

The Special Meeting of the City Council of the City of Panama City Beach, Florida, conducted on June 26, 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

ITEM 1 REHEARING OF NOTICE OF INTENT TO ISSUE A LOCAL DEVELOPMENT ORDER FOR AMUSEMENT PARK RIDES AT 101 BLUEFISH DRIVE, PIER PARK.

Mayor Oberst called the meeting to order at 12:45 P.M., with all the Council, the City Manager, City Clerk and City Attorney present.

The Mayor explained that Mr. David Theriaque was representing the City today because Mr. Sale, City Attorney, was counsel for the Staff and Planning Board. Mr. Theriaque asked each attorney to identify himself and his client. Mr. Sale said he represented City Staff and Planning Board, Mr. Doug Smith said he represented the Simon Property Group, Mr. David Powell said he also represented the Simon Property Group, Mr. Bob Hughes said he represented the applicant and Mr. Mike Burke said he represented Miracle Strip Carousel.

Mr. Leonard explained the Notice requirements for the Rehearing were met.

Regarding the Jennings Disclosures, Councilman Reichard said he had met with Ms. Jenny Meeks about two months ago, toured the proposed site of her new location, and heard her concerns about the new amusements; spoke with Mr. Hughes about the scheduling of this Hearing; attended the Planning Board Meeting but did not speak; and spoke numerous times with Staff and the City Manager about the LDC, Development Order and DRI. Mr. Theriaque asked if he could base his decision solely on the evidence, testimony and argument presented today. Councilman Reichard said yes.

Councilman Russell said he had spoken with the Meeks who favored their request and spoke with Mr. Leonard and Mr. Gisbert numerous times. Mr. Theriaque asked if he could base his decision solely on the evidence, testimony and argument presented today. Councilman Russell said yes.

Mayor Oberst said she had spoken with the Meeks numerous times as they were building their project but not about this matter and spoke with Staff numerous times but no other interested parties. Mr. Theriaque asked if she could base her decision solely on the evidence, testimony and argument presented today. Mayor Oberst said yes.

Councilwoman Strange said she met with the Meeks, Mr. Gardner, Mr. Gisbert, and Mr. Leonard. Mr. Theriaque asked if she could base her decision solely on the evidence, testimony and argument presented today. Councilwoman Strange said yes.

Councilman Curry said he toured the Meeks development, spoke with both several months ago and recently spoke with Mr. Leonard. Mr. Theriaque asked if he could base his decision solely on the evidence, testimony and argument presented today. Councilman Curry said yes.

Mr. Theriaque asked the attorneys if they had any questions for the Council concerning these disclosures. Each attorney stated no.

Mr. Theriaque said today's Hearing would have two parts, the first being whether Mr. Burke's client had standing to ask for the Hearing and he explained the portions of the Code pertaining to this issue. If the Council voted that Mr. Burke's client did not have standing, the Hearing would be concluded and the Planning Board's decision upheld. If the Council decided that Mr. Burke's client did have standing, then the Hearing would proceed to the merits. Mr. Theriaque continued that the Council had a letter from Mr. Burke with three issues why the application should be denied.

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Mr. Theriaque read the LDC's definition of an "adversely affected person" and explained in many ways, this tracked the Florida Statute in that a party must demonstrate that they had an interest greater than the general public and were adversely affected as a result of the approval of the application. At this juncture, the witnesses were sworn.

Mr. Doug Smith, attorney for the Simon Property Group, stipulated that he could live with that presumption of what related to the issue of standing for the purpose of this Hearing and move to the merits of the case. Mr. Hughes said his client agreed with Mr. Smith in this matter. Mr. Theriaque said parties could not stipulate to standing and the Council still needed to make a threshold decision that standing existed and Mr. Burke provide a factual predicate of standing. Mr. Burke called Mr. Teddy Meeks.

Mr. Teddy Meeks, owner of Miracle Strip Carousel LLC, said his property was approximately Two Hundred Fifty Feet (250') from the other location involved in this Rehearing. He said the biggest issue was the fairness of the Development Order as he felt they had been held to a higher standard. He said they observed processes which they felt were not being followed and raised questions with City Staff. For their current site, the Meeks had a Conditional Use Hearing which was attended by an attorney from Pier Park who questioned the look of the new site, fencing, and parking and traffic questions. He said this attorney also questioned the traffic that would be generated by the amusement park business coming to their prior location.

Mr. Doug Smith, representing the property owner, asked Mr. Meeks if Miracle Strip Carousel had previously operated an amusement park on the site in question. Mr. Meeks said yes from March 2010 through the end of 2013.

Mr. Burke said the Council had a longstanding rule that any properties within Three Hundred Feet (300') of a Conditional Use were required to receive notice. His clients were within Two Hundred Fifty Feet (250') so following this precedent, his clients would meet the definition of an adversely affected person and were more affected than anyone else because their property actually adjoined the Pier Park DRI. Any additional impact within the Pier Park DRI would impact his clients. Mr. Burke continued that Pier Park had sent an attorney to the February 11, 2013 Planning Board meeting who questioned the traffic impact. Mr. Smith had also stipulated that his client would be considered an adversely affected party and had standing to request the Hearing.

