

REGULAR MEETING OF THE CITY COMMISSION
February 8, 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 Police Chief Brett Railey, followed by the Pledge of Allegiance.

Members present:

Mayor Kenneth Bradley
Commissioner Phil Anderson
Commissioner Margie Bridges
Commissioner Beth Dillaha
Commissioner Karen Diebel (arrived 3:43)

Also present:

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

Approval of the agenda

The agenda was approved by consensus.

Fire and Police Pension Board Update

Assistant Fire Chief Pat McCabe provided a PowerPoint presentation regarding the overview of both the Fire and Police Pension Boards. He addressed their duties, the definition of a fiduciary, the member composition of both boards and their names, and the asset allocation for each board. Mayor Bradley asked where the pensions are in terms of unfunded liabilities. City Manager Knight and Plan Administrator Jeff Templeton provided Mayor Bradley the information he requested.

Mayor's Report

a. Police Department Accreditation Assessment recognition

Police Chief Brett Railey spoke about the three year process it took to receive this award. Altamonte Springs Police Chief Bob Merchant who serves on the Statewide Commission For Law Enforcement Accreditation presented the accreditation award to the Police Department. He praised the Winter Park Police Department as a whole and also Ed Bigley for how he organized and runs the property and evidence section. Chief Railey recognized Sgt. Pam Marcum and Capt. Vern Taylor for making this award possible through their efforts and hard work.

b. Presentation of UPPCC Agency Certification Award for 2009

Purchasing Manager Carrie Woodell presented the City with the UPCC Agency Certification Award for 2009 that was received by the Purchasing Department. She introduced Purchasing Agents Tony Durrum and Diane Wetherington who were critical in helping to receive this award.

c. Proclamation – 2010 General and Referendum Election

Mayor Bradley proclaimed March 9 as Election Day in Winter Park.

Mayor Bradley announced the anniversaries of the Boy Scouts for being 100 years old; the 75th anniversary of the Bach Festival and the 55th anniversary of the Winter Park Memorial Hospital.

City Manager's Report

1. City Manager Knight addressed the bulk power contract with Progress Energy ending May 31 after 5 years and the advertising of Request For Proposals (RFP's) for bids on the contract. He stated the City of Bartow has received their bids from the same entities we expect to receive bids and based on some of the information, the numbers are not looking as attractive as in our existing contract. He stated Progress Energy has offered to extend the existing contract and terms through the end of the year while the market settles down which he recommended. He stated he pulled the RFP and recommended to extend the contract for the rest of the year. There was a consensus for the City Manager to move forward with extending the contract and later in the year put the RFP back out there.

2. City Manager Knight spoke about tennis fees and the differential between resident and non-resident increases and working with High Performance who has offered to revise the fees that bring them back into line between the resident and non-residents so the percentages are the same. He stated he provided this information to the Commission. He stated the contract gave staff the authority to make those adjustments so no action is necessary by the Commission.

3. City Manager Knight spoke about decisions that need to be made regarding the Canvassing Board for the March 9 election. He addressed the information provided to the Commission in December that outlined "active participation" by members in campaigns which could disqualify them from serving on the board. Attorney Brown explained the Division of Elections opinion rendered and the City Charter language. He stated it is up to the Commission to be the judge of qualifications of the members of the Canvassing Board and if only two can serve the City Clerk will serve as the third person. He stated this will be discussed at the next meeting and will need to appoint the board. He stated if we find ourselves in the position that only one Commissioner can serve on the board, the County Supervisor of Elections will be approached to ask to appoint someone to serve as the third person.

City Attorney's Report

Attorney Brown requested an executive session be scheduled for the Miller vs. Trbovich and the City of Winter Park lawsuit. After discussion, the session was scheduled along with the Williams lawsuit executive session on March 5 at 2:30 p.m.

Attorney Brown addressed the letter he issued summarizing his impressions of the letter received from the Vose Law Firm and Attorney Frank Hamner and is prepared to address it beyond the letter. It was agreed to address this further when the item comes up for discussion.

Non-Action Items

a. Update on Winter Park "Outreach" Emergency Alerting Network

Fire Chief Jim White provided a PowerPoint presentation regarding the Outreach Network to include a description of what it is, how it works, when Outreach is used, access to Outreach, the member webpage, how members with special needs are handled, how to enter the member

information, how they can search and select groups, and how they notify the residents. Questions were addressed and responded to. Commissioner Diebel addressed the need to combine the information that Ms. Howard in Communications has from residents with their resident list. Chief White stated they are already working on that.

b. Financial update for FY 2010.

Finance Director Wes Hamil provided a brief summary of the financial outlook of how they finished in 2009 and first quarter of FY 2010. Mr. Hamil addressed questions posed by the Commission regarding various parts within the report.

Motion by Commissioner Anderson to accept the report; seconded by Commissioner Diebel and carried unanimously with a 5-0 vote.

c. Fairbanks improvement projects update.

City Manager Knight spoke about the information provided in the package regarding the intersection of Fairbanks/Pennsylvania. Utilities Director David Zusi provided the status of the West Fairbanks project. He stated they have submitted a number of items to the FDOT who is in the process of reviewing and approving those to include a very in-depth technical memorandum which discussed the preliminary design, plans for alternate bicycle routes and a report showing where the medians will be placed, etc. He stated they requested and received from us a supplemental letter of commitment to the bike route that they are proposing on Minnesota and they believe they have a requirement to address bicycle lanes on state roads that have work done on them. He stated we believe we have adequately met the requirement of the statute; however, they have pushed hard for this and we have had to go through several iterations to give them what they feel is an adequate response. He met with them today and they have preliminarily indicated that they think they can now approve everything.

He spoke about the agenda item for February 22 regarding this project. Mr. Zusi addressed having to go through FDOT for the final design approval because of it being a state road. He stated their involvement will be concluded once the initial alternate route is approved. Mr. Knight clarified that they approved the preliminary design and we have to submit our final design for their approval. Mr. Zusi stated the start date should be late 2010 and will be completed in late 2011. Mayor Bradley suggested that at the time we have definitive information that we have a community wide meeting or send out the information that was provided to them as a form of communication for that portion of the area. Mr. Zusi stated he can provide a better schedule for the entire process when the final design is approved. He stated they intend to hold a public meeting to explain what will take place during the project's duration.

d. Economic incentive package update.

Economic Development/CRA Director Dori DeBord provided an update on the economic development incentive packages. She summarized what is currently available in the CRA to the businesses within the CRA district. She addressed the Business Facade Program that is very active, the Micro Loan Program, the HUBZone Program where we act as a go between to allow for small businesses to begin, and the Business Recognition Program. She addressed three areas of interest they are working on: the Targeted Job Creation Program, the Anchor Investment Tax Rebate Program, and the Development Fee Rebate Program. She spoke about others areas they have had discussion on regarding expediting the permitting process, the

permitting fee processes, and what we need to do to qualify new businesses for either incentives or opportunities to have those areas also reviewed. Discussion ensued about the need to expedite the permitting process. Ms. DeBord stated she will work with Building Director Wiggins and his department on this. Mr. Knight clarified this is not an efficiency issue but is to expedite the process for specific types of projects.

Mayor Bradley suggested that the City Manager's Report include a report as to how long a project was in the permitting process. Ms. DeBord concluded that she would like to continue to move forward on this and will make it the priority as to where they go with the economic incentive package. Other questions and comments regarding the programs and economic incentives from the Commission were responded to by Ms. DeBord. Ms. DeBord will bring back program details and, if necessary, standardized applications for Commission consideration and approval as well as the industry cluster information by the first meeting of April. She explained the funding for these programs and the need to budget these for the FY 2010/2011 budget year.

Commissioner Diebel suggesting lowering the fees which will have the same result as the rebate and incentive tax programs instead of creating an economic program that will have other programs associated with it having to be administered. Ms. DeBord responded that it aims at targeted businesses and not every business and provided additional comments. Commissioner Bridges asked that they be informed of the targeted businesses and that staff review the financial ramification of pursuing Commissioner Diebel's suggestion to end up with the same goal but through a different mechanism. Ms. DeBord stated the programs are very broad and can be tailored to the way the Commission wishes to tailor them.

- e. Report of the Mayor and Commissioner's Legislative meetings in Washington, D.C. on February 3.

Mayor Bradley addressed their visit to Washington, D.C. with our congressional delegates and two senators as well as a special meeting with Congresswoman Kosmas to discuss with the high executives of the postal service regarding the relocation of the post office and distribution center. He stated the meetings went well and that they asked for resources and support in the Fairbanks Avenue initiative as well as the quiet zones in our City. He believed they were well received and there was no resolution to the post office with the exception that we have an agreement to extend the contract at this point and that they received the assurance from the postal service that they have no desire to redevelop that land. Commissioner Anderson spoke about them being fortunate to have the four representatives from the various parts of Winter Park present. Mayor Bradley stated as items come forward, Mr. Knight will keep them informed as to what they will be able to receive or respond to from Washington.

Consent Agenda:

- a. Approve the minutes of 1/25/10.
- b. Approve PR 143810 to Chaz Equipment for manhole structural rehabilitation, piggy-backing off City of Delray contract #2002-37; \$37,704.00 (Budget: Capital Projects - Rehab Sewer Manhole).
- c. Approve the rate increase for Waste Pro due to landfill cost increase.

Motion made by Commissioner Dillaha to approve the Consent Agenda; seconded by Commissioner Anderson. The motion carried unanimously with a 5-0 vote.

Action Items Requiring Discussion:

a. Winter Park Code of Ethics.

Assistant City Manager Michelle del Valle provided the Code of Ethics for approval that was reviewed by the City Attorney. She stated that Mr. Warner and Mr. Walker were present. She clarified portions of the code and spoke about where the Code of Ethics and the State law differentiates. She stated the code has been written by the Ethics Board with the intention of heightening awareness of ethics in our community, is seeking voluntary compliance by the members of the community and using the State as an enforcement board (body of investigation) if necessary so many of the concepts in the code are paralleling the State law.

She addressed differences in the State law versus the Ethics Code to include: 1) the definition of relative which the board defined more narrowly than the State; 2) the State law pertaining to accepting gifts where they allow up to \$100 and the code applying a \$0 threshold; 3) political activities was expanded in the Code of Ethics to provide examples and clarify what is and is not acceptable; and 4) ethics education which differs from the State where they recommend a requirement that all City officers are educated on the City's Code of Ethics within 30 days of taking office. She stated the Ethics Board is continuing to work on developing language regarding campaign finance but is not being targeted in the Code of Ethics presented this evening. She stated changing this would require a special act of the Legislature.

Commissioner Diebel commented about the importance to not supersede the State law it but to comply with it and asked why we were still pursuing this. City Manager Knight stated the direction of the Commission has been for the Ethics Board to review that issue which is why they are continuing to work on it. Commissioner Diebel stated this needs further Commission discussion because of the need to be consistent and compliant with State laws rather than making our own laws.

Commissioner Dillaha questioned whether a municipality can create new campaign finance laws that are more stringent than the State. Attorney Brown stated that the City of Sarasota tried to do that but was struck down by the courts and is now being appealed. He stated the court found there was an implied preemption of state law when you try to alter campaign finance contributions because they stress the importance of uniformity for all elections on a statewide basis. He stated if the Supreme Court does something different after their second round of oral arguments, his opinion will change but currently the opinion is that the State law preempts local governments on these campaign finance issues.

Commissioner Anderson inquired about the political activity definition on page 5-6 for clarification. Discussion ensued regarding the activity that would not be allowed during a political activity versus freedom of speech. After further discussion regarding political activity and the definition of relatives, there was a consensus to streamline the Code of Ethics to reflect the state statutes and for the City Attorney to revise the code as discussed (including Section 1.08) and to bring this back before the Commission.

Motion made by Mayor Bradley to table this item until the City Attorney has reviewed the code with appropriate review to state level and bring this within state compliance; seconded by Commissioner Bridges and carried unanimously with a 5-0 vote.

b. Winter Park Historical Association (WPHA) request for funding.

Executive Director Danielle Jansick, Winter Park Historical Association, along with Board President Linda Kuhlman was present. She addressed the materials submitted on January 11 and on January 25. She pointed out that she was asked to return to clarify expenditures for their proposed initiatives and that they made a change to Part I in their request to increase the City's funding by an additional \$75,000 for the City's 2009-10 budget year (\$25,000 has already been allocated). She stated that Part II remains the same for future budget years to provide for WPHA funding via a City budget line item with the proposed amount to cost each resident \$2 per year. She addressed the importance of the economic impact of heritage tourism to the City and highlighted some of the unfunded initiatives to include archival, Winter Park tours, student outreach (in their own voices), oral histories, speaker series program, and museum services. She also addressed their collaboration with other City organizations, their current operating costs and their sources of funding.

Commissioner Anderson compared the funding that Winter Park contributes with the City of Maitland who contributes much more to their historical association. He stated he did not believe he could support the entire increase of \$75,000 but would support some increase in the funding. Commissioner Dillaha supported increasing the funding now, and to discuss a more definitive amount and revisit this in the next budget cycle.

Commissioner Bridges agreed that we have a demonstrated economic driver with the WPHA in our community and have lost past opportunities to provide the support they need. She elaborated on the benefits associated with the WPHA and meeting the needs of the community and to fully support them financially (\$75,000). Mayor Bradley expressed the need to factor in the rent of the building that the City provides rent-free as well as the staff that provides support for them.

Commissioner Diebel stated she does not support increases in discretionary spending to outside organizations outside of the budget cycle. She addressed the consensus they reached during the budget cycle regarding who they will support financially.

After comments regarding Exhibit B, **a motion was made by Commissioner Anderson to approve funding for the approximate cost of the archival services and the education/tours which would be around \$35,000.**

Commissioner Diebel inquired if he would be willing to refer this to the CRA board to fund since it is tied to both initiatives, not only by location in the CRA but there is discretionary funding that is being debated today. She opposed taking this out of the General Fund. Commissioner Anderson spoke about grant funding as opposed to ongoing funding of an operation that will forever continue and believed this to be a General Fund issue.

The motion was seconded by Commissioner Dillaha.

Mayor Bradley asked about the archival services of the library and the distinction between the two entities and if one entity could provide this service. Ms. Jansick stated she does not want to duplicate efforts so they are trying to dedicate themselves to only archiving artifacts that no one else archives. She stated the library does not have the capability to take this over because of the lack of staffing and space. Mayor Bradley inquired about the number of heritage visitors that come to Winter Park. Ms. Jansick responded that she did not know that number. Mayor

Bradley asked her to provide their list of contributors. Commissioner Dillaha explained why CRA funds could not be used and asked for support of the increase.

