

REGULAR MEETING OF THE CITY COMMISSION
August 10, 2009

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 Building Director George Wiggins, followed by the Pledge of Allegiance.

Members present:

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

Also present:

City Manager Randy Knight
City Attorney Trippe Cheek
Deputy City Clerk Nancy McLean

Non agenda item:

Mayor Bradley announced that the Tennis Management Services for the Azalea Lane Recreational Center issue will be on the August 24 agenda.

Citizen Public Comments:

1. John Gugel, President E-Tennis Incorporated, expressed interest in the RFP for the Tennis Management Services.
2. Frank Costentino, President of Frankie C's Pro Shop, introduced himself and stated that he had been recommended for the Tennis Management Services RFP award.
3. Rose Plumley, 1639 Barcelona Way, supported the professional tennis players and believed they have a vested interest in keeping this a top rated facility.

Citizen Budget Comments:

Nancy Shutts, 2010 Brandywine Drive, asked as related to the Azalea Lane Recreational Center, that the Commission consider letting them keep the profits for maintaining the courts so they do not have to give it back the General Fund. She also thanked the Parks Department for replacing the table benches in Fleet Peoples Park.

Mayor Bradley commented that they voted on a tentative maximum millage at the last Commission meeting and there will be two formal sessions to discuss the budget in September.

Mayor's Report:

- a) Proclamation - Full Sail's 20th Anniversary.

Mayor Bradley read a proclamation proclaiming July 2009, as the celebration of "Full Sail's 20th Anniversary." Garry Jones, President of Full Sail University, gave brief remarks.

b) Fireman's Fund Insurance Heritage Grant presentation.

Fire Chief Jim White explained that the grant package is part of a nationwide program funded by the Fireman's Fund Insurance Company (FFIC) to provide needed equipment, training and educational tools to local Fire Departments. He commented that over the past 18 months they have received 3 Heritage grants from FFIC and that this grant funding helped them purchase a Thermal Imaging Camera (TIC) which is an essential tool that save lives and will enhance rescue efforts. Steven Simms of Cooper, Simms, Nelson & Mosley Insurance Agency, spoke about the Heritage grant and that they look forward to more years of being able to help the City. Chief White provided the Commissioners the TIC to review.

Non agenda item:

Mayor Bradley announced that on August 7 both he and Commissioner Anderson attended a dedication/open house at AeroClave, LLC, a Winter Park business that is working to help stop the spread of disease and infection. He commented that the revolutionary new system that AeroClave has produced will help the City's first responders, hospitals and citizens. Commissioner Anderson added that we have an innovative Fire Department and that they teamed up with AeroClave to test and research the system. He added that it decontaminates the interior and exterior of large assets such as ambulances, emergency vehicles and police cars.

Mayor Bradley commented if there is any forward thinking items that come from departments, he welcomes that these items be put on the agenda as the City Manager deems appropriate.

c) The role of the Chairperson.

Mayor Bradley stated that the Charter declares the Mayor as Chairperson and that he was elected to do just that, but that he also serves as a fellow Commissioner. He gave a brief overview of the Chairperson's role and addressed questions raised from the last Commission meeting regarding his role as Chairperson, time allocated for people to speak and how they deal with New Business. He also requested that items be submitted in writing for the agendas. He commented that he appreciates that they are having work sessions to address their 90 day process and asked for their continued cooperation as they work to accomplish all the matters before them. He stated that they will be discussing some of the rules later in the meeting.

Mayor Bradley spoke about the motion to adjourn, according to Robert's Rules of Order, and stated that going forward he will formally accept a motion to adjourn at the end of their meetings from each of the Commissioners, as well as a second and vote.

d) 2009 Mayor Appointments.

Mayor Bradley commented that there were no Mayoral appointments. He stated that he spoke with Attorney Cheek and he is expecting feedback from the Attorney General's office regarding the potential ordinance establishing the succession of alternates on boards. Attorney Cheek was optimistic that he would have an answer by the next Commission meeting. Mayor Bradley commented that both items a) and b) under Action Items Requiring Discussion will be placed on the August 24 agenda.

Consent Agenda:

- a) Approve the minutes of 7/27/09.
- b) Approve award of RFP-19-2009, Debris Monitoring Services to Beck Disaster Recovery, Inc.
- c) Approve award of IFB-12-2009, Cady Way Restroom Project to C&S Technical Resources, Inc.; \$90,530.00.
- d) Fleet Peoples Park "Appeal" from Ms. Bonnie Jackson. **PULLED FOR DISCUSSION. SEE BELOW.**

Consent Agenda item d) was pulled for discussion.

Motion made by Commissioner Anderson to approve Consent Agenda items a), b) and c); seconded by Commissioner Dillaha. The motion carried unanimously with a 5-0 vote.

Consent Agenda item d): Fleet Peoples Park "Appeal" from Ms. Bonnie Jackson.

Commissioner Dillaha asked for further clarification regarding the process for appealing decisions. Attorney Cheek explained that there is no process for appealing to the City Commission regarding a decision made by the Commission. He stated that the next step in the chain of authority would be to go through the Circuit Courts; however, someone can always ask the Commission to change its position which technically is not an appeal. He explained the language at the bottom of the agendas relating to appeals.

City Manager Knight addressed the current rules saying that the winning members of the vote on the Commission would need to bring back the item for reconsideration to be voted on again. Commissioner Anderson asked if that was a 6 month provision. Attorney Cheek agreed. Staff recommendation for this item was as follows: "Find that the "appeal" from Ms. Bonnie Jackson of the Commission action of July 13, 2009 was not filed with the appropriate agency."

Commissioner Bridges asked Ms. Jackson to speak on this item. Attorney Cheek stated that was not a requirement and if there is the potential for litigation, that the Commission be reticent in their comments. Mayor Bradley allowed her to speak and commented since it was not an action item and unless there is a motion after Ms. Jackson was finished, this would stand.

