

**CITY OF WINTER PARK
REGULAR MEETING OF THE CITY COMMISSION
October 8, 2007**

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

The invocation was given by Reverend Mike Armstrong, First Baptist Church, followed by the Pledge of Allegiance.

Members present:

Mayor David Strong
Commissioner Douglas Metcalf
Commissioner Margie Bridges
Commissioner Karen Diebel
Commissioner John Eckbert

Also present:

City Attorney Trippe Cheek
Acting City Manager Randy Knight
City Clerk Cynthia Bonham

Mayor's Report:

- a) Employee of the Quarter (third quarter)

Mayor Strong recognized Keri Martin, Risk Management, as the Employee of the Quarter (third quarter).

- b) Recognition the Fire Corps Citizen Volunteers (Fire Chief White)

This item was postponed to a future meeting.

- c) Board appointments:
Environmental Review Board. Mayor Strong nominated Karolyn Foreman and Vicki Krueger.
Public Art Advisory Board. Mayor Strong nominated Michele Hipp.

Motion made by Commissioner Eckbert to approve the board appointments; seconded by Commissioner Bridges and carried unanimously.

Non Agenda Items

Mayor Strong announced that Commissioner Bridges was nominated to serve as the board member of the Tri-County League of Cities. Commissioner Bridges accepted the appointment.

Action Items:

- a) Approve the minutes of 9/24/07. **PULLED FROM ACTION ITEMS FOR DISCUSSION. SEE BELOW.**
- b) Approve the following bid and purchases:
- 1) After the fact Purchase Order 133299 to Embarq for equipment maintenance; \$109,698.87 (Budget: ITS).
 - 2) PR 134901 to Brunswick Commercial & Government Products, Inc., piggy-backing off GSA Contract # GS-07F0011J, for the purchase of a

- 17' boat for the Police Department; \$25,323.00 (Budget: Vehicle Replacement Fund).
- 3) After the fact Purchase Order 133386 to Ring Power Corporation to purchase a Caterpillar 262C skid steer loader, piggy-backing off the Florida Sheriff's Association Contract 06-41-0821; \$37,739.00 (Budget: Vehicle Replacement Fund).
 - 4) Award of IFB-35-2007 Vegetation Planting and Management Plan for Mead Gardens to Aquatic Weed Control; \$22,254.00 (Budget: Stormwater and Federal Fair Share 50/50 Grant).
- c) Approve the budget adjustment transferring \$125,000 remaining in the FY 2007 General Fund Contingency to an account for the Architectural Review Board study.
 - d) Transfer the ownership of City owned lots located on West Comstock Avenue to the Hannibal Square Community Land Trust for the development of four single family modular homes.
 - e) Assign Randy Knight as the City of Winter Park's representative to the South Seminole North Orange County Wastewater Transmission Authority (SSNOCWTA).
 - f) Request for a moratorium ordinance on development in the Central Business District. **PULLED FROM ACTION ITEMS FOR DISCUSSION. SEE BELOW.**
 - g) Ethics Task Force recommendation. **PULLED FROM ACTION ITEMS FOR DISCUSSION. SEE BELOW.**
 - h) Update on the Land Development Code implementation and the Progress Energy project. **PULLED FROM ACTION ITEMS FOR DISCUSSION. SEE BELOW.**
 - i) Acquisition of 509 S. Capen Avenue.
 - j) Process for hiring a new City Manager. **PULLED FROM ACTION ITEMS FOR DISCUSSION. SEE BELOW.**

The following items were pulled from the Action Items list and discussed separately: a, f, g, h and j.

Motion made by Commissioner Metcalf to approve Action Items (b, c, d, e and i); seconded by Commissioner Bridges and carried unanimously.