Amendment to the motion made by Mayor Bradley that any monies approved in the overall motion be matched 50% by donations received by the association; seconded by Commissioner Diebel. Commissioner Diebel stated the library was required to do a similar type drive. Mayor Bradley asked where the funds would come from. City Manager Knight stated this would come out of the Contingency Fund. Commissioner Anderson addressed the amendment and stated if the organization was adequately funded to begin with, he could support the amendment but that it is underfunded based on comparison with the region and the amount of draw it brings in and will continue to bring in as a result of recent historical articles about the City.

Joe Terranova, 700 Melrose Avenue, member of the Historical Association, agreed with the request of the association but cautioned about how other organizations being in similar situations are treated and that this is an off-budget time. He cautioned about setting a precedent and asked that this be considered during the budget process because of other requests that will come forward.

Kim Allen, 271 Virginia Drive, addressed the significance of heritage tourism and the dollars this brings back to the community. She stated this is a good way to attract tourists and wanted to see the WPHA be more involved in the heritage tourism business in conjunction with the Chamber of Commerce.

Pete Weldon, 700 Via Lombardy, supported the association's mission but asked that their funding request be considered with all other third party funding requests at the next budget cycle. He expressed concerns with other organizations currently facing the same financial constraints. He requested that this request and any current special City support for the WPHA be limited to providing \$5,000 in matching funds for the first \$5,000 in private donations deposited before April 30, 2010. He stated if this is approved today, he will pledge \$500 to the WPHA to help get this started. Upon comments by Mr. Weldon, Commissioner Anderson clarified that his awareness of this issue was triggered by his wife but that does not change the perception of the relative importance of this organization to the City. He spoke about the importance of organizations that bring money and people to the City. Attorney Brown stated this does not create a conflict of interest for Commissioner Anderson.

Commissioner Bridges stated she is incredibly supportive philosophically of our historical association and the City's responsibility to provide financial support to the WPHA because it is a reflection of our community, although torn of having a mid-budget cycle discussion. She stated she served on the WPHA as well as the Historic Preservation Board.

Upon a roll call vote of the amendment, Mayor Bradley and Commissioner Diebel voted yes. Commissioners Anderson, Dillaha and Bridges voted no. The motion failed by a 3-2 vote.

The original motion made was further discussed. Commissioner Diebel reiterated her concerns with making an out of budget discretionary expense as a one time item and that they should go back to the CRA Board because the grant process achieves the same goal and monies would not be taken out of the Contingency Fund. Mayor Bradley expressed concerns with expending

funds at this tough economic time and that we do not know what the rest of the budget cycle will bring before them.

Upon a roll call vote of the original motion, Mayor Bradley and Commissioners Diebel and Bridges voted no. Commissioners Dillaha and Anderson voted yes. The motion failed with a 3-2 vote. Commissioner Bridges expressed the difficulty of this decision for her.

Public Comments

Pete Weldon, 700 Via Lombardy, suggested that the opportunities to expedite permits are directly related to expediting changes to the Comprehensive Plan and the Land Development Code. He also asked if the City's financial books could be closed (even if on a reported unaudited basis) long before 5 months after the end of the fiscal year. Mayor Bradley stated they can discuss that at another time.

Joe Terranova, 700 Melrose Avenue, spoke about the email he sent to the Commission regarding the recession of a vote. He stated he was not questioning the ability of a Commissioner to rescind a vote but the matter in which it was handled raised questions among the community as to what happened. He stated the minutes do not reflect everything that happened; only in a cursory way. He addressed the lengthy discussion regarding the Winter Park Towers and the recess taken when everyone involved in the process left the meeting. He stated there was a change in the vote and he wanted to be sure it was handled in a proper manner that would not compromise the City's legal rights. He asked that the explanation of the City Attorney regarding the vote be made part of the record. Attorney Brown stated the letter can be made part of the minutes. The City Clerk will add this to the minutes.

A recess was taken from 5:58 - to 6:18 p.m.

Public Hearings:

- a. ORDINANCE NO. 2792-10: 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 Second Reading

Attorney Brown read the ordinance by title.

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

Joe Terranova, 700 Melrose Avenue, disagreed with reducing the number from \$9,100,000 to \$8,100,000 because the CRA has not discussed the priorities and we are uncertain as to the unknowns at this time. He asked the Commission to reconsider raising the figure back to \$9,100,000. No other public comments were made.

Commissioner Dillaha reiterated that we go with the \$9,100,000 to allow for more flexibility until the projects are determined and what our strategic plan is for the CRA going forward. Discussion ensued regarding whether they need to reconvene as the CRA Agency to change this since this is the second reading. Attorney Brown stated this will have to go back to the CRA

Agency if this is changed. CRA Director DeBord stated the bond counsel is currently preparing the bond documents at the \$8,100,000, the closing is set for next week and there is a deadline for this loan with SunTrust. It was clarified that the entire process would have to begin all over if this number is changed.

Upon further discussion whether or not to increase to \$9,100,000, **a roll call vote was taken with Mayor Bradley and Commissioners Anderson, Dillaha and Bridges voting yes. Commissioner Diebel voted no. The motion carried with a 4-1 vote.**

- b. 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

A verbatim transcript is provided at the end of the minutes on this public hearing.

Planning Director Briggs stated for the record that the hearing has started after 5:30 pm and the comprehensive plan that was adopted last year takes precedence over the development standards and rules in the zoning code so this ordinance will bring the zoning code into line with the comprehensive plan. He summarized the process to date and the improvements that were made to the code.

Mr. Briggs addressed the parapet height amendment from the last meeting. He stated the Commission asked to report back on was the issue of building height feet. He explained the floor heights for various types of buildings as recommended by P&Z which now is 42.5 feet for three stories and back to the same 55' that was in the code prior to making any changes for four story buildings. Staff and P&Z recommended making this change. He clarified what the text means on where you can use Central Business District (CBD) C-2 zoning. Mayor Bradley inquired about the parking regulations. Mr. Briggs addressed the parking issue and the need to increase the number of parking spaces for restaurants.

Motion made by Commissioner Anderson to adopt the ordinance, incorporating the changes suggested by Mr. Briggs, seconded by Commissioner Bridges.

Becky Vose, Vose Law Firm, 324 W. Morse Boulevard, summarized their concerns with the proposed code as provided within the letter sent to the City Attorney and Commissioners. The letter is attached as part of the minutes. She addressed discrepancies she believed existed between the comprehensive plan and the Land Development Code regarding the Central Business District Future Land Use designation and Central Business District C-2 zoning concerning properties in the CBD. She stated Mr. Briggs indicated it was not the intent to limit C-2 zoning just to the one area (in the green) showing on the map as there are other properties fronting on four streets in the Hannibal Square neighborhood that also qualify. She stated the matter of adopting a map as published in the LDC has a negative impact on the code.

Ms. Vose also addressed the property at 301 W. New England Avenue that was rezoned in 2003 but now under the LDC is designated commercial so it cannot be C-2. She addressed the importance to address the conflicts that currently exist in the proposed code. She asked not to pass this code as it currently exists, but to make the needed corrections before it is finally adopted. She asked that the LDC be changed to comply with the due process requirements.

Dan Bellows, 511 W. New England Avenue, represented three corporations: New England Avenue Development Company, Winter Park Redevelopment Management Corporation and the Welbourne Avenue Corporation. He compared the map with the text of the code as relates to C-2 zoning and discrepancies between them. He expressed concerns about the property on New England Avenue between Virginia and New York Avenues because of the ordinance zoned C-2 in 2003 and the mapping error showing otherwise. He further elaborated on specific issues within the C-2 zoning code (17 units to the acre) that he disagreed with, concerns with the code related to off-street parking, the R-3 zoning no longer allowing the construction of a bed and breakfast (wanted to continue to maintain the conditional use), the R-3 now saying you cannot build 3 story buildings east of Denning (showed R-3 buildings that currently exist), the provision regarding terracing that will destroy the value of land he purchased if he is forced to do this and the parapet wall. He explained that the proposed code is violating his rights and taking rights away that he currently has and that the map and the text differ. He spoke about diminishing his property values by millions with this code.

Questions were posed by the Commission to Attorney Brown. He stated that Attorney Katie Reischmann needs to work with Mr. Bellows and Ms. Vose regarding these issues because you should not down zone property in the comprehensive plan if that is what has been done. He stated the LDC could be adopted legally and then you can deal with cases as they come up to fix it. He stressed the importance to have a LDC that is consistent with the comprehensive plan and suggested moving forward to adopt the LDC that is consistent with the existing comprehensive plan and then work to fix the cases that come up and to consider proposed amendments to the comprehensive plan. He spoke about the discretion issue that Ms. Reischmann put in regarding compatibility with the surrounding neighborhoods. He stated that the Commission does not have personal liability with adopting this code as it is and there is no legal reason not to move forward with adopting the ordinance but then work with them to resolve the issues where their property rights might be infringed.

Commissioner Dillaha asked Mr. Briggs to respond to the issues brought forward and to address Mr. Bellows ordinance from 2003 that zoned property on New England Avenue as C-2. Mr. Briggs stated that Mr. Bellows is getting what he wants in the C-2 zoning (5' parapets in all zonings) if the Commission approves it. He addressed the bed and breakfast being an issue that the P&Z has discussed for years and that this is a conditional use in residential zoning districts. He stated you can have bed and breakfasts inns within commercial or office zoned property but cannot in residential areas because of the impact to the residents. He spoke about the parking issue and the need to require at least one parking space per resident so they have a place to park if they come home from work during the daytime (does not affect any other properties in the City as they are grandfathered in and only relates to the property they are speaking about but in the future if a mixed use project comes in and there is shared parking, they want one space for each living unit reserved).

He spoke about the mapping error in the comprehensive plan that was discovered which will be corrected by ordinance. He addressed the misunderstandings of the map throughout the process and that the words in the comprehensive plan and zoning code are clear. He

suggested taking the entire map out of the definition section of the CBD and to rely upon the words in the code to eliminate any other future confusion between the two. There was a consensus for the City Attorney to clarify the text versus the mapping issue and whether or not the map should be eliminated. He further elaborated on comments made by Ms. Vose. Commissioner Diebel inquired as to how to resolve the issue with the W. New England Avenue property and the discrepancy in the map. Mr. Briggs stated the map will be corrected on the comprehensive plan map next month to reflect the correct color for the 301 W. New England property. The need to correct the down zoning issue in the comprehensive plan was discussed. Further questions were asked for clarification purposes.

Commissioner Diebel asked about the minimum amount of time it would take to correct a mistake the City has made because of the restrictions now put into place by the Commission (that she dissented on) regarding the supermajority, comp plan amendments twice a year, etc. She stated she is skeptical that this could be accomplished in less than a six month timeframe. Mr. Briggs stated this one small correction on one single property can be corrected in two months and it is already advertised for the march agendas.

Commissioner Diebel asked why we would not correct the comprehensive plan first then address the LDC to correct the errors. Mr. Briggs stated there is only one error to correct which is the property at 301 W. New England Avenue, staff has already advertised the ordinance to correct the error and will come before the P&Z and Commission in March. Commissioner Diebel disagreed with adopting a LDC that compounds the error. Mr. Briggs commented that he does not know where there may be a discrepancy with any other properties; they have heard about Bert Harris claims for over two years and about how we are harming property values but that you need to bring in a specific case of a specific property that is harmed by the comprehensive plan and bring in an appraisal to show the difference in value for how you are harmed by the enactment of these rules; then the City reacts as to whether or not the City believes they harmed them. He stated the City has not received any formal Bert Harris claims as of this time for any specific property just "shotgun" accusations.

Commissioner Anderson addressed comments regarding the discrepancies and difference of opinion as to what the entitlements are. He asked if the LDC could be adopted in two weeks with the issues where there are no differences in opinion on (things that were not required in the comprehensive plan but are imposed in the LDC that brought forward were not intended). Attorney Brown stated he wants to speak with Ms. Reischmann first but there could possibly be language to settle disputed cases and that each case needs to be reviewed case-by-case. He stated he can come back in two weeks and under the new case that would not change the substance of the ordinance and could adopt on second reading with as much flexibility type language in to give comfort to people, then start the comprehensive plan review and amendment process which cannot be done quickly (for the C-2 issue). Attorney Brown suggested that staff meet with the land owner and identify areas where there is agreement and that he can devise language that would not be in opposition to the comprehensive plan but would allow a process for disputes in the gap period while we are amending the comprehensive plan to be corrected.

Motion amended by Commissioner Dillaha to adopt the LDC except for the map and language pertaining to C-2 zoning in the CBD and to expedite those changes to the CBD map and language. The motion failed for lack of a second.

Commissioner Bridges asked Attorney Brown about his recommendation to most expeditiously move this forward. Attorney Brown suggested adopting the LDC as presented on second reading and work with staff and affected land owners to resolve all the issues that we agree with including the 301 W. New England C-2 issue, go through the comprehensive plan amendment process and bring back the amendment to the ordinance to allow for a quick change to the comprehensive plan when it is necessary like this.

After further comments, **a motion was made by Commissioner Diebel to table this for two weeks until the inconsistencies can be resolved, seconded by Commissioner Anderson.** Commissioner Diebel asked that we reference any inconsistencies. Mayor Bradley expressed concerns that there may be other property owners we do know about at this time that could potentially be affected by the code. Commissioner Dillaha stated she wants to move forward with the City Attorney recommendation to adopt the LDC this evening and work to resolve the issues.

Motion to table carried with a 3-2 vote with Commissioners Anderson, Diebel and Mayor Bradley voting yes. Commissioners Dillaha and Bridges voted no.

Commissioner Diebel stated she wants to see at the next meeting exactly which comprehensive plan changes we need to make as well instead of just what the LDC inconsistencies are and to expeditiously correct the comprehensive plan if needed.

Recess from 7:56 – 8:08 p.m.

- c. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING REGULATIONS" SECTION 58-65 "R-1AAA LAKEFRONT DISTRICT," SECTION 58-66 "R-1AA AND R-1A DISTRICTS," SECTION 58-70 "PURD DISTRICT", SECTION 58-71 "GENERAL PROVISIONS," AND SECTION 58-95 "DEFINITIONS," "SO AS TO ENACT NEW SINGLE FAMILY AND ACCESSORY BUILDING REGULATIONS AND DEFINITIONS; PROVIDING FOR CODIFICATIONS, CONFLICT, SEVERABILITY AND EFFECTIVE DATE First Reading

Attorney Brown read the ordinance by title. Building Official George Wiggins provided a PowerPoint presentation that summarized the contents of the ordinance. Mr. Wiggins provided a written list of all the changes to help better understand the ordinance being adopted and outlined all the necessary revisions to be made to the ordinance for second reading. Questions were asked by the Commission and answered by Mr. Wiggins. He also suggested adopting the changes as recommended by the City Attorney that are marked in yellow. Commissioner Dillaha commended Mr. Wiggins for a job well done.