Bonnie Jackson, 3009 Temple Trail, commented that she brought this forward because she wanted to point out that the actions taken were inconsistent with sections of our City code, the comprehensive plan, an Orange County ordinance and the Florida Statutes. She provided the Commission a copy outlining these sections.

Action Items Requiring Discussion:

Items a) and b):

- a) Potential ordinance establishing succession of alternates on boards and Commissions which can have quasi-judicial and land development duties.
- b) Potential ordinance(s) creating the number of regular members on boards and Commissions which can have quasi-judicial duties. Also, the elevation of current alternates to regular members as part of the initial transition. (Pending response

from the Attorney General's office.) (NOTE: This item has been tabled from a previous Commission meeting with both a motion and second.)

Mayor Bradley commented that these items will be placed on the August 24 agenda or they will wait until they have Attorney Cheek's opinion from the Attorney General's office.

c) Resolution 1978-07: The policies governing the City Commission meetings.

Mayor Bradley suggested scheduling a work session on this item in the next two weeks and was open to the Commission's recommendations.

Commissioner Anderson suggested they go rule by rule. Commissioner Dillaha suggested that they compile everyone's comments that pertain to each of the different rules. Mayor Bradley asked the City Manager to compile the different suggestions under each of the rules and if possible, to summarize them in a form of a decision (keep it as is or make the following changes). He commented that he was concerned about the times and dates of the Commission meetings changing and he wanted to hear the City staff's recommendation on this matter. Commissioner Bridges agreed with having a work session and believed with staff's reorganization, they could get through this fairly quickly.

Commissioner Anderson agreed with the motion to adjourn with a second. Mayor Bradley commented that he will do that going forward and will ask each Commissioner under New Business if they have anything to add. Commissioner Anderson commented on authorizing the extension of time for a citizen to speak and should be allowed if there are two Commissioners that agree. Mayor Bradley stated that he would be open to that, but wanted a formal action during that time.

Commissioner Anderson also asked for legal research on rules that have been established by other municipalities regarding electronic meeting participation. Commissioner Dillaha commented that she already provided that information and looked forward to coming up with a policy. Mayor Bradley asked Attorney Cheek to review that information and commented that he sent the Commission some other rulings. He added that all of this needs to be compiled so they are aware of what is out there on this subject. Mayor Bradley commented that they will have a work session, but it will be pending for the time being.

d) City Attorney selection.

Commissioner Dillaha commented that she was on the Selection Committee and that both she and Commissioner Anderson participated in the oral presentations. She explained that they decided to issue this RFP for City Attorney services in an effort to reduce their legal costs and to ensure that they have the right experience in specific areas of law; land use, municipal, labor and employment law.

Motion made by Commissioner Dillaha to select the Brown, Gargenese, Weiss & D'Agresta firm; seconded by Commissioner Anderson for discussion. Commissioner Dillaha commented that she appreciates the relationship they have had with the Winderweede firm and with Attorney Cheek over the years but found that there are a number of qualified firms with lower fees and different fee structures that can add a true benefit. She addressed their rating being based on experience and credentials, the fee structure and the oral presentation. She summarized the firm's background, credentials and fee structure.

City Manager Knight answered questions regarding the point ranking system and modifications to proposals by three law firms in the oral presentations. Commissioner Anderson explained his thought process regarding the Brown, Gargenese, Weiss & D'Agresta firm. He expressed that Winderweedle has done a phenomenal job for the City for a long time.

Patty Heidrich, 1112 Schultz Avenue, stated when the accounting firm was being selected, an out of City firm had the best ranking, yet the Commission decided to support a Winter Park firm. She asked the Commission why they were not supporting the Winter Park firm now. Commissioner Dillaha commented that she was not on the Commission at the time.

Mark Van Valkenburgh, 319 Raintree Court, asked for the Selection Committee's ranking of the firms. Mr. Knight responded: 1) Winderweedle, Haines, Ward & Woodman; 2) Brown, Gargenese, Weiss & D' Agresta; 3) Vose Law Firm; 4) Mateer Harbert; 5) Fishback Dominick; and 6) Gray Robinson.

Mayor Bradley questioned why they would not choose the number one ranked firm if they are going through the process. He stated that he will take this into consideration with his vote and clarified that Commissioner Dillaha's motion was to enter into negotiations to select the Brown, Gargenese, Weiss & D' Agresta firm. Commissioner Dillaha agreed.

Commissioner Diebel asked for Commissioner Dillaha's reasoning for choosing the number 2) ranked firm over the number 1) ranked firm. Commissioner Dillaha responded that she had ranked them number 1) in the written presentations; however, the written rankings were different than what happened in the oral presentations. She added that because they are a full service municipal firm they have different specialties in house and they would save them considerable money in legal fees. **Upon a roll call vote, Commissioners Anderson, Dillaha and Bridges voted yes. Mayor Bradley and Commissioner Diebel voted no. The motion carried with a 3-2 vote.**

- e) Possible rezoning of the current post office property back to Public, Quasi-Public (PQP).

Motion made by Mayor Bradley to rezone the current post office property back to the previous designation of PQP; seconded by Commissioner Diebel. Attorney Cheek commented that rezoning the property would have to go through an ordinance process and recommended drafting an ordinance.

Commissioner Anderson asked that this be tabled until after the discussion of the park expansion. This was tabled until after the discussion of item g); then continued as follows upon the conclusion of item g):

Motion made by Mayor Bradley to rezone the current post office property back to the previous designation of PQP; seconded by Commissioner Diebel for discussion. Commissioner Diebel stated for this to be effective it has to have a comprehensive plan amendment. Attorney Cheek reiterated that it has to be done by ordinance and that he is interpreting this as a direction to provide an ordinance. Mayor Bradley agreed. Attorney Cheek answered questions.