Mr. Sale said Staff deferred on the standing issue due to the precedent set by Council that because of the proximate location of the parcel, there would be presumptive standing. Apart from that presumption, based on the testimony heard today, Mr. Sale said he did not think the Council had heard a basis for standing. Mr. Meeks had said he was concerned about traffic generated by this proposed amusement park but the Council did not hear evidence distinguishing the traffic potentially generated by this amusement park from the traffic generated by any other use permitted at the same location that was not an amusement park. Mr. Burke responded by noting that Mr. Sale had already stipulated at the Planning Board meeting that his clients were adversely affected based on prior rulings.

Mayor Oberst asked Mr. Theriaque to repeat the protected interests. He said the protected interests were related to health and safety, police and fire protection, densities or intensities of development, transportation facilities or recreational facilities. Regarding transportation, he said the Council would need to have heard that the witness would be adversely affected because of the increased traffic. He said he would leave it to the Council members whether they heard such testimony or was it a general concern of the overall traffic within Pier Park.

Councilman Reichard said "competition" had not entered into these discussions. Mr. Theriaque replied that competition was not a legitimate basis for standing under the City's LDC.

Councilman Curry asked Mr. Theriaque for his opinion. Mr. Theriaque said he did not believe he heard evidence from Mr. Meeks that his business would suffer an adverse effect; he believed that he heard that Mr. Meeks was concerned about traffic in Pier Park, not the traffic related to his property. He did not hear concerns voiced about noise or lighting. At this point, the Council took public comments to the standing issue only.

Ms. Felicia Cook, resident of 104 Sunset Circle, said she personally heard evidence from Mr. Meeks about density and intensity of development.

Ms. Jenny Meeks, owner of Miracle Strip Carousel LLC, said that this new business would affect them because any event which brought more people into Pier Park caused additional traffic down L. C. Hilton that could turn right onto Powell Adams and block the entrance into their property. Mayor Oberst asked if she attributed the increased traffic to the new amusement park. Ms. Meeks said she attributed the increased traffic to anything that would increase the density on the Pier Park property and she opposed any new development that affected the traffic beside her property. Ms. Meeks added that the DRI was specifically correlated to 2002 traffic

studies and each specific business planned had the number of proposed trips per day and night. Nothing in the DRI referenced an amusement park and how it would affect the area around it.

Mr. Smith said it was highly unusual for one of the owners to make evidentiary arguments under public comment. He said he should have the right to ask questions of Ms. Meeks concerning the testimony she just gave to the Council and Mr. Theriaque agreed. Mr. Burke said it was equally unusual that the Council would have two parties stipulate to standing and then there be an issue whether or not his client had standing. More comments ensued concerning the testimony and standing. Mr. Smith said when the DRI was approved, it was with assumptions for the number of trips going into the DRI; the reason no traffic study was submitted by his client was because it was not required and had already been taken into consideration. He continued that his client's use was less intensive than when the Meeks used the same site.

Mr. Theriaque clarified that he was not making a finding for the Council and that a party's stipulation was not binding on court. He said it was ultimately the City Council's determination.

Councilman Curry made the motion that they had standing. Second was by Councilwoman Strange. Councilman Curry said in looking at the definition of standing, whether it was legal was different than whether it was right. He said he felt they had standing and that the merits of the case would support it. Mayor Oberst said she personally believed they did not have standing because they were not more adversely affected than others in Pier Park or land adjoining Pier Park. Councilwoman Strange mentioned not being able to enter into their property from Powell Adams Road. The Mayor said other businesses could not be entered due to the traffic. Councilman Reichard said before the property was developed, it should have been anticipated that extra traffic would happen. Councilman Russell added that Powell Adams Road had always had that problem during the heavy part of the season, not necessarily because of Pier Park. Councilman Reichard said when Miracle Strip Carousel was originally built it created more traffic for Pier Park. Councilwoman Strange said the traffic studies were outdated and that no one would have anticipated the amount of traffic now being experienced. Mayor Oberst said that was what DRIs did, taking the future traffic, stormwater, streets, water, and sewer needs into consideration.

Councilman Reichard asked Councilwoman Strange what evidence she heard which swayed her decision and Councilwoman Strange replied the density issue. The Mayor asked Mr. Theriaque if density related to standing as Mr. Meeks did not mention density. Mr. Theriaque said that was the test as what evidence was presented. Councilman Reichard asked if Mr. Theriaque meant density could not be considered a deciding factor in their decision. Mr. Theriaque said if the Council members believed they heard testimony from Mr. Meeks that increased density would create an adverse impact on their property which he suggested would be an increased intensity since this was an amusement park and density was a residential issue. At this juncture, Councilwoman Strange asked Mr. Meeks testimony to be replayed and the court reporter replayed the tape after a brief recess. Mr. Smith and Mr. Burke discussed the questions asked during Mr. Meeks testimony. **With nothing further, the motion passed by majority roll call vote recorded as follows:**

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

The Mayor called for a recess at 1:55 P.M. to have the Regular City Council meeting and announced that the Rehearing would be continued upon its conclusion.

Following the City Council Meeting, the Rehearing was called back into order at 2:40 P.M.

Mr. Leonard said on June 9, 2014, the Planning Board considered the Notice of Intent to issue the Development Order and approved it five to zero (5-0). He entered into the record the Staff Report, the Development Order Application, the Development Order Application Request for Information and Response, Mr. Burke's Appeal, the Planning Board Order, and the draft Planning Board Minutes.