Motion made by Commissioner Dillaha to accept the ordinance on first reading with the revisions as presented by Mr. Wiggins; seconded by Commissioner Bridges. Other questions were brought forward and responded to.

The following spoke in favor of adopting the ordinance:

Deede Sharpe, 1599 Highland Road
Phil Kean, 1011 McKean Circle
Steve Feller, 126 Park Avenue S.

Mr. Wiggins thanked Steve Feller, Phil Kean, Gary Hancock and other designers and builders that worked with staff along the way to make this possible. He commented that they spent many hours, as well as the P&Z, on this code.

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

- d. RESOLUTION NO. 2044-10: A RESOLUTION OF THE CITY OF WINTER PARK, FLORIDA, SUPPORTING A STATE BAN ON THE USE OF TEXT MESSAGING WHILE OPERATING A MOTOR VEHICLE OR ALTERNATIVELY SUPPORTING STATE LEGISLATION PERMITTING LOCAL MEASURES TO BAN TEXT MESSAGING WHILE OPERATING A MOTOR VEHICLE; AND PROVIDING FOR AN EFFECTIVE DATE.

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

Motion made by Commissioner Bridges to adopt the resolution; seconded by Mayor Bradley. Commissioner Anderson stated he is not convinced that this needs to be regulated by the City and would rather defer this type of regulation to the State. It was clarified that the resolution is only asking the State to take action. **Upon a roll call vote, Mayor Bradley and Commissioners Dillaha and Bridges voted yes. Commissioners Anderson and Diebel voted no. The motion carried with a 3-2 vote.**

City Commission Reports

a) Commissioner Anderson

Commissioner Anderson requested an hour work session regarding the Land Development Code before the next Commission meeting on February 22 to review the documents provided by the City Attorney that will be incorporated into the code. Commissioner Bridges asked that the information be provided before the work session for their review. Commissioner Anderson clarified his intent of the work session is to address any conflicts before the regular meeting. There was a consensus to schedule this for 2:00 p.m. Attorney Brown stated he will bring Ms. Reischmann with him if she is available.

b) Commissioner Dillaha

Commissioner Dillaha addressed the need for newly elected City officers to attend the Ethics and Government Program within 30 days of taking office that is provided by the Florida League of Cities. She asked if an ordinance or resolution should be adopted regarding this. Mayor Bradley stated there appears to be no consensus to do so. She asked that information be provided regarding the program, how long it takes, the cost, and how to approach it so they can better discuss it at another time. Mayor Bradley addressed the orientations provided by the various boards. There was a consensus to bring this back for further discussion.

c) Commissioner Diebel

No report.

d) Commissioner Bridges

No report.

e) Mayor Bradley

1. Appointment of the Park Avenue Area Board per the Strategic Plan

Mayor Bradley stated that is coming to the CRA Agency in April.

2. City performance metrics summary

Mayor Bradley stated Mr. Knight has distributed a CD containing the performance metrics summary and asked that this be summarized and they begin to address key performance metrics on a routine basis.

3. Renewable energy sources incorporated into the upcoming bulk power utility contract

Mayor Bradley stated that our current contract does not allow this and recommended that the current contract address this. Electric Director Jerry Warren responded. There was a consensus for staff to review this and where it is applicable in the future. The need to develop a policy in this area was discussed. This will also go before the Utilities Advisory Board.

Meeting Adjourned


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

The meeting adjourned at 9:27 p.m.



Mayor Kenneth W. Bradley

ATTEST:



City Clerk Cynthia S. Bonham

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EXCERPT FROM
MEETING OF THE WINTER PARK CITY COMMISSION

Members Present:

- Mayor Kenneth Bradley
- City Manager Randy Knight
- Commissioner Phil Anderson
- City Attorney Larry Brown
- Commissioner Margie Bridges
- City Clerk Cynthia Bonham
- Commissioner Beth Dillaha
- Commissioner Karen Diebel

AUDIO TRANSCRIPTION

MEETING DATE: February 8, 2010

EXCERPT TIME: 6:30 p.m. - 8:08 p.m.

PLACE: Commission Chambers
401 Park Avenue South
Winter Park, Florida 32789

REPORTED BY: CHRISTINA GEROLA
Court Reporter and Notary
Public

<p style="text-align: right;">Page 2</p> <p>1 REPORTER'S NOTE: 2 All speakers have been designated to the best of 3 the reporter's ability, based upon the meeting 4 minutes and voice recognition. "UNIDENTIFIED 5 SPEAKER" and "UNIDENTIFIED FEMALE COMMISSIONER" 6 have been used where the reporter was unable to 7 discern who was speaking. Speaker designations 8 may be incorrect, since the reporter was not 9 present at the meeting and has transcribed the 10 proceedings via CD. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 after 5:30. 2 As you know, a comprehensive plan was 3 adopted in February of last year, accepted by 4 the State on May 14. And the comprehensive 5 plan takes precedence over the development 6 standards and rules in the zoning code. So we 7 can't have two different sets of rules and have 8 someone pull up muni code that says they can do 9 something in zoning when, in reality, they 10 can't do it per policies of the comp plan. So 11 that's what started this whole process of 12 redoing, really repealing and readopting all of 13 the non-residential as well as the multi-family 14 R-3 and R-4 zoning districts. 15 While we are at it, P and Z made some 16 additional modifications. Staff made some 17 changes as well in ways to improve the code. 18 We have been at this, you know, for quite 19 a while. The first versions of this new code 20 were put on the website in the beginning of 21 August. August 18, P and Z recommended 22 approval of these changes to the code. We went 23 from there to the next meeting of the City 24 Commission to ask you how you wanted to proceed 25 towards adoption. You decided that full</p>
<p style="text-align: right;">Page 3</p> <p>1 P R O C E E D I N G S 2 ***** 3 THE MAYOR: Mr. Brown, 11-B, please. 4 MR. BROWN: An ordinance of the City of 5 Winter Park, Florida amending Chapter 58 Land 6 Development Code, Article III, Zoning so as to 7 adopt new zoning regulations changing the 8 permitted, conditional and prohibited uses 9 within the zoning districts of the City, 10 adopting new development standards, densities 11 and intensities of development, adopting 12 changes necessary to implement the City of 13 Winter Park Comprehensive Plan, Goals, 14 Objectives and Policies document dated February 15 23, 2009, and providing an effective date. 16 THE MAYOR: Thank you, Mr. Brown. This is 17 on second reading, I believe. 18 Mr. Briggs, is there something you'd like 19 to comment on as it relates to this? 20 MR. BRIGGS: Yes, I'd like to put a couple 21 of things in the record and address two things. 22 THE MAYOR: Thank you, sir. 23 MR. BRIGGS: Number one, Chapter 166 24 requires this public hearing to start after 25 5:00, and we advertised for 5:30. It's</p>	<p style="text-align: right;">Page 5</p> <p>1 knowledge of the citizenry was what we were 2 after, so we mailed out notices to all the 3 14,000 households throughout the city telling 4 them about the October 28th public hearing that 5 was advertised, as all of these have been, with 6 a quarter-page ad in the Orlando Sentinel. 7 However, the commission decided at that meeting 8 that it would be a listening session. So you 9 took no action, but you did direct staff to 10 prepare that summary of the changes which then 11 was placed on the website. 12 And so we went to the November meeting of 13 the City Commission, where we had another 14 public hearing. We had just received revisions 15 from the city attorney's review. It was 16 determined that there was not enough time in 17 terms of posting of those modifications, so the 18 request was tabled for that evening so that 19 those could be put on the website. They were 20 on the website for a month prior to your 21 January 11th meeting, where we did have the 22 first reading and the adoption of these new 23 land development code requirements. 24 Given the hour at the meeting two weeks 25 ago, the action, again, was to table, which</p>

Page 6	Page 8
<p>1 brings us to tonight.</p> <p>2 At that first reading, you did make one</p> <p>3 change to these requirements that has to do</p> <p>4 with the parapet height, solving that problem</p> <p>5 with the mechanical issues. But another thing</p> <p>6 that you asked the staff to report back to you</p> <p>7 on was the issue of building height in feet,</p> <p>8 because there didn't seem to be any symmetry</p> <p>9 between the number of feet as you were going up</p> <p>10 in the floors.</p> <p>11 And so we did have an opportunity to</p> <p>12 revisit this with the planning and zoning</p> <p>13 commission in the interim, and basically I</p> <p>14 think everyone is content with the 30-foot for</p> <p>15 two-story buildings, which is 15 feet per</p> <p>16 floor. Typically, you do have higher floor to</p> <p>17 ceilings on the first floor if it's retail or</p> <p>18 if it's a bank lobby; medical, you tend to have</p> <p>19 more floor to ceiling on the first floor. And</p> <p>20 so the architects on the board felt that 30 was</p> <p>21 appropriate.</p> <p>22 As you get to upper level floors, you're</p> <p>23 typically just dealing with office or</p> <p>24 residential. So they felt that maybe a little</p> <p>25 more allowance was beneficial, an additional 12</p>	<p>1 business district, not out at Kmart, and it</p> <p>2 should be used in the areas of the Hannibal</p> <p>3 Square neighborhood, where we have had</p> <p>4 development that has met the central business</p> <p>5 distinct density standards.</p> <p>6 And so as you read the previous language,</p> <p>7 it wasn't as clear as it could have been to</p> <p>8 indicate that C-2 is not to be used anywhere,</p> <p>9 except if it is within the map area or if it is</p> <p>10 on the four designated streets: Morse, New</p> <p>11 England, Pennsylvania, Hannibal Square East.</p> <p>12 It's always been our intention -- it may</p> <p>13 not be as clear as it would seem -- need to be</p> <p>14 or want to be in the text, but it has always</p> <p>15 been the intention of the comp plan and the</p> <p>16 zoning code that where you can use central</p> <p>17 business district C-2 zoning, which is our most</p> <p>18 intense district, is the central business</p> <p>19 district and on those four designated streets</p> <p>20 in the Hannibal Square neighborhood. So the</p> <p>21 addition of those couple of words up there in</p> <p>22 yellow, I think, improve the text and make it</p> <p>23 more clear.</p> <p>24 It's been pointed out to us -- we may have</p> <p>25 some conflicting language in the -- by the map</p>
<p>Page 7</p> <p>1 and a half feet per floor for floors three and</p> <p>2 four. So that added a foot and a half to what</p> <p>3 was in the code before for a three-story</p> <p>4 building, added three feet to what was in the</p> <p>5 code for the four-story building.</p> <p>6 The important thing is now it is back to</p> <p>7 the same 55 feet that was in the code prior to</p> <p>8 us making any of these changes for four-story</p> <p>9 buildings. P and Z had originally said tweak</p> <p>10 it back to 53; well, it's back to 55. So we</p> <p>11 disarmed some of the arguments that folks are</p> <p>12 losing height, because we were back to where we</p> <p>13 started in the first place.</p> <p>14 So staff and P and Z would recommend that</p> <p>15 you make this change as one of the</p> <p>16 modifications if you choose to adopt the second</p> <p>17 reading.</p> <p>18 The one other thing that I wanted to talk</p> <p>19 about was that there was presented to us at the</p> <p>20 last meeting that there is some confusion about</p> <p>21 what the text means on where you can use</p> <p>22 central business district C-2 zoning. All the</p> <p>23 comp plan and all the zoning code is trying to</p> <p>24 do is, if it is central business district</p> <p>25 zoning, it should be used in the central</p>	<p>Page 9</p> <p>1 in the definitions section, and we can clear</p> <p>2 that up as well, because this is one situation</p> <p>3 where we don't have any question about what the</p> <p>4 finish line is. So if it's just perfecting</p> <p>5 the -- the text, then we can get it there.</p> <p>6 So those are two changes that the staff</p> <p>7 would recommend that you make if you choose to</p> <p>8 move ahead on the second reading.</p> <p>9 With that, I'll answer any questions you</p> <p>10 may have before we open the public hearing.</p> <p>11 THE MAYOR: Questions of Mr. Briggs?</p> <p>12 UNIDENTIFIED SPEAKER: I have one, Jeff.</p> <p>13 The parking regulations, I guess I'm confused</p> <p>14 by what drove this. Could you just give me a</p> <p>15 little background on what the thinking was</p> <p>16 under parking?</p> <p>17 It seems like we're encouraging -- with</p> <p>18 the exception of the library, we're encouraging</p> <p>19 more parking, which discourages use of public</p> <p>20 transportation or other ways to go to a school</p> <p>21 or eat in a restaurant or theater, et cetera.</p> <p>22 MR. BRIGGS: Well, these are changes not</p> <p>23 required by the comp plan, but which came from</p> <p>24 the planning and zoning commission review.</p> <p>25 They basically felt that there are some</p>

	Page 10		Page 12
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	<p>businesses in town that -- that our current code does not sufficiently address required parking. And the first and biggest one is restaurants, based on one for every four seats. It assumes that four people are coming to a car, and it still doesn't provide any parking for the staff or the folks who work there.</p> <p>So we did some research of other cities' codes. We talked to different franchise folks. And really, the industry standard, if you're doing an Applebee's or a Bennigan's or a Ruth's Chris, is one per three. So it felt, in that particular case, that we needed to increase the number of parking spaces for restaurants.</p> <p>Similar kind of logic in looking at the real world uses for nursing homes, where the requirement was beefed up, and theaters, in terms of the requirement only previously being one for every six seats. It may work most times, but certainly in the peak hours, the Regal Cinema shows us that one per six just doesn't provide enough parking. So those are some -- some of the rationale behind some of those changes.</p> <p>UNIDENTIFIED SPEAKER: It makes sense. I</p>	<p>Last week I sent a letter to your city attorney, and I copied all of you with it. I'm not going to try to go over all of that again. I just want to hit a couple high points and update you a little bit with some additional information we received.</p> <p>One of our primary concerns is that the land development code provisions unconstitutionally grant unfettered discretion to the City Commission, and that's not allowed in Florida. The Florida Supreme Court has held that an ordinance whereby the City Council delegates to itself the arbitrary and unfettered authority to decide where and how a particular structure shall be built or where located, without at the same time setting up reasonable standards which would be applicable on -- inaudible -- to all property owners similarly conditioned cannot be permitted to stand as a valid municipal enactment.</p> <p>That's what -- there is a provision that is scattered throughout this land development code that is not in the comprehensive plan. So this is not something to bring the land development code in compliance with the comp</p>	
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	<p>just feel like it doesn't promote other forms of transportation. It feels like we're saying, hey, use your car, where it might be nice to have people walk to the theater or walk to Park Avenue for a restaurant or something. So it's just a comment.</p> <p>THE MAYOR: Questions of Mr. Briggs?</p> <p>I'm going to open the floor for public comment. This is on second reading. We don't have a motion on the floor at this point, unless the commission wants to do that. I'm going to --</p> <p>Go ahead, Commissioner Anderson.</p> <p>MR. ANDERSON: Move to approve incorporating the changes suggested by Mr. Briggs.</p> <p>THE MAYOR: There's a motion.</p> <p>Is there a second?</p> <p>MS. BRIDGES: Second.</p> <p>THE MAYOR: Motion and second, great.</p> <p>Now the public can comment on our pending Anderson (sic).</p> <p>MS. VOSE: Thank you. I'm Becky Vose, and I'm an attorney with the Vose Law Firm at 324 West Morse.</p>	<p>plan. This is just gratuitously put in there.</p> <p>The provision is -- in addition, in the review and approval of specific projects, the City Commission may limit and restrict the capable floor area ratio if the commission finds the proposed project is not compatible with the adjacent properties.</p> <p>Now, in the letter that I sent to you, I went carefully through a lot of the Florida cases on this. But it's clear, if you look at the Florida cases, this language, the only criteria for limiting the floor area ratio is if the commission finds the proposed project is not compatible with adjacent properties; that is, they -- it doesn't really mean anything, and this provision is unconstitutional and gives total and absolute power to the City Commission to lower FAR not based on any specific criteria. In that way, no property owner would ever be able to determine what FAR would definitely be approved. And, of course, FAR, in most instances, is the major factor in values of property.</p> <p>And also, it was mentioned earlier in the meeting of a need to attract businesses to</p>	Page 13

