

REGULAR MEETING OF THE CITY COMMISSION
February 22, 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 City Manager Randy Knight, followed by the Pledge of Allegiance.

Members present:

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

Also present:

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

Approval of the agenda

The agenda was approved by acclamation of the City Commission. The agenda was moved around as the meeting went along to accommodate the public comments and public hearing times.

Historic Preservation Commission (HPC) Update

HPC Chairman Kit Pepper provided a PowerPoint Presentation explaining the buildings in the City eligible for historic designation, the types of historic designation, the history of the path to preservation within the City, certificates of review hearings to date, buildings listed on the National Register of Historic Places in Winter Park, the City's downtown nomination for the National Register of Historic Places, local historic designation standards and criteria they must meet the designation process for individual properties, the designation process for historic districts, the results of designation to the Winter Park Register of Historic Places, the goals for the conservation of vintage neighborhoods and homes, and the 2010 HPC goal to review the historic preservation ordinance. Ms. Pepper answered questions by the Commissioners.

Mayor's Report

Mayor Bradley stated that the remains of Mr. Strickland were found in Haiti and that the service on his behalf will be soon.

Mayor Bradley stated that the City received a visit from Congresswoman Kosmas who presented the City with a Federal Assistance to Firefighter grant check for \$224,100 to be used to purchase advanced cardiac defibrillators for every Advanced Life Support Unit in the department.

Mayor Bradley announced receiving pictures of newly renovated Chestnut Park and thanks from the Neighborhood Association for making this a great park.

City Manager's Report

City Manager Knight stated that we closed on the Community Center bonds last week so the project is ready to begin, the demolition bids came back slightly under budget, and they hope to

have the Request For Information (RFI) for the State Office Building site completed by the end of the week.

City Attorney's Report

Attorney Brown addressed the Florida Supreme Court issuing an opinion on February 11 in the Sarasota County case who held that the Sarasota County charter provisions regarding how they conduct their elections were not expressly or impliedly preempted by the State election code. This reversed the 2nd District Court of Appeal on that issue but they did find that certain provisions of the local regulations conflicted with State law. He stated that when it comes time to evaluate possible recommendations from the Ethics Board you have to review any conflict with State laws as opposed to preemption.

Attorney Brown addressed a new lawsuit against the City and that he would like to add the lawsuit of Webb versus the City (related to a Board of Adjustment appeal on a sign issue) to the March 5 executive session already scheduled.

Non-Action Items

None.

Consent Agenda:

- a. Approve the minutes of 2/8/10. **PULLED FROM AGENDA. SEE BELOW.**
- b. Approve Task Order 2010-01 for CH2M HILL for the Fairbanks Corridor Wastewater Collection & Transmission Final Design and Permitting.
- c. Authorize extension of federal lobbyist contract with Alcalde and Fay through September 30, 2010. **PULLED FROM AGENDA. SEE BELOW.**

Commissioner Diebel asked to discuss 'a'. Commissioner Dillaha asked to discuss item 'c'.

Motion made by Mayor Bradley to approve Consent Agenda Item 'b'; seconded by Commissioner Bridges and carried unanimously with a 5-0 vote.

Consent Agenda Item 'a':

Commissioner Diebel stated it is important that we incorporate a verbatim transcript concerning the exchange with the City Attorney where he rendered an opinion on the potential of takings in Bert Harris claims during that exchange. She stated she did not see that summarized in the minutes. Mayor Bradley also addressed the minutes stating there was consensus that the LDC will be adopted at the next meeting and did not believe there was a consensus (page 12) and to strike this from the minutes.

Motion made by Commissioner Diebel to approve the minutes and to include where discussion took place under the Land Development Code, the exchange specifically between myself and our counsel on potential of takings and potential Bert Harris claims that we have – I would like the context of that to be in the minutes. Motion was seconded by Mayor Bradley for discussion.

Commissioner Dillaha asked to consider an amendment to the motion to add the recommendation of the City Attorney regarding adopting the Land Development Code. Commissioner Bridges clarified that was already in the minutes.

Attorney Brown stated the law does not require you keep verbatim minutes; however, when you have a sensitive issue that may come before a court, it is sometimes advisable to have detailed minutes because they are usually introduced into evidence. He recommended the recording not be destroyed from the LDC meetings and as much clarity as possible in the minutes as to what was discussed.

Motion amended by Commissioner Bridges that a verbatim transcript of the entire discussion be provided as part of the minutes. Commissioner Diebel and Mayor Bradley agreed with the amendment. Motion carried unanimously with a 5-0 vote.

Consent Agenda Item 'c':

Commissioner Dillaha spoke about working with the Lobbyist in Washington. She asked if they retain them through the end of September if they could provide a quarterly report as to what they are doing on the City's behalf; who they are meeting with and how they are progressing on issues. She asked, as a second alternative, if it would be more beneficial for the Commission to go to Washington to meet with the City's representatives, instead of having a lobbyist. City Manager Knight stated a quarterly report would be appropriate. Mayor Bradley agreed and stated that he believed there is tremendous value with the City presenting their cases but that more is done on the City's behalf other than when they are present which is what the quarterly report would tell them. Commissioner Anderson asked if we could co-host a visit from the lobbyist here whenever they have other client meetings in the area as well.

Motion made by Commissioner Anderson to approve Consent Agenda Item 'c' to authorize the extension of the Federal lobbyist contract with Alcalde and Fay through September 30, 2010; seconded by Commissioner Bridges to include the recommendation that a quarterly report be provided and to contact them and encourage a unified meeting when they are here meeting with other regional clients. The motion carried unanimously with a 5-0 vote.

Action Items Requiring Discussion:

- a. Appointment of Canvassing Board members for March 9 election

Motion made by Mayor Bradley that Commissioners Bridges and Diebel and City Clerk Cindy Bonham comprise the Canvassing Board for the 2010 election, seconded by Commissioner Bridges and carried unanimously with a 5-0 vote.

