

REGULAR MEETING OF THE CITY COMMISSION
January 25, 2010

The meeting of the Winter Park City Commission was called to order by Mayor Kenneth Bradley at 3:30 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida.

The invocation was given by Pastor Walter Jackson, First Baptist Church, followed by the Pledge of Allegiance.

Members present:

Mayor Kenneth Bradley
Commissioner Phil Anderson
Commissioner Margie Bridges
Commissioner Beth Dillaha
Commissioner Karen Diebel

Also present:

City Manager Randy Knight
City Attorney Larry Brown
City Clerk Cynthia Bonham

Mayor Bradley announced two sad situations in the City: the passing of Dallas Maddrom and Lee Strickland who serves on the Code Enforcement Board was in Haiti during the earthquake and is still missing and that the search and effort recoveries are now recovery efforts so he is presumed to have passed away. Mayor Bradley asked for a moment of silence to honor these individuals.

Approval of the agenda

Motion made by Commissioner Anderson to approve the agenda with the amendment to include an action item for discussion and action on the Historical Association request for funding as a carryover from the last meeting (new Item 10 b.); seconded by Mayor Bradley. The motion carried unanimously with a 5-0 vote.

Mayor's Report

- a. Presentation of check by Congressman John Mica for Federal grants received by the Police Department.

Congressman John Mica presented the City with a check for over \$110,000 representing three Federal grants received by the Police Department. Police Chief Railey expressed his gratitude to Congressman Mica.

- b. Presentation of spring 2010 Webisode produced in partnership with Full Sail's SPARK program.

Clarissa Howard introduced the Full Sail team that produced the Webisode for the City's website that will be broadcast on the website beginning February 1. The video that was produced that will hopefully help draw people to Winter Park was shown to the audience.

- c. Haiti support.

Mayor Bradley addressed the community supply drive that took place and collected numerous bins of donations.

City Manager's Report

City Manager Knight addressed the Whispering Waters issue, the noise in the parking lot and the parking of vehicles on the grass. He stated they met with the church to resolve the issue. The chain was put back up between the regular parking lot and the grass parking lot. The list of special events was provided where they use this as overflow parking that is permitted by the City. There have been no code enforcement violations. He stated the church representatives are present for any questions.

Commissioner Dillaha asked about the Good Government Group candidate forum being broadcasted live and asked how the word is being provided to the citizens. Communications Director Howard explained the ways they are communicating these to the public and that they will inform the public that these will be broadcast over the website. It was clarified that only the ones held in the Commission chambers will be broadcast.

Commissioner Dillaha asked about the Neighborhood Relief project that began and asked for periodic updates on this and to include information on the trees (how many, where they are going, etc.). Commissioner Bridges asked that this information be posted on the website.

City Attorney's Report

No report.

Non-Action Items

No non-action items.

Consent Agenda:

- a. Approve the minutes of 1/11/10. **PULLED TO MAKE CHANGES. SEE BELOW.**
- b. Approve Amendment 1 to Task Order 2007-01 for CH2MHILL for enhancements to the Water and Wastewater SCADA system in the amount of \$38,000.
- c. Approve the modification of the current Keep Winter Park Beautiful liaison position from part time to full time with the funding to be paid from the existing KWPB funds.
- d. Approve the contract with High Performance Sports Management, Inc. – RFP-2-2010, Tennis Management Services. **PULLED FROM THE AGENDA FOR DISCUSSION. SEE BELOW.**

The following items were pulled from the Consent Agenda: Item a and d.

Item a: Minutes of 1/11/10:

Mayor Bradley addressed pages 10 and 12 showing unanimous approval with a 3-2 vote. Commissioner Anderson addressed page 12 and asked to clarify the Winter Park Historical Association comments in the minutes that he was not referring it to the CRA but was asking for the Economic Director to look at different funding options. Also in the second paragraph, where it reads "Mayor Bradley stated that Winter Park and Maitland are in two different places from a tax base standpoint". He stated that was correct but Ms. del Valle offered the information that Winter Park's general revenues are much higher than Maitland's and the City of Winter Park's budget is much larger.

Motion made by Commissioner Bridges to approve Consent Agenda items a-c, with the changes made to the minutes; seconded by Commissioner Anderson. The motion carried unanimously with a 5-0 vote.

Consent Agenda Item d:

Mayor Bradley stated the issue this evening is only the contract with High Performance. He provided options as how to handle this item before taking public comment. Commissioner Anderson suggested waiting for Commission discussion and any motions until after the public comments. Mayor Bradley stressed that the only public comments that will be taken must pertain only to the contract.

Motion made by Commissioner Bridges to table this contract to a future meeting until we have had an opportunity for interested parties, our Parks Department and representation from the citizen tennis player groups to work out some of the specific contract issues or at least discuss them and possibly reach consensus that could be worked out and be agreeable to our citizens and the vendor that we sought to manage the tennis center; seconded by Mayor Bradley for discussion.

Commissioner Dillaha stated she was not in favor of tabling this to a later date, but there may be necessary revisions based upon the community input she has received and there are adjustments she wanted to make. City Manager Knight clarified that the contract is still going to be awarded to High Performance but that the contract language will be amended to protect all the concerns of the citizens that were raised.

Commissioner Bridges agreed that was the intent of her motion. She stated her concerns remain with the tournament play, the effects on the adjacent residential neighborhoods, and with additional parking. Additional comments were made by Commissioners regarding concerns within the proposed contract and of the citizens they had spoken with.