Mayor Bradley voiced concerns if they do not raise the money and the post office does not agree to our extensions that we will have a C-2 parcel in Central Park. Commissioner Anderson

commented that as a preface to an extension negotiation, he was hesitant to do it. Commissioner Dillaha agreed and stated it should be done in January or February if things did not work out. Mayor Bradley commented that this motion would lead to an ordinance to rezone the postal property. **Upon a roll call vote, Commissioners Anderson, Dillaha and Bridges voted no. Mayor Bradley and Commissioner Diebel voted yes. The motion failed with a 3-2 vote.**

- f) Seeking an extension or modification of the agreement with the post office.

Mayor Bradley tabled this item until item g) was discussed. Upon completion of item g), the motion was made.

Motion made by Commissioner Anderson to seek an extension with the post office; seconded by Commissioner Diebel. Commissioner Anderson commented that this initial extension is as an administrative action. **Upon a roll call vote, Commissioners Anderson, Dillaha, Diebel and Bridges voted yes. Mayor Bradley voted no. The motion carried with a vote of 4-1.**

- g) Proposed use of the post office property/fundraising.

Commissioner Anderson commented that as a result of the work session with both him and Commissioner Dillaha on August 4, there was a proposed motion.

Motion made by Commissioner Anderson to approve a redevelopment plan for the post office property that includes rebuilding a retail post office on the northern arrowhead and expanding Central Park by at least one acre from the southern portion of the property. This endeavor shall be carried out by:

1. **Moving the retail component of the post office with its required parking to the "arrowhead" (one acre) or northernmost portion of the existing post office property;**
2. **The City will agree to provide 1.0-2.0 acres at the Morse/Denning site for the new Post Office distribution center in exchange for the balance (minimum one acre) of the existing post office. The City will have the option to substitute/swap other land for the post office distribution facility provided it is acceptable to the Post Office;**
3. **Agreement that no taxpayer funds will be used for this initiative. Funds necessary will be provided through private donations. Any differential in value as determined by an independent appraisal between the value of that portion of the Morse/Denning site and the post office to the expanded Central Park site will be reimbursed to the City. The total costs to fund the differential and build the new postal facilities are estimated to be \$4 million;**
4. **Appointing Commissioner Anderson to be the city liaison with the post office representatives on negotiating any modifications to the existing agreement and other implementation activities; and**
5. **Moving forward immediately with the initiative with Commissioner Dillaha proposing a fundraising committee structure for implementation of the fundraising campaign.**

Motion was seconded by Commissioner Dillaha.

Commissioner Anderson commented that subsequent to their work session when they drafted this, some things came up and he believed that the right intent was to start the process of finalizing the concept and getting a capital raising group under way. He suggested making this approval in principal contingent on a presentation of a conceptual plan to the Commission at a later date, the presentation of the fundraising group, and a confirmation on the conceptual budget based on that concept plan. Commissioner Dillaha commented that time is of the essence. Commissioner Anderson stated if there was a date on this, they should have a conceptual plan and a better budget within 2 weeks and identify a fundraising committee within 4 weeks.

ZHA President Rick Mellin commented that Commissioner Anderson wants to refine a particular plan for that site. Commissioner Dillaha asked who would do the conceptual plan. Commissioner Anderson responded that he would request that Jack Rogers, Steve Feller and David Lamm be the design volunteers with the Commission's agreement.

Commissioner Bridges stated that she was anxious to see the fundraising move forward and believed that there is a commitment of the residents to support this, but they need a plan.

Commissioner Anderson stated the revision he may suggest on the motion and approval to this process and concept being "subject to a conceptual plan coming back before them; and subject to a fundraising committee being deemed acceptable to the Commission for executing a plan." He stated this approach starts with the numbers, see if it works, raises the approximate amount of money, and take it to the schematic design phase where there will be community discussion. He stated that if they can raise \$4 million, then use a part of it to go forward and fully develop the conceptual plan.

Commissioner Anderson addressed the need to get the extension from the post office. Commissioner Dillaha commented that there might be some options that are advantageous for the City and to the post office. Mr. Mellin stated that he spoke to the post office and the one year extension is easier to go through their process and they may know more in the next 12 months; however, asking for more than a year could be more problematic.

Mayor Bradley asked about the value of the Morse/Denning property and if they used one to two acres of that site. Mr. Mellin responded and answered questions. Commissioner Anderson commented that, in an effort to move forward, he proposed the State Office Building land, but has learned that there may be more complications in doing that and there may not be a unilateral right for the City Commission to make that decision because it is the CRA.

Mayor Bradley amended the motion of #2 to strike 1-2 acres at the Morse/Denning site. He stated that the City will agree to provide a site for the new post office distribution in exchange for the balance; seconded by Commissioner Bridges. Mayor Bradley clarified his intent and did not want this action to force them to use the Morse/Denning site for the distribution facility. He commented that this was in conflict with item #3 with the agreement that no taxpayer funds will be used for this initiative, unless Commissioner Anderson is suggesting that whatever is raised will reimburse the cost of what the Morse/Denning site would be, which is between \$600,000 and \$1.2 million.

Commissioner Anderson clarified that the \$800,000 was for the value of State Office Building land. He stated that he put in the \$800,000 assuming that it would buy land and that the State Office Building is land that the City currently controls, which is acceptable to the post office.

He commented if the Swoope land was acceptable as a distribution center that would be his first choice. He stated that in this context he would be amenable to that change, but it would need to be completed by identifying the right parcel and that maybe there is discussion that still needs to take place with the post office.

Commissioner Bridges stated as related to the Mayors amendment to point #2, they will agree to provide 1-2 acres for a distribution site that provides the opportunity to look at other locations which would be agreeable to the post office. Commissioner Anderson commented that they need to figure out the scope of this project and to ensure that it has broad community support. He added that, in terms of the changes that he will be making to his motion, that the contingencies will include finding the parcel of land that they can commit to for the distribution center along with the other three items that he already mentioned. Mayor Bradley commented that at this point Commissioner Anderson's conceptual plan and the fundraising plan are not included in his motion.