	Page 14		Page 16
<p>1 Winter Park. And businesses need certainty for 2 planning. Vague language -- 3 (Timer interruption.) 4 THE MAYOR: Continue? 5 MS. VOSE: May I request -- 6 UNIDENTIFIED SPEAKER: Is there a second 7 to -- 8 UNIDENTIFIED SPEAKER: Second. 9 UNIDENTIFIED SPEAKER: I mean, is there an 10 additional commissioner who's -- 11 UNIDENTIFIED SPEAKER: Grant an additional 12 three minutes. 13 THE MAYOR: We're going to grant you 14 another three minutes, if that's appropriate? 15 UNIDENTIFIED SPEAKER: Thank you. Thank 16 you. Thank you. 17 Anyway, vague language that gives the City 18 Commission unfettered discretion on FAR 19 certainly discourages development. People 20 aren't going to want to come here, spend a 21 whole lot of money to do concept plans, to do 22 everything, if they realize that, in fact, once 23 they went to the City Council, City Council 24 could pull the rug out from under them. That's 25 going to hurt development.</p>		<p>1 meeting, Mr. -- Mr. Briggs, who, by the way, 2 has been extremely cordial to us, but we still 3 have a problem with what's in the land 4 development code, he described this as a 5 misunderstanding, whether my client could get 6 C-2 zoning on property. And C-2 zoning is 7 absolutely critical to make his properties 8 worth what he believes they are worth, what he 9 paid for. And the -- Mr. Briggs said clearly 10 it wasn't the intention of City Commission per 11 the comp plan to permit central business future 12 use designation in central business district 13 C-2 zoning for properties that were in the 14 central business district. This is what 15 Mr. Briggs was talking about. And it's 16 extremely important to -- 17 (Timer interruption.) 18 THE MAYOR: I'm going to pause and then 19 ask if the Commission desires to extend her 20 comment? 21 MR. ANDERSON: Yes. 22 UNIDENTIFIED FEMALE COMMISSIONER: Yes. 23 MS. VOSE: It's -- thank you. 24 THE MAYOR: If it's possible, before we go 25 any further, do you have a sense of how long</p>	
<p>1 Also, our Fifth DCA, which is the court 2 that our stuff goes to, recognized the need for 3 certainty. And they held, if any additional 4 requirements are to be imposed, the owner or 5 purchaser of property so zoned has a right to 6 know what the requirements are that he must 7 comply with in order to implement the permitted 8 use. These requirements must be of uniform 9 application, and once the requirements are met, 10 the governing body may not refuse the 11 application. And, therefore, this provision 12 that's scattered throughout this land 13 development code just cannot stand. 14 Also, the -- the revised comprehensive 15 plan and the proposed land development code 16 conflict in major respects, particularly with 17 regard to properties that my client owns. 18 For example, the comp plan prohibits my 19 client from applying for C-2 zoning along New 20 England from Virginia to New York, even though 21 the land development code appears to remit that 22 application. The -- 23 (Inaudible exchange ensued.) 24 MS. VOSE: If you all could look at the 25 first email that we received after the last</p>		<p>1 you'll be, because we don't need to do this 2 ever three minutes if -- 3 MS. VOSE: That's -- 4 THE MAYOR: If you say you need 10 5 minutes -- 6 MS. VOSE: I'm almost done. 7 THE MAYOR: -- I'd like to do that. 8 Okay. Three minutes. 9 MS. VOSE: I'm almost done. Okay. 10 THE MAYOR: And if the clerk would redo 11 the clock, please, I would appreciate it. 12 Thank you. 13 MS. VOSE: Okay. All right. 14 And Mr. Briggs just addressed this issue 15 too, to y'all. And if you look on the fourth 16 page of what you were handed, here's the 17 infamous green line and the red line, the -- 18 and the designation as in the comprehensive 19 plan indicates that only C-2 -- the only place 20 where you can have C-2 zoning is within the 21 green line. 22 This green line/red line is also in the 23 land development code. According to 24 Mr. Briggs, what he just told you and what he 25 said in the e-mail, it was not the intent to</p>	

Page 18	Page 20
<p>1 limit the C-2 zoning to just being in the 2 green.</p> <p>3 So we implore you, don't make things worse 4 by adopting a map with the red and the green in 5 your land development code. It's just making 6 things worse.</p> <p>7 And then also, on the next page there is 8 an email which we just received today, which 9 talked about an error that has occurred as to 10 301 West New England Avenue. That was rezoned 11 C-2 back in 2003, but right now, under the land 12 development code as it's before you, it -- it's 13 designated as -- so that it can't be C-2.</p> <p>14 And they're actually at the -- two more 15 pages here, Mr. Briggs has suggested different 16 ordinances to change what you've got in front 17 of you now in order to take care of like 18 conflicts. And we ask you to please just don't 19 pass this now. Make it right the first time. 20 Get rid of that green line in the map and also 21 change the land development code to comply with 22 the due process requirements. I think this -- 23 the City would adopt this code as it's before 24 you at its pill (sic).</p> <p>25 My client doesn't want to sue the City,</p>	<p>1 about Morse Boulevard from Capin to Virginia. 2 So I believe the Douglas Grand is C-2, all of 3 Morse from Virginia to Capin can be C-2, but it 4 specifically eliminates the Smith Barney 5 building from being a C-2. It's within this 6 red line; however, the green says only area 7 potential for C-2. And then, when you go to 8 the text about the Hannibal Square district, 9 and then the Morse Boulevard district, you do 10 not get this parcel of land to be C-2. And 11 it's an issue for us, obviously.</p> <p>12 As the previous speaker was alluding to, 13 when you look at the ordinance that was adopted 14 in 2003, where two parcels on New England 15 Avenue were, in fact, zoned C-2 in the CBD, yet 16 you find them located on New England Avenue 17 between Virginia and New York, two lots right 18 here. Again, there is specific language, and 19 we had specific discussion and votes up here of 20 this commission. where our previous Mayor 21 Strong and Commissioner Diebel voted to make it 22 pink, three others voted not, yet I have two 23 parcels here that are CBD zoning C-2.</p> <p>24 And, again, the further frustration comes 25 when you look at the comp plan, and it says you</p>
<p>Page 19</p> <p>1 but if -- it appears he'll have no choice due 2 to the admitted errors in the land development 3 code that's before you today and due to the 4 clearly confiscatory and unconstitutional 5 provisions strewn throughout the land 6 development code. And we're asking that you 7 get it right the first time. Don't adopt a 8 defective land development code. Doing that 9 will invite lawsuits. And go back and make the 10 changes so that, when you adopt it, it's right.</p> <p>11 Thank you very much.</p> <p>12 MR. MAYOR: Thank you very much.</p> <p>13 Other citizens wishing to make comments?</p> <p>14 MR. BELLOWS: Dan Bellows, 511 West New 15 England Avenue.</p> <p>16 Mayor, I'm representing three 17 corporations, New England Avenue Development 18 Company, Winter Park Redevelopment Management 19 Corporation and Welbourne Avenue Corporation. 20 So hopefully I can get some time on this.</p> <p>21 The map -- you know, the infamous green 22 and red, when you read the text, this is 23 338 West Morse Boulevard. And it talks about 24 C-2 zoning being permitted areas to include 25 New York Avenue to the green, and then it talks</p>	<p>Page 21</p> <p>1 will find C-2 only in the CBD district, which 2 is -- you know, it doesn't say C-2 can be 3 anywhere else, just in the central business 4 district, yet I've got property --</p> <p>5 (Timer interruption.)</p> <p>6 THE MAYOR: Excuse me one minute, 7 Mr. Bellows.</p> <p>8 Commission, is there any role to have him 9 continue his --</p> <p>10 MR. ANDERSON: Yes.</p> <p>11 UNIDENTIFIED FEMALE COMMISSIONER: Yes.</p> <p>12 THE MAYOR: Okay.</p> <p>13 We're going to extend your comments by a 14 few minutes, Mr. Bellows.</p> <p>15 MR. BELLOWS: So I have a concern about 16 the property on New England Avenue between 17 Virginia and New York, that I have an 18 ordinance. It was zoned C-2 in 2003. And when 19 you get into this specific language from 20 Mr. Briggs, also clearly that it was the City's 21 intention for 301 West New England Avenue, then 22 the City would have been required to provide 23 notice of such change to you as the property 24 owner. No notice was sent. Instead, there's 25 some GIS mapping here. So I have a real issue</p>

<p style="text-align: right;">Page 22</p> <p>1 there.</p> <p>2 When you get into some of the specifics in</p> <p>3 the zoning code, C-2, 17 units to the acre.</p> <p>4 This is what I think is one of the nicest</p> <p>5 buildings that we've built in Hannibal Square.</p> <p>6 It's a mixed use building. It has 32 units.</p> <p>7 If this ordinance is adopted tonight, I will be</p> <p>8 non-conforming of 21 units. I would only have</p> <p>9 been allowed to construct 11 units on this .66</p> <p>10 acre site. I would have lost \$220,500 a year</p> <p>11 in revenue, just at 875 a month for an</p> <p>12 apartment.</p> <p>13 I have the same issue directly across the</p> <p>14 street at 430 West New England. Again, I think</p> <p>15 a very attractive building. That one, I only</p> <p>16 would have been allowed six units there. I</p> <p>17 have 16 units. I would have lost a hundred and</p> <p>18 five thousand a year.</p> <p>19 And I can keep going. I mean, 400 West</p> <p>20 New England, multiple buildings. I don't know</p> <p>21 where this, right out of thin air, 17 units to</p> <p>22 the acre came from. The C-2 zoning concept of</p> <p>23 mixed use allowed for these opportunities.</p> <p>24 The previous building that I showed, this</p> <p>25 is its internal courtyard, which, again, is an</p>	<p style="text-align: right;">Page 24</p> <p>1 another three minutes, Mr. Bellows.</p> <p>2 MR. BELLOWS: Okay. Thank you.</p> <p>3 So it works because the landlord for all</p> <p>4 these buildings manages all these parking lots.</p> <p>5 And if this code gets adopted tonight, 43 of</p> <p>6 these parking spaces that are now opened, I</p> <p>7 have to put a reserved sign on it. And you can</p> <p>8 imagine, during the day, when all these</p> <p>9 apartment people are off at work and what's</p> <p>10 going, we would no longer have the shared</p> <p>11 parking concept. And this is just one area of</p> <p>12 multiple parking lots we have. I don't know</p> <p>13 where that came from.</p> <p>14 R-3, I can no longer do a bed and</p> <p>15 breakfast. I have multiple R-3 parcels, and I</p> <p>16 would like to continue to maintain the</p> <p>17 conditional use to be able to do a bed and</p> <p>18 breakfast. Also, on R-3 now it says no</p> <p>19 three-story buildings east of Denning. And</p> <p>20 here's an R-3 building I have. You know, it's</p> <p>21 one that I will tell you the City has used more</p> <p>22 than once in their different slide</p> <p>23 presentations of what you're supposed to do,</p> <p>24 and now all of a sudden you're outlawing it and</p> <p>25 making it a non-conforming use.</p>
<p style="text-align: right;">Page 23</p> <p>1 issue when we talk about the R-3, R-4 code,</p> <p>2 where it says you can't have courtyards unless</p> <p>3 they're viewable by the street. This is the</p> <p>4 type of product, you know, that we built, and,</p> <p>5 again, that people have enjoyed.</p> <p>6 We get into the -- the off-street parking.</p> <p>7 All of a sudden the code says I have to reserve</p> <p>8 one parking space. I'm sorry. You're not</p> <p>9 going to be able to see what's behind these</p> <p>10 lines here. But these are all parking spaces</p> <p>11 all the way around here.</p> <p>12 My parking is mixed use. The whole</p> <p>13 concept behind that was it's open, it's not</p> <p>14 reserved, and I have people coming and going.</p> <p>15 Could you imagine if I had 10 of the apartments</p> <p>16 out of the 130 in Hannibal Square, and 10</p> <p>17 parking spaces were marked reserved, and nobody</p> <p>18 could use them at all.</p> <p>19 (Timer interruption.)</p> <p>20 THE MAYOR: Mr. Bellows, a moment.</p> <p>21 Commission, what is your role?</p> <p>22 MR. ANDERSON: Continue.</p> <p>23 THE MAYOR: Is there a second for that?</p> <p>24 UNIDENTIFIED FEMALE COMMISSIONER: Second.</p> <p>25 THE MAYOR: We'll extend your comments</p>	<p style="text-align: right;">Page 25</p> <p>1 I also have approvals to build three</p> <p>2 stories for the town and villa style product on</p> <p>3 Denning, which the courtyard issue and the</p> <p>4 three-story issue will make those</p> <p>5 non-conforming before it ever gets out of the</p> <p>6 ground.</p> <p>7 Then we have the provision about</p> <p>8 terracing. And I bring you, again, back to</p> <p>9 buildings like -- like this. That's a</p> <p>10 three-story building. If I have to terrace, it</p> <p>11 is absolutely going to destroy the value of</p> <p>12 what -- why I purchased the land, what I have</p> <p>13 been planning for almost 19 years with every</p> <p>14 project I've done.</p> <p>15 I just submitted five or six applications</p> <p>16 again last week, with all the checks, all the</p> <p>17 PowerPoint and everything. This will be the</p> <p>18 fourth time submitting the same package under</p> <p>19 the prior code. There's a three-story</p> <p>20 building. Again, if I have to set it back, it</p> <p>21 will be an issue.</p> <p>22 Mr. Briggs points out the provision about</p> <p>23 the parapet wall. You've understood the reason</p> <p>24 for having a five-foot parapet wall, because of</p> <p>25 the mechanical issues and the code requiring</p>