City Clerk Cindy Bonham asked the board if they would agree that the Supervisor of Elections office staff open and run through the tabulating machine ahead of time (before we arrive) all of the absentees that do not need Canvassing Board review. The results will not be tabulated per law until 7:00 p.m. The Commission agreed to allow this.

b. Parks and Recreation Strategic Plan

Parks Director John Holland presented a PowerPoint presentation which included the history of the master planning for the Parks and Recreation Department over the last 8 years; the process to date to include all master plan and study documents that were evaluated and all recommendations that were listed and prioritized, the top priorities of each plan/study were selected for evaluation and compliance with the Strategic Plan objectives, and the top 4 priorities were selected from the combined list. He provided the cost of each plan: in 2002, the Central Park Master Plan was prepared by Michael Design Associates costing \$98,581.00; in 2006 the Winter Park Country Club/Golf Course evaluation was prepared by Kitson & Partners, LLC costing \$14,500.00; in 2007 the Mead Garden Master Plan was prepared by PBS&J costing \$103,479.00; in 2008 the Parks and Recreation Master Plan was prepared by Wade Trim costing \$101,059.00; and in 2008 the Fleet Peoples Master Plan was prepared by The Friends of Fleet Peoples Park/Neil and Jan Frazee, LA costing \$0 with a total cost of all combined of \$317,619.00.

Mr. Holland presented the Parks and Recreation Strategy Map 2009-2014 and the Comprehensive Plan Strategic Plan Compliance Cross Reference Matrix, the Parks and Recreation Strategic Plan Compliance with City-wide Strategic Map and the Parks and Recreation Strategy Planner.

Commissioner Dillaha asked that this be tabled and discuss it as part of the entire strategic plan for the City and to focus on some of these and determine how they will be funded for the upcoming budget years. Mr. Holland stated that this is not a critical issue that needs approval but is only presented to the Commission for acceptance and to move forward using this as a tool. Commissioner Dillaha suggested updating the Central Park Master Plan because it is 8 years old. Commissioner Bridges agreed with waiting for the City's Strategic Plan.

Mayor Bradley asked questions about the status of the concert stage and the children's garden. Mr. Holland responded. Mr. Holland addressed the receipt of FRDAP and Land and Water Conservation funding grants for parks that are struggling at this time. He commented about the Lake Waumpi Outcreek Basin from the Howell Branch Preserve to the property we own on Lake Waumpi where acreage is available which should be considered as part of the capital plan.

Mayor Bradley addressed the small neighborhood parks and their value to the City. Mr. Holland addressed the various small parks and that they are meeting with the Kings Way neighborhood next week to look at doing something in that area. He also spoke about looking at property currently owned by Orange County in an area that was annexed on the north side of Lake Killarney and that Orange County is willing to give to the City.

Commissioner Diebel commented about priority #3, increasing revenue sources. She wanted to make sure that we are very careful about increasing any more fees. Mr. Holland stated they try to be very sensitive to that knowing they provide a service to the citizens and do not want to exclude anyone from the use of any services we provide on a fee basis.

Commissioner Bridges asked Mr. Holland if he has seen changes in our revenues on merchandise sales based on moving the Pro Shop to the new site. Mr. Holland responded that they have definitely seen an increase in merchandise sales but a reduction in play which is due to the weather and economy. He stated that the food sales are going well and the response to

the patio has been excellent. He commented that the use of the clubhouse has also increased with small meetings that are using the clubhouse during the daytime.

Mayor Bradley stated he will accept Commissioner Dillaha's suggestion that this be reviewed as part of the overall strategic planning. By acclamation, this was agreed to.

c. State Legislative priorities

City Manager Knight addressed the list of priorities not in priority order presented in the Commission package that he discussed with Lobbyist Bill Peebles who said it is not going to be a good year to receive money: 1) Protection of Home Rule Authority including control of local planning issues, revenues and expenditures; 2) Funding for quiet zones where the state roads (Fairbanks Avenue and 17/92) intersect with the railroad track; 3) Dedicated funding source for Commuter Rail; 4) Funding for Florida Forever – Florida Communities Trust Program; 5) Repeal of F. S. Chapters 175 and 185 legislation that only allows growth in revenue to be used for Fire and Police pension fund enhancements; 6) Oppose Public Service Commission regulation of municipal owned electric utilities; 7) Implement ban on texting while driving; 8) Authorization for Red Light Cameras; 9) Funding for; and 10) Modification of S. B. 216 adopted last year which prohibits use of public funds in advocacy of an issue. This should be modified to exclude local issues.

Mr. Knight explained that there are three projects they are requesting funding on: the quiet zones, the Florida Forever Program, and funding for the expansion of the reuse water system. He stated that most of the other items are legislative issues. Mayor Bradley asked when redistricting will take place and asked to add this to the list of priorities. No public comments were made.

Motion made by Mayor Bradley to approve the state legislative priorities with the 11th item added to continue to follow the redistricting process. Seconded by Commissioner Anderson and carried unanimously.

Public Comments

Dan Bellows, 511 W. New England Avenue, asked about the status of the previous action of the Commission to sign the contract and to purchase the Hannibal Square parking lot. He commented about the contract showing a single deed restriction that the land remain a parking lot which is the only motivation he has to sell it for half or one-third the price at \$60,000. He addressed the agreement with the City that they must provide him 37 parking spaces; how this came about; and the CRA budgeting almost \$800,000 for parking.

He stated that the CRA Director told him last week that the issue of deed restriction of parking cannot happen because they may want to use it for utilities. He stated he still has no deal after all this time. Mr. Briggs stated there is an issue whether or not there is to be a deed restriction on the property; Mr. Bellows wants a deed restriction to be restricted to parking, and they are concerned they may want to use it occasionally for things other than parking (various events). He stated that he understands Mr. Bellows' concerns that he does not want to find out later that the property will be built on. He stated they are in negotiations with Mr. Bellows over the wording to give both sides assurances that we can use the property as we intended. Mayor Bradley asked that this be included under the City Manager's Report for next meeting.