John Skolfield, 3585 Vitoria Avenue, believed that expanding the park is a wise long term decision.

Patty Heidrich, 1112 Schultz Avenue, asked if the City/taxpayers will be reimbursed for whatever land is used for a distribution center. Mayor Bradley commented that the current proposal before them is that whatever they raise will do that. Commissioner Anderson agreed. She added that any use or proposals for the properties such as City Hall, the Library or the State Office Building should be determined by the citizens and not the Commission.

Sally Flynn, 1400 Highland Road, commented that the fundraising program will be different because there will be a plan and she supported expanding the park.

Steve Goldman, 2009 Venetian Way, commented that as the density increases, the park space needs to increase as well. He showed pictures of other parks locally and around the country and explained how Central Park compares to them.

Jack Rogers, 1002 Temple Grove, stated that Central Park is the crown jewel of Winter Park. He believed that they should move forward and raise these funds because it's a win/win situation for the businesses, merchants and the community.

Carolyn Cooper, 1047 McKean Circle, supported expanding the park. She commented that in reference to Commissioner Anderson's issue regarding the conceptual plan, if they make that amendment for clarity since they have Rick Mellin working on the project and it is within the scope of the plan that the conceptual plan might be provided to the committee by the City. She added that to move forward they need to tie this to a specific piece of property.

Robert Battaglia, 1466 Alabama Drive, asked the Commission to keep in mind that all of this should be done including any plans or expenses with contributed funds and no tax dollars.

Jean Cummings, 902 Golfview Terrace, supported increasing the park space. She asked what happened to the first \$3.7 million. Mr. Knight responded.

Anna Goldsmith, 2009 Venetian Way, supported the expansion of the park.

Bonnie Jackson, 3009 Temple Trail, supported the expansion of the park. She added that they should use the Denning/Morse property for the post office. She also had concerns with other groups raising money.

David Lamm, 1250 Alexa Drive, commented that if it has been rezoned to C-2, to rezone it to PQP is a down zoning and he assumes that they would need permission from the post office to do that. He stated that he would do this before they do an appraisal of any kind of mutual swap. Mr. Lamm recommended that if the City does this that they pursue an immediate down zoning or there will be a substantial evaluation difference between C-2 and PQP.

Susan Finnegan, 75 Palmer Avenue, supported expanding the park but did not agree with using the Denning/Morse property as the distribution site.

Mayor Bradley clarified that his amendment will read: #2 the City will agree to provide a site for the new post office distribution in exchange for the balance. He believed that there are better uses for the Morse/ Denning site than a distribution center, such as a library. Commissioner Anderson agreed but believed that it is tying up a parcel. Commissioner Anderson asked him to consider an amendment to his amendment that says **in exchange for the existing post office and striking for the balance (minimum one acre) of.** **Mayor Bradley agreed and stated that it would read #2) the City will agree to provide a site for the new post office distribution center in exchange for the existing post office site. Commissioner Anderson agreed.**

Commissioner Dillaha suggested they keep the language as is, in order to let property owners know this is the site that they are looking at and that they want to exchange that site or do a swap. Commissioner Bridges commented that she was agreeing with the Mayor's motion but does not want to have unintended consequences and believed if they removed this from the motion we might hinder ourselves. Commissioner Dillaha agreed. Commissioner Bridges called for point of order. Attorney Cheek clarified if Commissioner Anderson is willing to accept the amendment to his motion then Commissioner Dillaha (second of the original motion) has to also second this, then that becomes the motion. **Commissioner Dillaha did not second. Commissioner Bridges rescinded her second for the purpose of not ending up with unintended consequences. The amendment failed for lack of a second.**

Commissioner Anderson clarified that his intention for #2 is to define a specific acceptable location for this as a tradingship (hopefully) for someone else to come forward with another acceptable location. Commissioner Diebel asked if it commits a City asset to be able to trade for some other asset. He agreed and stated there is financial remuneration for the State Office Building land in the \$4 million range and that there would not be City funding going into the deal. He explained that it was as if the State Office Building is being purchased, but the seller (i.e. the City) has an opportunity to substitute which piece of land is being purchased.

Commissioner Dillaha commented that the goal of the master plan was to increase the green space in downtown Winter Park and now they have the opportunity to do that without using taxpayer dollars. She addressed that the \$3.7 million is for the option on this property and she wants to do something with it.

Mayor Bradley commented that at present they were voting on Commissioner Anderson's original motion that was presented in the Commission packets. Commissioner Anderson

commented that he wanted to add a few things. Mayor Bradley asked if he was moving those as amendments because he was not going to accept them in the original motion.

Motion made by Commissioner Anderson to amend the following: #2 strike the words the balance (minimum one acre) of; part 2 of the motion is that this plan is contingent upon a Commission review and approval of a refined conceptual plan and budget at the next Commission meeting. This motion is contingent upon the Commission approving the fundraising committee structure at the first Commission meeting in September. Commissioner Anderson read #2 as amended: The City will agree to provide 1-2 acres at the Morse/Denning site for the new post office distribution center in exchange for the existing post office site. He clarified that the City acquiring 2 acres is his expectation and not just the one; **seconded by Commissioner Dillaha.** Commissioner Anderson answered questions. Commissioner Diebel commented that the best course of action is to get the option to extend with the post office and she was not certain why that would be contingent on pre-committing a City asset. Commissioner Anderson responded.

Commissioner Diebel addressed not having an issue with the location, but rather that they are pledging a City asset that can go to fund two other priorities that are equally important.

Commissioner Dillaha commented that there is a need to get this started now. Commissioner Bridges stated that these citizens have shown a commitment to raise money to expand the park space without any plan and that she supported Commissioner Anderson's motion.