Action Item a: Minutes of 9/24/07:

Mayor Strong asked for clarification on page 11 of the second paragraph and whether he asked the other Commissioners (besides Commissioner Eckbert) if they agreed with the assessment that paying Mr. Williams \$600,000-\$800,000 was in the best interest of the citizens. He stated he remembers asking Commissioner Eckbert and the other Commissioners if they were willing to accept the risk that it may be significantly more than that amount if Mr. Williams' attorney is correct. Commissioner Diebel stated that she did not recollect Mayor Strong asking for validation on that matter. Commissioner Eckbert stated that the nature of his comments was that the severance that they owe Mr. Williams was worth proceeding with the action.

Mayor Strong asked for a transcript on this particular subject matter. Commissioner Bridges suggested having a transcript of the entire discussion regarding the City Manager's item. Commissioner Eckbert agreed. Mayor Strong asked City Clerk Cindy Bonham to transcribe the

discussion about Mr. Williams' status in its entirety before the next meeting; Ms. Bonham agreed to do her best. Mayor Strong suggested establishing a policy that transcriptions are provided upon request.

Motion made by Commissioner Eckbert to table the minutes, seconded by Commissioner Metcalf and carried unanimously.

Action Item f: Request for a moratorium ordinance on development in the Central Business District.

Michael Dick, 823 Granville Drive, spoke in favor of imposing a moratorium in the Central Business District.

Director of Planning Jeff Briggs explained that this is a unique scenario because it is the only place in the newly adopted Comprehensive Plan where they change the future land use on what the zoning is intended to be on specific parcel. He stated if anyone is caught in the moratorium they cannot ask for the Comprehensive Plan future land use map changes until they receive the seal of approval from the State on the newly adopted Comprehensive Plan. Mayor Strong stated he received a letter from the Department of Community Affairs (DCA) dated September 27, 2007 and that he wanted to see the response for this letter and any follow up letters they receive from DCA. Acting City Manager Randy Knight agreed to provide this information to the Mayor and the Commissioners. Attorney Cheek reminded the Commission they are engaged in litigation and that making statements about the Comprehensive Plan process was not a good idea in a public meeting.

Commissioner Bridges asked about the timeline. Mr. Briggs explained staff's recommendation to decline the moratorium because they in effect have a moratorium and the new things placed in the Comprehensive Plan cannot be used by property owners until they put them in the zoning code. He said the Commission already controls the timing of the use of the new development standards. He addressed that the timeline could be up to one year for things to be implemented. Mr. Briggs answered further questions.

For the record, Attorney Cheek clarified this is technically not a moratorium and that they are using this as an illustration for people to understand. He commented it is his current view that the City followed the appropriate procedures and adoption of the Comprehensive Plan adoption ordinance; and he believed P&Z could work on potential ordinances based on criteria and guidance they are given by staff or the City Commission and if they are not in line with the adopted Comprehensive Plan language, it will have to be adjusted.

Motion made by Commissioner Eckbert to approve staff's recommendation for denial of the request for a moratorium; seconded by Commissioner Metcalf and carried unanimously.

Carolyn Cooper, 1045 McKean Circle, requested that they have a reading from the City Attorney relative to what the moratorium means. She supported a moratorium and listed reasons why the moratorium was in order.

Rebecca Furman, representing Progress Energy, stated that she had no idea their project would be discussed under a moratorium ordinance on development in the Central Business

District (CBD). She addressed their project not being in the CBD and disagreed with imposing a moratorium.

Joe Terranova, 700 Melrose Avenue, disagreed with imposing a moratorium and urged approval of the staff recommendation.

Marc Hagle, 1220 Park Avenue N., agreed with staff's recommendation not to impose a moratorium.

Will Graves, 3048D George Mason Avenue, spoke about the recall of Commissioner's Eckbert and Metcalf on Channel 9 News. Commissioner Eckbert stated that this was not in reference to the moratorium. Mayor Strong asked Mr. Graves to remain on the subject of the moratorium. Mr. Graves spoke in favor of a moratorium.

Mayor Strong stated for the record that he will not support any approval request in anticipation of a Comprehensive Plan approval. He stated when you have a Comprehensive Plan and a project is consistent with the plan, he will vote for it, but not in anticipation of a Comprehensive Plan.

Upon a roll call vote, Mayor Strong and Commissioners Bridges, Eckbert, Metcalf and Diebel voted yes. The motion carried unanimously with a 5-0 vote.