Public Hearings:

- a. RESOLUTION NO. 2045-10: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, ESTABLISHING AND DESIGNATING VIRGINIA HEIGHTS EAST AS A HISTORIC DISTRICT IN THE WINTER PARK REGISTER OF HISTORIC PLACES

Attorney Brown explained there are two resolutions with the same title (one with Exhibit A and one with Exhibit B). He read the resolution by title (using the one with Exhibit B) that was proposed by the Historical Preservation Commission. He explained the difference in the two resolutions whereby one excludes 1590 Glencoe.

Planner Lindsey Hayes explained the request to establish Virginia Heights East as a historic district in the Winter Park Register of Historic Places. She explained the process to date and the historical significance of this neighborhood. She commented that one resolution shows 30 properties and the other shows 29 properties which is the recommendation of the HPC to exclude 1590 Glencoe Avenue since they objected citing concerns with the future value of her property for redevelopment (Exhibit B). She provided background information on the City's historic preservation ordinance and the requirements set forth in the ordinance. She stated that staff's recommendation is to adopt the resolution with all 30 properties included. Questions of the Commission were answered by Ms. Hayes regarding why the HPC voted not to include 1590 Glencoe and the vote of the property owners whether to move forward with the designation.

Upon other comments and questions, **a motion was made by Commissioner Anderson to adopt the resolution with the HPC recommendation (Exhibit B); seconded by Commissioner Bridges.**

Kit Pepper, 2221 Howard Drive, asked that the resolution be adopted with the HPC recommendation to exclude 1590 Glencoe Avenue.

Christy Wilson; Wilson, Garber & Small, 437 N. Magnolia Avenue, Orlando and representing the property in question (Mr. Hall at 1590 Glencoe) asked that the Commission adopt the resolution with the HPC recommendation to exclude their property. He stated they have challenged the boundaries of the historic district because the ordinance requires that there be a cohesive neighborhood that forms the boundaries. He stated that boundaries are not artificially formed based on where you can get the votes.

Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Dillaha, Diebel and Bridges voted yes. The motion carried unanimously with a 5-0 vote.

- b. RESOLUTION NO. 2046-10: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, TO EXECUTE A LOCAL AGENCY PROGRAM AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE LAKEMONT AVENUE RESURFACING PROJECT, THE PHELPS AVENUE RESURFACING PROJECT, AND FOR THE FLEET PEEPLES MULTI-USE TRAIL PROJECT.

Attorney Brown read the resolution by title. City Manager Knight stated this is from stimulus money that will be used for the three projects: paving of Lakemont Avenue, a portion of Phelps

Avenue and the walking/bicycle (pedestrian) trail that completes the path around Lake Baldwin. Public Works Director Attaway explained that this is in process but there are no guarantees of funding so the projects will not move forward if the funding is not provided. He stated he expects to know within the next month whether or not they will definitely be funded. Commissioner Dillaha asked that they see the plan for the Fleet Peoples trail before going forward if we receive the money. No public comments were made.

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

A recess was taken from 4:55 – 5:03 p.m.

- c. ORDINANCE NO. 2795-10: 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 Second Reading

Mayor Bradley read the ordinance by title. Building Official George Wiggins provided an update on the change made since the first reading to Section 8 at the recommendation of the City Attorney that deals with outstanding potential legal issues. Attorney Brown explained why the addition is recommended at this time. He addressed the two lawsuits pending that they are aware of where it would be in the interest of the City to allow those lawsuits to be resolved under the existing land code and this language accommodates that.

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

Motion made by Commissioner Anderson to amend the ordinance with the inclusion of the new language regarding Section 8; seconded by Commissioner Dillaha.

Commissioner Diebel inquired about the email sent from Phil Kean today with concerns that he said needed attention. Mr. Wiggins stated that Mr. Kean has sent a follow-up email that he does not want to hold up the ordinance; he went over the issues with Mr. Kean that he raised and will address them further later with him. He stated if there are further issues arising from the ordinance, they will come back before the Commission at that time.

Rebecca Furman, on behalf of the John and Mary Curtis Trbovich, co-defendants in the City lawsuit, stated that the language addresses their concerns. She was available for questions.

Upon a roll call of the amendment regarding Section 8 language, Mayor Bradley and Commissioners Anderson, Dillaha, Diebel and Bridges voted yes. The motion carried unanimously with a 5-0 vote.

Upon a roll call vote of the adoption of the ordinance, Mayor Bradley and Commissioners Anderson, Dillaha, Diebel and Bridges voted yes. The motion carried unanimously with a 5-0 vote.

- d. ORDINANCE NO. 2796-10: 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

Attorney Brown read the ordinance by title. Mayor Bradley explained the work session held earlier and that there are suggestions coming from both staff and the Commission. Planning Director Jeff Briggs stated it is after 5:30 p.m. and the ordinance implements changes required by the adoption of the comprehensive plan as well as other things that staff and the Planning and Zoning Commission has recommended. It was advertised via ¼ page ad in the newspaper in accordance with Chapter 166 and put into the record on the first reading the process and procedures that they have gone through in terms of notice and posting the drafts of this on the City's website to make sure those changes were made available to the public.