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

Commissioner Diebel addressed that in the conceptual plan (in a few weeks) she wants to see the Community Center debt service, along with what this asset would potentially fund and what the library is requesting in City support. She asked that this to be presented at some level. Commissioner Anderson commented that he will prepare another spreadsheet.

Commissioner Anderson clarified (amended the motion) that this approval including any kind of land is conditioned on the next two approval stages: the approval of the conceptual plan and budget and the approval of the fundraising plan. He wanted to ensure that was clear in this revision and stated that he wanted to be responsive to Commissioner Diebel's concerns that there are conditions that have to be met before they commit the land; **Commissioner Dillaha agreed with the clarifications.**

Mayor Bradley also expressed his concerns on this matter and commented that he would be considering them with his vote. He believed that there are no cost alternatives to assure that this property is park land 50 and 100 years from now and this is specific to item 7e) and would require no cost in terms of fundraising to us; limiting the use of the Morse/Denning site, specifically to put the distribution center there (he wanted to meet with Mr. Mellin and see what that does for the overall cost); and if they go into a citizen fundraising initiative there are other issues that our citizens have voted on including the library as an area that he believed they will need citizen fundraising for.

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

A recess was taken from 6:35 p.m.-6:48 p.m.

Public Hearings:

Mayor Bradley asked that Vice Mayor Diebel conduct the public hearings going forward.

- a) RESOLUTION NO. 2029-09: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, SETTING FORTH THE CITY'S INTENT TO USE THE UNIFORM AD VALOREM METHOD OF COLLECTION OF A NON-AD VALOREM ASSESSMENT FOR THE PROPERTIES LYING WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY OF WINTER PARK, CONSISTING OF PROPERTIES WITHIN THE FORREST HILLS PLAT ABUTTING FAWSETT ROAD, GLENCOE ROAD, DANA WAY, LAKE CHELTON CIRCLE, ROCKWOOD ROAD AND WEST READING WAY (AS RECORDED IN PLAT BOOK K PAGE 90 PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA) AS MORE PARTICULARLY INDICATED IN EXHIBIT "A" ATTACHED HERETO, TO FUND CERTAIN PUBLIC IMPROVEMENTS OF THE INSTALLATION OF UNDERGROUND ELECTRICAL/BRIGHT HOUSE NETWORKS (BHN) FACILITIES; PROVIDING THAT A COPY OF THIS RESOLUTION SHALL BE FORWARDED TO THE PROPERTY APPRAISER, TAX COLLECTOR AND THE FLORIDA DEPARTMENT OF REVENUE IN ACCORDANCE WITH SECTION 197.3632(3)(a), FLORIDA STATUTES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Attorney Cheek read the resolution by title. No public comments were made. **Motion made by Mayor Bradley to adopt the resolution; seconded by Commissioner Dillaha.** Commissioner Bridges asked if there was an agreement from Bright House to bury their lines and do all everything necessary simultaneously with the City. Mr. Knight stated that they agreed to participate in this process but did not agree to do it as timely as we would like. Electric Utilities Director Jerry Warren responded. Commissioner Bridges commented that, for the Plug-In program, where residents are paying for that, we need to be extremely persuasive with Bright House that they should follow us very closely. Commissioner Anderson commented that he would need to abstain from this vote as a direct beneficiary. **Upon a roll call vote, Mayor Bradley, Vice Mayor Diebel and Commissioners Dillaha, and Bridges voted yes. Commissioner Anderson abstained. The motion carried unanimously with a 4-0 vote.**

- b) Appeal of MFT Enterprises of Winter Park, Inc. contesting the City Building and Zoning Official's interpretation and enforcement of Article III, "Zoning" of Chapter 58 of the City of Winter Park's Land Development Code regarding the provisions of Section 58-64 for nonconforming uses relating to the denial by the City for the use of the property at 2190 W. Fairbanks Avenue, zoned C-3, for the sale of motor vehicles as applied to the provisions of the code regarding nonconforming uses.

Mayor Bradley addressed his relationship with Karin Thilmony and her father. Attorney Cheek commented that he would not have a conflict unless there is a financial benefit. Mayor Bradley stated that it would not be financial and explained that he asked Vice Mayor Diebel to chair this conversation so no one can suggest there is any conflict.

Planning Director Jeffrey Briggs explained that pursuant to Section 58-91 of the Zoning Code, MFT Enterprises of Winter Park, Inc. has filed an appeal contesting the interpretation and determination of the City's Building and Zoning Official that the sale of motor vehicles and recreational vehicles from the property at 2190 West Fairbanks Avenue violates the code provisions regarding nonconforming uses. He showed a site map of 2180/2190 W. Fairbanks. He stated that on March 12, 2007, the City Commission adopted, following notice mailed to all commercial property owners in the City, Ordinance No. 2706-07. That ordinance, among other things, changed the status of new or used motor vehicle sales businesses from a conditional use status, City-wide, to a conditional use status only within certain geographic areas of the City and otherwise a non-conforming use outside of those specified geographic areas. As a result, the status of the all commercial properties on Fairbanks Avenue, including this particular one at 2190 West Fairbanks Avenue was changed from having the potential for the approval of a conditional use to permit motor vehicle sales to a situation where motor vehicle sales are prohibited.

As a result, the only way MFT Enterprises of Winter Park, Inc. can qualify to be permitted for motor vehicle sales is to prove that they were actively in business within and upon the areas for which they now seek an approval so as to be considered "grand-fathered-in" as a "nonconforming use". Generally "non-conforming uses" may continue to operate, (per Section 58-64), as long as the "use" is not discontinued for more than six months. However, non-conforming uses may only be "grandfathered-in" for the specific portion of the property that has been actively used for motor vehicle sales. Non-conforming uses cannot be enlarged, extended or moved to any other part of the property or building. Also it is very important to note that once a property or building or a portion of the property or building is used for a permitted legal use, then that property or portion of a property or building cannot revert back to a "non-conforming use", regardless of the time period. In other words, once a property or building or portion of a property or building becomes "conforming" then it cannot thereafter become "non-conforming".

