

MINUTES FOR THE SPECIAL MEETING OF THE
CAPE CORAL CITY COUNCIL

October 30, 2024

Council Chambers

2:00 p.m.

Meeting called to order by Mayor Gunter at 2:00 p.m.

PLEDGE OF ALLEGIANCE

Roll Call: Mayor Gunter, Councilmembers Carr, Cosden, Hayden, Long, Sheppard, and Steinke were present. Councilmember Welsh was excused.

ORDINANCES/RESOLUTIONS - PUBLIC HEARINGS - Quasi-Judicial Hearing(s)

Resolution 300-24 Public Hearing (VESTED24-000001*)

*Quasi-Judicial, All Persons Providing Testimony Must Be Sworn In

WHAT THE RESOLUTIONS ACCOMPLISHES:

A resolution of the Mayor and City Council of the City of Cape Coral, Florida, determining that North Medical Land Company, LLC, either has or has not established vested rights with respect to the development of a new car wash facility on property described as Tracts Com-6 and Com-8, Block 8053, of the plat of Entrada Subdivision, as more particularly described herein; property located at the intersection of Del Prado Boulevard North and Dan Leduke Road.

City Clerk Bruns read the title of the Resolution.

City Attorney Boksner disclosed that the City Manager, himself, and DSD Staff spoke with all of City Council individually in one-on-one communications regarding this specific process and what was going to be presented. He inquired if there were any other ex-parte communications on this item to be disclosed other than what he mentioned. There were no other ex parte communications.

City Clerk Bruns administered the oath.

City Attorney Boksner explained this was a request for vested rights determination. It was the applicant's responsibility at this point to establish whether or not they are entitled and have met the requirements for vested rights determination.

Bryan Stanley, Attorney, Bryan J. Stanley P.A., appeared as representative for Boos Development Group, Inc., and explained the vested rights application.

Eric Feichthaler, Attorney and Managing Partner, Burandt, Adamski, Feichthaler, & Sanchez Law Firm, represented the property owner, North Medical Land Company, along with the primary principal of that organization, Hal Arkin, and voiced support for the vested rights application.

Assistant City Attorney Vaughan-Birch explained the following:

- Applicant laid out three criteria to be addressed as specified in the moratorium
- In dispute - Time frame of submitted plan to be eligible to claim vested rights
- Suggested that evidence and testimony will support a finding of the applicant not being vested

Planning Team Coordinator Struve explained the City's position, history, and discussed documentation on file.

Assistant City Attorney Vaughan-Birch introduced the Staff Report as City's Exhibit A and a composite Exhibit B of the exhibits referenced. He provided a copy to the applicant previously and confirmed with them that there is no objection to the entry of said evidence.

Evidence submitted was in support of a recommendation that there is a finding of no vested rights today. He requested that Council move forward with a finding that the applicant has no vested rights.

Mr. Feichthaler explained:

- Residential unit cap on Pine Island Corridor a year ago
- Comp Plan to Tallahassee to increase that number, time, effort spent
- Those already in permitting were the numbers sent to Tallahassee
- This issue parallel to that situation
- Consider that precedent in this somewhat unique case

Mr. Stanley clarified that the costs submitted by Boos are all expenditures that occurred prior to the date when comments were received about the site plan application. Once the moratorium became known to Boos, those expenditures ceased. Relied on the City Code which allowed for this use.

City Attorney Boksner explained based upon what has been presented, it is the City Attorney's position, along with DSD Staff and the City Manager's Office, that there has been a failure to establish vested rights for the actual new car wash facility on the property that has been described herein. He requested based upon their failure to meet the requirements that a motion be made denying their request and that they have failed to establish that vested right and that there should be a Resolution to that effect. He clarified the language of the proposed motion: ***that North Medical Land Company, LLC has not established vested rights with respect to the development of a new car wash facility on the property that has been identified herein, based upon what has been submitted in terms of the Staff Report and the documentary evidence in support of that Staff Report.***

Councilmember Long moved, seconded by Councilmember Cosden, that North Medical Land Company, LLC has not established vested rights with respect to the development of a new car wash facility on the property that has been identified herein, based upon what has been submitted in terms of the Staff Report and the documentary evidence in support of that Staff Report.

Discussion held regarding:

- When Staff sent their comments on the site plan
- Comments were completed from late April of this year into May
- If the site plan reviews continued post moratorium
- Site plan came in before moratorium went into effect
- When first correspondence with the developer came in
- No specific date for when comments were available
- Significant amount of money definition – no bright line definition for vested right
- Monetary funds expended not sufficient to be a determination of entitlements
- Was the information provided by the City detrimental to the developer?
- At the time of pre-application, nothing in foreseeable future about a moratorium

Councilmember Carr inquired if the information in the City Code is sufficient or does it have to be in a communication such as a pre-application meeting.

City Attorney Boksner responded that the City Code was sufficient. There is an obligation to do due diligence. There was documentary evidence in support as early as March that it was already publicized that there was going to be action taken for a potential moratorium on car washed.

Discussion held regarding:

- March 20th was the introduction
- April 11, 2024 application submitted by applicant – post intro, post first hearing
- Publication and legal obligation met by City

Councilmember Steinke recalled the current property owner spoke at the self-storage hearing but expressed no concern on the car wash public hearings.

Mr. Stanley explained that the developer was not aware of those meetings of those Ordinances being discussed. He added that comments were issued on May 9th.

Councilmember Steinke questioned if the burden was on the seller to provide full and fair disclosure to a potential buyer.

Mr. Feichthaler responded in the affirmative.

Councilmember Steinke noted that he was a strong property owner rights advocate, but we need to apply the law in this case. Most important was the timing and who was responsible where changes happen legally to let all parties know. The intended use was publicly apparent that it was changing, and he was concerned that the owner of the property did not bring that into play. Buyers won't invest a penny until they know the project has been determined. Moratorium not in place until April 17th. Money spent prior to that was the risk.

Councilmember Long explained that the standards were met, public hearings held, and there were news articles about the moratorium. He would support denial of the petitioner's request.

Council polled as follows: Steinke, Carr, Cosden, Gunter, Long, and Sheppard voted "aye." Hayden voted "nay." Six "ayes." One "nay." Motion carried 6-1.

CITIZENS INPUT TIME

No speakers

TIME AND PLACE OF FUTURE MEETINGS

A Regular Meeting of the Cape Coral City Council was scheduled for Wednesday, October 30, 2024, beginning at 4:30 p.m. in Council Chambers.

MOTION TO ADJOURN

There being no further business, the meeting adjourned at 2:56 p.m.

Submitted by,

Kimberly Bruns, CMC
City Clerk