

The Special Meeting of the City Council of the City of Panama City Beach, Florida, conducted on February 13, 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 4:30 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 DENIAL OF THE MOPED/SCOOTER CONDITIONAL USE REQUEST AT 10908 FRONT BEACH ROAD.

Mr. Sale said this was a Quasi-Judicial Hearing and explained the procedure. Beginning with the Jennings Disclosure, Councilman Reichard visited the property and said he spoke with Mr. Paul Shamblin of the Resort Collections who managed Majestic Beach Towers Resort who reported that they opposed the request. Councilman Russell said he received a phone call from Mr. Dave Serra from Flagala Hardware who opposed the request. Mayor Oberst said she knew the property location and spoke to no one. She added that the Council had received a number of emails which were all opposed to the request. Councilwoman Strange said she knew the property location and no one had contacted her. Councilman Curry said he knew the property location and when he visited, he spoke with Mr. Safdie who answered his questions about parking and who supported the request.

At this juncture, witnesses who wished to testify and present competent substantial evidence were sworn.

Mr. Leonard said the property was the Oxygen Zone property, across from Majestic and near the Gulf Highlands properties and the addresses were 10908 and 10909 Front Beach Road and 10924 Parkhill Circle. The applicant was Mr. Adi Rahatlev, known as the King of Scooters. The Planning Board considered the request on January 13, 2014 and denied the request because the original application and presentation during the meeting did not have sufficient specificity in the application about the number of scooters and that the proposed training area was too small, not meeting the minimum requirements per the Code. These facts prevented the Planning Board from making a positive finding based on the multiple criteria for Conditional Use, both the general and specific criteria. The applicant timely filed his appeal on January 15, 2014. Since the Planning Board meeting, the applicant revised the application and submitted for sixty (60) scooters and the training area was now adequate and meeting the minimum criteria for the Code. Mr. Leonard said thirty-eight (38) spaces were required and fifty-one (51) were provided. The applicant also indicated that there would be no repairs on site. Based on the revised application, Mr. Leonard said it appeared that all of the black and white criteria were satisfied (number of parking spaces, location of the training area, display of the scooters, and number of scooters). He continued that what remained to discuss was the criteria which dealt with the potential nuisance to surrounding properties and traffic congestion created by the business. The applicant also indicated that the hours of operation would be from 9 A.M. to 10 P.M. Mr. Leonard then submitted the Agenda Packet which contained the Appeal, the Planning Board Order and Minutes, the original application, the revised application, and the Staff report into the record.

Mr. Leonard confirmed that the signs were properly posted on the property and advertised in the newspaper. Additionally, anyone who appeared at the Planning Board and requested to be notified of the Appeal was notified of today's Hearing. The notice requirements of the Code were satisfied in order to conduct this Hearing.

Ms. Lea Tzala, representative for Mr. Adi Rahatlev, said the original application had been denied because they had not answered all notes. She displayed a drawing of all designated parking spaces for the scooter business and the tattoo shop as well as the ingress/egress from Front Beach Road. She said she moved the training area to the middle of the back property to

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alleviate some of the noise to the nearby neighbor. Ms. Tzala added that they planned to build a fence around the training area for safety. She continued that the scooters would be stored at the rear of the property during the day and inside the store at night. No scooters would be displayed on Front Beach Road but rather inside the store at the front windows. Regarding safety, their trainers would offer helmets free of charge as well as instruct them how to drive safely. Ms. Tzala said there would be no repairs or maintenance on the premises and added that the business would close at 10:00 P.M. so there should be no interference with the residential neighborhood.

Mr. Jimmy Lewis, President of the Homeowners Association of Majestic Beach Towers, said he was not prepared to ask questions but wanted to speak. Prior to his speaking, Mr. Sale explained the definition of an "adversely affected" person and the Mayor asked the other Council members if they agreed Mr. Lewis would be adversely affected. There were no objections. Mr. Lewis added that he was speaking on behalf of 523 other homeowners, not merely himself.