Commissioner Diebel addressed comments she read that staff has been more to not outsource the contract versus cure concerns with the responsibilities and the way the contract is written. She asked if that is the summary of the correspondence and if we have documented issues and concerns that are not addressed in the contract. City Manager Knight stated the model for outsourcing is a good model and having a private company operate the center can be just as effective. He stated the outsource model would take the risk of breaking even out of the City's hands and putting it into the hands of a private contractor. He addressed the many issues brought up, many that were addressed in the revised contract. He spoke about the conflict between instructors, academies, teams and the people who want open play.

Commissioner Anderson clarified the order of priority for City parks: 1) City of Winter Park resident open play; 2) City of Winter Park resident team play; and 3) City of Winter Park resident instructional play. He stated as long as the contract reflects this order of priority and everyone is clear, he suggested that they move forward. Commissioner Dillaha summarized the main concerns she believed existed that needs resolution concerning the number of tournaments, prime time/non-prime time and school vacation time (make adjustments to the amount of courts that are guaranteed for the community). She did not believe there were many other changes that needed to be made in the agreement.

After further comments, a vote was taken whether to table. Upon a roll call vote, **Mayor Bradley and Commissioner Bridges voted yes; Commissioners Anderson, Dillaha and Diebel voted no. The motion carried with a 3-2 vote not to table.**

Discussion continued regarding amendments to the contract that each Commissioner wanted included and their concerns that they wanted to resolve. Attorney Brown suggested making a motion to approve the contract with amendments that clarifies the concerns and see if High Performance is willing to enter into that contract. He emphasized that the contract provides that it can be terminated without cause on 30 days notice and if there is such termination that High Performance does not have a right to lost profits or consequential damages. Mayor Bradley stated his vote to table was based on the many issues that continue to surface.

Commissioner Dillaha summarized the main concerns that need to be included in the contract: Article 11, page 7, prime time tennis court availability (the hard and soft court numbers need to be adjusted as to the availability for non-instructional play); Article 2, page 8, Public school, vacations and break schedule (how many hard and soft courts should be available during the prime time hours and non-prime time hours); Article 11, page 9, the non-prime time availability of courts for non-instructional play (how many hard and soft courts need to be adjusted); Article 11, page 10, number of tournaments (currently there are up to 10 junior tournaments a year and up to four adult tournaments per year – reduce to a number that makes sense). Discussion ensued regarding the City's ability to change the contract as needed. Mayor Bradley stressed the importance of not having to go through contract negotiation every time they want to make a change. Attorney Brown stated they will craft language within the contract so the City will not have to negotiate certain issues from time to time and see if they are willing to accept the language.

Motion made by Commissioner Anderson for discussion to approve this contract subject to certain amendments, including the amendments proposed by Commissioner Dillaha and an amendment regarding the default provisions that there is no cure period for repetitive defaults and in Article 11, paragraph 'a' where it says "The parties understand that there is a tradition by which recreational and community players have had access to tennis courts and it is the intention of the City that the established uses of the Azalea Lane Recreational Center will be accommodated and will not be disturbed because of this contract for management services." Motion was seconded by Commissioner Dillaha.

Attorney Brown asked if they wanted to increase the number of courts available for non-instructional play during priority/non-priority and vacations and school break times. He stated he will need specific numbers to put into the contract.

Elizabeth Faiella, representing P.A.L.S. (Players of Azalea Lane) and 510 people (not all present at the meeting), summarized the concerns within the High Performance contract. She addressed the breakdown of the vendor's students, having to form new rules about court usage that they disagreed with, wanting to add a cap in the contract for new students because of how it is affecting their court time, the large percentage not wanting the contract to go through with the vendor, concerns with how the courts are being utilized now compared to how they were utilized in the past, and the emails that she obtained from the City that showed the majority not wanting the proposed contract. She asked the Commission not to change the character of current tennis procedures and playing in Winter Park.

Attorney Tom Callan, representing High Performance, and negotiating the contract, stated they have addressed a lot of issues going through the process. He spoke about the concern with instructor rates and other concerns in the contract that they have been trying to resolve.

Ms. Faiella reiterated the concern that they cannot obtain court times because of the scheduling issues. She spoke about the number of children taking lessons that are utilizing most of the courts. She addressed the people not wanting to renew their memberships to the center until they see what is going to happen with the contract. She stated how the center has been run for years has worked very well and they do not want to lose that.

Mr. Callan spoke about the large fees for lessons and that there are not a lot of parents that can afford this which is the cause for loss of revenues. He rebutted the comment that the courts are heavily utilized for lessons.

David Odahowski, 345 Prairie Dune, asked for approval of the contract. He addressed the availability of courts, the hourly rates and that issues with the tournaments will be demonstrated within the contract. He compared the rules in the contract with other entities.

Further comments were addressed by the Commission. Commissioner Anderson expressed the importance of making everyone happy with the contract because of the possibility that the contract could be terminated. Upon questioning by Commissioner Dillaha regarding courts availability, Parks and Recreation Director John Holland and Assistant Director Ron Moore addressed the schedule for court usage. City Manager Knight spoke about the tournaments that are an addition expanded use of over what has been happening. Mr. Moore explained what has been happening with tournaments and what is in the proposed contract. Tournament play was further discussed.