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<p>1 condensers to be on a stand. However, if 2 someone does get a conditional use for a third 3 floor, I'm assuming, because I've got about 4 five of these buildings, it's because you 5 believe there should be a third floor, however, 6 it still says two foot for a parapet on a 7 three-story building. It's five foot on a one- 8 and two-story, but it's two foot on a 9 three-story; again, you're basically saying you 10 can't build a three-story building, or it's 11 going to look like hell if you do. 12 (Timer interruption.) 13 THE MAYOR: Commission? 14 UNIDENTIFIED FEMALE COMMISSIONER: More 15 time. 16 THE MAYOR: Okay. Is there a second for 17 that? 18 MR. ANDERSON: Second. 19 THE MAYOR: Okay. Another three minutes, 20 Mr. Bellows. 21 MR. BELLOWES: Under the lines of the 22 terracing, to now have to run a building, and I 23 don't have it off the top of my head, but the 24 165 foot and then 200 foot, you have to have a 25 35-foot break in the building. This isn't an</p>	<p>1 we zoned in 2003 and adopt something that 2 basically says I can't have that. 3 And, you know, I'm sitting here today 4 trying to deal with banks and appraisals. And 5 on a good day, the appraisals suck. I can't 6 begin to tell you what you guys have done. 7 These appraisers are calling up your staff, 8 they're talking to the experts, and you have 9 diminished my value in the millions of dollars. 10 And I'm extremely unhappy about it. 11 THE MAYOR: Other citizen comments about 12 the land development code to be enforced? 13 Going once. Going twice. I'll close the 14 public hearing on this matter. 15 Mr. Brown, I've got a couple of questions, 16 if you'd entreat me, please. 17 The one is, it's been -- there's been a 18 question put forth that we needed to act within 19 90 days per our own ordinance. I'm confused on 20 that. 21 MR. BRIGGS: I looked at that. If we'd 22 taken the action, even though we didn't come to 23 a final conclusion, it was tabled and 24 postponed -- 25 MR. BROWN: Yeah, I looked at that. The</p>
<p>Page 27</p> <p>1 interaction with the street, where you 2 articulate the facade, this is a, I want dirt 3 there, and I want to see the parking lot in the 4 back from the street. I want a 35-foot gap. 5 That is unbelievable. I mean, I can 6 understand articulating the building, different 7 materials; this is stucco, this is brick, this 8 is stone, this is a different color. But to 9 put a gap? I mean, can you imagine somebody 10 owning Park Avenue, and all of a sudden they 11 have to take a 35-foot space of Park Avenue, 12 and it has to be grass. I mean, you can put -- 13 I mean, that's a building. A 35-foot width is 14 a building. 15 I think -- a lot of code stuff was 16 discussed. I have pages and pages of specific 17 uses of how these codes are violating my 18 rights, taking rights away that I currently 19 enjoy today. After multiple meetings, we 20 cannot understand what the red line and the 21 green line means and why the comp plan says you 22 can only have C-2 in certain areas, but then 23 the text says something else. And then how on 24 earth the City found it necessary to take my 25 C-2 zoned property on New England Avenue that</p>	<p>Page 29</p> <p>1 specific provision that they refer to, I think 2 is reasonably interpreted as applying only in 3 quasi-judicial actions, not with legislative 4 actions such as just generally amending your 5 land development code. 6 So just so -- just so everyone knows, the 7 last series of points they were making, the red 8 line/green line, I think my partner, Katie 9 Reischmann, needs to work with Mr. Bellows and 10 his attorney, because you really shouldn't down 11 zone property in your comp plan. And that's 12 what you've done in some cases. 13 So that -- that can be fixed. I don't 14 think there's any legal reason why you couldn't 15 go ahead and adopt your land development code 16 legally, but then we have to deal with cases as 17 they come up to fix it as quickly and as 18 efficiently as possible, so that you -- or pay 19 damages. 20 You know, you have to -- because you've 21 done a taking. You've done a regulatory 22 taking. That's in your comp plan to some 23 extent. And we can't do anything about that. 24 You know, when my firm came on board, the comp 25 plan was cooked, you know. It was done. And</p>

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1 now your land development code that Ms. Vose is
 2 recommending you not go forward on, you've got
 3 to have a land development code that's
 4 consistent with your comp plan. And legally,
 5 that's where you need to be at.
 6 But then people have legal rights that
 7 could be infringed by doing what you're
 8 supposed to do, and then we have to deal with
 9 those case by case.
 10 We have a case right here. And that's
 11 something my partner can work with Ms. Vose on,
 12 and then we can come back with -- and
 13 Mr. Briggs, and we'll come back with
 14 recommendations case by case.
 15 But just to give a real clear example, in
 16 my opinion, you can't have C-2 central business
 17 district property from the mid 2000s or
 18 whatever the date was you referred to, and
 19 then, in the comp plan, take that away.
 20 So I guess, to be really clear, I think
 21 you could and you should go ahead and adopt the
 22 land development code that is consistent with
 23 your existing comp plan and then work to fix
 24 the cases such as this. There may not be any
 25 other cases that come up.

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1 And then I think it would be in order to
 2 work with Mr. Briggs and consider proposed
 3 amendments to the comp plan to -- so that you
 4 don't adversely affect rights in that manner.
 5 Is that -- is that --
 6 UNIDENTIFIED FEMALE COMMISSIONER: That's
 7 clear.
 8 MR. BROWN: Yeah, I could address -- as
 9 far as the 90 days, that doesn't -- I mean, the
 10 notice issue, the 90-day issue, even the
 11 discretion issue, if I can say for the record,
 12 on the discretion issue, one of the things
 13 Katie did while working with staff is she had
 14 put in compatibility with the surrounding
 15 neighborhoods. And when they read the
 16 question, the provision, they read the
 17 provision that says it has to -- you know, that
 18 the commission can look at compatibility of the
 19 surrounding properties.
 20 There's a court case, Fifth District Court
 21 of Appeal, 1990, Life Concepts versus Harden,
 22 which held, in part, that the compatibility
 23 standard is not void for vagueness; in other
 24 words, that has been accepted by the court as
 25 not void for vagueness. And the case that they

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1 rely on in their letter, the Afee (phonetic)
 2 case, is a 1983 case, and the Fifth District
 3 Court of Appeal in Life Concept versus Harden
 4 distinguished Afee, because in Afee, it
 5 basically said the government official could
 6 look at, quote, all other pertinent factors,
 7 which is vastly different than compatibility
 8 with the surrounding neighborhood.
 9 So for that reason, I don't think the void
 10 for vagueness or the unbridled discretion
 11 argument works. The 90-day issue, I've
 12 addressed. The notice issue, I don't think, is
 13 enough.
 14 You know, I don't -- clearly, you don't
 15 have any personal liability. I'm very
 16 comfortable with that. You've got qualified
 17 good faith immunity and legislative immunity in
 18 a federal action. And in state court, you
 19 768.28. If it's a state action, you have to be
 20 willfully engaged in misconduct. And so I --
 21 personal liability is just not an issue, and I
 22 know that was raised in the letter. So I
 23 wanted to reassure you.
 24 So I do think -- so, in conclusion,
 25 there's no legal reason to not go forward, in

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1 my opinion, to adopt the ordinance. But we
 2 then need to work hard with them to resolve the
 3 issues that I mentioned, where their -- where
 4 their property rights might be infringed.
 5 MR. MAYOR: Thank you.
 6 Did you want to speak, Commissioner
 7 Dillaha? Go ahead, please.
 8 MS. DILLAHA: Yeah, and then I've got a
 9 couple of questions. I -- and they're really
 10 for Jeff.
 11 I -- number 1, I wanted to give Jeff the
 12 opportunity to react to what's been said. And
 13 I did want -- want Jeff to address the --
 14 Mr. Bellows refers to an ordinance in 2003 that
 15 zoned property on New England as C-2. I
 16 thought you could address that as well.
 17 And then the third was, did all of these
 18 issues come up with P and Z, or are they just
 19 coming up now? I mean, I just -- was this
 20 addressed during the P and Z public hearing?
 21 MR. BRIGGS: No. These specific comments
 22 weren't addressed at that time.
 23 MS. DILLAHA: Or workshops or anything?
 24 Excuse me?
 25 THE MAYOR: No, ma'am. I'm sorry. I'm

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1 sorry. We're listening to --

2 MS. DILLAHA: Well, anyway, I did want to

3 hear from -- from Jeff on those things and what

4 you have to say.

5 MR. BRIGGS: Let me touch on a couple of

6 those things. First of all, Mr. Bellows will

7 like to hear that the commission approved

8 five-foot parapets in all of the zoning

9 districts. Yes, it says two now. It says

10 three in the other districts. So all of those

11 will be changed in every zoning district. So

12 he's not losing out on it in the C-2 district.

13 THE MAYOR: Please. I'm sorry.

14 We're not -- I mean, Mr. Briggs is speaking,

15 guys, and we'll address questions later.

16 MR. BRIGGS: He'll be pleased to know that

17 he is getting what he wants in the C-2 zoning,

18 which is five-foot parapets, per you're

19 approval.

20 The bed and breakfast issue is something

21 that P and Z has wrestled with over the years.

22 This is a conditional use in residential zoning

23 districts. You can do bed and breakfast in

24 commercial zoned, office zoned property. But

25 in residential areas, we have had four of these

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1 requests in the last 15 years, and in every

2 case, people who live next to this bed and

3 breakfast don't want a business. They don't

4 want a commercial business next to their house.

5 And so that's why, if we're never going to

6 approve any of these, and we never do, because

7 residents come out and say, I don't want a

8 business next to my house, there's no point

9 having that conditional use in the R-3 and R-4

10 residential districts. You can still do a bed

11 and breakfast in a commercial and as for one in

12 office, but not in those multi-family

13 districts.

14 The one space per unit, we have parking

15 lots, such as the project that Mr. Bellows

16 indicated, where we are sharing spaces between

17 the apartments and the commercial tenants. And

18 P and Z's thinking is that people come home for

19 lunch. Some people work out of their homes.

20 We ought to have at least one of the two

21 required spaces reserved for the residents

22 during the day so they have somewhere to park.

23 It doesn't affect any of the existing

24 projects in the city. They are all

25 grandfathered in. It only relates to the

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1 property we're speaking about. But in the

2 future, if we get a mixed-use project, and

3 we're sharing parking, we want to have one

4 space for each living unit reserved so those

5 residents have a place to park if they come

6 home during the day or need to use it during

7 the day.

8 There was a mapping issue in the comp

9 plan, an error, and that was discovered, and we

10 will correct that. We have advertised the

11 title to the ordinance to correct that. Go to

12 P and Z next month and come to City Commission.

13 Tonight we are adopting the words of the

14 zoning code. We're not dealing with the map.

15 So we'll get to the map, and we'll correct the

16 error that's been brought to our attention.

17 And there couldn't be anything more committing

18 than what I wrote today in the email, that it

19 is something that needs to be corrected, and we

20 will get to that. It's just that we're dealing

21 with words today, not the map.

22 But as I say the word "map," this CBD map

23 has been a problem from day one in terms of

24 misunderstanding. I think the words in the

25 comp plan and the words in the zoning code are

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1 pretty clear. And I don't seem to have ever

2 been able to find, in two years, a way to get

3 this map to communicate what it's supposed to.

4 So at this point I'd be happy if we just took

5 the whole map out, and we relied upon the words

6 that I just showed you that made it perfectly

7 clear that you can have C-2 where everyone

8 expects to have it, both Mr. Bellows as well as

9 the City.

10 UNIDENTIFIED FEMALE COMMISSIONER: And,

11 Jeff, my understanding was always -- and I have

12 said this before. Terms started to be used

13 loosely, in my opinion. I thought central

14 business district was a geographic area. C-2

15 is zoning. They're different items. But I

16 hear different people refer to CBD zoning as

17 opposed to C-2 zoning. I'm just thinking

18 that's where this has gotten --

19 MR. BRIGGS: Yes, it's gotten --

20 UNIDENTIFIED FEMALE COMMISSIONER: -- a

21 little confusing.

22 MR. BRIGGS: It's gotten confusing because

23 it's the central business district zoning and a

24 central business district.