Mr. Lewis asked Ms. Tzala if the building would meet the Fire Codes with the scooters inside the building and if the building had sprinklers as they were concerned about the possibility of a fire. Ms. Tzala confirmed that the building had sprinklers. Mr. Lewis asked if the building was habitable now and Ms. Tzala said yes. Mr. Lewis asked Ms. Tzala how the scooters would get to her business if Front Beach Road was congested which was often the case during Spring Break and summer. He said in his experience, scooters went around traffic in an unsafe manner and he anticipated that the drivers would use Parkhill Circle underneath their parking area that had a lot of pedestrian traffic. He asked how Ms. Tzala thought her business could prevent harm to the pedestrians. Ms. Tzala said they planned to post signs about safe driving as well as train the drivers; however, she could not ensure the drivers would follow the training. Mr. Lewis said he observed scooters weaving in and out of traffic as well as driving on the sidewalks. He asked Ms. Tzala to identify the fifty-one parking spaces on the drawing. After she pointed to the various areas, Mr. Lewis asked if she leased all the properties. Ms. Tzala said the tattoo shop had their own parking on the side and that she leased all other areas.

Councilwoman Strange asked about the markers noted on Ms. Tzala's handout. Ms. Tzala said the figures were the various widths of the driveway.

Councilman Russell asked the size of the practice area for the scooters. Ms. Tzala said the training area must be 80' by 50' and their area was 80' by 65' and identified it on the handout.

Mr. Lewis said he had not been at the Planning Board meeting but it had been reported to him that they also planned to open a pizza business on site. Ms. Tzala said not in the beginning but that they might open one in the future but it would only be a pizza delivery business. It would require four parking spaces and they had more parking than required.

Councilman Reichard asked if there would be any activity in front of the property. Ms. Tzala said no, that the scooters would be inside the shop behind the windows. Councilman Reichard asked if they planned to block off the front of the shop to prevent motorists from parking in the right-of-way and possibly backing out onto Front Beach Road. He said people from out of town might not know that there was no parking in the right-of-way and parking there would be dangerous. Ms. Tzala said only what had been done for years. Councilman Curry said all of the businesses in that area now were parking in the right-of-way.

Councilwoman Strange asked Mr. Leonard about the building being up to Code and if it was allowed for scooters to be inside at night. Ms. Tzala said as far as she knew it would be allowed but if the building was not up to Code, they would ensure it was before the scooters were brought into the building. She added that the scooter storage area was in the rear of the building during the day and could be used at night if necessary.

Mayor Oberst asked if Parkhill Circle was the name of the street under the parking garage. Mr. Sale replied affirmatively. The Mayor asked Ms. Tzala if she thought it a problem with the scooters being directed onto this street when the Majestic Beach Towers were full. Ms. Tzala said she did not foresee having a lot of customers at one time, more like any other store.

Councilman Russell said his main concern was that this area was one of the heaviest traffic areas during summer and Spring Break and he was concerned about someone learning to ride a scooter in that heavy traffic. He asked Ms. Tzala how long the training period was for new drivers. Ms. Tzala said it depended upon the person but that they did not let them leave the shop until they were tested to ensure that they could handle the scooter. The Mayor asked Ms. Tzala if there was anyone she wished to testify on her behalf. Ms. Tzala said no.

Ms. Colleen Schwab was sworn and said she was the owner of California Cycles. She said the problem was having a scooter business on every block of Front Beach Road and this would affect her business by taking away revenue. She confirmed that the loss of revenue was her primary impact. Mr. Sale addressed the Council and said the definition of an adversely affected

party was that the impact may be shared with others but that it was an interest protected by the Code with examples such as light, air, traffic. This Code was not designed to protect against competition. In his opinion he was not certain Ms. Schwab was an adversely affected party based upon that definition and he would say she was not. However, that would be a policy question if the Council thought they could separate her testimony and allow her to proceed as an adversely affected party without being considered one in order for her comments to be on the record. He said he thought her interest in this case was black and white but not adversely affected. Mr. Sale continued that to err on the side of caution, the Council could rule that a party not adversely affected could proceed as one anyway in order for their comments to be on record. Mayor Oberst asked the difference between that and public comments and Mr. Sale replied nothing. He said the audience would also not be able to question Ms. Schwab. Ms. Schwab said she would speak during the public comment portion of the meeting.

Mr. Paul Shamblin was sworn and he said he was an adversely affected party. He said he was the Association Manager for Majestic and represented the homeowners. The Council agreed he was adversely affected. Mr. Shamblin said he had spoken with Fire Inspector Jordan, and at that time, the building was not up to code sprinkler-wise. He said this was their concern about storing scooters inside. He said the other issue concerning Parkhill Circle was the pedestrians using that street to cross to their parking garage. Mr. Shamblin added that if allowed, this would be the third scooter business within .7 miles along the busiest stretch of Front Beach Road. He said he understood that it would not be her fault if the scooters were in an accident but he had witnessed five scooter accidents in front of the Resort weaving in and out of traffic. Mr. Shamblin asked about the stability of the training area because the parking lot in the area was broken and not level. Finally, he asked if it had been confirmed how many parking spaces were available.