He addressed that in March 2009, MFT Enterprises of Winter Park, Inc. applied for a business certificate (occupational license) for motor vehicle sales from the property at 2190 W. Fairbanks Avenue. That application was denied because no existing business certificate was in effect for this property that could substantiate that any motor vehicle sales business had been conducted on this property that could qualify as being grandfathered-in for "non-conforming status". Previously MFT Enterprises had been licensed for motor vehicle sales at 2190 W. Fairbanks Avenue but that license expired on Sept. 30, 2005. No business certificate (occupational license) from the City of Winter Park was requested or issued for the 2006, 2007, 2008 or 2009 business years.

On April 7, 2009 the City received correspondence from Attorney Jason Merritt, representing MFT Enterprises (Matt and Karin Thilmony) providing information to assert that an active motor vehicle sales business had been in continuous operation from the property at 2190 W. Fairbanks. That information included the State of Florida Motor Vehicle motor vehicle dealer licenses at that 2190 W. Fairbanks Avenue address and sales tax records. From that information it appeared that since March 2007 (when the zoning code changed) motor vehicles were sold in two months of 2007 and in ten months of 2008.

At that point, the City was prepared to issue a business certificate for motor vehicle sales but only for the specific portion of the property that was grandfathered-in. That consisted of the 11x18 office at the rear of the building at 2190 W. Fairbanks Avenue and the parking lot area to the rear of that building.

MFT Enterprises however, has insisted upon the right to utilize the entire building at 2190 W. Fairbanks Avenue for motor vehicles sales and as well as the right to park and display motor vehicles for sale across the Fairbanks Avenue frontage of the property.

The City has outlined earlier that it cannot permit the expansion or enlargement of a nonconforming use. The City also cannot permit a nonconforming use to occupy a portion of a property that has been made conforming to the code.

He stated that since March 2007, the City has issued business certificates (occupational licenses) for the building at 2190 W. Fairbanks Avenue to the American Combat Club (mixed martial arts studio) and to the Black Chapel Tattoo (art/photo gallery, photo studio and retail sales). These businesses have included use of the front parking lot area as the required parking for employees and customers. Otherwise they would not have been able to provide the required paved parking necessary to meet the parking requirements for those businesses. Thus, the building with the exception of the 11x18 office at the rear of the building has been used for permitted and conforming uses in the C-3 zoning.

As a result, the City cannot permit or issue a business certificate for motor vehicle sales for this entire property, as requested. To do so would be an enlargement or expansion of a nonconforming use because when use of the building and the front portions of the property have been used for permitted legal businesses, then the non-conforming uses (motor vehicle sales) cannot be re-established.

Mr. Briggs explained that the P&Z vote was 3-2; three votes to uphold the interpretation of the City and two in favor of the appellants view.

Jason Merritt, 1000 Legion Place, Suite 1700, Orlando, FL, represented the applicant. He questioned Mr. Briggs and asked for clarification of staff's position. Commissioner Anderson asked Attorney Cheek about the questioning of Mr. Briggs. Attorney Cheek commented that we are here under Section 58-91 of the City code that is the method by which an aggrieved party can appeal an interpretation by the building and zoning official. He commented that they can take testimony, but the Commission has some discretion on how it wants to proceed or it can proceed just on the record.

Mr. Merritt provided the Commission Section 58-64 of the code and commented that it discusses a non-conforming use of the land in conjunction with a use of a structure and believed that this was the correct section of the code which is applicable in this case. He stated that they take issue with the City's interpretation of the code with regard to parking and gave the background of the applicant operating out of this location. He explained that they have no record of an occupational license renewal being received and was not aware until the client was "red tagged" concerning the parking of motor vehicles on the portion of the property facing Fairbanks Avenue. He stated that parking has been shared by all occupants of the building.

At that point, the City was prepared to issue a business certificate for motor vehicle sales but only for the specific portion of the property that was grandfathered-in. That consisted of the 11x18 office at the rear of the building at 2190 W. Fairbanks Avenue and the parking lot area to the rear of that building.

MFT Enterprises however, has insisted upon the right to utilize the entire building at 2190 W. Fairbanks Avenue for motor vehicles sales and as well as the right to park and display motor vehicles for sale across the Fairbanks Avenue frontage of the property.

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Mr. Merritt expressed that the Commission needs to determine whether staff's interpretation of the code is correct. He commented that for any type of non-conforming use to be considered abandoned it is necessary to show a voluntary and an intentional act on the part of the property owner and that the lapse of a license does not necessarily constitute the abandonment of a permit. He discussed the code interpretation of Section 58-64 in more detail. He addressed the importance to look at the property as a whole and note that the applicant has continued to maintain his office in the rear, maintain appropriate state license, insurance and bonds. He commented that the only logical and consistent conclusion would be that the existence of this grandfathered non-conforming use necessarily carries with it the right to display cars along Fairbanks Avenue.

Applicant Matthew Thilmony gave a presentation regarding his business of MFT Enterprises, as a non-conforming use and the parking issue. He answered questions posed by Attorney Cheek.

Attorney Cheek commented that the staff's determination was reasonable and believed that it was a voluntary intentional decision that was made to lease out the property and provide parking. Mr. Thilmony expressed that he leased out the property and provided parking, but not front parking. He stated that he has contiguous property that has ample parking for his tenants. Attorney Cheek commented that it was a voluntary abandonment of a non-conforming use. Mr. Thilmony reiterated that he did not voluntarily give up the front parking and stated that he should be grandfathered in under the same rules that applied to him in 2003, 2004 and 2005.

