She said she was concerned about her customer's safety as well as the other drivers on the roadway.

Mr. Sale asked the Applicant if she had any questions for Ms. Swab. There were none. Mr. Sale asked the Council if they had any questions for Ms. Swab on simply whether she was an affected party.

Councilman Reichard asked Ms. Swab where her shop was located and she identified her business on the map and the site of the potential new scooter shop. He asked Ms. Swab if she rented thirty scooters from that location and she replied affirmatively.

Mayor Oberst asked Ms. Swab how she was adversely affected. Ms. Swab said with the new business opening, it would affect her customers as it was right next door to her shop. She said she was concerned about the safety issues.

Councilman Curry asked Ms. Swab to state specifically why she felt she was an affected party with an interest protected by the Code, either by the LDC or the Code of Ordinances. Ms. Swab said she guessed that she was not but that she felt the Council was concerned about safety issues which she presented.

Mayor Oberst asked about more details of her safety concerns. Ms. Swab said she felt that their business next to her location and both businesses putting out scooters would create safety issues because she thought there was already heavy congestion in that area and enough scooters on the roadway. She mentioned possible additional sanctions, such as vests and flags, and then questioned why more scooters would be allowed on the road.

Mr. Sale said the safety issues raised were, by and large, shared by the community as a whole and that Ms. Swab had not expressed a degree of impact that was materially different from the public at large in terms of general safety. The two points made by Ms. Swab that related to precedence already established by the City Council as to who would be adversely affected and entitled to present evidence that the Council could consider were: first, that her property was 75' away from the subject property and the City Council had previously indicated that someone within 300' of a subject property would be presumed to be adversely affected, since that was the radius of notices of zoning matters which were mailed by the City, presuming that those parties had an interest different from everyone else in the City who did not receive such notices; second, Ms. Swab indicated that she was concerned about the proximity of the two businesses and that she would have to more closely watch her customers because of the inflow of bikes from the other business. That was something unique to Ms. Swab. It would be a policy question whether that was materially significant enough. He said those two issues were the only matters of law that he heard which were distinct from what affected the public generally. Mr. Sale said he thought the Council had the authority under the prior precedent to find Ms. Swab adversely affected, and could go forward with the substance of the Hearing.

Councilman Reichard addressed Ms. Swab and her concern that 30 and 35 scooters together were too many; yet at her other location, there were approximately 80 scooters in a smaller space. He understood that Ms. Swab's other location was grandfathered so a training area was not required. He questioned whether there was a limit to the number of scooters at one location and that the two locations discussed had more frontage together, had a training area, and only 65 scooters. Ms. Swab responded that the 80 scooters were being readied for other stores and were being prepared to go to the Police Department for stickers and could not go on the road. She said there would not be 80 scooters going out of the one store. Ms. Swab added that the training area for her riders were on a public back road.

Ms. Sale said, setting aside the obvious concern about competition, given that her shop was 75' away, if her business was an ice cream shop or a business that sold anything, would the Council find her adversely affected by having to watch her customers more closely. The Mayor asked for a motion whether Ms. Swab was adversely affected or not in order to continue the Hearing. Councilman Reichard questioned the reason for her to be adversely affected. Mr. Gisbert said distance, because in prior meetings, the Council has set the distance at 300' for any adversely affected party. Councilwoman Strange asked about the ice cream shop scenario. If Ms. Swab had an ice cream shop and Mr. Rahatlev wanted to open an ice cream shop, if it would be

the same situation. Mr. Sale said yes, that competition was irrelevant but an ice cream shop was not a Conditional Use, and could be opened as a matter of right. He explained the purpose of having the Appellant as an adversely affected party was so that the party could articulate the reasons why they were more strongly adversely affected than anyone else living on the beach. Mayor Oberst recommended that the Council determine that Ms. Swab was adversely affected in order to hear her evidence. **Councilman Curry made the motion finding that Ms. Swab was adversely affected. Second by Councilwoman Strange. The motion passed by the unanimous roll call vote recorded as follows:**

Councilwoman Strange	Aye
Councilman Curry	Aye
Councilman Reichard	Aye
Councilman Russell	Aye
Mayor Oberst	Aye

Mr. Robert Kauffman, attorney, said he was here representing Mr. Rahatlev and Ms. Tzala in the Rehearing for the Planning Board's approval of the Conditional Use request. He said this location was proposed to operate at the maximum thirty-five (35) scooters. He said the Council already had sufficient evidence introduced by Mr. Leonard in order to grant the application. What the Council would hear today from Ms. Swab and Mr. Kauffman was additional evidence for consideration. He said the Planning Board placed conditions which addressed Staff's concerns when the application was granted. He said the only significant area of concern for Staff was the flow of traffic within the parking lot itself which was addressed by conditions inserted by the Planning Board. Mr. Kauffman reminded that there were no restrictions within the LDC for proximity of scooter locations to one another and no general restrictions on competition of that nature. He said the Planning Board and City Staff found that this application met all of the criteria for a Conditional Use. The two issues being discussed today were health and safety, and congestion. He continued that the black and white requirements in the Code were met which left the gray areas of the health and safety and congestion. Regarding congestion, he said the proposed use could not materially increase congestion on public streets surrounding the area and emphasized materially. He read where Staff had noted that the scooter business would not significantly increase traffic congestion. Staff did not raise any concerns about the proximity of the two scooter business locations because most likely that was not a specific criteria addressed in the LDC, and that the scooter businesses were required to be located in an area such as this, a heavily traveled Tourist Corridor. He said scooter businesses were directed to locations such as this so an objection about congestion was not valid for this particular Use. Regarding health and safety, this was a critical issue for the business and he reminded that the King of Scooters would have to meet the regulations of the new LDC, specifically providing a training area. He said all renters would be required to go through the training area and not be released onto the streets until they could safely operate the scooters. Mr. Kauffman said Mr. Rahatlev had an excellent reputation and had operated two locations in the City for some time. He said he believed that all evidence heard and presented today would show that all conditions were met, and on that basis the Planning Board's approval of the Conditional Use should be affirmed.