Mr. Sale said the Council had two issues at this time. He said it would be appropriate to limit cross-examination to only the applicant at this time. The Mayor asked Ms. Tzala if she had any questions for Mr. Shamblin. Ms. Tzala said if the scooters were not allowed to be stored inside of the building that they would be stored in the outside rear storage building. She said they would not move the scooters inside if the building was not up to code. Regarding the scooter accidents, Harleys also have accidents and maybe there would be less traffic on Front Beach Road if more scooters were used.

Councilwoman Strange asked if the Resort had two walkways over Front Beach Road. Mr. Shamblin said yes. She asked how many people from Majestic actually used the walkways. Mr. Shamblin said the Resort was two buildings on the north side of Front Beach Road and the amenities building was separated from the parking garage by Parkhill Circle. The walkways go into the amenities building and most people entered the parking garage park on the ground floor and walked across Parkhill to the elevators to the walkway. He said they also had a number of people who walked out their lobby doors and crossed Front Beach Road.

Councilman Curry asked if Collins Drive entered into Front Beach Road. Mr. Shamblin said that street was right beside the business. Councilman Curry said someone coming out of the parking garage could come out on Collins Drive to Front Beach Road. Mr. Shamblin said that had been one question at the Planning Board as to where the people would go when Front Beach Road was backed up. He continued that most people would use Parkhill Circle to get to Churchwell if Front Beach Road was congested. Regarding scooter businesses, Councilman Curry asked Mr. Shamblin if he thought there should be no more scooter businesses on Front Beach Road. Mr. Shamblin said he thought three scooter businesses within less than a mile on Front Beach Road was too many.

Councilman Reichard asked for clarification about the building's sprinkler system as he had heard conflicting statements. Mr. Sale suggested a better approach as one witness testified about statements from the Fire Inspector which would be hearsay. However, the Council was entitled to accept that testimony in this Hearing if it was something a reasonable person would rely upon in their own affairs. The Council also heard the applicant testify that they would not open the business if it did not meet the code. In his opinion, those testimonies would be a wash. If the Council allowed, a condition could be added that the building would not be opened until the Codes were met. Councilman Reichard said if that was an older building, would it be grandfathered in that it did not require a sprinkler system. The Mayor said this issue could be discussed during Staff comments. Councilman Curry said they also had designated scooter storage outside. Councilman Russell asked how many scooters would be inside the building. Ms. Tzala said only the ten (10) on display at the windows. The Mayor asked if there were any other adversely affected parties who wished to speak.

Mr. Jimmy Lewis, President of the Homeowners Association for Majestic Beach Towers, said when the condos were built, they were designed and permitted through FDOT and all of the entrances and exits met the requirements of the City in terms of traffic. The entrance shown into this business was a blind entrance, an alleyway, and anyone making the turn in or out of there would be blind and he thought this would be an opportunity for multiple accidents there. Mr. Lewis said he did not believe a scooter business would fit at that location. He added that today's meeting concerned the appeal of the Planning Board's denial; if the applicants wanted to change their approach, they should have returned to the Planning Board and began the process again. Ms. Tzala commented that when drivers prepared to turn into an alleyway, they slowed down.

The Mayor asked Ms. Tzala if she wished Mr. Yoram Safdie, the owner of the property, to testify on her behalf. Ms. Tzala replied yes. Mr. Safdie was sworn and said he had owned the property since 1996. Regarding the entrance to the business, he said that was not an alley. It was used as an entrance to that parking area for many years. Concerning the traffic on Parkhill Circle, Mr. Safdie said that Parkhill Circle was there before the Majestic was built and it was a public road, not an entrance to the parking for Majestic. Regarding the scooter display, that could be solved very easily because the front windows could be removed and then the scooters could be displayed outside as if on a sidewalk. For the training area, there was sufficient area for training in the 1.87 acres and the training area was gravel. Mr. Safdie responded about the comments about too many scooter businesses, reminding that this was the Tourist Corridor and was zoned that way before the Majestic was built. With nothing further, the Mayor asked if there were any adversely affected party who wished to question Mr. Safdie.