25 UNIDENTIFIED FEMALE COMMISSIONER: Well,

<p style="text-align: right;">Page 38</p> <p>1 C-2 zoning, but it's a central business 2 district geographic area.</p> <p>3 MR. BRIGGS: So I would suggest, at this 4 point, to eliminate the confusion, to take that 5 map out altogether as an amendment to this.</p> <p>6 UNIDENTIFIED FEMALE COMMISSIONER: I'm 7 wondering if -- and this would be a question 8 for Mr. Brown: If the map needs to come out, 9 or does it need to stay in and just make it 10 more clear, the descriptions?</p> <p>11 MR. BRIGGS: If you'll direct the city 12 attorneys to clarify that language. Either 13 way, I think we're all trying to get to the 14 same finish line as the speakers.</p> <p>15 And then one last comment that was made by 16 Ms. Vose, I mean, when we put this sentence 17 into the code, in addition, in the review and 18 approval of specific projects, the City 19 Commission may limit and restrict floor area 20 ratio, all we were thinking about was, when 21 you're reviewing conditional uses and you're 22 grading them by the criteria, you can decide 23 that someone doesn't get -- they're not 24 entitled to the maximum floor area ratio. 25 Anywhere they're located, we don't want to give</p>	<p style="text-align: right;">Page 40</p> <p>1 feature or something that would limit the 2 maximum amount. And I understood that that was 3 the intent of having that language in there. 4 That was my understanding when we went through 5 this, gosh, a long time ago with your comp 6 plan.</p> <p>7 Is that right? 8 MR. BRIGGS: Yes. Um-hmm. 9 THE MAYOR: Other questions? 10 MS. DIEBEL: Address the specific example 11 to properties that Mr. Bellows brought up on 12 the New England portion, where it is properly 13 zoned C-2 and reflects as such, but the map is 14 not consistent. I don't understand how you 15 resolve those.</p> <p>16 MR. BRIGGS: We don't resolve it tonight, 17 but we can resolve it in a month by correcting 18 the map. We've only got advertised the words 19 in the zoning, but we have advertised the P and 20 Z next month, and to come to you to correct 21 that map error. And now that we've discovered 22 it, what we've known about this earlier, we've 23 discovered it, we will legally do the ordinance 24 to correct it. 25 MS. DIEBEL: But you just advocated taking</p>
<p style="text-align: right;">Page 39</p> <p>1 them a hundred percent of what the floor area 2 ratio would allow because of the compatibility 3 issues. So all we were thinking about was in 4 the context of conditional use reviews.</p> <p>5 You read this, and you read it as though a 6 city commissioner can say, I heard they're 7 going to get a building permit over there on 8 Holt Avenue. Can you bring those plans in 9 here? And when you're reviewing it, you can 10 decide to limit the floor area ratio. And that 11 certainly wasn't the intention.</p> <p>12 This is only supposed to apply to where 13 you can legally exercise that authority in the 14 review of conditional uses. So perhaps adding 15 that phrase, within the review of specific 16 projects via conditional use, the City 17 Commission may limit -- will avoid the --</p> <p>18 UNIDENTIFIED FEMALE COMMISSIONER: Well, I 19 had understood that there was a phrase saying 20 that --</p> <p>21 MR. BRIGGS: FAR is not an entitlement. 22 UNIDENTIFIED FEMALE COMMISSIONER: Yeah, 23 the maximum FAR is not an entitlement, because 24 there are sometimes situations where -- maybe 25 it's a drainage situation or maybe it's a land</p>	<p style="text-align: right;">Page 41</p> <p>1 the map out.</p> <p>2 MR. BRIGGS: We don't have a map in here 3 to start with -- oh, I'm sorry, the map, in the 4 definitions section of the central business 5 district.</p> <p>6 But Dan's talking about the color on his 7 property at 301 West New England. We have the 8 wrong color on the comp plan map, and we'll 9 correct that next month.</p> <p>10 MR. BROWN: Mayor, if I could just -- 11 THE MAYOR: Yes, Mr. Brown, a question for 12 you.</p> <p>13 MR. BROWN: Thank you. I'd like to 14 address also what Commissioner Diebel asked. 15 In addition to going back and amending the map 16 so the C-2 is not down zoned by the comp plan, 17 you can also settle Bert Harris Act claims, 18 even if it means the settlement agreement is 19 inconsistent with your comp plan. So my 20 contemplation was, as these individual issues 21 came up, once we evaluated them, if, in fact, 22 we determined that the comp plan impermissibly 23 down zoned their property -- we have a specific 24 example, I think it was 301 New England is the 25 one Mr. Bellows was referring to. Specific</p>

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<p>1 example, we can settle that through a 2 settlement agreement. And one of my associates 3 found authority that you can do that, even if 4 it's inconsistent with the comp plan, in the 5 settlement of a Bert Harris claim.</p>	<p>1 land development code, that could cause a Bert 2 Harris claim, if the land development code 3 purports to say that the person doesn't even 4 have the right to ask for a variance or 5 permission to -- to use his property as it was 6 previously entitled, which was 25 units.</p>
<p>6 UNIDENTIFIED SPEAKER: And I've already 7 advertised the settlement.</p>	<p>7 So in my opinion -- and Katie Reischmann 8 has been working with staff on this. And 9 I'm -- you know, it's my understanding that in 10 several places in the comp plan it does say 11 that, purportedly, certain areas don't have the 12 right to request. And I think we'll have to 13 look at those situations case by case and 14 evaluate each one on the facts.</p>
<p>8 THE MAYOR: I don't disagree with that, 9 but if we -- and I don't want to say --</p>	<p>15 But to answer your question, it is 16 possible that a person who had a right to 25 17 units per acre or whatever, you know, unit of 18 land, and then we say, in the land development 19 code or the comp plan or both, if we say they 20 don't have the right to get back to 25, you 21 create a potential Bert Harris claim. Okay.</p>
<p>10 (Inaudible exchange ensued.) 11 THE MAYOR: I don't want to say willfully, 12 but if we said it was this way, and then 13 through whatever process we said it's a 14 different zoning and know that going into this, 15 I don't want to pay your fees and other --</p>	<p>22 And you can do that. You can steadfastly 23 refuse to deviate. But you'll pay damages.</p>
<p>16 MR. BROWN: But you've already done that 17 in the comp plan --</p>	<p>24 THE MAYOR: So I guess my question is, is 25 that something that should be fixed, because</p>
<p>18 THE MAYOR: -- to address that.</p>	
<p>19 MR. BROWN: You've already done that in 20 the comp plan. The comp plan --</p>	
<p>21 THE MAYOR: But I guess my point is, then 22 the comp plan ought to be amended.</p>	
<p>23 MR. BROWN: Yes, it should be. Yes, it 24 should be. I agree.</p>	
<p>25 (Inaudible exchange ensued.)</p>	
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<p>1 THE MAYOR: And I guess at some point I'd 2 like to ask the process of staff as to how we 3 would get a comp plan approved with what, in my 4 opinion, is a pretty large mistake. Now, I 5 don't know if it's a mistake or an omission or 6 whatever, but, I mean, that's pretty serious, 7 if I've got C-2 and you make it parks or 8 something completely different.</p>	<p>1 some of this stuff in the land development 2 code, as I understand, is not in the comp plan 3 today, is that correct, Mr. Briggs, especially, 4 like, the 25 to 17?</p>
<p>9 MR. BROWN: That's wrong to do, yes, sir. 10 It should not -- I mean, you shouldn't down 11 zone property in the comp plan. That's as 12 simple as it can be.</p>	<p>5 MR. BRIGGS: There are a number of things 6 that aren't in the comp plan, and that's one 7 that is in there.</p>
<p>13 THE MAYOR: Can I ask you a question on a 14 different matter which is comparable to this, 15 and that is, to go from 25 units per acre to 16 17, which is sprinkled throughout the land 17 development zone, is that a similar type of 18 action?</p>	<p>8 THE MAYOR: The 25 to 17 is? 9 MR. ANDERSON: Yes. So if you want to fix 10 that --</p>
<p>19 MR. BROWN: If someone has a right to -- 20 to 25 units per acre under an existing code, 21 and then the comp plan comes along, if it -- 22 and I'd have to --</p>	<p>11 THE MAYOR: I'm confused, because I 12 thought the yellow items weren't. 13 Am I misreading the document you've sent 14 to us?</p>
<p>23 THE MAYOR: And this came right out of the 24 comp plan, the yellow sections.</p>	<p>15 MR. ANDERSON: The yellow highlighted 16 items are comp plan required, and the white -- 17 the un-highlighted ones are not.</p>
<p>25 MR. BROWN: Okay. If it was just in the</p>	<p>18 THE MAYOR: Thank you, Mr. Anderson. I've 19 been reading it the opposite. Thank you for 20 that. 21 MS. DIEBEL: So, Mayor, I have a question 22 of our attorney, then. 23 THE MAYOR: -- inaudible -- 24 MS. DIEBEL: That's okay. I just want to 25 make sure I have the floor.</p>

<p style="text-align: right;">Page 46</p> <p>1 So to our counsel, procedurally, if we 2 accepted a land development code that has -- 3 effectively has a Bert Harris claim, because 4 you've clearly said that acceptance of the comp 5 plan has created several, and I was very vocal 6 about that as well on the acceptance process 7 and dissented because of that reason, and the 8 fact that we have a restriction where we can 9 request amendments to our own comp plan every 10 six months, and we have an ordinance that says 11 we need a supermajority to do those kind of 12 things, what is the minimum amount of time that 13 we would be able to correct our own mistake in 14 this situation? Because we attempted to at 15 least have a consensus to correct our own comp 16 plan before.</p> <p>17 So I'm very, very skeptical that the City 18 would be able to take the appropriate action to 19 correct this mistake in less than a six-month 20 time frame.</p> <p>21 MR. BROWN: I'm going to defer to Katie 22 Reischmann working with Jeff Briggs, but I 23 think that's right. I think there will be some 24 time delay. I think what you need to do is to, 25 as expeditiously as possible, let Katie work</p>	<p style="text-align: right;">Page 48</p> <p>1 then we can resolve those in that period of 2 time before you can amend everything so that 3 you're totally solid, and we can work and 4 settle those claims.</p> <p>5 And they may be few. It may be just 6 Mr. Bellows who has an interest in developing 7 property and pushing projects through at this 8 time.</p> <p>9 THE MAYOR: Mr. Brown, I appreciate your 10 counsel on this matter, but I'm confused as to 11 why we wouldn't amend the comprehensive plan 12 before we enacted the land development code. 13 It appears at this point we think we may be 14 opening ourselves up to some liability.</p> <p>15 MR. BROWN: You've got the liability issue 16 because of what's in the comp plan anyway.</p> <p>17 THE MAYOR: Comp plan anyway. So that 18 doesn't matter. Okay. I see your point.</p> <p>19 MR. BROWN: And the law requires you to 20 have a land development code which is 21 consistent with your comp plan.</p> <p>22 THE MAYOR: But does it require it within 23 a time frame? Does it require --</p> <p>24 MR. BROWN: Within a reasonable period of 25 time, and I think we're bumping up against</p>
<p style="text-align: right;">Page 47</p> <p>1 with Jeff and correct those issues, come back 2 and amend the comp plan, and amend the land 3 development code at that point. But I do think 4 you need a land development code which is 5 essentially consistent with your comp plan. 6 And in that period of time, that gap -- and I'm 7 sorry, this is the way it is. In that period 8 of time, we'll just have to work diligently 9 with property owners, because they have 10 potential claims.</p> <p>11 This is another point of legal discussion 12 I've been having with the Vose Firm. They can 13 bring a declaratory judgment action, not for 14 damages, with respect to some facial invalidity 15 of the ordinance. I'm not concerned about 16 that, because I don't think the ordinance is 17 facially invalid. But you do need a case.</p> <p>18 So just -- just because there may be 19 property owners in that gap between the red 20 line and the green line doesn't mean that each 21 and every one of them is going to want to do 22 something that could raise a Bert Harris Act 23 issue. So the ones that do try to do the 24 development, then you have a -- what's referred 25 to in the law as a case in controversy, and</p>	<p style="text-align: right;">Page 49</p> <p>1 that.</p> <p>2 THE MAYOR: Approaching that.</p> <p>3 MS. DIEBEL: But Counsel, my question is 4 that, if we have an inconsistency in our 5 comprehensive plan, rather than compound the 6 error with -- with validating it against a land 7 development code that also contains the same 8 error, why wouldn't we bring forth amending the 9 comprehensive plan in the right order and then 10 adopting the language in the land development 11 code, which is what I think you said you wanted 12 to do in parallel?</p> <p>13 MR. BRIGGS: There's only one error. It 14 pertains to the property at 301 New England. 15 Staff has already advertised the ordinance to 16 correct the error. It's going to P and Z March 17 2nd and will be at the City Commission at the 18 end of March. So within those two months, the 19 error will be corrected. That action is 20 already underway. So I think the only reason 21 to bring that to your attention tonight is to 22 let you know that this is something that needs 23 to be done and voted on in the future.</p> <p>24 MS. DIEBEL: Well, I disagree, Mr. Briggs. 25 I heard our counsel say that we -- that, quote,</p>

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<p>1 you shouldn't have down zoned the property in 2 the comprehensive plan, which you've done, and 3 you've done a regulatory taking in it. And it 4 was more than one.</p>	<p>1 a few things that I guess I just need to say. 2 Well, number one, I understand the 3 recommendation from the city attorney to adopt 4 the land development code and then go back and 5 make whatever amendment to the comp plan and 6 associated land development change. And that 7 makes sense to me, because we have to have a 8 land development code so we can move forward.</p>
<p>5 MR. BROWN: There's been -- there's been 6 one that's been brought forward. Is that what 7 you meant, Mr. Briggs? There's been one 8 landowner with one parcel, 301 New England --</p>	<p>9 But here's where I'm really confused. And 10 I don't know if this is a matter of legal 11 opinions and differing opinions. But this 12 whole issue of Bert Harris, it was my 13 understanding that a municipality or county has 14 the right to change zoning or zoning 15 regulations from time to time if it's in the 16 best interest of the community, or whatever the 17 language is. I've read some of the U.S. 18 Supreme Court cases on that. And I think Lake 19 Tahoe is one of the examples.</p>
<p>9 MR. BRIGGS: This one parcel.</p>	<p>20 But anyway, if what you're saying is true, 21 then I want to understand -- I want to 22 understand how we had a previous attorney and 23 law firm sitting up here when we adopted the 24 comp plan, and none of that was made --</p>
<p>10 MS. DIEBEL: And I'm just hearing our 11 counsel say that --</p>	<p>25 MR. BROWN: Let me just address -- can</p>
<p>12 UNIDENTIFIED SPEAKER: There could be 13 others.</p>	
<p>14 MS. DIEBEL: -- there could be others. So 15 rather than adopt a land development code that 16 compounds the error, why don't we fix the 17 comprehensive plan so we don't go down this 18 path?</p>	
<p>19 MR. BRIGGS: Because we don't know where 20 those others are. We have heard about Bert 21 Harris claims for over two years, about how we 22 are harming property values. And what you do 23 is, you bring in a specific case of a specific 24 property that's harmed by your comp plan, and 25 you bring in appraisals, and you show the</p>	
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<p>1 difference in value for how you were harmed by 2 the enactment of these rules.</p>	<p>1 I -- I'm sorry to interrupt. 2 MS. DILLAHA: Yeah. I'm finding it 3 frustrating.</p>
<p>3 Then the City reacts. It either says, no, 4 we don't think we harmed you. Here's our 5 appraisals. See, this property is just as 6 valuable as it always was. Or we say, oh, I 7 guess we did harm the property, and we didn't 8 mean to, so we'll correct it.</p>	<p>4 MR. BROWN: The Supreme -- and I 5 understand. This has been extremely 6 frustrating for Katie and Jeff, and we're 7 having to get to know each other very well 8 through this process. And it's very 9 frustrating for all of us. And I'm sorry for 10 that.</p>
<p>9 So we are waiting for those specific, 10 on-point properties to be brought to us, backed 11 up by appraisals demonstrating the diminution 12 of value, and we've yet to receive any of 13 those.</p>	<p>11 The Supreme Court cases you've read are 12 the common law constitutional cases, where, in 13 order to have a regulatory taking, you 14 essentially have to deprive the landowner of 15 virtually all use of his property. But then 16 the Florida legislature passed the Bert Harris 17 Act, where any regulation that diminishes the 18 value, down zoning. We can change zoning, yes. 19 But you may down zone a property, and if that 20 property owner can show that as a result of the 21 down zone, he's lost value, then you can suffer 22 damages. It's as simple as that.</p>
<p>14 MR. BROWN: Mr. Briggs is correct in his 15 statement. I've been trying to say that. But 16 I think, as a policy matter, you should analyze 17 your comp plan, and if you act on my 18 recommendation, your land development code, and 19 we should proactively amend it so that citizens 20 aren't put to the burden of having to do that.</p>	<p>23 So the Bert Harris Act is something the 24 legislature layered on that's far more 25 protective of property rights than the common</p>
<p>21 In the meantime, we're aware of a specific 22 case that can be resolved, as Mr. Briggs 23 indicated.</p>	
<p>24 THE MAYOR: Commissioner Dillaha?</p>	
<p>25 MS. DILLAHA: Okay. I've got -- I've got</p>	