Mayor Bradley suggested that the Commission adopt the ordinance, deal with the amendments and then open the public comments after we know what the amendments will be. Attorney Brown stated he met with co-counsel and Mr. Briggs with Mr. Bellows and Ms. Vose who requested we suspend the running of one year for them to get a formal and somewhat expensive notice of a Bert Harris claim. This would allow us to continue working and they did not have time to get it on the agenda since they just met with them last week. He stated he will be bringing this back at the next meeting. He further explained that under the Bert Harris statute, they have one year to give the City a notice outlining their claim of any regulation of the City (which could include the comprehensive plan) which has adversely affected a project they have in the works. It was clarified that the adoption date of the comprehensive plan was May 14, 2009. Attorney Brown addressed his recommendation that in order for them to continue to work through the processes, it would be of benefit to both sides if we suspend the running of the statute of limitations and suspend the one year for either one of them.

Motion made by Commissioner Anderson to adopt the ordinance (approval of the Land Development Code) as presented; seconded by Commissioner Dillaha.

Motion amendment was made by Commissioner Anderson to incorporate the recommendations from staff as outlined in the work session in the document that was distributed as follows:

1. **Delete the following sentence wherever stated in the Code:**

"The City in the review and approval of specific projects may limit and restrict the achievable floor area ratios, if the Commission finds the proposed project is not compatible with the adjacent properties".

2. **Revise the districts as follows:**

Terracing and articulation requiring additional setbacks are required to create relief to the overall massing of the building facades. Such design features of building façade articulation are required at least every sixty (60) feet on average along the façade of the primary building facades facing streets. For any building over two stories in height and over 200 feet in length, there shall be a thirty-five (35) foot break on at least the first floor, the design of which shall be a component of the architectural review process required for conditional use. ~~For any building over two stories in height, the maximum building length along a street frontage shall be two hundred (200) feet and the separation between buildings shall be a minimum of thirty-five (35) feet. For any building over two stories in height, a significant portion of the top floor shall be terraced and stepped back from the exterior face of the next lower floor, by at least one foot for each foot of height of that third floor.~~

3. Re-instate bed & breakfast inns as a conditional use in the R-3 and R-4 districts provided such location is at least 100 feet from any single family home.
4. Amend the PL district text as follows:
Surface parking lots including storm water retention facilities but not parking garages or decks.
5. Amend in Off-Street Parking to allow one per four seats for restaurants in the geographically defined CBD (Central Business District) and HSNCD (Hannibal Square Neighborhood Community District).
6. Amend in Off-Street Parking as follows: In any mixed use building or project constructed after February 22, 2010, that includes residential units, at least one of the required parking spaces provided for each residential unit shall be dedicated and reserved for each residential unit.
7. Delete the text above the CDB map, amend CBD map to include the six properties at the south end of Park Avenue and to amend the C-2 text as follows: This commercial zoning district is limited to the commercial portion of the geographic downtown area known as the Central Business District and the similar commercial area of the city within the Hannibal Square Neighborhood Commercial District (HSNCD) of the City's Community Redevelopment Area (CRA) where emphasis is placed on pedestrian-oriented shopping. Commercial (C-2) district zoning is not permitted on any property except if it is within the Central Business District "potential C-2 zoning" area depicted in the CBD Map (D-2) within the definition section of this Article, generally described as west of Knowles Avenue, south of Swoope Avenue, north of Comstock Avenue and east of and including the New York Avenue Corridor or it is on properties abutting Morse Blvd between Capen and Virginia Avenues, abutting New England Avenue between Pennsylvania and New York Avenues, abutting Pennsylvania Avenue between Garfield and Lyman Avenues, or abutting Hannibal Square, East. No applications for C-2 zoning shall be accepted for any property outside these designated areas.

8. Amend building heights wherever stated in the Code (except C-2) to 42.5 feet for three story buildings and 55 feet for four story buildings.

The amendment to the motion was seconded by Mayor Bradley.

An amendment to the amendment was made by Commissioner Anderson as follows to replace on page 1, the bottom right hand paragraph (rather than deleting the sentence that begins with “for any building and ends with 35’) with this sentence: “For any building over two stories in height, every 200’ there shall be a 35’ wide break on at least the first floor, the design of which shall be a component of the architectural review process required for the conditional use.” The motion was seconded by Commissioner Bridges.

Becky Vose, Vose Law Firm, representing Dan Bellows and his various corporations, spoke in opposition to the proposed Land Development Code. She believed it was anti-development and will have numerous negative effects on the City, will affect the City’s tax base, will threaten future budgets, will cause huge civil liability on the City and some of its officers, and the City is inviting Bert Harris actions. She provided two emails specifically referencing New England Avenue and the Post Office property from a Planning and Zoning member that she believed showed bad faith actions that resulted in the ordinance before them. She asked for reconsideration of the ordinance.

Frank Hamner, FAH, P.A., 1011 N. Wymore Road, asked that a comprehensive set of the amendments be put in writing to it is clear as to what is being proposed. He stated he does not know what he needs to challenge at this point because of being unclear of what is currently on the table. Mr. Briggs stated the spreadsheet could be shown and then the Commission could vote on each one. He asked about the amendment of Commissioner Anderson proposed regarding the articulation on the first floor. This was clarified by Commissioner Anderson. He stated he does not see any rational reason with the 35’ standard but thought it was possibly to discourage third stories. He objected to adopting a code that he believed needs further revisions. He stated the Commission needs to find the problem areas and fix them.

Rebecca Furman, Lowndes Drosdick Doster Kantor and Reed Law Firm and representing New England Partners, displayed the property they own on the corner of New York and New England (vacant parking lot whereby they own one lot – 4th lot in on New England and they own three lots on Welbourne (lots 2, 3 and 4 coming in from Virginia Avenue). She showed a map that depicted where the new LDC put the entire block in. She addressed the text not being clear as to the zoning. She stated since they are on New England and do not have a right to C-2 zoning, they can request a comprehensive plan amendment and a C-2 zoning. She stated they are not trying to re-hash the comprehensive plan’s treatment of this property but in the LDC, the changes have gone much further than what was contemplated by the comprehensive plan.