Mr. Theriaque said there were three arguments raised by Mr. Burke: 1) the Development Order application violated the LDC because it required a Conditional Use and one was not applied for nor granted; 2) the Use was not allowed because the Pier Park DRI did not permit amusement parks; and 3) the square footage authorized in the center commercial category of Pier Park already had too much square footage and thus the proposed amusement park could not be approved. He continued that there were two sub issues for the Council to decide: 1) whether Mr. Burke's June 17th letter noted as "C" was not filed when the initial request for the Rehearing was timely filed; 2) whether compliance with the DRI Development Order was part of the Council's

review. Mr. Theriaque said the Code only referred to a Rehearing in the context of pointing out violations of the Comp Plan and the LDC and that the DRI Development Order was not part of the LDC. He said it would be valuable to address these threshold questions because if the Council decided not to hear the DRI Development Order compliance issues, the scope of the testimony would be limited. If the Council determined that letter "C" was untimely, then the square footage questions would not be addressed.

Mr. Burke said he believed his June 17th letter was timely filed and that the City's Code did not prohibit amending an appeal. In order to file an appeal, the applicant was only allowed five days from the advertisement of the Development Order. He said the fundamental fairness issue was whether the other side had any notice of it and they did have notice. He said Mr. Sale would argue that there was a requirement in the Code that Staff would provide a report five days before the Planning Board meeting which would set forth the issues. That was not a requirement on the appealing party. He submitted that his filing was timely and the other sides had plenty of time to read the arguments and prepare the biennial report.

Mr. Burke said the Development Order itself stated that it must be in compliance with the Comp Plan and the LDC. Testimony from Mr. Leonard at the Planning Board Hearing was that he did consider that aspect for the no down-zoning. He said whether the Council could consider the entire DRI regarding the square footage, testimony would be given that the DRI Development Order established certain criteria by which Pier Park could be developed and part of that regulation was how much the developer could build within certain areas. Mr. Burke said their position was that if the square footage exceeded the amount allowed, then extra steps would be required and in this instance, on the central commercial area, it was over-built.

Mr. Burke continued that for Staff to issue a Development Order that relied upon the DRI Development Order, the DRI Development Order must be in compliance. If not in compliance, no permits should be issued related to Pier Park. He said the developer exceeded what they had been required to do and until it was fixed with a Notice of Proposed Change process, the Council could not approve the Development Order.

Mr. Sale said at this point the discussion involved the two sub issues, whether letter "C" was timely and whether the Council should consider the DRI issues. He said the preliminary issue was how much of the DRI, if any, was the Council going to consider. The argument that Pier Park was overbuilt under the DRI had two potential defects and Staff decided that both defects prevented the Council from considering "C". Regarding the timing issue under the LDC, the City had created a system to allow points of entry for parties who were adversely affected by a decision of this City. One level was the baseline which was the Notice of Intent proceeding. Under this baseline, Staff would make a decision on an application, which in this case was an application by Mr. Hughes' client to build an amusement park. Staff decided it was appropriate and gave Notice of that decision. A point of entry would then allow an adversely affected party to take the jurisdiction away from Staff and give to the Planning Board. This is what Mr. Burke did in behalf of his client.

Mr. Sale read that *"an Adversely Affected Person may file a written request for a hearing with the Building and Planning Department within five (5) days of Publication of the Notice of Intent. The written request for a hearing shall identify the specific sections of the Comprehensive Plan and/or the LDC that the application violates and describe how such sections are not met."* Mr. Sale said if the request was not received within the five days, it was late and there was no other point in the Code to raise it. He said that Mr. Burke had stated that once a piece of paper was filed with the Department that it could be amended at any time. Mr. Sale argued that was not the way the Code was written because on the other side, there was an applicant waiting to move forward with his project and the City had stopped it. He said if a valid reason was not furnished in the five days, then the applicant's project could move forward. He read aloud Section 10.06.03 and said Mr. Burke's original letter only had two issues and Staff prepared the answer to the objections and the public was informed. "C" was added much later and it should not be considered, not merely for this case but for the precedent it would set.

Councilman Reichard asked about the "C" that was mentioned. Discussion ensued concerning a June 17th letter which had not been supplied to the Council and Mr. Sale said the June 3rd letter (first letter in the binder) was untimely as it was well outside the five day window for the appeal to identify the specific LDC sections at issue and the reasons why the City's proposed action did not comply with those sections.

Mayor Oberst asked Mr. Sale if his position was that the June 3rd letter should be ignored because it was too late. Mr. Sale said absolutely. Councilwoman Strange said the Notice of Appeal was filed May 29th. Mr. Sale explained that there was a request for a Hearing within the five days that started the process, and that was the May 20th letter. After the Planning Board ruled, there could be a request for a Rehearing of that Hearing, but that Hearing was only based on the

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original five day letter. There was nothing about providing additional grounds to object to a City action in the time frame between the Planning Board and the City Council.

Mr. Sale said the second issue was whether the Council could consider the DRI Development Order and Mr. Burke had suggested that it would be impossible not to look at it in order to make a decision. He said he agreed but that he disagreed with how far the Council had to look. Mr. Sale said when the DRI specifically affected a relevant section of the LDC that was in context of the application, then yes the Council could consider the DRI. In this case, where the DRI came into play, it was the fact that it contained the "no down-zoning" provision and Mr. Leonard relied on that provision.