Commissioner Diebel asked what the oversight will be to be sure they are in compliance with the contract. Mr. Knight responded that he and the Parks Director will make sure they are compliant and that they have the tennis committee. Mr. Holland explained how the tennis committee has operated for the past two years. Commissioner Bridges expressed concerns with the difficulty to get courts and asked if they could approve an additional set of clay and hard courts available to our members for the periods of time they want and need. She asked if a compromise could be met to meet that need. Mr. Holland stated they can work on negotiating with them on this and can be an adjustable issue throughout the year.

Discussion about the camera not properly working on the courts was addressed. Mr. Holland stated he will place cameras on the final two courts and should be fully operational within the next 30 days. Commissioner Dillaha addressed the number of hard and soft courts that need to be determined during prime time. Mayor Bradley stated the vendor and staff will work through those details. Mr. Holland stated that is flexible.

Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Dillaha and Diebel voted yes. Commissioner Bridges voted no. The motion carried with a 4-1 vote.

A recess was taken from 5:27 – 5:38 p.m.

Action Items Requiring Discussion:

a. Discussion and Ranking of Legislative Priorities

City Manager Knight stated they are preparing to visit the Legislators in Washington and this is the time of year when any funding requests the City makes are due. He asked for approval and ranking of the list provided to the Commission to take to Washington to try and obtain funding for. He stated the list was larger but was narrowed down by the lobbyist to the six projects that may be possible to be funded: acquisition of the post office property; Fairbanks Avenue roadway and sewer improvements; complete quiet zones/railroad intersection safety improvements; acquire remaining Howell Branch property for parkland; bicycle/pedestrian connector from Pennsylvania/Minnesota to Par Avenue; and Fairbanks/Orange/Pennsylvania Phase II project. No public comments were made. Mayor Bradley reminded everyone that they are traveling to Washington next week and are hoping to come back with some good news.

Motion made by Mayor Bradley to approve the list in the prioritization as presented to us by the City Manager, seconded by Commissioner Dillaha and carried unanimously with a 5-0 vote.

Public Comments

Woody Woodall, 328 N. Park Avenue, Chairman of the Holiday Lights Committee, thanked staff for their support during the holidays.

Public Hearings:

- a. ORDINANCE NO. 2793-10: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE", ARTICLE I, "COMPREHENSIVE PLAN" SO AS TO ADOPT NEW ADOPTION PROCEDURES FOR AMENDMENTS TO THE CITY OF WINTER PARK, COMPREHENSIVE PLAN, SUBSTITUTING FOR THE CURRENT AMENDMENT PROCEDURES, PROVIDING AN EFFECTIVE DATE. Second Reading

Attorney Brown read the ordinance by title. **Motion made by Mayor Bradley to table this until March 22 after our Charter has been voted on.** He stated that this is premature for the Commission to vote on this in with the Charter question on the ballot. **Motion seconded by Commissioner Diebel.** Commissioner Dillaha expressed her preference to move forward.

Upon a roll call vote, the motion to table failed with the following votes: Mayor Bradley and Commissioner Diebel voted yes. Commissioners Anderson, Dillaha and Bridges voted no. The motion failed with a 3-2 vote.

Motion made by Commissioner Anderson to adopt the ordinance, seconded by Commissioner Dillaha. Attorney Brown addressed a grammar issue on page one, paragraph 5 and asked that this be changed to allow one public hearing for the ordinance to transmit and adopt the comprehensive plan amendment at the first reading and upon the receipt of the ORC, have second reading of the ordinance. He explained that this is to streamline the process to have first reading of the ordinance at the same time the decision is made to transmit to the DCA. He stated this is acceptable to change on the second reading and suggested it to read as follows: "The City Commission shall proceed to hold one public hearing for the ordinance to transmit and adopt the comprehensive plan amendment at first reading and on second reading

will hold the second public hearing on the ordinance to adopt such comprehensive plan amendment following receipt of the ORC.” **Motion made by Commissioner Anderson to amend the ordinance as noted by the City Attorney, seconded by Commissioner Dillaha.**

The following spoke in opposition to the ordinance and the supermajority vote:

Joe Terranova, 700 Melrose Avenue
Frank Hamner, 1011 North Wymore Road
David Johnston, 636 Darcey Drive
Woody Woodall, 328 N. Park Avenue
Dan Bellows, 533 W. New England Avenue

Commissioners Anderson and Dillaha addressed why they supported the supermajority vote. Commissioner Diebel stated her reasons for not supporting the ordinance (believed it to be tyranny of the minority and disagreed that the Commission can override the P&Z vote).

Upon a roll call vote, to adopt the ordinance with the amendments as stated by the City Attorney, Commissioners Anderson, Dillaha and Bridges voted yes. Mayor Bradley and Commissioner Diebel voted no. The motion carried with a 3-2 vote.

- b. ORDINANCE NO. 2794-10: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, ESTABLISHING A POLICY FOR THE AUTOMATIC ADVANCEMENT OF CITIZEN BOARD ALTERNATES TO REGULAR POSITIONS IN THE EVENT A REGULAR MEMBER OF THE BOARD VACATES HIS OR HER POSITION PRIOR TO THE EXPIRATION OF HIS OR HER TERM; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, EFFECTIVE DATE OF ORDINANCE AND AN EFFECTIVE DATE FOR THE APPROVED AMENDMENTS. Second Reading

Attorney Brown read the ordinance by title.