Action Item g: Ethics Task Force recommendation.

Motion by Commissioner Bridges to have a work session to discuss their recommendation; seconded by Commissioner Eckbert and carried unanimously. Mayor Strong stated they would schedule a date at their next Commission meeting.

Action Item h: Update on the Land Development Code implementation and the Progress Energy project.

Planning Director Jeff Briggs asked the City Commission to schedule a joint work session with the Planning and Zoning Commission (P&Z) to look at the new zoning district being prepared by staff with consultant assistance and to look at the Progress Energy project. Commissioner Metcalf stated he would be out of town from October 22 – November 6.

After discussion, the meeting was tentatively scheduled for October 22 at 1:00 p.m.; however Mr. Briggs commented he would schedule it for 12:00 if 1:00 was not convenient for everyone.

Motion made by Commissioner Eckbert to approve item h; seconded by Commissioner Metcalf and carried unanimously.

Action Item j: Process for hiring a new City Manager

Mayor Strong proposed hiring Mr. Knight on an interim basis for a probationary period not to exceed a year, if he was agreeable to that, and to see if he could perform the job.

Commissioner Eckbert thought that Mr. Knight was very capable and he has a great deal of respect and appreciation for his talents however, he believed the appropriate thing to do was go

through the process of a national search. He commented the City would be best served by doing this and it will instruct the Commission on what they are looking for and give them a better identification of how the City Commission can and should interact with the City Manager position. He stated that he asked Tom Freijo with the Mercer Group (a search firm) to share how a search firm could assist the City and how he would work with the Commission. Commissioner Eckbert also said the Mercer Group was hired by the City of Naples in their search for a City Manager.

Mr. Freijo, Mercer Group Senior Vice President, explained that the Mercer Group was a national consulting firm that specializes in recruitment in the public sector. He addressed why searches are performed, what the process would be, and the cost. He offered a caveat that if the Commission has a strong internal candidate that has been publicly supported by members of the Commission, the applications the City receives will probably be influenced. He explained that applicants want to apply for something that is an open and fair game and do not want to apply knowing that a decision has already been made in the minds of the Commissioners. Mr. Freijo further elaborated on the process he would follow, provided a proposal addressing what they would accomplish along with a tentative time schedule for the search (60-70 days) and answered questions.

Barbara DeVane, 1035 Lakeview Drive, asked that Mr. Williams be reinstated immediately as City Manager.

Joe Terranova, 700 Melrose Avenue, spoke about being on the Commission a few years ago and going through a similar process for hiring a City Manager. He suggested setting guidelines concerning the City Manager's duties and the process to be followed.

Pat McDonald, 2348 Summerfield Road, asked not to move forward until after the January 29 election.

Marc Hagle, 1220 Park Avenue N., spoke about the qualifications of Mr. Knight but that the City needs to allow a search to take place because of the knowledge available out there. He suggested an alternative to set up an educational program to teach him the various ways of managing a City if they decide to hire Mr. Knight without doing a search process.

Mayor Strong asked Mr. Knight if he was comfortable with the selection process if that was what the Commission chose to do. Mr. Knight responded that he was fine with that but said he would be seeking employment elsewhere if they hire another City Manager. He expressed that it was important that he has security for his family and with a new City Manager coming in and since he applied for the City Manager position, it was likely he would not be the number two person.

Commissioner Bridges asked how we are going to pay for the termination of Mr. Williams which is a part of the process. She was concerned that they have placed themselves in an extremely difficult position and she wanted to hear from the Commission and the Interim City Manager how they would address this. She stated there were some citizens that believed reinstatement was a solution to that financial process that they find themselves in. Mayor Strong responded that his recollection of this from the last meeting was that it was contemplated that any severance would be paid from the Reserves Fund and that was the only logical place. Mr. Knight responded that they have money in the Reserves but there are also funds available in

the Water/Sewer Fund or the Insurance Fund if needed. He stated this was not a planned expenditure that was part of the fiscal 2008 budget. Finance Director Wes Hamil stated that exclusive of the severance pay they have about \$3.5 million in the General Fund and they have other funds accessible.