Mr. Paul Shamblin, Association Manager for Majestic, asked Mr. Safdie about the parking being shared by the liquor store next door. Mr. Safdie responded that the parking was not shared by the liquor store as it was his property and although there may be other cars parked there, that parking was not assigned to the liquor store. He said there was sufficient space to park parallel to the building as well as for cars to travel down the roadway. Mr. Shamblin asked about the home near the property and that the homeowners use that roadway as their driveway. Mr. Safdie said he owned that area and just because other people parked there, that would not mean that there was not enough room for ingress and egress. Mr. Safdie said the homeowners traveled on his property to reach their home and he did not give permission. There were no further questions for Mr. Safdie.

The Mayor opened the floor for public comments.

Ms. Colleen Schwab, owner of California Cycles, said there were six (6) scooter shops within a one mile radius. She noted their addresses and said due to the weather last year, her business income was less. Ms. Schwab said if the new shop was opened, a portion of her income and some of the other shop's incomes would go to the new business. Councilman Reichard asked how many shops belonged to California Cycle and Ms. Schwab replied four (4) shops within a ten mile radius. She asked the Council to consider regulations putting distances between scooter shops to allow all businesses a chance. The Mayor said this venue was not the appropriate place to ask for that consideration. Mr. Sale said in his opinion this would be a legislative matter and could be considered by the Council on a different day. The Mayor asked if there were any further public comments and there were none.

Mr. Leonard said everything seemed pretty accurate with the comments. Regarding inspections of the building, no inspections had yet occurred. That would be the next step if the Council approved the Conditional Use and then the applicant could apply for a Development Order and pay the fees. The Building Code would have to be met and he was confident if this Conditional Use was approved and it tripped additional requirements about life safety, those Codes would also be met and inspected by Lt. Jordan. Mr. Sale added that the Council had heard the testimony from Ms. Tzala that they would not open unless all safety Codes were met.

Councilman Curry asked if this matter was following the new LDC process. Mr. Leonard responded it came to the Council upon appeal from the Planning Board. Councilman Curry asked if there were differences between the first and second applications. Mr. Leonard said there were very significant changes between the applications. The lack of detail in the original application led to the Planning Board not to make a positive ruling as there were too many unanswered questions. The revised application was more specific with regard to the display of scooters, the number of scooters, the parking arrangements and the training area, and all now met the requirements. Councilman Curry questioned the comments about shared parking and if a new business opened in the center of the property, would this take away parking from the scooter business. Mr. Leonard said the future restaurant was supposed to be carryout only and even if they planned a full restaurant, there would not be any more parking available than what was

already on site. Whatever existing parking that remained after the scooter business took their portion would be a constraint of the development for the entire site. Councilman Curry said it appeared this applicant met all of the criteria with the exception of noise. He asked Mr. Leonard to confirm the applicant met all twelve criteria. Mr. Leonard said yes for the black and white issues, but the more debatable items such as the nuisance of the operation itself, area congestion and traffic flow were a gray area. He continued that the applicant specifying the exact numbers of scooters would tie into permits from the Police Department and having adequate training area. Those two major changes from the old regulations would restrict the number of sites ultimately eligible for a Conditional Use scooter operation.

Looking at the diagram, Councilman Reichard asked if the applicant could count the parking spaces so far away from the building. Mr. Leonard responded yes.

Mayor Oberst asked if the Codes regulated hours of operation for scooters on Front Beach Road. Mr. Leonard said there were no regulations in the Code but that the applicant had proposed the hours to be 9 A.M. to 10 P.M. as a condition of the approval. The Mayor asked if Staff had measured the lot to confirm that there would be adequate parking and training area and Mr. Leonard responded affirmatively. Responding to the Mayor's question about distances from residential, Mr. Leonard said 1500' from Single-Family Residential (R-2). He said he believed the closest residential zoning was on the north side of Hutchison Blvd. off Glades Trail, 2000' feet away from the property. After displaying the map, homes on White Sandy Drive were identified as zoned Commercial, as well as all of Edgewater.

Councilman Reichard commented about the number of scooter businesses on Front Beach Road and said that was controlled by the market. He said he thought free market would take care of the businesses. The Mayor added that this issue would not be part of today's consideration.

The Mayor asked if there was anything in the LDC about scooters inside of a building. Mr. Leonard responded not in the LDC, but may be something in the Building Code concerning life safety and combustible materials. Lt. Jordan would do an inspection and if something tripped a sprinkler system being installed or a prohibition of those type machines inside, they would not be able to open the business even if the Council approved the Conditional Use.