She showed a property they own on the map where there is now a requirement for a 50’ alleyway which takes up 41% of their property. She stated that giving them increased density does not benefit them if they do not have the property to build it on because of having to build an alleyway. She spoke about how the proposed code is going to devalue their property. She addressed doing some modeling on their properties which showed what the cumulative impact of the new LDC does; they found that it is not creating the Winter Park that everyone says they want or preserving the village-like character but instead the code is setting properties back

further from the street. She explained that is not appropriate for all streets in the City. She expressed concerns with the increase in the requirement for multi-family parking (please note that there was no recent change in the multi-family parking). She stated they want to see those things that are required and demanded by the comprehensive plan to be changed and those things that are above and beyond what was mandated by the comprehensive plan remain the same. Upon questioning, Ms. Furman elaborated on how the code will affect building.

Daniel Butts, 120 W. Reading Way, opposed the proposed LDC because of the need to correct what is in error. He asked to have staff create a comparison that would highlight all the potential "problem areas" where down zonings have occurred and expressed concerns of down zoning properties. He also spoke about concerns with the economic impact of reducing what can be built in the City and how it will affect businesses.

Dan Bellows, 511 W. New England Avenue, represented four different general partnerships, not the limited partnerships that Ms. Vose is representing. He stated that he provided the Planning and Zoning staff report from October 2008 which contained the staff recommendations for designating the remaining block frontages on New England Avenue (from Virginia to New York Avenues) as CBD, otherwise they will have one block of New England Avenue from Pennsylvania to Virginia that looks like Park Avenue and the next block Virginia to New York Avenue will look like Aloma Avenue. He stated that keeping the commercial future land designation will ensure the City does not get anymore residential units along New England Avenue. He stated it is a comprehensive plan issue but in the proposed LDC (page 6 of the C-3 zoning) the LDC implements those Comprehensive plan policies in the C-3 district on New England Avenue between Virginia and New York and he objects to that designation.

He addressed the process beginning in 1995 when the City voluntarily amended the comprehensive land use plan and rezoned over 12 of his properties along New England Avenue to C-2. He spoke about the March 25, 2003 Commission meeting where the Planning Director stated that "commercial future land use permits and entitles property owners to either Office or Commercial zoning" in the block between Virginia and New York on New England Avenue where he believed there was confusing language in the LDC because there is one property with C-2 zoning already there. He stated he never received C-3 zoning; but always received C-2 zoning. He stated, that in his opinion, the City's position was for this street to be C-2 and mixed use; not a C-3 district that the LDC presently says.

He stated he is not sure where the special zoning rules for the Hannibal Square Neighborhood Commercial district came from since it is showing up as new text. He stated he does not want that designation on his property and it is degrading, restricting and devaluing his property and changing a course that he has been following the direction of the City for many years. He spoke against the R-3 zoning changes, as stated in Chapter 58-68, page 3, line 1 where it states the comprehensive plan limits development in the R-3 zoning district to a maximum of two stories in any location east of Denning Drive except within the CBD. He addressed his property at 550 Denning Drive that is not the CBD and has R-4 zoning where he has not built his apartment building that has already been approved and the majority of it is three stories which will be negatively impacted by this code. He stated he does not agree with removing the bed and breakfast provision or with the proposed modification that they must be 100' from residential and asked it be reinstated as it previously was because he has multiple R-3 properties. He addressed 402 Welbourne that is a building already built with 9 residential units with covered parking and how the code affects this as this is a potential bed and breakfast inn location.

William Battaglia, 250 Park Avenue South, representing BFC New England, LLC, the owner of the property located at 158 New England Avenue, opposed portions of the Land Development Code. He provided a handout with the issues listed that will be made part of the minutes. He suggested to go back and correct the comprehensive plan and to adopt the LDC to meet that.

Dexter Richardson, 1590 Highland Road, and owner of Dexter's of Winter Park, 558 W. New England Avenue stated he has to decide in the next few months whether he is going to renew his lease. He expressed concerns that if the proposed code is restrictive to property owners and business development that it will lead to litigation which will cost the taxpayers. He expressed concerns about some of the decisions the City has been making these days. He stated that Winter Park is what it is today because they got it right years ago. He is concerned that this LDC is making too many changes too rapidly and way too much and that the current atmosphere concerns him.

Commissioner Anderson commented about the lengthy process whereby public comment was taken regarding a comprehensive growth plan that was adopted and now we are implementing a land use code that implements a comprehensive plan that took years of public debate and discussion. Commissioner Dillaha stated she believed they are taking extra care in planning and developing the community as we go forward. She stated they will be addressing any LDC and comprehensive plan changes that require tweaking along the way and will make it right. She spoke against comments made by Ms. Vose and by Ms. Furman. She stated she believed we are working hard to maintain Winter Park's character.

Commissioner Diebel stated she asked at the last meeting for a summary of where they had conflicts in the comprehensive plan with the LDC. City Manager Knight addressed what was provided at the work session today which contained the compilation of the issues staff believed needed to be addressed and changed. She stated she has concerns with the conflicts brought before them but does not have documentation explaining what the summary of conflicts are. She asked when that will be resolved and under what timeframe they will receive a summary so they can better understand the risk of the City in developing a LDC that is in direct conflict with some parts of the comprehensive plan.

City Manager Knight stated there are other issues that the public believes needs to be addressed and that staff provided the list of what they believed needed to be changed. Mr. Briggs commented that the list was provided at the work session that included what staff believed needed to be changed to correct errors and omissions in the comprehensive plan and that staff received clear direction at the work session that staff was to come back with a more exhaustive list of things to be discussed as potential changes to the comprehensive plan for the future. He stated it can be done within a month and will come back on March 22. He stated that issues brought forward this evening from the public comments have been ones they have heard since the adoption of the comprehensive plan.