Commissioner Bridges believed that Mr. Knight would be an excellent City Manager and the history he has with the City and the interaction he has with the department heads would benefit the City and citizens well. She thought a national search would be good, however in terms of process, she was disturbed that a representative from the Mercer Group gave a presentation without the Commission first discussing it. She stated this was premature and inappropriate in the process and believed the next meeting would have been more appropriate for the Mercer Group to attend if Commissioner Eckbert recommended them. Commissioners Bridges and Eckbert had further discussion on what process they should go through for hiring a City Manager.

Mayor Strong again suggested that Mr. Knight be hired as the Interim City Manager for a probationary period. Mayor Strong stated that it has been suggested by one member of the public that part of the process should be to consider the rehiring of Mr. Williams. Attorney Cheek commented that they could consider that if they wish to do so but Mr. Williams would have to agree to that if they make that decision.

Commissioner Eckbert reiterated the need for a national search for a City Manager and by the next Commission meeting to consider any other firms and make a decision. Mr. Knight responded with three options: the Commission can waive the City's purchasing policies, they could do an RFP or RFQ that needs to be advertised, or have Director of Human Resources Anna Currie or the Purchasing Division solicit proposals directly from 3-5 firms that does this type of business in the State of Florida, receive quotes and return with this information hopefully by the next meeting. Mayor Strong asked Ms. Currie to identify the three firms that would serve the Commission well and to discuss this at the next meeting. She agreed to do so.

Commissioner Metcalf commented that he would like to have a shade meeting regarding this and find out their status before the next meeting when they are presented with Ms. Currie's results and before they make a decision. He spoke about the Mayor's suggestion of extending Mr. Knight's one year contract even if it is more of a permanent basis, that they might consider this unless they go through the process of a national search.

Commissioner Eckbert stated they should provide Mr. Knight with an interim contract even if they proceed with a national search. He recommended an increase to salary and an extension of contract pending results of the national search. Mayor Strong asked Mr. Knight if he would be comfortable with a one year severance package. Mr. Knight agreed. There was a consensus regarding Mr. Knight's one year severance package.

Commissioner Diebel suggested that the redefinition of the description of the City Manager position could be done in coordination with the search firm. Commissioner Eckbert agreed with Commissioner Diebel. Mayor Strong felt that the Commission should be doing this. Commissioner Metcalf agreed the Commission should be the ones who modify or strengthen the job description and they should discuss and make a decision on it. He commented that they need to do this before they move forward with a national search. He made suggestions regarding any education that Mr. Knight may lack (if he has the skills they are looking for).

Commissioner Bridges agreed that they should take on this responsibility and go through the job description and see if Mr. Knight meets the requirements and bring on outside assistance at that time, if necessary.

Mayor Strong suggested that they proceed as follows: 1) ask Ms. Currie to identify three national search firms and bring those back to the next Commission meeting; 2) reinstate and/or extend Mr. Knight's contact at the recommended increase that Ms. Currie provided with a severance provision equal to the possibility of one year's salary (if it is one year they will discuss that then); and 3) at the work session on October 15 that each of them review the job description and discuss one they are comfortable with. Commissioner Eckbert stated he was not opposed to that but agreed with Commissioner Diebel's earlier point that a search firm may help them clarify that conversation. He commented that he would be happy to meet and discuss that; he thought that was a productive conversation but did not think they should preclude that conversation continuing into the search firm's process when they begin.

Commissioner Diebel commented that if they are going to evaluate three firms she would advocate how they would service the Commission like the representative from the Mercer Group had presented. She suggested they could have their proposals for the next meeting and maybe they could broaden this for a City Manager and an Assistant City Manager should Mr. Knight be promoted to City Manager. Mayor Strong stated that the Commission does not hire an Assistant City Manager; the City Manager does that.