Regarding the third issue, whether the Council should consider the entire DRI, Mr. Burke wanted the Council to consider whether the entire Pier Park was overbuilt. When the LDC was written, it was never intended to serve as a vehicle to enforce a DRI Development Order.

Mr. Doug Smith, attorney for Simon Property Group, said they agreed with Staff's conclusion on the timing of the appeal. The Code clearly stated the timing requirements and although five days did not sound like a long time, the Meeks had been following this project from day one. The third issue raised by Mr. Burke was not an issue properly before the Council and something that could not be considered. He said the City had the power to enforce DRI Development Orders in the correct venue but a neighboring landowner did not have the standing to raise compliance issues. He continued that the main issue was the Use and if it was authorized as a matter of right under the DRI Development Order. They submitted letters to Mr. Leonard and after review Mr. Leonard made the determination that it was authorized at that specific location and Mr. Burke received a copy of that decision. The Code gave thirty days to appeal that determination of March 21st and Mr. Burke waited until May 20 to raise issues with the Development Order. Mr. Smith said the Meeks had admitted during the Planning Board Hearing that this was an authorized use at that location. The simple answer was that the Meeks did not want the competition.

Councilwoman Strange asked how late was the biennial report. Mr. Smith said the report had been due April 1st and was delivered June 17th. They had been given thirty days to produce the report at the prior meeting and it was delivered in a week. He said neither Mr. Burke nor his clients had the standing to enforce the timing requirements for the reporting under the DRI Development Order. He agreed that they did not report in time but asserted that was not the basis to deny a Development Order.

Councilman Curry asked Mr. Smith if the Council felt there was a problem with the DRI, if it should be addressed through the court system. Mr. Smith said that was the proper process. Mr. Theriaque clarified that the Council would not have the authority under this proceeding but would have the authority under a separate compliance proceeding. Mr. Sale said the LDC did not provide a separate proceeding for hearing enforcement actions of DRIs. When Mr. Burke raised the question of the tardy biennial report, Mr. Sale's advice to the City was to conduct an investigation the same as if any citizen came with a complaint and report back through Staff to the City Manager to the Council. He said the City probably should have an Ordinance but even without one, common sense said Staff would do an investigation and report to the Council, contact the developer and have it corrected.

Mr. Bob Hughes, attorney for the applicant, said the Council and the Planning Board adopted the LDC with deadlines. He said following Mr. Burke's argument, they could have waited until the day before the hearing to present another reason. The time limit provided the time for Staff to analyze the challenge, prepare a report and distribute it to the applicant and general public. Mr. Hughes said the Meeks did not want the competition and they were doing anything they could to stop his clients from putting the same kind of rides in the same place that the Meeks had recently vacated. He said this was not the appropriate time or place to consider the entire DRI. He urged the Council to find that "C" was late and not discuss the entire DRI. Mr. Hughes said he did the Bay Point DRI in 1985 so he knew the complexity of a DRI. He said he felt the Planning Board did the right thing in finding that Staff did a very thorough job in deciding that the Development Order should be issued and that they decided what Mr. Burke and his clients wanted to do was not appropriate. Mr. Meeks had said they had to get a Conditional Use permit at the new location so they felt his applicant should also get one. Mr. Hughes said the Meeks had to get one because they were not in the DRI and were governed by a different set of rules. In order to put their rides on the subject property, all the Meeks needed originally was an Electrical permit. He said his client was obtaining a Development Order. Staff thought his clients did not need anything further and the Planning Board agreed.

Mr. Burke said in the new LDC, there was no prohibition for someone to file an amendment to an appeal. He said if the City could appeal a decision before the Planning Board Hearing had even occurred and there was no prohibition for that action, where was the prohibition against filing an amendment to an appeal. Mr. Burke continued that whether the Council could

consider the DRI as part of the process was guided by the Development of Regional Impact Statute. The local government was responsible for monitoring the development and enforcing the provisions of the Development Order and not issuing any permits or approvals or providing any extensions of services if the developer failed to act in substantial compliance with the Development Order. Their position was that the Conditional Use permit could not be issued because the developer was not in compliance with the Development Order. If he agreed that the Council could not consider the DRI and only the LDC, then the developer for Pier Park Rides was required to go through the Conditional Use Hearing process.

Mr. Sale said some aspects of the DRI directly related to this property which Staff considered such as the no down-sizing provision. Regarding the Statute referenced by Mr. Burke, there had been no finding that the developer was in violation of the Development Order. He submitted that the Quasi-Judicial Hearing in the context of a very specific application to replace an amusement park in Pier Park was not the proper venue to engage in an enforcement action of an entire DRI.

At this juncture, the Mayor called for a short recess at 3:45 P.M. The Rehearing was reconvened at 3:55 P.M.

Mr. Theriaque recommended that the Council vote on the legal issues separately rather than by a collective vote. Regarding the third issue, whether paragraph C was timely filed, there were two competing arguments. The first argument was the plain language that the request for Rehearing shall be filed in five days and there was nothing in the LDC which addressed the ability to amend that request. Mr. Theriaque explained how this would be handled in circuit court as an example, and that motions to amend would be freely given unless there was an abuse of the process or the other side would suffer prejudice as a result of that amendment. He said the Council had also heard from City staff that there was prejudice because of the timing. Mr. Theriaque said he believed the Council could use both benchmarks in their decision whether they wanted to construe the LDC to allow an amendment after the five-day window. Mr. Theriaque said the Council could construe that because the LDC did not state the amendment was not allowed, once jurisdiction was established by the first filing there was no prejudice as a result of the amendment.