Commissioner Diebel commented that in several instances over the last couple of years before the comprehensive plan was first rescinded and re-adopted all the way through the meetings of July 20, May 12, and May 5, 2008 she has been hearing the same claims that are substantiated in legal correspondence that there are takings and inconsistencies in our comprehensive plan as re-adopted. She stated from the beginning of the process of the LDC, we have not seen a summary of what those are other than claims by particular landowners so that we can understand the risks. She stated that in the last meeting our counsel reaffirmed that exists and

what we should do about it. She expressed concerns with opening the City up to risks and adopting a LDC that further compounds the problem.

Commissioner Diebel asked what we are going to do about the individual cases and when. Commissioner Dillaha stated they have already taken the concerns from the last meeting and outlined them in the chart with recommendations for changing those. She also stated that the LDC has been out there for months. She agreed that if there are property owners that believe they have been impacted negatively they can come to the City with their issue and it can be addressed at that time. She disagreed with stalling this further so more reports and information can be put together after we have already been doing this for so long.

Upon a roll call vote for the amendment to the amendment as follows (see above) that strikes the language in C-2 and replaces it with "For any building over two stories in height, every 200' there shall be a 35' wide break on at least the first floor, the design of which shall be a component of the architectural review process required for the conditional use", Commissioners Anderson, Dillaha and Bridges voted yes. Mayor Bradley and Commissioner Diebel voted no. The motion carried with a 3-2 vote.

Upon a roll call vote on the amendment to incorporate the recommendations from staff as outlined in the work session (see above), Mayor Bradley and Commissioners Anderson, Dillaha and Bridges voted yes. Commissioner Diebel voted no. The motion carried with a 4-1 vote.

Motion to amend was made by Commissioner Anderson to restore the 10 foot street front setback wherever it had been changed at the first reading to a 15 foot front setback from the existing code requirement for a 10 foot street front setback (districts C-1, C-3, I-1, PQP, P&R, O-1 and O-2). Commissioner Anderson explained his rationale for wanting to change this back.

The amendment was seconded by Commissioner Bridges for discussion. Commissioner Bridges asked Mr. Briggs what the ramifications of this would be and the effects it will have. Mr. Briggs explained that the street front setbacks in all commercial office districts have been 10' for years. He stated that the P&Z recommended changing it to 15' (was not in the comprehensive plan) because they wanted extra green in front of the buildings. He stated that it would not be a significant change to put it back or keep it at 15'. Commissioner Dillaha addressed the need to be pedestrian friendly and encourage people to walk instead of using vehicles. She stated she is hesitant at the last minute to make a change such as this. Mr. Briggs stated the 10' or the 15' is not going to be pedestrian area because they will not have an easement for a sidewalk so it comes down to the amount of landscaping between the edge of the sidewalk and the building. Commissioners Anderson and Bridges expressed concerns with this being problematic for some.

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

Commissioner Diebel inquired about the newly restricted setbacks on New England Avenue, the Hannibal Square designation and the properties that have a different future land use code than have been discussed. Mr. Briggs elaborated on these issues.

After additional comments, Commissioner Anderson offered another amendment that in **Section 58-76 regarding the commercial C-3 district, Page 6 lines 29-49 which says that C-3 in New England Avenue between Virginia and New York Avenues can get up to 100% FAR density if they abide by these six rules and his motion was to make this section optional (“the portion of HSNCD and CRA district comprising properties that front on New England Avenue between Virginia and New York Avenues have the option to be developed with enhanced density and intensity.”) and sentence ‘e’ be modified from a 50’ rear setback to a 35’ rear setback.** He stated if they choose that option they have to meet the criteria and if they want to use the existing C-3 zoning they can have it. Mr. Briggs stated they put in the comprehensive plan an extra allowance of FAR subject to the design constraints. He stated this could be an option.

Commissioner Diebel spoke about the special rules being adopted on January 20, 2009, which has six different restrictions instead of having a designation of CBD. She stated that it is not making sense with the examples being brought forward to have anything other than a designation of CBD. Commissioner Anderson disagreed in that what he found in the detailed review during the comprehensive plan process, there was not a definitive paper trail leading you to conclude that C-2 was the ultimate designation for this block. He stated they said they were not going to deny anyone the opportunity to pursue C-2 but if they want something done right now in the comprehensive plan, a C-3 heavy or a C-2 light approach was palatable to the people involved in the comprehensive plan adoption. He is suggesting that if the owners want to revert to just C-3 zoning on these four lots, that they can do that but that they have the option to either have straight old C-3 zoning or can get this enhanced C-3 zoning if they follow these special rules. He addressed the complaints received regarding this issue.

Commissioner Bridges expressed concerns with “piece meal” this and even though the intentions are good, she was concerned with going down a road of completely rewriting this tonight. She stated they thought they were doing something good and those property owners are not satisfied with that and wondered if they are moving too far away from what the task is before them tonight which is to pass this LDC with the amendments that we discussed at our work session this afternoon and then to address the comprehensive plan issues that are before them.

Commissioner Anderson stated they have tried to listen to what has been said about this issue that has been tabled over and over to give them the opportunity to listen. He stated there are land use issues that they can do something about tonight and there are a lot of disagreements and a body of facts out there that will be discovered and then those disagreements will be resolved. He stated he is trying to listen to two of the affected land owners who do not like this code so he is suggesting making it an option which is the basis for his motion. He stated there are a lot of other good ideas that they can do that are coming forward but require more study.

Motion seconded by Commissioner Dillaha. Commissioner Dillaha stated it is only an option that is being presented.

Rebecca Furman stated that the changes being added by Commissioner Anderson are punitive. She stated all she has to go by is what is in writing and the verbal amendment being made is not the same. Mayor Bradley opened the floor for public comment on the amendment specifically only.