Motion made by Commissioner Dillaha to adopt the ordinance; seconded by Commissioner Anderson.

David Johnston, 636 Darcey Drive, disputed the ordinance because of interfering with the Charter where the Mayor makes the appointments. Attorney Brown explained the Attorney General’s opinion received regarding this issue.

Joe Terranova, 700 Melrose Avenue, disagreed with restricting the Mayor the opportunity to make board appointments.

Upon a roll call vote, Commissioners Anderson, Dillaha and Bridges voted yes. Mayor Bradley and Commissioner Diebel voted no. The motion carried with a 3-2 vote.

- c. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AUTHORIZING THE ISSUANCE BY THE WINTER PARK COMMUNITY REDEVELOPMENT AGENCY OF NOT EXCEEDING \$8,100,000 REDEVELOPMENT REVENUE BONDS, SERIES 2010, IN ACCORDANCE WITH THE COMMUNITY REDEVELOPMENT ACT OF 1969; AND PROVIDING AN EFFECTIVE DATE. First Reading

Attorney Brown read the ordinance by title. It was clarified that the dollar figure was lowered at the CRA Agency meeting held beforehand by \$1 million. Commissioner Bridges asked for

clarification why the borrowing amount was lowered. Mayor Bradley and Commissioner Anderson responded. Commissioner Diebel believed these projects could wait and the City should not incur more debt at this time. CRA and Economic Development Director DeBord explained how the Community Center will be funded and how the loan will be paid off. No public comments were made.

Motion made by Commissioner Anderson to accept the ordinance on first reading; seconded by Commissioner Bridges. Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Dillaha and Bridges voted yes. Commissioner Diebel voted no. The motion carried with a 4-1 vote.

- d. RESOLUTION NO. 2042-10: A RESOLUTION BY THE CITY OF WINTER PARK, FLORIDA TO ENTER INTO A GRANT MEMORANDUM OF AGREEMENT WITH THE STATE OF FLORIDA, DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, DIVISION OF FORESTRY

Attorney Brown read the resolution by title. No public comments were made.

Motion made by Commissioner Anderson to adopt the resolution; seconded by Commissioner Bridges.

Upon questioning by Commissioner Bridges, Parks Director John Holland explained what the grant would be used for if the City receives it. **Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Dillaha, Diebel and Bridges voted yes. The motion carried with a 5-0 vote.**

- e. Request of the Winter Park Towers (1111 S. Lakemont Avenue):

Planning Director Jeff Briggs explained the process for the hearing, the four items the Commission needs to take action on this evening, and what the Winter Park Towers was requesting. Mr. Briggs alerted the audience about the sign in sheet they are required to sign if they want to be kept in touch with the correspondence from the DCA. He explained that after this is adopted on first reading this evening it will be reviewed by the Florida DCA who will comment and provide the ORC report and then the second reading will take place in about three months when this comes back for adoption. He stated they will also be looking at a change to the comprehensive plan future land use map because a portion of the property has to be changed from a low density residential category to a high density residential category in order to permit the size of the parking garage and the units where they have evolved to be located. He elaborated on the rezoning ordinance and the conditional use approval required.

He summarized what has taken place with this request since 2006 whereby the parking deficit was addressed and a 425 space parking deck was proposed where the existing parking lot is but there were P&Z concerns at that time regarding the size of the structure and the proximity of the parking garage to the units within Waterbridge. He stated that P&Z tabled it to have time for more planning. He stated the Towers came up with a better plan which moves the parking deck to a more centralized location on the campus so it minimizes the impact to the neighbors and takes advantage of taking the residential units as a liner facing the lake facing the north so a good portion of the parking garage is not seen as a parking garage but as new residential units. He stated the request tonight is basically the same parking garage and same location with more separation between the residential building and the garage. He stated the plan calls for it to be

closer to the lake (98' versus 150' from the 2007 plan). The garage will be three levels and 5 stories for the residential units.

Mr. Briggs summarized the positive recommendations of the Planning and Zoning Commission of all four elements. He explained that this is a preliminary approval and after tonight the applicant will continue to work on refining the plans with respect to architecture, lighting of the parking garage, issues with the trees, the landscape plan, etc. He addressed the debate at P&Z regarding the issue of the proximity of the building to the lake which is about 50' closer to the lake than the 2007 master plan showed. He concluded that the P&Z approved this project as is at the 98' setback and recommended that the pitch of the roof be reduced so there is a 50' overall height versus 55' and recognizing that the details will come back at the final approval.

He spoke about the development agreement that will come back as well as the master plan. He commented about the measures taken by the Towers to accommodate the Waterbridge residents. He mentioned there are a lot of issues with putting a traffic light on Lakemont which will be a future discussion. Commissioner Dillaha asked what staff's recommendations were to the P&Z. Mr. Briggs summarized the different scenarios that he proposed. He stated that no one has a problem with the density that is requested and that even though the rezonings give them more density, they do not need it but it is because of the location of the building that forces them to move the zoning line.

Rebecca Furman, Lowndes Drosdick Doster Kantor and Reed law firm on behalf of the Winter Park Towers introduced the team present: Paul Velandar, landscape architect; Steve Cook, Vice President of construction for Westminster, Linda Kirk, Director of Winter Park Towers; Roger Stevens, Chief Operating Officer at Westminster; Nancy Schwalb who helps with public relations; Joe Robinson, McCree General Contractor's and architects; John Percy, formerly with Glatting Jackson (now AECOM); Carl Beers of HKS Architects and several board members.