Mayor Oberst said she had understood that the Planning Board had noted not to accept the Paragraph C. Mr. Theriaque said he had not read the transcript but the parties had informed him that the Planning Board voted not to accept Paragraph C.

Councilman Curry made the motion to accept Paragraph C as timely filed. Councilwoman Strange asked if this meant that section of the LDC would need to be amended. Mr. Theriaque said if the Council voted that the amendment was timely filed, then the Council would be opening the door without a time limitation and people could wait until later in the process to file amendments. The Council may want to consider an amendment to the Code to establish that amendments were permitted up to a certain point but after that point there would be prejudice because there was not sufficient time for Staff or parties to evaluate the amendment. If the Council stated that no amendment was allowed then the LDC did not need to be amended. The Mayor called for a Second. **Hearing none, the motion failed for a lack of a Second.**

Councilman Reichard made the motion to determine that Paragraph C was untimely filed and would not be considered in these proceedings. Second was by Councilman Russell. The Mayor called for comments and there were none. **The motion passed by majority roll call vote recorded as follows:**

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

Mr. Theriaque said this decision solved the first threshold issue, that paragraph C in Mr. Burke's letter would not be considered. The next issue was Paragraph B which pertained to whether the DRI Development Order permitted amusement parks.

Councilman Reichard asked if this process was necessary if there had been an amusement park on that property. Mr. Theriaque said he struggled with that question because of the "unclean hands" doctrine in circuit court. In this instance, the folks who were challenging whether an amusement park was authorized under the DRI had operated an amusement park in the DRI.

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Councilman Reichard asked if Mr. Theriaque could stop at that point. Mr. Theriaque said the Council had the authority with a majority vote to stop the proceedings at any point. He said the Council could take the stance that the Meeks could not take that position and vote to deny the rehearing; or the Council could proceed to the merits and if ultimately decided on the merits, it could be included in the Findings and Conclusions that they were estopped and it had been considered anyway. Mr. Theriaque said the Council ran a risk of being reversed in circuit court without something specifically in the Code which would give the ability to use the unclean hands doctrine.

Mayor Oberst asked if the Council could vote not to consider the DRI but continue the Rehearing. Mr. Theriaque replied yes and said the issues raised by Mr. Burke relating to the DRI did not pertain to any particular section of the Comprehensive Plan or the LDC. The Council could stop there and state that the DRI issues were not subject to review in a rehearing because the rehearing could only hear LDC and Comprehensive Plan violations. Staff reviewed the DRI to determine whether there was a vested right to an amusement park such that the property owner and applicant did not have to obtain a Conditional Use, so Staff clearly looked at the DRI Development Order. Mr. Theriaque said if the Council did not look at the DRI Development Order and only looked at the LDC, then only a Conditional Use was required.

Mr. Theriaque suggested a middle ground and thought all parties might agree that this Hearing did not need to be converted to a Compliance Hearing. He submitted that under Chapter 380 that the Council had the legal authority to conduct a Compliance Hearing but did not think the Council wanted to convert today's Hearing into that process. He said if the parties limited the Council's review of the DRI specifically to this particular property, he could see the basis.

Councilman Reichard asked if the Rehearing could go directly to arguments to determine whether the DRI was applicable. Mr. Theriaque said the next step were legal arguments regarding if an amusement park was allowed on this particular property and were they grandfathered such that they could not be down-zoned. He said if the Council decided an amusement park was not allowed, then the other issue was not relevant. If allowed, the next issue was whether it was a vested right or required a Conditional Use approval. Mr. Theriaque reminded that the issues were limited to those raised in Mr. Burke's request for Rehearing.

Mr. Burke said he had an expert witness who was also a lawyer who would testify whether the amusement park was a vested right on that particular piece of property. Mr. Theriaque said Mr. Burke was asking for an expert witness to construe a legal document and that he did not think that was an appropriate use of an expert witness and was instead a pure question of law for a judge. Mr. Sale said he agreed that whether amusements were permitted on that property under the DRI Development Order were matters of law. Mr. Smith agreed and stated that the Council could read the DRI and determine its intent. Mr. Hughes agreed with Mr. Sale and Mr. Smith. Mr. Burke questioned if this meant he could not call his expert witness and Mr. Theriaque responded that the question was whether this was a purely legal issue. Mr. Burke said Staff had made a decision on behalf of the City that determined that the no down-zoning provision applied, and he felt he had the ability to call an expert witness to testify. He elaborated.

Mr. Theriaque said this Rehearing was to determine factual issues. He said Mr. Burke had raised a very limited issue, if an amusement park was allowed on this property. Staff construed the DRI to say they were vested and the Planning Board said they were vested. Mr. Burke said not to allow this expert to be called was severely prejudicing his ability to put on the case. Mr. Sale said it was inappropriate and prejudicial to the process to permit another lawyer to present expert testimony. The Council now had the same obligation that Mr. Leonard had, sitting in his office and reading the documents. A legal argument was not testimony. Mr. Smith added that the other parties were not trying to prevent the Council from hearing legal arguments; the Council would not need a lawyer to tell them what they said. Mr. Theriaque said Mr. Burke was asking a Planner to construe a legally binding document, a DRI Order, and that was a question of law. Mr. Theriaque questioned if the Council had heard enough to vote to hear the Planner.