Frank Hamner stated each time they come to the meetings, there are amendments and he is not prepared to talk about this and there are other property owners that may be affected. Attorney Brown clarified this is a quasi-legislative action and are adopting a code and are not affecting a specific property. He stated that cities are allowed to amend ordinances at second reading so long as the purpose of the ordinance has not changed from that which is noticed. Mr. Hamner stated he understands that from a legal standpoint but wants what is fair because the LDC that they are proposing in the amendment is not the LDC he previously agreed with.

Dan Bellows stated that between Virginia and New England, as it relates to the amendment, there are only three property owners that comprise the vacant land fronting New England in that block and with one of those property owners, 100' of that frontage is already C-2. When you address the amendment and the setbacks in C-3, there is going to be development that will be up against a C-2 100' project which will be built like everything else in Hannibal Square. He stated he disagrees with "piece meal" Virginia to New York Avenue and that it needs to be a continuous flow.

Commissioner Anderson asked Mr. Briggs if the C-3 section they are addressing is in the comprehensive plan. Mr. Briggs stated the P&Z recommendation contained the six criteria and the Commission decided that they did not want the criteria in the comprehensive plan in case they needed a variance from the 50' rear setback.

Commissioner Diebel spoke about the previous discussion as to what the zoning should be that resulted (after going back to the P&Z) in the six restrictions. She stated the motion should be to support the designation for "pink" (Central Business District), which is where they sent it back to the P&Z Commission, and not necessarily putting boxes around each parcel of property. Commissioner Anderson stated the affected parties have stepped forward and it is intended for this to resolve their issues.

Commissioner Dillaha spoke about being uncomfortable with not understanding the ramifications or the rationalizations of P&Z for their recommendations and at the last minute re-writing some of this without having the context in which P&Z was making the recommendations. She suggested adopting this LDC, then address the comprehensive plan issues, and anything that comes about as a result of that, and stop the last minute changes because of the requests coming from the public. Commissioner Diebel stated she understood what the P&Z was doing with their recommendation and that she listened to their meeting and that this is a problem that is connected to the comprehensive plan and that adopting what we have in front of them in the LDC is only going to aggravate it.

Commissioner Anderson stated that we have a comprehensive plan that passed and there are issues that came forward in the LDC that were not required by the comprehensive plan and are trying to focus on that narrow list of items.

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

Upon a roll call vote of the adoption of the LDC ordinance second reading with all the amendments as stated above, Commissioners Anderson, Dillaha, and Bridges voted yes. Mayor Bradley and Commissioner Diebel voted no. The motion carried with a 3-2 vote.

City Commission Reports

a) Commissioner Anderson

Commissioner Anderson asked the City Manager how our budget is performing and how do we look compared to the long range budgeting we have been looking at doing. Mr. Knight stated we are close to being on track for the current year, the revenues are running in line with what was projected and expenditures are in control.

Commissioner Anderson stated for the fiscal year when the long range planning was done, we looked at a slightly better than break even operating budget and asked if that is where we will still end up. Mr. Knight stated there is no solid information at this time on property values and we are in the early stages of reviewing this and the projections have not been done yet. Commissioner Anderson asked how this rolls into our property tax revenues and when we did the forecast we projected another reduction in values during the budgeting cycle. Mr. Knight stated there was a very small reduction in 2011 (1%-3%) and are starting to see economy based revenues level off and come in above to what was projected this year. He stated he is hoping some of the other revenues will help offset the additional property tax reduction if it occurs at the 6-9% level. Mr. Knight explained that property taxes are only about 30% of the overall general fund revenues so the reduction would be the percentage (if it is 9% or whatever) of the 30%.

b) Commissioner Dillaha

Commissioner Dillaha asked that this be discussed at the next meeting to again pursue the idea of newly elected Mayors and Commissioners attending the Institute for Elected Municipal Officials provided by the Florida League of Cities. City Manager Knight stated they are already working on this and it will come back to the next meeting. There was a consensus to bring this back as a policy.

c) Commissioner Diebel

No report.

d) Commissioner Bridges

Commissioner Bridges asked about the status of the wayfinding signage. City Manager Knight explained we are hung up in the State approval process because of a font size and the speed limits. CRA Director/Economic Director DeBord stated that District 5 has been challenging with regard to the signage. She further explained what has taken place to now regarding the font size of the signs that FDOT wanted but that staff did not find acceptable. She stated they are continuing to move up the FDOT chain of command to see what they can do to move this forward.

She stated their goal is to have this in play within the next 6 months but has been a challenge with regard to the type of signage that reflects Winter Park and what the Commission has asked them to bring forward in getting signoff on FDOT on this. She stated they had a beautiful plan laid out and are disappointed that we have run into this difficulty. Ms. DeBord stated if they see they need a Commissioner to meet with the FDOT representatives, she will let them know.

e) Mayor Bradley

1. Amtrak Station design and rebuilding schedule

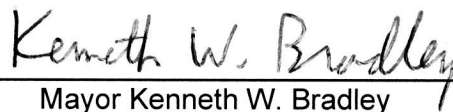
Mayor Bradley asked staff to bring forth the Amtrak design schedule. Mr. Knight addressed the schedule for this project and the next step in the process is to engage an architect to do the preliminary design work. He stated the approval of architectural services will be on the next agenda prior to receiving the signed document saying we will get the Federal money.

A recess was taken from 5:17 p.m. to 5:31 p.m.

Meeting Adjourned

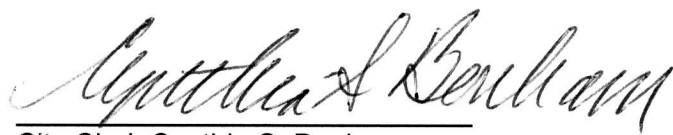
Motion made by Commissioner Bridges to adjourn the meeting; seconded by Commissioner Dillaha and carried unanimously.

The meeting adjourned at 7:47 p.m.