Councilwoman Strange said the Applicant stated the hours of operation would be 9 A.M. to 10 P.M., but yet there were no Ordinances regulating the hours of operation for the other scooter businesses and if they could be open all night. Mr. Leonard responded yes, unless they violated the Noise Ordinance, just like any other business. He continued that the Council could place restrictions on the Conditional Use approval if they thought it would mitigate a particular nuisance that would otherwise prevent the Council's approval. Councilwoman Strange asked about placing that type restriction on the other scooter businesses, and Mr. Leonard replied it would only be for this one business. The Mayor asked if there were any further comments and there were none.

Mr. Jimmy Lewis, Majestic Beach Towers, made his closing statement that this would not be the appropriate use of the property, it did not meet sufficient design criteria for the traffic to function smoothly in and out of the business, and would create a nuisance which would result in frequent calls to the Police. Mr. Safdie responded that the design was his own opinion and for scooters, he could not see any difference for their use as opposed to any other business opened on that location. He said the scooters being able to exit onto Parkhill Circle as opposed to Front Beach Road was a plus instead of a negative factor.

Mayor Oberst asked Ms. Tzala if she wished to make a closing statement. She replied no.

Councilwoman Strange said she thought it was not the Council's position to deny someone the right to earn a living. Councilman Russell said he thought that area was too congested. Councilman Reichard questioned if the Applicant met all twelve criteria in order to be approved. Mr. Leonard responded yes on the very specific criteria concerning parking spaces, training area, etc. The other criteria, such as nuisances to surrounding properties or causing congestion in the roadways, would be more subjective and it would be the Council forming an opinion once the evidence was heard. He said it was a gray area. Mr. Sale read the exact wording of those points in the Code.

Mayor Oberst said, in her opinion, the B, D, G, H, and I criteria were not met. Councilwoman Strange said if this property was developed for a bar or nightclub, it would meet the same conditions and that this area was congested no matter what business went into that location. Mr. Leonard said it could be a restaurant without a Conditional Use.

Councilman Curry asked about the B criteria and asked if the property met the distance criteria or not. Mr. Leonard said he thought the B was not having an adverse effect on existing traffic patterns. The Mayor said she thought it would adversely affect the traffic patterns because more people would go to Churchwell and that the proposed use would increase congestion on the

public streets. She said she thought it would impair the established values of nearby properties and explained for Majestic that it was bad enough a tattoo parlor and liquor store across the street. She continued that the hours of 9 A.M. to 10 P.M. would have the scooter noise all day. The Mayor questioned how the noise, lights and activities could be shielded so as not to create a nuisance to nearby properties.

Councilman Curry said he disagreed and that he felt they did meet the twelve criteria. He questioned Mr. Sale if it was a clear path that this Applicant did not meet all twelve criteria, as he did not want to seem that the Council was picking and choosing who could put a scooter business where. Mr. Sale responded that as a matter of law, the Council had the discretion. If the Council limited themselves to consider the evidence heard today, such as the number of scooters, the layout of the building, the configuration of the surrounding properties and streets, then the Council would have a great deal of discretion in the areas that Mr. Leonard described as "gray". He continued that even though this was a Quasi-Judicial Hearing, the Council was elected to make decisions on behalf of the community and if the decision was not arbitrary or capricious, but rather based on competent substantial evidence in today's record, then he could defend the Council's decision either way. He said it was a policy question and that there had been a great deal of competent substantial evidence presented. The Mayor asked if there were any further comments and asked for a motion. Mr. Sale said if the Council chose not to grant the Conditional Use, the reasons why it was being denied needed to be articulated.

Councilman Curry made the motion to approve the Conditional Use. Second was by Councilwoman Strange. The Mayor called for comments and there were none. The motion failed by majority roll call vote recorded as follows:

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

Mr. Sale asked the Council members who voted "Nay" to give their reasons why they voted no and he would prepare an Order for review. He said the Mayor had listed 5.06, and listed B, D, G, H and I. Councilman Reichard agreed with the traffic patterns and that the area was already at capacity. In his opinion, the existing traffic pattern was his first concern, D. Councilman Russell said B and D and had already stated his opinion. Mr. Sale said staff would prepare the Order with using B and D as the reasons for denial.

With nothing further, the meeting was adjourned at 5:55 P.M.

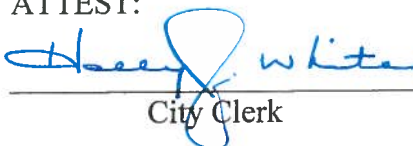
READ AND APPROVED this 27th of March, 2014.

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

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