Linda Kirk, Executive Director of Winter Park Towers, explained the history of Winter Park Towers, their mission statement, what they do and what they look like as far as residents and staff members.

Ms. Furman addressed the original submittal of 2006 and the meetings with public input since then, the current layout of the property, and the Waterbridge residents not wanting the large parking garage adjacent to their residences (a compromise was made to accommodate them which was to move it from closer to Waterbridge to the interior of their site which caused the comprehensive plan amendment). She explained what was contained in the site plan and the Lake Berry site compatibility.

Landscape Architect Paul Velandar addressed the landscaping and tree canopy of the project. Ms. Furman then addressed the proposed height of the garage and buildings, code and parking analysis, the setbacks, their request for a large scale comprehensive plan amendment, rezoning, and the conditional use permit request. She summarized the P&Z recommendation and the conditions placed on the project. Questions were asked of Ms. Furman by the Commission.

A recess was taken from 7:25 p.m. – 7:50 p.m.

David Johnston, 636 Darcy Drive, spoke in favor of the project because of the quality services they provide to the elderly.

Chase Lasbury, 1268 Melissa Court, addressed the necessity of the wall for a sound barrier because of vehicles frequenting the facility. He asked for a stop light with unlimited access at the end of Serena and agreed with 3 stories.

Gregg Kern, 2019 Natalen Road, opposed the expansion because of the impact to the lake.

Steve Breitbeil, 1946 Gunn Road, opposed the expansion because of the 5 story building, the setback and the impact to the lake shoreline.

Steve Webb, 708 Balmoral Road, opposed the project because of the impact to the community.

Lisa Armour, 708 Balmoral Road, opposed the project because of the need to preserve their neighborhood.

James Thomas, 716 Balmoral Road, opposed the project because of the scope and traffic it will bring.

James Tinkey, 361 Merrie Oaks Road, spoke in favor of the expansion and the garage because of the need for more parking.

Joe Terranova, 700 Melrose Avenue, spoke in favor of the project with the conditions imposed by P&Z because of the need for more residential units for seniors.

Bonnie Breitbeil, 1946 Gunn Road, opposed the project because of the setback and the impact to the lake and the trees that will be destroyed.

Bill Manuel, 526 Genius Drive, did not oppose the expansion but did oppose how it is going to be done. He addressed it being too close to the lake and the building height is too high.

David Pendergraft, 2314 Woodcrest Drive, opposed the request because of the impact to the traffic and lake.

Farlen Halikman, 1201 S. Orlando Avenue, spoke in favor of the project because of the need for additional senior housing and the need to take good care of the elderly.

Carlos Gimenez, 1889 Jessica Court, Waterbridge HOA President, representing about 100 homeowners in Waterbridge addressed the impact to developing too close to the lake, the traffic light issue and concerns with setback and height. He asked to increase the setback from the lake.

Steve Murphy, 1051-1053 Schultz Avenue, spoke in favor of the expansion because of the need to provide additional jobs and because the Towers is good for Winter Park.

Tommy Cullens, 1274 Serena Drive, spoke in favor of the expansion because he did not believe it will impact the community or the lake in a negative way.

Henry Spang, 1065 Lakemont Drive, and resident of Winter Park Towers, spoke in favor of the expansion.

Jim Bogner, 1009 Tuscany Place, spoke in favor of the expansion because of the good they provide to the community.

Allen Trovillion, unknown address, spoke in favor of the project because it is a good project and will not negatively impact the community.

John Webb, 697 Balmoral Road, Lake Berry Property Owners Association, opposed the plan because of the setback, taking out the trees and impact to the lake. He supported staff recommendation #2.

Dennis Devona, 701 Balmoral Road, opposed the 5 story building and the setback. He asked for the 150' setback and a 3 story building because of concerns with the impact to the lake.

Don Rudolph, 1774 Lake Berry Drive, agreed the expansion needs to be done but opposed the plan. He asked that staff's recommendation (#2) be followed.

Richard Sturm, 1840 Winchester Drive, spoke in favor of the project and believed it to be a good plan.

There was a show of hands of people for and against that did not speak.

Commissioner Dillaha stated she met with Rebecca Furman and Steve Cook to go through the plans and get questions answered. She addressed the need to better understand the magnitude of the project. She stated she is favor of the project in terms of the parking garage and 60 units and share the concern with the majority who spoke about the setback issue on the lake and the height of the building on the lakefront. She stated she is not comfortable with approving something that does not conform to the policies that are in the comprehensive plan but believed they can make it work. She spoke about needing to address the traffic light issue and had concerns with the plans for water retention.

Mayor Bradley commented that the P&Z has addressed the issues such as height and that they have made a recommendation and that the role of the Commission is to vote on this and not design it because it has been properly vetted already. Commissioner Dillaha stated she did not believe there was 100% agreement with the vote of the P&Z regarding the height.

Attorney Brown addressed the legal aspects of the quasi-judicial proceedings they need to approve or disapprove as well as the legislative changes before them. He suggested dealing with the legislative questions first. Attorney Brown read the title of the first ordinance.

1. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING CHAPTER 58, "LAND DEVELOPMENT CODE", ARTICLE I "COMPREHENSIVE PLAN" SO AS TO REPEAL AND RE-ADOPT POLICY 1-3.8.4 IN THE FUTURE LAND USE ELEMENT REGARDING THE CONDITIONS UNDER WHICH FUTURE LAND USE MAP CHANGES ARE PERMITTED FROM SINGLE FAMILY OR LOW DENSITY RESIDENTIAL TO MEDIUM DENSITY OR HIGH DENSITY RESIDENTIAL, MORE PARTICULARLY DESCRIBED HEREIN. First Reading

Motion made by Mayor Bradley to accept the ordinance on first reading, seconded by Commissioner Anderson.

Commissioner Anderson voiced a potential conflict. Attorney Brown clarified there was no conflict of interest. Mayor Bradley and Commissioner Bridges disclosed their conversations with Ms. Furman, Mr. Cook and that they have received emails from citizens.

Motion amended by Commissioner Dillaha to read for Policy 1-3.8.4: "The City shall encourage single family detached homes as opposed to apartments and condominiums by prohibiting future land use map amendments from single family residential or low density residential to medium or high density residential. (This portion was changed): The only exception to this policy that may be considered as when an amendment involves an increase to medium or high density residential pertaining to existing residential elderly housing communities consistent with housing element policy 3-1.4.3." The motion was seconded by Commissioner Bridges.

Ms. Furman stated they have no objection to this and allows the project to go forward. After review and discussion, Attorney Brown suggested using other language to clarify the intent. **The amendment was withdrawn by Commissioner Dillaha and Bridges.**

Attorney Brown reworded the language under Policy 1-3.8.4 as follows: "The intent of this policy is to provide a smooth transition of density/intensity of land use. However, the sole exception to this policy shall be with respect to an existing residential elderly housing development that is larger than 10 acres, etc."

The original motion with the change in language as stated above was agreed to by Mayor Bradley as the maker of the original motion. Commissioner Anderson as the second to the motion agreed. The motion carried with a 5-0 vote. Following the public hearing, Commissioner Dillaha rescinded her vote and voted no. Thus the motion carried by a 4-1 vote. (See the attached information at the end of the minutes from the City Attorney regarding this matter)

2. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING CHAPTER 58, "LAND DEVELOPMENT CODE", ARTICLE I "COMPREHENSIVE PLAN" FUTURE LAND USE MAP SO AS TO CHANGE THE COMPREHENSIVE PLAN FUTURE LAND USE MAP FROM LOW DENSITY RESIDENTIAL TO HIGH DENSITY RESIDENTIAL ON 2.74 ACRES WITHIN THE WINTER PARK TOWERS PROPERTY AT 1111 S. LAKEMONT AVENUE, MORE PARTICULARLY DESCRIBED HEREIN. First Reading

Motion made by Mayor Bradley to accept the ordinance on first reading, seconded by Commissioner Anderson. Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Dillaha, Diebel and Bridges voted yes. The motion carried unanimously with a 5-0 vote.

3. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING CHAPTER 58, "LAND DEVELOPMENT CODE", ARTICLE III, "ZONING" AND THE OFFICIAL ZONING MAP SO AS TO CHANGE THE ZONING DESIGNATION OF PLANNED UNIT RESIDENTIAL (PURD) DISTRICT TO MULTI-FAMILY (HIGH DENSITY R-4) DISTRICT ON 2.74 ACRES WITHIN THE WINTER PARK TOWERS PROPERTY AT 1111 S. LAKEMONT AVENUE, MORE PARTICULARLY DESCRIBED HEREIN. First Reading

Attorney Brown read the ordinance by title. He suggested that each disclose any conversations if they have not already done so and to be sure all emails are in the City's possession.

Motion made by Mayor Bradley to accept the ordinance on first reading, seconded by Commissioner Anderson. Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Dillaha, Diebel and Bridges voted yes. The motion carried unanimously with a 5-0 vote.

4. Conditional use approval to allow the construction of a new four level, 383 space parking garage and a new five story, 60 unit residential building.

Motion made by Mayor Bradley to approve the Planning and Zoning Commission preliminary approval of the conditional use as follows: That a development agreement needs to be completed at a future date prior to final approval to include the following: 1. A cap on the WP Towers expansion into Waterbridge. The number and area can be determined later; 2. To review and approve the final master plan which would also place a cap on any future buildings and density; 3. The consideration of the traffic light with staff recommendation of a 2/3 to 1/3 funding split; 4. On the western perimeter wall where it abuts other Waterbridge neighbors to increase the height or integrity of the wall so that it abates noise from mechanical units, trash, lighting or other service traffic in that location; 5. That the storm water review be done thoroughly; and 6. That if any of the existing mature trees along the lakefront are damaged or destroyed either during construction or a period of six months after construction, they will be replaced at their current size (The motion was amended as follows: Tree replacement is limited to those designated on the tree survey as presented. Compensation is to be determined by the Tree Preservation Board of the City Arborist and future use of the facility is restricted to elderly housing, nursing or assisted living facility. (Height of the project P&Z motion): For the lakefront building with a 98' setback and 5 stories but limited to a 50' height with roof slope design to be approved with the final conditional use approval at a later date. The motion was seconded by Commissioner Diebel for discussion.

Commissioner Bridges expressed her concerns with not providing enough protection for the adjacent neighbors, the environmental concerns with the lake and the height setbacks. She stated she is looking for conceptual approval of the expansion of the garage and the need for that but for better planning of what is actually built on the site. She asked if someone can provide ideas or modifications to the plan to see if it is something that better fits the site and the concerns of the adjacent property owners.