Mr. Sale said the only two issues were Mr. Burke's contention that amusements parks were not permitted in the DRI and that this should have been a Conditional Use. Mr. Leonard had determined that amusement parks were permitted in the DRI and it did not have to be a Conditional Use because that would be down-zoning.

Mr. Hughes said his firm did the Bay Point DRI and made a number of amendments and NOPCs over the years. He said he was very knowledgeable about the DRI process and it would be inappropriate for Mr. Smith to call him as an expert witness. He said he thought Mr. Theriaque was correct in identifying Mr. Burke's two issues of law.

Mr. Theriaque said there were two choices, whether or not to allow Mr. Burke to call the expert witness to testify on pure questions of law. He explained in his experience, every time a lawyer as a witness tried to tell a judge what a legal document said, the judge said he could read it and did not need a lawyer to tell him what it said.

The Mayor said she felt she had heard enough and felt the Council should follow Mr. Theriaque's recommendations. **Councilman Reichard made the motion to not allow the expert testimony. Second was by Councilwoman Strange.** The Mayor called for comments and there were none. **The motion passed by unanimous roll call vote recorded as follows:**

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

Mr. Burke said, subject to his objection being on the record, that the court reporting from the Planning Board meeting be submitted into the record. Mr. Theriaque said it would be incorporated by reference.

Mr. Burke said when the Meeks took possession of the property and it was rezoned from T-3 to T-3A in 2010, the City had a Code that was different than what the applicants had in 2012 when they applied for their Development Order. The Meeks had a legal non-conforming Use and when they removed everything from the site, the legal non-conforming Use ceased to exist. According to the Code, the next project coming onto the site must conform to Code. The new LDC required that an amusement park must seek a Conditional Use permit. Mr. Leonard testified at the Planning Board that he had reviewed the application as a Conditional Use, not as a legal non-conforming Use. There were questions asked by Pier Park in the beginning submitted to Mr. Leonard, and he had responded that evidence would have to be provided that the applicant was a legal non-conforming Use. They then chose to submit a Development Order application which would require a Conditional Use permit according to the 2012 LDC. When the Meeks first went onto that site, all that was required was to obtain an electrical permit after having the property rezoned in 2009 from T-3 to T-3A. When the DRI was adopted in 2002 and amended in 2005, that property was still T-3 and an amusement park was not allowed. He said St. Joe, the developer, had not contemplated an amusement park in the DRI because at that time, the original Miracle Strip Amusement Park was still running and no one planned a second amusement park at Pier Park. When the Council adopted the DRI Development Order, the attractions specified only a movie theater.

Mr. Burke displayed Resolution 05-57, amending the original DRI Development Order that vested the rights for certain items to be built until build-out. This Notice of Proposed Change amended the developer to Simon Property Group, the authorized agent, and in section 5, outlined the attraction allowed. The attraction was specified as a 3,700 permanent seat movie theater.

Councilman Reichard asked Mr. Theriaque if the square footage issue was not to be considered. Mr. Burke said he was not arguing whether the footage was over or not, merely speaking of the vested rights. Mr. Theriaque confirmed that Mr. Burke was within the scope.

Mr. Burke continued that the Resolution outlined the permitted Uses that were vested until the build-out date. The attraction noted was the 3,700 seat theater with a footnote specifying a multi-screen theater. Anything else was not vested and would have to come to Council to make a change in the same manner as the developer did in 2005. Mr. Burke explained that the developer in 2001 originally submitted an application to City Staff and numerous State Agencies for review with plans for some amusements or entertainment facilities on that site. He said that was significant because State Statutes defined attractions to include amusement parks.

Mr. Burke continued that St. Joe originally planned for a 6-screen movie theater and a live performance theater. As the application moved through the process, the live performance theater option was removed. In 2010, the zoning was changed from T-3 to T-3A. He said that particular piece of property did not have the vested right for an amusement park. He explained some of the actions taken with the Bay Point DRI and their NOPCs which ultimately went to the 1st District Court of Appeal. The Court made some succinct statements in what a DRI would do and Mr. Burke read these into the record emphasizing that changes to DRIs must comply with the Comprehensive Plan. In this instance, since an amusement park was not specifically authorized under the DRI Development Order, the change must come to the Council for approval. The City would then make them comply with the LDC with a Conditional use permit and require a NOPC.