Mayor Kenneth W. Bradley

ATTEST:



City Clerk Cynthia S. Bonham

Bill Bottaglia
2-22-10

BFC New England, LLC
Land Development Code Issues

BFC New England, LLC, ("BPL NE"), the owner of the property located at 158 New England Avenue in Winter Park, submits the following objections to the proposed Winter Park Land Development Code:

- Section 58-75 Commercial (C-2) District subsection (a)(2) among other items, states that the regulations outlined in the C-2 district will "encourage the continuation of the present aesthetically pleasing central business district" erroneously implying the entire central business district is aesthetically pleasing and no new development or redevelopment is needed, both of which are essentially precluded by new Land Development Code ("LDC"). The language of the proposed LDC does the exact opposite and reduces, and in some cases eliminates, the development of property. .
- Section 58-75(c)(3) concerns Conditional Uses and provides that buildings with a third floor and up to forty (40) feet in height, **requires the affirmative votes of four (4) city commissioners to be approved as a conditional use**. This is a supermajority rather than just the majority vote as in the current LDC and thereby, especially when viewed in the context of all the new conditional use requirements and prohibitions, not to mention the unfettered discretion granted to the City Commission thereby, greatly diminishes the value of BFC New England's property.
- Section 58-75(c)(4) states that retail stores in excess of 6,000 square feet (per floor) will be a conditional use (again, requiring the supermajority vote), which will limit the available tenant pool, again for the same reasons cited above.
- Section 58-75(c)(6) makes new buildings in excess of 10,000 square feet, any addition of more than 250 square feet to an existing building over 10,000 square feet, or additions to existing buildings that result in a building exceeding 10,000 square feet in size each a conditional uses. Consequently, BFC NE's undeveloped property that exceeds 26,500 and therefore could have a 53,000 square foot building under the current LDC is limited to 10,000 square feet without obtaining a conditional use permit. One can only assume that as Commissioner Bridges stated in the work session today, this is to encourage multiple owners of our property, none of which would have any hope attaining the required level of parking on a smaller tract. Specifically for 158 New England, this reduction of 43,000 square feet of FAR not requiring a conditional use under the proposed LDC reduces the value by over eighty (80%) percent. At a conservative estimated value of \$300 per square foot, that is almost \$11M of value lost to the property owner, the WP tax rolls and the CRA.
- Building height as addressed in Section 58-75(e)(2) limits the BFC NE lot at 158 New England to a three story building maximum, which combined with the 2.0

FAR limitation and the new requirement for parking structures and surface level covered parking to be counted in calculating FAR, is an illusory conditional use since a 2.0 FAR means the equivalent of a two-story structure on the entire lot, save the building articulations and new ten foot rear property setback, which in our case would result in less than 5,000 square feet on the third floor.

- Section 58-75(e)(3) also reduces a building's attainable square footage as it states that “buildings shall be setback no less than ten (10) feet from the rear lot line.” This rear setback, which in our case is opposite a City alleyway, limits FAR approximately 1,800 square feet per floor.
- Section 58-75(e)(5) states that the maximum floor area ratio for any buildings shall be two hundred (200%) percent and that that FAR shall include the floor area of any attached or detached above grade private parking garage or covered parking. As proposed, the new LDC perpetuates and implements the combination of parking structure and floor area ratio (FAR) that was not part of the prior code, which again significantly limits our property rights. This is an economically unfeasible requirement and essentially penalizes the property owner.
- Section 58-75(k) that addresses the CBD area façade review requires an approval by the planning department and includes as a replacement, renovation or change requiring approval those that are made to canopies or awnings and to signage on walls, canopies or awnings. Under Section 58-75(k)(5), (6) and (7), the proposed code additions state that any applicant can appeal a decision of the planning department to the planning and zoning commission. Although the decisions by the planning department and/or zoning commission shall be based on design guidelines and criteria adopted by the city commission, the decision of P&Z is final. Essentially, what this means is that the very entity that created the “guidelines and criteria” cannot be appealed to for an interpretation of its own guidelines and criteria, delegating instead that quasi-judicial authority to an appointed advisory board.
- The parking ratio suggested in the proposed code uses a suburban parking ratio when the CBD is clearly an urban area. The standard ratio is between 2.25 - 2.75 per 1,000 square feet of non-parking structures in urban venues. Additionally, the building articulation required in order to obtain a conditional use takes away floor area, increases costs and takes away the functionality of the parking structure. For suburban 4 spaces per 1,000 of non parking structures, this equate to 1.1 to 1.4 square feet of parking for each one square foot of non-parking structure. Because of the lot size and geometric configurations, 158 New England requires 1.75 square feet of parking structure per one square foot of non-parking structure meaning over 60% of a structure would be consumed by parking, thereby limiting non-parking uses to approximately 33,000 square feet. At a conservative estimated value of \$300 per square foot, that is \$6M of value lost to the property owner, the WP tax rolls and the CRA.

- In general, to provide “guidance” as to the proposed changes, the city commission provided a “Comparison List” on the website that alleges to show a comparison between the existing code and the proposed code. This list is erroneous in that many changes to the current code are not, in fact, listed on this comparison chart. Further, the comparison document is often inaccurate and misleading, making it difficult, if not impossible to discern the changes made to the LDC.

In sum, the proposed code makes it impossible to replicate the Park Avenue village character or develop or redevelop properties in the C-2 Zoning District because of the combination of super-majority conditional use permits with no clear, objective, determinable, ascertainable or objective criteria and instead arbitrary criteria that will lead to inconsistent application in the Commission's unfettered discretion; building height limitations; FAR limitations in combination with counting parking structures in FAR and applying suburban parking requirements in an urban, shared parking context, new ten foot rear property setbacks; and the lack of the City Commission's ability to interpret and apply its own standards and criteria will negate the ability to develop or redevelop in the central business district and therefore will reduce and impair property values and the attendant property taxes and CRA tax revenues..