Attorney Cheek explained that the Commission can affirm the position of the P&Z position or they can override that decision and substitute their own. Attorney Cheek and Planning Director Jeff Briggs answered questions.

Frank McMillan, 655 N. Wymore Road, expressed that the applicant has been validly using this property and the parking spaces in connection with the state motor vehicle license. He asked the Commission to grant Mr. Thilmony's request.

Jim Lashley, 12049 South Orange Blossom, confirmed that Mr. Thilmony actively displayed enclosed trailers for sale on the front of 2190 W. Fairbanks Avenue during 2006 through mid 2008. He stated that he never heard of trailers being "red tagged" until mid 2008.

Tim Huskins, 5108 Barton Drive, voiced concerns that taking property rights affects the value of the property and sees this possibly happening here.

Commissioner Anderson commented that they have someone who has continuously operated an auto sales business in this location. He understands from the discussion that there is unspecified parking in the tenant leases and there is a real application where the parking was accommodated throughout the site, possibly on non-conforming uses adjacent. He questioned if the compromise would be to bring that additional parking into compliance and if this was a way where the applicant could continue to do both uses on this parcel.

Commissioner Dillaha commented that this is difficult, but supports the P&Z's decision and staff's recommendation.

Commissioner Bridges voiced concerns regarding the grandfathering in and that the property owner was notified that we were not going to continue promoting vehicle sales down that portion of Fairbanks Avenue. She added that although his licensing from the State and other County

records are up to date, the City did not have his occupational license. She commented that she looks at this as an abandonment of the 6 months according to our grandfathered in regulations. She commented that she is conflicted about this, but supports the P&Z board and our officials.

Commissioner Anderson believes that staff has correctly interpreted our statutes; however; he believes that we had an out of compliance issue and that the use is grandfathered.

Motion made by Commissioner Anderson to request staff to find out if there is a way to bring this use into compliance and report back to the Commission. The motion failed for lack of a second.

Motion made by Commissioner Dillaha to deny the appeal. The motion failed for lack of a second.

Motion made by Vice Mayor Diebel to table this action item until the next meeting so they can come to a proper resolution; seconded by Commissioner Anderson. Commissioner Anderson commented that he would like to do further research and see it on the August 24 agenda. **Upon a roll call vote, Vice Mayor Diebel and Commissioners Anderson, Dillaha, and Bridges voted yes. Mayor Bradley voted no. The motion carried with a 4-1 vote.**

- c) AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE I, "COMPREHENSIVE PLAN" SO AS TO ADOPT NEW PUBLIC NOTICE AND ADOPTION PROCEDURES FOR AMENDMENTS TO THE CITY OF WINTER PARK, COMPREHENSIVE PLAN, GOALS, OBJECTIVES AND POLICIES DOCUMENT, SUBSTITUTING FOR THE CURRENT AMENDMENT PROCEDURES, ADOPTING A 2009 PUBLIC PARTICIPATION PLAN, PROVIDING AN EFFECTIVE DATE. First Reading

Attorney Cheek read the ordinance by title. Planning Director Jeff Briggs commented that this was tabled from the last Commission meeting and explained the intent of the ordinance. He stated that during the interim, Commissioners Anderson and Dillaha had a work session and they discussed having a threshold of 2 acres; if it is 2 acres or less it can be heard at any monthly meeting with regular frequency; but if it is more than 2 acres, those are limited to the twice a year schedule. He stated that in expectation from that meeting, an ordinance was prepared and provided to the Commission. He commented that on page 2, the yellow section is what the perspective amendment would be, based on the meeting with the two Commissioners.

Motion made by Mayor Bradley to approve the ordinance and to strike all the blue underlined sections; seconded by Vice Mayor Diebel for discussion.

Vice Mayor Diebel stated that she was not sure why they were limiting themselves to twice a year. She commented that they have many positive opportunities for small scale amendments that are in cue or under consideration and that this limits their ability to make decisions for things that come before them. Mayor Bradley agreed.

Commissioner Anderson amended the motion to not delete the blue section and substitute the yellow section that was provided to the Commission earlier today. Vice

Mayor Diebel asked Attorney Cheek to read the insertion of the ordinance that Commissioner Anderson is referring to. Mayor Bradley called for point of order for a second to the amendment. **Motion was seconded by Commissioner Dillaha.**

Attorney Cheek read subsection 1(a) of the amendment into the record:

“The commencement of the process to amend the comprehensive plan shall be limited to no more than two times during any calendar year except for amendments to the Future Land Use map involving applications for properties of less than two (2) acres in size provided the cumulative effect of the above condition shall not exceed thirty (30) acres annually; the proposed future land use map amendment does not involve the same property more than once a year; and the proposed future land use amendment does not involve the same owner’s property within 200 feet of property granted a change within a period of 12 months. This twice a year limitation shall not apply or count as one of the two permitted amendments cycles any City sponsored comprehensive plan in the case of emergency, if the emergency plan amendments receive the approval of all of the members of the City Commission. “Emergency” means any occurrence or threat there of whether accidental or natural, caused by man, in war or peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property or public funds.”

Vice Mayor Diebel wanted to take the motions separately. The first motion concerned deleting the verbiage that was originally read in the ordinance that had a second. The amendment to the motion is in direct opposition to that, which reinserts the same language plus more. Attorney Cheek suggested letting the public comment and then vote on the amendment first.

Carolyn Cooper, 1047 McKean Circle, explained that our existing code does not repeat State Statutes. She asked the Commission not to throw out an existing law because they want to change notification requirements. She commented that there were many ways to take what we have and amend it to fix the notification to match the zoning code notification.

Vice Mayor Diebel believed she was speaking more to the action item that was next on the agenda but she understood what she was advocating. Mr. Briggs answered further questions.

Commissioner Dillaha believed this was an important ordinance and suggested tabling it. She also wanted to discuss a super majority vote requirement.

Commissioner Anderson withdrew his motion to the amendment in order to table; seconded by Commissioner Bridges.