Mr. Sale said the bottom line was if any of the Councilors believed that the City had not intended originally for amusements to be in the middle of Pier Park. The argument was that an amusement park on this site violated the DRI Development Order and was made by the people who started an amusement park at that location. In the beginning, the Pier Park Public Improvement Partnership Agreement (PIPA), which he entered into the record as City Exhibit #1, the parties determined that primarily entertainment attractions would be built, including food,

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beverages and retail. With the economy's downturn, the PIPA went primarily retail instead of entertainment. Regarding the original DRI Development Order, the PIPA was noted on the first page which included a description of the project and incorporated the PIPA whose intent was primarily entertainment and secondarily retail. The application for the DRI Development Order contained the general description of amusement or entertainment facilities. Mr. Sale displayed the chart from the revised plan Exhibit B from Resolution 05-57 that stated that attractions included a multi-screen theater but not only a multi-screen theater. Mr. Sale explained how the approval came in two stages with Mr. Leonard's analysis of the matter in March. He read portions of the March letters which referenced the prior use of the site as an amusement park and how Mr. Leonard determined this site was intended as an amusement park. Mr. Leonard had determined that attractions was not exclusive to only a multi-screen theater and further stated that there was no doubt that the Pier Park project was to have more than two attractions in the designated area. He added that although the LDC made an amusement park a Conditional Use, he agreed with the property owner that the Use originally permitted by the DRI had been preserved by State Legislation and the owners' election to draw the benefits of that legislation. On March 21, 2014, City Staff decided that no down-zoning applied and amusements were permitted and that decision was not challenged. Mr. Leonard further wrote that the no down-zoning protection was limited to uses, densities and intensities: however, the City must require the applicant to apply for a local Development Order under the LDC. No objections were received.

Mr. Smith agreed with Mr. Sale's position, Staff's analysis and more importantly common sense. He said an amusement park was on site six months ago and why could it not be there now. He said within the DRI Development Order, an amusement use was contemplated at the site since the original Development Order was approved. The NOPC adopted in 2005 had the same language and reference to the ADA in the amended Development Order, meaning that amusements were contemplated in the Central Commercial Area from day one. Mr. Smith continued that in 2002, the Council determined that the DRI was consistent with the LDC and the Comprehensive Plan. He said the DRI Development Order did not have to be changed nor did the Zoning have to be changed in order to permit an amusement park as it had been authorized since the beginning. When the Meeks operated on that site, they did not need a Development Order or to go to the City Council for approval to operate an amusement at that location. Mr. Smith said the no down-zoning protection of the DRI had been extended by State Statute through the build-out date of December 31, 2016. He said there had been no testimony that the proposed Development Order for this site was inconsistent with the Comp Plan. Mr. Smith reminded that when the Meeks moved out of Pier Park, they were subject to different development restrictions.

Mr. Bob Hughes, attorney for the applicant, explained how the Meeks originally approached Mr. Leonard in 2010 requesting to place an amusement park at the site in Pier Park. According to his story, amusements were not allowed in the DRI. Within the DRI was zoning and that site was T-3 which would not allow amusements but a T-3A would allow an amusement park. Mr. Hughes said the DRI did not have to be changed for the Meeks because it was not necessary. When the LDC was adopted, it created a new zoning category on that site but the City did not require the Meeks to leave the property. Mr. Hughes said when his clients approached Mr. Leonard, he concluded that the DRI had always intended that there be some form of amusements and the language prohibited down-zoning, which led to the Notice of Intent to issue the Development Order. He continued that the Planning Board had heard testimony for four hours and agreed with Mr. Leonard, and the simple matter was that the Meeks had placed their rides at that location and thus his clients should also be able to place their rides at the same location. He said this was about the right to use your property and allow his people to do the same as the Meeks.

Mr. Burke asked for Ms. Meeks to give testimony. The attorneys discussed Ms. Meeks being able to give testimony with cross-examination during the public comments portion. Discussion ensued concerning whether Ms. Meeks was limited to only speaking three minutes. Mr. Sale said the narrow point was that to receive an emotional appeal at this point of the Hearing would be prejudicial to a judicial determination of the facts. Mr. Burke said any potential witness should be subject to cross-examination so he had no objections on Ms. Meeks behalf.

Mr. Burke explained when he was engaged by the Meeks and that it was the developer's obligation to amend the DRI Order. He said the LDC was relevant and would apply to Mr. Hughes' clients. He said the Council had the opportunity to make the developer go through the NOPC process and make the applicant go through the Conditional Use process. Regarding the PIPA, Mr. Burke said the Development Order superceded the PIPA. He said the original application was determined to have attractions as too broad a term and ultimately the only attraction as a vested right that could not be down-zoned was a multi-screen movie theater. Anything else had to follow the LDC and be consistent with the Comp Plan. Mr. Burke said this was not a non-conforming Use and Mr. Leonard had not reviewed the application as a non-

conforming Use. Instead, they were considered as a Conditional Use per Mr. Leonard's testimony. He said in 2002 and 2005, the developer planned a multi-screen theater and the NOPC did not address a traffic analysis if an amusement park was located on site. He said the down-zoning was an important part of the DRI but it was also important for the Council to consider which particular Use was given the protection until 2016. Mr. Burke said if the developer asked for something that had not been granted the right in the beginning, that was different and not protected and must go through the Conditional Use process. He said the law said that the only vested rights were for a multi-screen theater and if an amusement park was being placed in a CH zoning, then a Conditional Use was required.

Mr. Theriaque asked Mr. Burke when the Meeks opened their amusement park at Pier Park. He responded March, 2010 and stopped operating in December, 2013. Mr. Theriaque asked when the application for an amusement park was filed by the current applicant for the same location. Mr. Burke responded April 25, 2014.

At this juncture, the Mayor called for a short recess at 6:12 P.M. She called the Rehearing back to order at 6:20 P.M.

Mr. Theriaque commended the quality of the lawyering today as it had been outstanding as well as the arguments. He said the next step would be public comment.