Mr. Leonard testified that the application met all of the Use requirements with the imposed conditions. He said the application met the required parking for the thirty-five scooters once the parking lot was restriped. He said the location exceeded the required distance from residential areas and the training area size and fencing were met. He confirmed that all of the black and white issues were met. Regarding health and safety, Mr. Leonard testified that this proposed Use was designed and would be operated in a way which would protect the public safety, health and welfare. Mr. Kauffman asked Mr. Leonard if he believed this Use would have an adverse effect on the existing traffic patterns. Mr. Leonard said no. Mr. Kauffman asked if City Staff had concerns based on the LDC criteria about the potential proximity of these two scooter businesses and Mr. Leonard replied no and that the only issue was the non-conforming parking which was addressed with the restriping. He said under the old use, the traffic was more erratic and unsafe and now wheel stops were required which would prevent vehicles from backing out onto Front Beach Road. The traffic pattern should be improved if the conditions imposed were approved by Council. Mr. Leonard testified that the proposed scooter business would not materially increase the traffic congestion of the surrounding area. Regarding parking, after his personal inspection, there were more than the required number of parking spaces for the thirty-five scooters and employees. Mr. Kauffman asked Mr. Leonard if this type location was suited for a scooter rental business. Mr. Leonard said yes because the LDC required a scooter rental operation to be within 500' of Front Beach Road and it met the distance requirements from

residential areas. He also testified that most of the other scooter rental businesses did not meet the new LDC requirement for a training area. Mr. Leonard said he was not aware of any complaints or enforcement problems with the other two locations for King of Scooters. During informal discussions with Chief Whitman, Mr. Leonard testified that Mr. Rahatlev had a good reputation for operating scooter rental businesses. Mr. Kauffman had no further questions. Ms. Swab had no questions for Mr. Leonard. The Council had no questions for Mr. Leonard.

Ms. Lea Tzala said she was testifying as representative for Mr. Rahatlev, the King of Scooters. She said she was personally familiar with the application presented to the Planning Board and how the business was proposed to operate at this location. She said it would be operated in the same manner as his other two locations. Mr. Kauffman asked if the business would open before it complied with all health and safety restrictions and Ms. Tzala said no. He asked if she was aware of any Code violations issued to the King of Scooters and Ms. Tzala said no. He had no further questions for Ms. Tzala. Ms. Swab had no questions for Ms. Tzala. The Council had no questions for Ms. Tzala.

Mr. Sale said this would be Ms. Swab's opportunity to present evidence as the Applicant had already presented evidence in support of the Application. He added if the LDC criteria was met, the City was obligated to grant the Application. He asked Ms. Swab to present evidence regarding the factors listed in the general Conditional Uses and specifically motorcycle rentals. He gave Ms. Swab a copy of those lists.

Ms. Swab said Condition "A" regarding health and safety was her issue because her business was only 75' away from the proposed location and she was concerned about more scooter congestion in such close proximity. She said she was not worried about merely his customers leaving the shop but also customers coming in as that area had heavy traffic. Ms. Swab said she would have to watch her customers more closely if this business opened. She said protecting her customers was her only concern. She said this new shop was not grandfathered. Mr. Kauffman said he had no questions for Ms. Swab. The Council had no questions.

Mr. Sale asked if there were public comments regarding any testimony. There was none.

Mr. Kauffman said City Staff had no particular concerns about the close proximity of the two scooter businesses and that was not a protected condition in the LDC. He said although this was a Conditional Use, the LDC said it shall be approved if the City found that it met all of the criteria. Mr. Leonard testified that he believed that Condition "A" was satisfied and City Staff was satisfied. Ms. Tzala testified that all renters would be given training and helmets and not allowed on the streets until they could safely operate the scooters. He asked that the Council affirm the Planning Board's decision to grant the Application.


Mayor Oberst asked if the other Council members found where any of the listed items A-L were being violated in granting this Conditional Use. There were no comments. **Councilman Russell made the motion to affirm the Planning Board's decision. Second was by Councilman Reichard.** The Mayor called for comments. Councilman Curry added with the conditions imposed by the Planning Board. Mr. Sale asked if the Council concurred with the factual matters presented by the Applicant and the testimony presented. **Councilman Russell added that he agreed with the testimony presented by Mr. Leonard. Councilman Reichard agreed also.** The Mayor asked if there were any further comments; there were none. **The motion passed by unanimous roll call vote recorded as follows:**

Councilwoman Strange	Aye
Councilman Curry	Aye
Councilman Reichard	Aye
Councilman Russell	Aye
Mayor Oberst	Aye

Mr. Sale said he would prepare a draft Order and circulate to both sides for comment, and have ready for the Council approval as to form at the next meeting.

With nothing further, the meeting was adjourned at 1:35 P.M.
READ AND APPROVED this 10th of April, 2014.

IN THE EVENT OF A CONFLICT BETWEEN THE FOREGOING MINUTES AND A VERBATIM TRANSCRIPT OF THESE MINUTES, THE FOREGOING MINUTES SHALL CONTROL.


Mayor

ATTEST: 
City Clerk

Special Meeting
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