Mayor Bradley inquired about the setback from the lake. Mr. Briggs stated the minimum lakefront setback in all zoning districts is 50' but the Commission can decide on the setback as part of the conditional use. He explained the options the Commission has to include this portion of the hearing. Ms. Furman expressed concerns with the time and money already spent on this project and they will not agree to table the conditional use permit because there is no guarantee that in the end what is approved conditionally will be feasible for them. She explained how to correctly measure the setback and that they designed this project with almost double the R-4 required setback. She stated they analyzed where else the units could be placed and that the 60 units are needed. Commissioner Bridges reiterated her concerns. Ms. Furman spoke about an option they considered to take off one story on Lake Berry and put that in the master plan on top of where the existing 14 units are but expressed concerns about delaying the project and not having a guarantee that the property owners would agree. Other possible options were addressed.

Commissioner Dillaha expressed concerns with the setback from the lake and the height and questioned why they are looking at a 5 story building 98' from the shoreline. The applicant stated they have more than met the requirements of the City for this project. Ms. Furman stated that taking this to four stories is a significant compromise and are still twice as far back as you would need to be and she asked for a preliminary approval of the four story compromise plan. Commissioner Anderson expressed his concerns with the setback but agreed to move forward with what P&Z approved. Additional questions were asked regarding the four stories versus five stories.

Motion amended by Commissioner Dillaha by adding the following condition to pay \$120,000 in park fees within 60 days of signing any developer's agreement. Attorney Brown disagreed with this condition because it does not relate to the protection of the surrounding neighbors. Motion was withdrawn.

Motion amended by Commissioner Dillaha that the traffic light staff recommendation of the 2/3 to 1/3 funding split be funded 100% by the developer. Motion failed for lack of a second.

Motion amended by Commissioner Bridges to include that the lakefront units only be four stories high and allow the developer to relocate those 12 units somewhere on the property. Motion failed for lack of a second.

Upon a roll call vote, Mayor Bradley and Commissioners Anderson and Diebel voted yes. Commissioners Dillaha and Bridges voted no. The motion to approve the conditional use with the P&Z recommendations was approved with a 3-2 vote.

Commissioner Dillaha rescinded her vote at this time regarding the text change to Policy 1-3.8.4 that they previously voted on as reflected above as part of the vote, as indicated in the motion above.

- f. ORDINANCE NO. 2795-10: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING" SO AS TO ADOPT NEW ZONING REGULATIONS CHANGING THE PERMITTED, CONDITIONAL AND PROHIBITED USES WITHIN THE ZONING DISTRICTS OF THE CITY, ADOPTING NEW DEVELOPMENT STANDARDS, DENSITIES AND INTENSITIES OF DEVELOPMENT, ADOPTING CHANGES NECESSARY TO IMPLEMENT THE CITY OF WINTER PARK, COMPREHENSIVE PLAN, GOALS, OBJECTIVES AND POLICIES DOCUMENT, DATED FEBRUARY 23, 2009, PROVIDING AN EFFECTIVE DATE Second Reading

Motion made by Mayor Bradley to table the ordinance until February 8; seconded by Commissioner Diebel. Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Diebel and Bridges voted yes. Commissioner Dillaha voted no. The motion carried with a 4-1 vote.

Attorney Wade Vose, Vose Law Firm, 324 W. Morse Boulevard, representing 14 property owners with 58 parcels of property that he stated would suffer substantial violations of private property rights and be hugely damaged by this code. He addressed the letter sent to the Commission expressing their concerns and summarized why they were opposing the proposed

Land Development Code . He addressed what they believed to be inconsistencies with the code and the comprehensive plan.

Attorney Frank Hamner, representing RCJ of Winter Park, addressed the citizen's summary on the website of the proposed changes to the C-2 zoning. He compared the comprehensive plan with the proposed LDC and portions of the code that were unclear to him. He expressed concerns that under the comprehensive plan you are entitled to apply for C-2 zoning but that the discretion of the Commission to approve or disapprove is taken away in the land use code.

Mayor Bradley asked Attorney Brown to review Mr. Vose's letter and bring recommendations to the next meeting. Attorney Brown addressed a recent case that these types of complaints are handled on a case by case basis as affected landowners and was not concerned that the City is subject to a preemptive lawsuit to invalidate the City's code but they do raise some serious issues that they will review and report back to the Commission at the next meeting.

Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Diebel and Bridges voted yes. Commissioner Dillaha voted no. The motion carried with a 4-1 vote.

- g. RESOLUTION NO. 2043-10: A RESOLUTION OF THE CITY OF WINTER PARK, FLORIDA SUPPORTING THE ACQUISITION OF THE PROPERTY CURRENTLY OWNED AND USED BY THE UNITED STATES POSTAL SERVICE FOR THE PURPOSE OF PUBLIC PARKLAND.

Attorney Brown read the resolution by title. No public comments were made.

Motion made by Commissioner Dillaha to adopt the resolution; seconded by Commissioner Anderson. Mayor Bradley asked for clarification that this resolution is non-binding if they decide that the northern end is a potential site for the library. Attorney Brown addressed Section 4 of the resolution that the City Commission cannot bind a future Commission so they can make this commitment today but a future City Commission could decide to use the property some other way. He stated if the will of the Commission is that you truly make the property parkland for a substantial period of time, Section 4 could be revised to provide for a deed restriction that the property would be deed restricted as parkland.