Vice Mayor Diebel commented that they will be voting on the motion on the ordinance read in the first reading with the exception of the deletion of the highlighted blue area requiring the public notice on the twice a year issue. **Upon a roll call vote, Commissioners Anderson, Dillaha and Bridges voted no. Vice Mayor Diebel and Mayor Bradley voted yes. The motion failed with a 3-2 vote.**

Commissioner Anderson commented that he would like to bring the ordinance back to the August 24 meeting for review with the revisions proposed by Mr. Briggs.

Motion made by Commissioner Anderson that they bring before a public hearing the ordinance distributed this afternoon for action in the next Commission meeting;

seconded by Commissioner Dillaha. Commissioner Dillaha wanted to add a discussion requiring a super majority vote to amend the future land use element as part of that. Mayor Bradley called for point of order because he did not know if this was an amendment to this ordinance or was a different ordinance. Attorney Cheek responded that they can discuss amendments to this when it is back on the agenda. Mayor Bradley was also concerned about the 2 acres in size which could impact the post office that is in their park and a critical issue for most of our citizens. Attorney Cheek commented that it will be a new first reading and they can amend it at that time.

Vice Mayor Diebel was uncomfortable putting this under a first reading not knowing the additional language Commissioner Dillaha is advocating. Attorney Cheek clarified this matter. Vice Mayor Diebel suggested they move forward with the motion and if Commissioner Dillaha would like to advocate a change in the ordinance at the next meeting she could do so then. Commissioner Dillaha agreed. **Upon a roll call vote, Commissioners Anderson, Dillaha and Bridges voted yes. Vice Mayor Diebel and Mayor Bradley voted no. The motion carried with a 3-2 vote.**

- d) ORDINANCE NO. 2775-09: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 2 "ADMINISTRATION" SO AS TO ADOPT NEW PUBLIC NOTICE PROCEDURES FOR ANNEXATIONS TO THE CITY OF WINTER PARK. Second Reading

Attorney Cheek read the ordinance by title. **Motion made by Mayor Bradley to approve the ordinance with the deletion of the section that discusses that we would do City-wide notice at the cost to citizens of annexation that they have already declared in the comprehensive plan.** Mr. Briggs commented that if they delete the blue section they will be moving denial of the ordinance because all the other text is already in our code. **Mayor Bradley withdrew his motion.**

Motion made by Commissioner Bridges to adopt the ordinance; seconded by Commissioner Anderson. Mr. Briggs answered questions. He commented that there are approximately five other potential annexation properties. Mayor Bradley commented that this would be an additional \$30,000 to spend on City-wide mailings if they move forward with this ordinance. Commissioner Dillaha explained that all those notices would not happen during the same period of time and was supportive of providing notification for annexation that is 10 acres or greater. Commissioner Bridges agreed that 10 acres is a reasonable threshold for notification and supported P&Z who spent a lot of time evaluating this. Mayor Bradley believed this would be an exaggerated use of City funds to communicate this issue and they are trying to do something they are already going to tell everyone about through numerous means. **Upon a roll call vote, Commissioners Anderson, Dillaha, and Bridges voted yes. Vice Mayor Diebel and Mayor Bradley voted no. The motion carried with a 3-2 vote.**

Vice Mayor Diebel called for point of order since she did not have public comment. Attorney Cheek advised they go ahead with the public input and if anybody on the winning side wishes to reconsider they could.

Pat McDonald, 2348 Summerfield Road, did not agree with depriving the citizens of notification.

Vice Mayor Diebel asked the Commission if they wanted to reconsider their vote. The ordinance was adopted on second reading.

City Attorney's Report:

No report.

Non-Action Items:

- a) City Manager's Report.

City Manager gave an update on the tender process for the electric bonds and the water and sewer bonds. He also mentioned that the Charter review was tentatively scheduled for August 17, but one Commissioner could not attend. He suggested changing it to August 20 at 8:45 a.m.-9:45 a.m., depending on everyone's availability. There was consensus among the Commission for that date and time.

New Business (Public):

No public comment.

New Business (City Commission):

- a) Charter Review. (Mayor Bradley)

Mayor Bradley pulled this item and stated that they should proceed to the next item.

- b) Winter Park City performance indicators. (Mayor Bradley)

Mayor Bradley commented that in the current proposed budget there are indicators for some of the departments and suggested that the Commission look at these very specifically. He stated that in some cases they need enhancement and wanted a thought process on this to ensure that they are focusing on the right things. He stated that he would like a dialogue on what our citizens perceive as good service from a City (including how miles of roads are paved) which they would track over time. He requested that staff prepare this for an Action Item Requiring Discussion on an upcoming agenda.

Vice Mayor Diebel commented that they could potentially give Mr. Knight direction in the budgeting cycle where he can tie the performance indicators or some increased measurement of what they have today and bring that to their budget discussion. Mr. Knight agreed.

Other New Business not on the agenda:

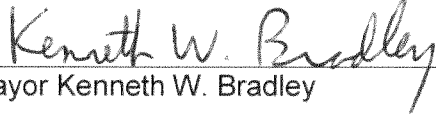
1. Commissioner Anderson wanted to understand how items are brought onto the ballot for referendum in February or March and did not want to confuse that to meaning a voter initiative. He wanted to know the process that the Commission uses to put something on for a referendum. Vice Mayor Diebel commented that this will be placed on the August 20 agenda as an informational item.

2. Mayor Bradley commented that he will be placing several things in writing on the next agenda.

3. Vice Mayor Diebel reiterated Mayor Bradley's comments regarding submitting items in writing for the agenda.


Motion made by Commissioner Anderson to adjourn the meeting; seconded by Commissioner Dillaha.

The meeting adjourned at 8:41 p.m.



Mayor Kenneth W. Bradley

ATTEST:



City Clerk Cynthia S. Bonham