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<p>1 law standard for constitutional regulatory</p> <p>2 taking.</p> <p>3 THE MAYOR: Commissioner Dillaha?</p> <p>4 MS. DILLAHA: Okay. Well, I was just</p> <p>5 finishing up with, if we had these problems</p> <p>6 with our comp plan, I don't understand why they</p> <p>7 weren't brought forward when our comp plan was</p> <p>8 adopted.</p> <p>9 MS. DIEBEL: Commissioner Dillaha, I mean,</p> <p>10 that was part of the debate that we had. I</p> <p>11 mean, adopted -- repealing, readopting the comp</p> <p>12 plan was the exact action was coming forward.</p> <p>13 I mean, I don't understand why this would be --</p> <p>14 why this would be new.</p> <p>15 MS. DILLAHA: No. What I'm saying is,</p> <p>16 when we had another city attorney sitting up</p> <p>17 here and we were going through the process, it</p> <p>18 was not brought forward that we might be down</p> <p>19 zoning property or violating the Bert Harris</p> <p>20 Act. None of that was discussed.</p> <p>21 MS. DIEBEL: It absolutely was. I was</p> <p>22 calling for the legal counsel on the opinion,</p> <p>23 which he stated you can do this, but here's</p> <p>24 some potential risk and ramification. I'd be</p> <p>25 happy to go pull the minutes and the tapes of</p>	<p>1 opinion on? I mean, is there a process where</p> <p>2 that could happen?</p> <p>3 MR. BROWN: I would like to go back and</p> <p>4 talk to Katie Reischmann, who's more of an</p> <p>5 expert on this than I am. You can't adopt a</p> <p>6 land development code that is inconsistent with</p> <p>7 your comp plan, that perhaps there could be</p> <p>8 almost settlement-type language that, you know,</p> <p>9 until the thing is amended, we could -- we</p> <p>10 could possibly settle, you know, disputed</p> <p>11 claims.</p> <p>12 But let me -- let me address something you</p> <p>13 said, Commissioner. Your third -- your third</p> <p>14 category of possibility was, there could be</p> <p>15 disputes on whether or not, in a given case,</p> <p>16 we've really violated their rights. And I want</p> <p>17 to make that clear. We have to look at each</p> <p>18 case, case by case.</p> <p>19 The 301 New England I think we do need to</p> <p>20 settle. But that doesn't mean that we wouldn't</p> <p>21 look at another set of facts and disagree that</p> <p>22 they have a valid Bert Harris claim. We might</p> <p>23 say they don't, okay. So I want to emphasize</p> <p>24 that.</p> <p>25 But if you'd like, I can come back in two</p>
<p>Page 55</p> <p>1 those meetings. I was very vocal about that</p> <p>2 and asked for counsel opinion.</p> <p>3 THE MAYOR: Commissioner Dillaha?</p> <p>4 MS. DILLAHA: I don't recall counsel</p> <p>5 ever -- ever saying that. But --</p> <p>6 THE MAYOR: We have a disagreement here,</p> <p>7 but --</p> <p>8 (Inaudible exchange ensued.)</p> <p>9 THE MAYOR: Commissioner Anderson has a</p> <p>10 question for counsel.</p> <p>11 MR. ANDERSON: Based on -- I mean, I'm</p> <p>12 sure there is a mixture of things that we've</p> <p>13 heard tonight, some of which are comp plan</p> <p>14 controversies, some of which are land use</p> <p>15 controversies, and some of which are plain</p> <p>16 differences of opinion on what the entitlements</p> <p>17 truly are. So I'm looking at this, and I'm</p> <p>18 thinking we've got sort of three different</p> <p>19 things going on.</p> <p>20 The comp plan changes we can't do anything</p> <p>21 about tonight. There's nothing we can do about</p> <p>22 it tonight. But do we know -- could we put in</p> <p>23 place, in this land development code, within --</p> <p>24 or make the changes within the next two weeks</p> <p>25 the things that we don't have a difference of</p>	<p>Page 57</p> <p>1 weeks and, under the Newmont (phonetic) case, a</p> <p>2 fairly recent case, that would not change the</p> <p>3 substance of the ordinance, in my opinion. So</p> <p>4 you could adopt, on second reading at the next</p> <p>5 meeting, with as much flexibility-type language</p> <p>6 in to give comfort to people, and then start</p> <p>7 the comp plan review process and amendment</p> <p>8 process, which can't (phonetic) be done</p> <p>9 quickly.</p> <p>10 MR. ANDERSON: But if you're asking could</p> <p>11 we come back in two weeks and take care of all</p> <p>12 these objections, the answer is no. There are</p> <p>13 things such as them wanting to keep the option</p> <p>14 for bed and breakfast that you either have to</p> <p>15 give it to them -- I mean, you can't solve all</p> <p>16 of the complaints about what's before you.</p> <p>17 MR. BROWN: I'm referring to the C-2 issue</p> <p>18 now.</p> <p>19 UNIDENTIFIED SPEAKER: May I --</p> <p>20 (Inaudible exchange ensued.)</p> <p>21 UNIDENTIFIED SPEAKER: That to me was --</p> <p>22 go ahead. I'm sorry.</p> <p>23 UNIDENTIFIED SPEAKER: I'm really</p> <p>24 concerned about the 25 to 17. I don't know if</p> <p>25 that unilaterally does something or not. So I</p>

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<p>1 don't know if that applies similarly in terms 2 of C-2, but --</p>	<p>1 about the three categories, just -- and I know 2 we may be revisiting it again. But the</p>
<p>3 MR. BROWN: I think, if the comp plan says 4 that they don't have the right to come in and 5 ask the City Commission and -- P and Z, then 6 the City Commission to go back to 25, then I 7 think you have a similar type -- 8 (Inaudible exchange ensued.)</p>	<p>3 areas -- I think what I'm hearing our counsel 4 recommend is that we really have to adopt a 5 land use code that's consistent with the comp 6 plan, that failure to do that is a problem.</p>
<p>9 Yeah. Because I know that Katie was 10 telling me that in some places in the comp 11 plan, we -- we say that you can't try to change 12 the zoning. There's some areas like that. But 13 if the 17-25 issue is not one of them, then 14 we're okay.</p>	<p>7 MR. BROWN: I think you open yourself up 8 to even more liability in the interim.</p>
<p>15 THE MAYOR: And maybe that opens up 16 another can of worms. But is that something 17 that should be addressed too? Because if we 18 don't give the people -- if we down zone or 19 adjust and we don't give them the right to ask 20 for that --</p>	<p>9 MR. ANDERSON: Yeah. And so -- I think 10 that's what I'm hearing, is that that's the box 11 we're in on comp plan issues, is that it's a 12 box, and you have to deal with that box.</p>
<p>21 MR. BROWN: That's a problem.</p>	<p>13 And then there's the second category, 14 which is things that weren't required in the 15 comp plan but are imposed in the land use -- 16 the land use code that perhaps, in the specific 17 instance brought forward, were not intended. 18 And that's the category that I'm wondering, can 19 we make changes in the next two weeks.</p>
<p>22 THE MAYOR: That's a problem. And you're 23 saying, based on your review or your firm's 24 review, Katie had that in the comprehensive 25 plan today?</p>	<p>20 And then the final category is, you know, 21 we just don't have this -- there's no 22 commonality of opinion, and so we can't make 23 those changes unilaterally.</p>
<p>Page 59</p>	<p>24 UNIDENTIFIED SPEAKER: Right.</p>
<p>1 MR. BROWN: Yes. She mentioned to me that 2 there are a couple of places where the property 3 owner doesn't have the right to seek any 4 conditional or use --</p>	<p>25 MR. ANDERSON: Yeah. And I've heard a</p>
<p>5 THE MAYOR: I'm assuming we're going to 6 fix that when we fix these other issues.</p>	<p>Page 61</p>
<p>7 MR. BROWN: Yes, sir.</p>	<p>1 litany of things that perhaps is a -- a 2 constructive list of specifics tonight that 3 have been absent since this thing was filed in 4 December and -- you know, but I think that 5 that's interesting. You know, there's now a 6 litany of very detailed discussion points which 7 I'm not sure is timely. I don't think it, you 8 know -- but it is what it is.</p>
<p>8 THE MAYOR: I would assume. We want to. 9 Maybe we don't want to. But --</p>	<p>9 I mean, would it be appropriate for the 10 parties to see if there's -- if Jeff can reach 11 an agreement on that middle group of items and 12 bring it back?</p>
<p>10 MR. BROWN: When we were -- we came into 11 this position, we had a comp plan. It was 12 already done. And then Katie worked with Jeff 13 just to make sure the land development code was 14 consistent with the comp plan. And she saw a 15 lot of these things, which caused her some 16 concern.</p>	<p>13 UNIDENTIFIED SPEAKER: Before we adopt, 14 you mean, Commissioner Anderson, or --</p>
<p>17 There's a lot that's good in your comp 18 plan, of course. And it's possible to do it 19 legally on the redo and still achieve, you 20 know, a lot of the protections that the City 21 wants.</p>	<p>15 MR. ANDERSON: Yeah.</p>
<p>22 THE MAYOR: Commissioner -- I'm sorry. 23 I'm listening for a comment.</p>	<p>16 MR. BROWN: I think -- yeah. As you were 17 speaking, I was thinking that maybe staff 18 should meet with the landowner and identify 19 areas where there's an agreement. And I could 20 look at bringing some language in that wouldn't 21 be in opposition to the comp plan, but would 22 allow a process for disputes in the gap period 23 while we're amending the comp plan to be 24 corrected or settled or resolved.</p>
<p>24 Go ahead, sir.</p>	<p>25 UNIDENTIFIED SPEAKER: Right.</p>
<p>25 MR. ANDERSON: So let me -- so I've talked</p>	

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	<p>MR. BROWN: That would be something that would be appropriate.</p> <p>MR. ANDERSON: I mean, I hate tabling this yet again. We've been tabling this since November, trying to give everyone ample opportunity to examine this code. And, you know, while it's - inaudible -- it's waited until this late to come out. It's only 60, 90 days. But, I mean, if we can find an agreement on those few things that reduce the pain for this particular situation, I'd be ready to table it until two weeks from now, or frankly, until a special meeting.</p> <p>MR. BRIGGS: I would say that all the issues that have been raised have been raised in the C-2 district. So the rest of the document, the other 95 percent of the document, hasn't been raised at issue, from what you've heard tonight --</p> <p>UNIDENTIFIED SPEAKER: R-3, R-4, C-2.</p> <p>MR. BRIGGS: I'm talking about things that you spoke about --</p> <p>THE MAYOR: I'm sorry. I'm sorry. We're not going to debate in the public.</p> <p>MR. BRIGGS: We could move forward on the</p>	<p>all part of the same ordinance, which is properly noticed to the public. So that would be a solution, one way to approach it.</p> <p>THE MAYOR: Mr. Brown, I have a question, back on the comp plan, if I might. The thing that's slowing us down is our arbitrary decision to go twice a year. Could we amend that ordinance to say, if there are issues which present themselves, such as this, which, again, I -- I am assuming were mistakes of human kind, that we could say or hold back a right for the City to adjust --</p> <p>MR. BROWN: Yeah.</p> <p>THE MAYOR: -- for such matters as this and not have to wait six months?</p> <p>MR. BROWN: That would require an amendment by ordinance, but we could get on that right away. I don't recall if --</p> <p>THE MAYOR: I think the every six months was we didn't want developers coming in every meeting and trying to adjust the code. But, I mean, this is something that, frankly, I don't want to have a personal timetable to my head. Since we put that timetable to our head, that -- it appears we've got some liability on</p>	
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	<p>document, taking out C-2 then we'll work on those changes in the interim two weeks.</p> <p>UNIDENTIFIED SPEAKER: Some of them aren't resolvable. So if we separated this with the two different components, I mean, what does that do to the notice requirements and the adoption requirements and --</p> <p>MR. BROWN: You wouldn't have to renotece if you table. I mean, you have to renotece that it's coming back, but you wouldn't have to go through the super notice and advertise in the paper or anything.</p> <p>UNIDENTIFIED SPEAKER: Okay. But, I mean, you could adopt tonight except for the C-2 zoning?</p> <p>MR. BROWN: Oh, I think you could, yes. You could adopt but for the C-2.</p> <p>UNIDENTIFIED SPEAKER: And then the second reading, the C-2 portion of it, would carry on until next --</p> <p>MR. BROWN: Yes. I don't think there's any problem with that.</p> <p>MR. ANDERSON: And then we'll work out --</p> <p>MR. BROWN: It's not -- it's not routine, but, yes, you could sever the C-2 out. It's</p>	<p>the surface, at least from what I'm hearing. And, you know, I'd like to fix that sooner rather than later, personally.</p> <p>MR. ANDERSON: But, Mr. Mayor, are you talking about putting something into the adopting or ordinance that would say that -- City cleanup issues --</p> <p>THE MAYOR: Yeah. I don't know what you'd call them, but --</p> <p>MR. ANDERSON: -- more frequently than twice a year?</p> <p>UNIDENTIFIED FEMALE COMMISSIONER: City administrative.</p> <p>THE MAYOR: I mean, administrative. I like that term. I mean, if we even looked at where we're at with the post office, this probably doesn't -- well, it may fall under that type of a category, but this is certainly much more onerous to me. And I think our citizens, as well as -- well, our citizens would appreciate us not having to create liability that we might have to defend. I mean, there's a cost to doing that, whether people win or lose at the end. It's the time and the cost.</p>	Page 65

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1 Mr. Brown, I'd rather be paying your time
2 in another way rather than in litigation.

3 MR. ANDERSON: I mean, I think that
4 reconsidering the adoption ordinance in that
5 category, if that expedites corrections of this
6 type, then I think it would be prudent to do
7 so.

8 UNIDENTIFIED FEMALE COMMISSIONER: I agree
9 with you, Commissioner Anderson. It would
10 be -- the City should act on its own accord to
11 be able to correct things that are wrong.

12 MR. BROWN: The City clerk has a very
13 strict, tough cycle for getting things on, but
14 I'll do my best to come up with an ordinance
15 and get it to staff and work with staff.