Ms. Jenny Meeks said many times during their negotiations with Simon that they had been told that their amusement park was not supposed to be on that site. She said they placed nothing permanent on site. She said this was because the DRI did not allow them to be there. Ms. Meeks said Simon must follow the rules and asked the City Council to ensure that they did so. She added that many times she contacted the City advising that the applicant was installing rides at night and on the weekends without an electrical permit. Regarding the Planning Board meeting, she said she did not believe anyone should give that meeting credence because they felt uncomfortable without having legal counsel. She said the reason they decided not to use the DRI was because it was the Council's job to look at the DRI, not them. Ms. Meeks said Mr. Sale at that time told the Planning Board members that they had no jurisdiction to look at the DRI. She asked if anyone had any questions of her and there were none.

Mr. Stan Meniscus, Pier Park Rides, said he wanted to put a face on the ride operators. He said they wanted to be in Pier Park and had done everything that the City had requested that they do. He said they wanted to open for business and asked if there were any questions. There were none.

The Mayor asked if there were any further public comments from the audience; there were none.

Mayor Oberst asked Mr. Theriaque about the possible language of a motion. Mr. Theriaque said it should be whether to approve or deny the Development Order. For guidance, he said the essence of the argument was if amusement Uses were allowed when the Development Order was initially approved. Looking at the 2002 chart, attractions included the single-performance theater and a multi-screen theater. He said part of the Council's duties tonight was looking at the documents and deciding whether they agreed with Mr. Burke in that the only amusement uses allowed when the Development Order was approved were two theaters or if they agreed with Staff that two theaters were identified as well as other amusement uses known to be part of the project.

Mr. Leonard displayed the 2005 amendment in which the single performance theater was deleted. If the Council decided that an amusement park was part of the original approval, then the motion would be to approve the Development Order. Regarding some of the comments about the zoning change from T3 to CH, Mr. Theriaque recommended that the vesting occurred based upon the uses allowed when the original Development Order was approved. The fact that the property was rezoned in 2010 to T3-A, he advised that that action did not create a vested right. He said the bottom line was whether the Council agreed with City Staff that other uses were approved in 2002 beyond merely a multi-screen theater and a single performance theater.

Councilwoman Strange asked about the revised Exhibit B and whether the Council members should use this information as opposed to the other documents. Mr. Theriaque said it depended upon whose argument they accepted; Mr. Burke argued that the Council should use Footnote #3 which only said a multi-screen theater, the only vested amusement or attraction use for Pier Park. City Staff argued that the Council would have to look at the DRI, the PIPA, the ADA and the pattern of use as it was never the intent to say the only amusement use was that noted in Footnote #3. He said it would be up to the Council to decide which argument was correct.

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Mayor Oberst said she was on the Council when Pier Park was established and when the PIPA was created so from her experience, it was always the understanding that Pier Park would be an entertainment center, with attractions and retail. Councilwoman Strange said she was amazed when she discovered that amusements would be at Pier Park as it was such a nice retail area. However, it was successful. She said she never envisioned amusements at Pier Park and thought this was a grey area. Councilman Reichard said the terms had been written very broadly in order to anticipate what would occur in the future and he felt would include amusements as well as the theaters as mentioned. He mentioned who could have anticipated a Dave and Busters with all the electronics as the technology was changing and this should be interpreted very broadly. Councilman Russell said the language was "attractions", plural, which opened a broader spoke of what could be placed there. Councilwoman Strange questioned why it had not been written to be more specific and Councilman Reichard said it was meant to be as broad as possible. Mayor Oberst commented that at one time, a water feature and a kiddie splash pool, were to be included. Mr. Theriaque said the comparison between the 2002 and the 2005 documents were very telling; looking at the documents as a whole, the Council vote would be to approve the Development Order. However, if the Council members looked at the documents and believed that only two attractions were originally planned, then the vote would be to deny the Development Order.

Councilman Reichard made the motion to approve the Development Order. Second was by Councilman Russell. The Mayor called for comments. Councilman Curry said Footnote #3 was one point in the process and that if it had not been inclusive when it was changed in 2005, it would not have been stricken through one of the items. He said he felt this process was fast-tracked and it was not about competition but more fairness. He encouraged the Council to look into the DRI as Simon Property had not filed their documents on time and had not followed the rules. He said it should have been an easy process if the DRI had been revised the right way. Councilman Reichard said he did not see how the DRI could have been looked at more thoroughly. Councilman Curry commented about the right way to follow the rules. Mayor Oberst said that was an issue that Staff could investigate and in her discussions with Mr. Leonard that he did not feel that there were glaring concerns. Councilman Reichard said his motion was based upon the thought that the City found that the development Order application was consistent with the Comp Plan, the LDC, and the DRI. With nothing further, **the motion passed by majority roll call vote recorded as follows:**

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

Mayor Oberst said Mr. Theriaque would prepare an Order and bring it back for Council approval. Mr. Sale explained the Council's usual practice for the Orders. Mayor Oberst thanked everyone.

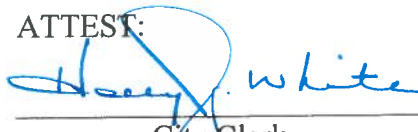
With nothing further, the meeting was adjourned at 6:45 P.M.

READ AND APPROVED this 11th of September, 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