Mayor Bradley spoke about the potential for part of the arrowhead property being the library and the major part being parkland, and if this resolution would disturb that if that is what the Commission chooses to do with the property. Attorney Brown stated he believed the way he will word it would not interfere with that. Commissioner Anderson asked that in Section 1 a statement be made that if the City were given the land, it would be intention to make it parkland. Attorney Brown stated he did not believe the current language is inconsistent with what the Commission is trying to accomplish or inconsistent with the current effort to rezone the property.

Both Commissioner Dillaha and Anderson agreed with the change to section 4. Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Dillaha, Diebel and Bridges voted yes. The motion carried unanimously with a 5-0 vote.

Historical Association agenda item that was added to the agenda:
The Historical Association issue was moved to the February 8 agenda.

City Commission Reports

a) Commissioner Anderson

No report.

b) Commissioner Dillaha

1. Commissioner Dillaha asked about the traffic signal on Lakefront at the Winter Park Towers and if staff should obtain a professional opinion regarding such a need for a signal at that location. She asked for closure of this issue so it does not come up year after year. Public Works Director Attaway Troy provided his opinion that a professional will determine that it will not meet the warrants to justify a light there as staff has already reviewed it. Commissioner Bridges spoke about staff reviewing this and that it does not comply with the warrants but asked if there is a solution that staff could give them to address the safety issues. There was a consensus that staff bring this back to the City Commission as an agenda item.

2. Commissioner Dillaha asked that the Planning Director bring forward to P&Z procedures for amending comprehensive plans and it is the list of criteria that uses the benchmarks to determine whether or not you will approve. Mr. Briggs stated that is already on the P&Z agenda and will come back to the Commission.

c) Commissioner Diebel

1) Report on Howell Branch Retention Pond escalation

Pulled to the next meeting.

d) Commissioner Bridges

Commissioner Bridges addressed the City Attorney getting with staff about the resolution to send to Tallahassee regarding texting while driving.

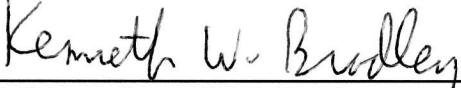
e) Mayor Bradley

City Manager Knight stated the residential code is scheduled for the February 8 unless a work session is needed before that. Mayor Bradley requested that the LDC be on the next meeting and the residential code be on the February 22 meeting agenda. Commissioner Dillaha asked to bring both of them forward at the next meeting. Mayor Bradley suggested adopting the LDC first before bringing other issues before them. Commissioner Bridges stated since they are both related she did not see why they could not address them at the same time. Commissioner Anderson stated we can try it and can always table it. Commissioner Bridges agreed. There was consensus to add this to the February 8 agenda.

Meeting Adjourned

Motion made by Commissioner Dillaha to adjourn the meeting; seconded by Commissioner Bridges and carried unanimously.

The meeting adjourned at 10:40 p.m.



Mayor Kenneth W. Bradley

ATTEST:

City Clerk Cynthia S. Bonham

Cindy Bonham

Subject: FW: RESCISSION OF COMMISSIONER`S VOTE.

From: Larry Brown
Sent: Sunday, February 07, 2010 3:30 PM
To: Bradley, Ken; joeterra@earthlink.net
Cc: rknight@cityofwinterpark.org; cbonham@cityofwinterpark.org; KBradley@cityofwinterpark.org
Subject: RE: RESCISSION OF COMMISSIONER`S VOTE.

You are correct that the practical effect was, by consensus or acclamation Commissioner Dillaha's vote changed, and it did not affect the result.

We don't strictly follow Robert's, but to the extent we did, Robert's Rules does not grant an automatic right to change a vote after the vote is completed and the result is announced by the Chair. Article VIII, Rule 46 says in part:

"A member has the right to change his vote up to the time the vote is finally announced. After that he can make the change only by permission of the assembly, which may be given by general consent; that is, by no member's objecting when the chair inquires if any one objects. If objection is made, a motion may be made to grant the permission, which motion is undebatable."

I'm working with a more complete set of the Rule's now. Last night I was using a more abridged version. I now see that there is a more direct route to justify procedurally what took place at the meeting. However, I would have treated the matter differently if the result of a quasi-judicial determination would change, and the parties to the proceeding had already gone home thinking they knew what happened. Under that circumstance the change of the vote should be tabled and the parties renoticed so they have an opportunity to listen to the discussion and record it for judicial review.

I have had situations where an official moves for reconsideration of a vote, or at a later meeting moves to rescind a vote. But I've never had an official simply want to change his or her vote, but on further study of Robert's I see that is authorized, either by consensus or undebatable motion.

From: Bradley, Ken [mailto:Ken.Bradley@FLHOSP.ORG]
Sent: Sunday, February 07, 2010 2:55 PM
To: joeterra@earthlink.net; Larry Brown
Cc: rknight@cityofwinterpark.org; cbonham@cityofwinterpark.org; KBradley@cityofwinterpark.org
Subject: Re: RESCISSION OF COMMISSIONER`S VOTE.

Larry:

While I agree with the net effect, we DID not reconsider our vote by application. I believe, even under Robert's Rules, a vote can be changed without a formal re-vote. I feel this distinction is important.

Thank you.

Mayor Bradley