16 THE MAYOR: It's a modification of the
17 ordinance.

18 MR. BROWN: It's an amendment to the
19 ordinance.

20 THE MAYOR: Amendment to the ordinance,
21 yes.

22 MR. BROWN: Yes, to allow for more
23 frequent -- any time the City needs to make an
24 administrative change.

25 THE MAYOR: Truthfully, I don't know that

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1 I want to be -- I mean, this body and its
2 wisdom, to me, shouldn't be constrained if
3 there's something of this nature that we need
4 to adjust, because, I mean, somebody could show
5 something coming up two months from now -- and
6 I realize Jeff is anticipating every issue
7 here. But if somebody comes up two months from
8 now, I don't want to say, oh, gee, we've got to
9 wait four months because we made this decision.

10 UNIDENTIFIED FEMALE COMMISSIONER: I
11 think, if we do this, it has to be extremely
12 specific, so that we're just not amending --

13 THE MAYOR: It's actions caused by the
14 City.

15 UNIDENTIFIED FEMALE COMMISSIONER: -- all
16 the time. Well, there has -- the language in
17 the ordinance has to be very specific, so that
18 we're not just calling anything and everything
19 an administrative change to the comp plan and
20 amending the comp plan, you know, every
21 other --

22 MR. BRIGGS: You can pass that ordinance,
23 but pending the outcome of the March 9th
24 charter referendum, it may not be -- it may be
25 superseded by those results.

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1 THE MAYOR: Well, we have things we've got
2 to do until March 9th, so the citizens put us
3 in a box or -- or don't.

4 UNIDENTIFIED FEMALE COMMISSIONER: So just
5 to --

6 THE MAYOR: I don't know where we're at at
7 this point, except we have a motion and a
8 second on the floor to approve the land
9 development code as presented.

10 Is there an amendment based on any of our
11 communication or a tabling motion?

12 MS. DILLAHA: Would the amendment be to go
13 forward and adopt the land development code
14 except for - this is where I might need help -
15 the map and language pertaining to C-2 zoning
16 and the central business district?

17 MR. BROWN: I think that's -- is that
18 sufficient, Jeff? I think so.

19 So the motion would be -- the motion to
20 amend is to amend -- to adopt the land
21 development code as presented, except for the
22 map and any reference to the C-2 zoning
23 district and the central business district.

24 MS. DILLAHA: Right, and to expedite those
25 changes or corrections to that CBD map and

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1 language.

2 UNIDENTIFIED SPEAKER: Are you making a --

3 UNIDENTIFIED FEMALE COMMISSIONER: I have
4 a question --

5 UNIDENTIFIED SPEAKER: -- form of a
6 motion?

7 UNIDENTIFIED FEMALE COMMISSIONER: Yes,
8 that's a form of a motion --

9 THE MAYOR: That's a -- we have a motion
10 to amend.

11 Is there a second to that?

12 Carrying on, the amendment fails.
13 Commissioner Bridges?

14 UNIDENTIFIED SPEAKER: I'm sorry. Go
15 ahead.

16 MS. BRIDGES: I just had a question of our
17 counsel. I would like to know what you would
18 recommend as our best and most expeditious
19 forward motion on this. I'm sensing that all
20 of the commission is united in the concerns
21 about not violating property rights and
22 addressing issues, finding the -- the right
23 answers here.

24 But for this evening's order of business
25 here, what is the -- what is the most

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<p>1 expeditious way to achieve our goals here?</p> <p>2 MR. BROWN: My recommendation is just to</p> <p>3 adopt, on second reading, the land development</p> <p>4 code. And we are going to work, as Mr. Briggs</p> <p>5 has indicated, to resolve all the issues that</p> <p>6 we agree with, including the fact that we do</p> <p>7 agree with the 301 New England C-2 issue.</p> <p>8 We're going to resolve all those issues so that</p> <p>9 there's no need for citizens to go through an</p> <p>10 expensive process of getting ready to bring a</p> <p>11 Bert Harris Act claim.</p> <p>12 So I would recommend just adopting the LDC</p> <p>13 as presented and then allowing us to work with</p> <p>14 staff and affected land owners as cases are</p> <p>15 presented, and then, of course, go through the</p> <p>16 comp plan amendment process and, of course,</p> <p>17 bring back the amendment to the ordinance to</p> <p>18 allow for very quick changes to the comp plan</p> <p>19 when it's necessary like this.</p> <p>20 THE MAYOR: Commissioner Diebel, I am just</p> <p>21 going to say, I am so uncomfortable adopting</p> <p>22 something that I know is trouble. It just</p> <p>23 troubles me. Just let me just say it that way.</p> <p>24 I would just rather table it for two weeks</p> <p>25 and bring it back when everybody's done their</p>	<p>1 incredibly flawed, or flawed, or partially</p> <p>2 flawed, or minorly flawed.</p> <p>3 MS. DIEBEL: Mr. Mayor --</p> <p>4 MR. MAYOR: -- if we, at least, can fix</p> <p>5 it.</p> <p>6 UNIDENTIFIED SPEAKER: Two weeks --</p> <p>7 MS. DIEBEL: Mayor, I'd like to support</p> <p>8 Commissioner Anderson's thoughts and the</p> <p>9 comments that he made and make a move to table</p> <p>10 this for two weeks until the inconsistencies</p> <p>11 can be --</p> <p>12 THE MAYOR: There is a motion to table.</p> <p>13 Is there a second?</p> <p>14 MR. ANDERSON: Second.</p> <p>15 MS. DIEBEL: And just discussion, at that</p> <p>16 time, I would assume we could have the</p> <p>17 reference to the ordinance that is necessary so</p> <p>18 that we can have a first review of that, as</p> <p>19 well as if there are any other inconsistencies</p> <p>20 that are discovered by the assistant counsel,</p> <p>21 that those could be brought forward at the same</p> <p>22 time, and we could vote at that time.</p> <p>23 MR. MAYOR: There's a motion to table and</p> <p>24 a second.</p> <p>25 MR. ANDERSON: Can I --</p>
<p>Page 71</p> <p>1 work, because at this point, it feels like</p> <p>2 we've got big gaps. I don't know how we've</p> <p>3 gotten here. I'd like to know at some point.</p> <p>4 But that's going to make tonight's meeting go</p> <p>5 any shorter or longer.</p> <p>6 MR. BROWN: I would bring Katie --</p> <p>7 MR. MAYOR: I'm just really concerned</p> <p>8 about what appears to be major gaps. And it</p> <p>9 feels like you're saying we will compound those</p> <p>10 gaps less by adopting this ordinance versus by</p> <p>11 not adopting it. I'm confused by a commission</p> <p>12 versus an omission.</p> <p>13 MR. BROWN: That's an excellent way to put</p> <p>14 it. I understand. And, intuitively, that's</p> <p>15 what most logical people would think.</p> <p>16 But I'm -- I'm -- as a lawyer, I am -- I</p> <p>17 keep coming back to the fact that the law</p> <p>18 requires you to have a land development code</p> <p>19 which is consistent with your comp plan. But I</p> <p>20 don't suppose --</p> <p>21 MR. MAYOR: So I guess I'd rather have</p> <p>22 somebody -- maybe I shouldn't talk out loud</p> <p>23 like this. But I think I'd rather have</p> <p>24 somebody bring an action against me than that,</p> <p>25 to bring action against me knowing something is</p>	<p>Page 73</p> <p>1 THE MAYOR: Commissioner Anderson, sure.</p> <p>2 MR. ANDERSON: -- ask Mr. Briggs another</p> <p>3 question, please?</p> <p>4 THE MAYOR: Sure.</p> <p>5 MR. ANDERSON: You made the comment a</p> <p>6 minute ago that that little category of</p> <p>7 question, you know, where there may be some</p> <p>8 agreement on things that do need to change</p> <p>9 that's not in the comp plan story, is that in</p> <p>10 the C-2 district? Is that primarily where</p> <p>11 those areas of agreement, but -- or is it just</p> <p>12 on the map or --</p> <p>13 MR. BRIGGS: The areas where we seem to</p> <p>14 have the disagreement, and we're not going to</p> <p>15 resolve them in two weeks, because they're</p> <p>16 philosophical differences in how buildings</p> <p>17 should be shaped and formed, are in the C-2</p> <p>18 district. So you're not -- we're going to be</p> <p>19 back here with these same complaints about the</p> <p>20 C-2 zoning in two weeks, because if it's the</p> <p>21 philosophy, just as a for instance, of where</p> <p>22 the third floor should be set back from the</p> <p>23 second floor, I mean, that was put in the comp</p> <p>24 plan, but --</p> <p>25 MR. MAYOR: Mr. Briggs, I'm sorry, I don't</p>

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<p>1 want to interrupt you, but I don't see this as 2 philosophical. I see this as potential down 3 zonings or citizens who can claim that we've 4 taken something away from them in the 5 comprehensive plan and are about to do that 6 again in the land development code. I don't 7 see this as a 35-foot gap or not, because, to 8 me, we have the right to do that. 9 I'm unclear as to whether or not we have 10 one parcel, 50 parcels, multiple opportunities 11 in the comprehensive plan where there have been 12 down zonings, and that's my concern. 13 And, today, I'm not getting confidence 14 from staff or counsel that we know how big the 15 problem is. We think it's one piece of 16 property, but we really don't know, because 17 we've gone months without even figuring this 18 one piece of property out. 19 MR. BROWN: Right. Right. I think -- I 20 haven't been involved in the trenches like 21 Katie and Jeff have been, but I -- I'm assuming 22 there are many more property owners who've been 23 similarly affected, it's just that they don't 24 have development plans that they're pushing, 25 and they may never, you know, within -- when</p>	<p>1 MS. DILLAHA: No. 2 UNIDENTIFIED SPEAKER: Commissioner 3 Diebel? 4 MS. DIEBEL: Yes. 5 UNIDENTIFIED SPEAKER: Commissioner 6 Bridges? 7 MS. BRIDGES: No. 8 UNIDENTIFIED SPEAKER: Mayor Bradley? 9 THE MAYOR: Yes. The land development 10 code will be tabled for two weeks, and 11 personally, I'd like to understand the extent. 12 I know we have one, but it seems like there 13 ought to be a way to overlay our current plans 14 with the current plan and figure out -- I don't 15 know why it takes people having to tell us that 16 without us knowing that. So I'd like to 17 instruct staff, at least from my perspective, 18 to figure that out. 19 MR. ANDERSON: And I'd like to make 20 another comment too. 21 UNIDENTIFIED SPEAKER: Please, 22 Commissioners. 23 MR. ANDERSON: This code has been 24 substantially in place and advertised for many, 25 many months. And it will get voted on at the</p>
<p>Page 75</p> <p>1 you amend the comp plan. 2 UNIDENTIFIED FEMALE COMMISSIONER: Well, 3 I -- just to continue with the discussion, I 4 want to go with the recommendation of our city 5 attorney in that we have to have a land 6 development code by law, and we do know that we 7 need to fix some things in the land development 8 code. 9 I probably am going to agree with Jeff. I 10 can't see that it's going to be done in the 11 next two weeks, or a week, I should say. So I 12 would -- I would just be in favor of going with 13 the recommendation of our city attorney on this 14 matter. So I'm not in favor of the table, I 15 guess is what I'm saying. 16 THE MAYOR: And we're going to vote it now 17 -- inaudible -- vote on the motion to table 18 this for two weeks until such time as staff has 19 the opportunity to determine the extent of the 20 problems we face. 21 UNIDENTIFIED SPEAKER: Commissioner 22 Anderson? 23 MR. ANDERSON: Yes. 24 UNIDENTIFIED SPEAKER: Commissioner 25 Dillaha?</p>	<p>Page 77</p> <p>1 next meeting. It will get voted on on the next 2 meeting. And so there's been three months of 3 time taken, and I guess there's five or six 4 days left before it gets voted on. 5 UNIDENTIFIED FEMALE COMMISSIONER: Thank 6 you, Commissioner Anderson, because I agree 7 that we need to get to the bottom of this. 8 Randy, what I want to be presented at the 9 next commission meeting under this discussion 10 is exactly which comprehensive plan changes 11 that we need to make as well, instead of just 12 what the land development code inconsistencies 13 are, is actual work that's come forward there, 14 because I'm uncomfortable that we are matching 15 the two, and to Commissioner Anderson's point, 16 we should be able to have that in front of us 17 to be able to vote this in the right direction. 18 UNIDENTIFIED SPEAKER: I agree with you -- 19 UNIDENTIFIED FEMALE COMMISSIONER: And 20 also at the time that the commission is 21 entertaining a discussion, that maybe we should 22 expeditiously correct the comprehensive plan, 23 if need be, in that direction as well, that we 24 can take that under discussion at the next 25 meeting, understanding the notice requirements</p>

<p style="text-align: right;">Page 78</p> <p>1 that we'd have to be under, and get it done.</p> <p>2 THE MAYOR: I'm with you, Commissioner</p> <p>3 Anderson. I want to get this done. I just</p> <p>4 don't know how. And if it's just because one</p> <p>5 person at the second meeting finally decided to</p> <p>6 look at it, I don't know if that's what's</p> <p>7 driven it. I'm not clear tonight if staff knew</p> <p>8 this problem and hasn't addressed it with us.</p> <p>9 I don't know what the issue is at this point.</p> <p>10 But, obviously, we all need to have information</p> <p>11 to be able to make a prudent decision and not</p> <p>12 be put, frankly, Mr. Brown, in a double-bind.</p> <p>13 MS. DILLAHA: Well, and I'm going to --</p> <p>14 THE MAYOR: That's an uncomfortable</p> <p>15 position to be in.</p> <p>16 MS. DILLAHA: And --</p> <p>17 THE MAYOR: Commissioner Dillaha?</p> <p>18 MS. DILLAHA: -- to add onto what</p> <p>19 Commissioner Anderson said, I feel the same</p> <p>20 way. This has been out there for months, and</p> <p>21 this is coming forward at the 12th hour, you</p> <p>22 know, which is problematic to me. I don't know</p> <p>23 why none of this ever came forward prior to</p> <p>24 tonight. And I agree, we need to vote on this</p> <p>25 at the next meeting.</p>	<p style="text-align: right;">Page 80</p> <p style="text-align: center;">C E R T I F I C A T E</p> <p style="text-align: center;">- - -</p> <p>I, Christina Gerola, Notary Public in and for the State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.</p> <p style="text-align: center;">Dated this 16th day of March, 2010.</p> <p style="text-align: right;">_____ Christina Gerola Notary Public - State of Florida My Commission No.: DD617707 My Commission Expires: 12/10/10</p>
<p style="text-align: right;">Page 79</p> <p>1 THE MAYOR: If it's ready, we will.</p> <p>2 Commission, I'm going to take a</p> <p>3 five-minute recess, if that's okay, and then we</p> <p>4 need to look at the timing for the rest of our</p> <p>5 agenda.</p> <p>6 (Audio excerpt concluded.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	