Commissioner Eckbert suggested that when they meet to discuss the job description that the three firms that Ms. Currie identifies can provide alternate job descriptions which maybe helpful for them to see what some of the other firms have used in their searches. Mayor Strong commented that the Naples, Florida job description maybe of interest to Winter Park.

Commissioner Metcalf suggested that they discuss the City Manager's job description at the work session on October 15 and measure that against Mr. Knight before they start the process. Commissioner Bridges shared that perspective and agreed it is appropriate to do a national search but they should determine if they have the appropriate person here and if they can agree on the qualifications they are looking for. She explained that she is a strong advocate of promoting from within and drawing on that experience and not causing any more disruption from our citizenry or staff that the Commission's actions have already brought.

Ms. Currie summarized the Commission's directives to: discuss the job description of the City Manager at the Monday work session; and provide three firms with written proposals at the next Commission meeting. Commissioner Eckbert also asked that those firms provide any recent job descriptions that can be circulated prior to the meeting if possible. Mayor Strong also stated that Ms. Currie should provide a contract for Mr. Knight for their final approval.

Public Hearings:

- a) ORDINANCE NO. 2724-07: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE V, "ENVIRONMENTAL PROTECTION REGULATIONS" DIVISION 6, "TREE PROTECTION" SO AS TO ADOPT NEW TREE PROTECTION AND TREE REMOVAL REGULATIONS. Second Reading

Attorney Cheek read the ordinance by title.

Lurline Fletcher, 790 Lyman Avenue, asked for clarification. She also asked about trimming a tree on her neighbor's property. Mr. Wiggins suggested Ms. Fletcher contact someone in code enforcement and that the arborist enforcement officer can evaluate the situation.

No other public comments were made.

Motion made by Commissioner Metcalf to adopt the ordinance, seconded by Commissioner Bridges. Upon a roll call vote, Mayor Strong and Commissioners Bridges, Eckbert, Metcalf and Diebel voted yes. The motion carried unanimously with a 5-0 vote.

- b) AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING" AND THE OFFICIAL ZONING MAP SO AS TO CHANGE THE EXISTING MULTI-FAMILY RESIDENTIAL (R-3) ZONING TO CENTRAL BUSINESS (C-2) DISTRICT ON THE PROPERTY AT 354 HANNIBAL SQUARE, EAST, MORE PARTICULARLY DESCRIBED HEREIN. Second Reading

Attorney Cheek read the ordinance by title and asked that this be tabled. He stated the language needs to be improved in section 3 to address some concerns discussed this evening in terms of approval by the DCA. Mr. Briggs also recommended tabling at this time.

No public comments were made.

Motion made by Commissioner Eckbert to table the ordinance, seconded by Commissioner Diebel. Upon a roll call vote, Mayor Strong and Commissioners Bridges, Eckbert, Metcalf and Diebel voted yes. The motion carried with a 5-0 vote.

City Attorney's Report:

- a) Discussion of litigation and request for shade meeting.

1. Attorney Cheek addressed the topics of the shade meeting regarding the two lawsuits that have been served on the City; Trismen vs. Winter Park and Williams vs. Winter Park. He requested they have this shade meeting later this week. There was a consensus to have the meeting on Wednesday, October 10 at 3:00 p.m.

2. Attorney Cheek stated he was asked to do a legal review of the draft Mayor's message for the November/December Update publication; he was not concerned legally with the article. He stated it was factually based regarding Mr. Williams tenure with the City and various other things that happened in the City during that time. Mr. Knight commented that it would be a part of the Winter Park Update around November 1. Commissioner Diebel stated they should wait until after the shade meeting to fully understand the extent of the litigation and then decide whether to publish.

Commissioner Eckbert agreed with Commissioner Diebel and felt that if there was going to be a report from the Commission, there should be equal air time for all the elected officials or no air

time. He believed that would open the door for "he said, she said" type opportunities in the City which he did not think was helpful. Mayor Strong stated this was an edited draft and it is 100% factual and would be in favor of deleting anything that was not factual. He commented that this was not intended to be political but rather informative and to thank Mr. Williams for his service.

Mayor Strong commented it may be disturbing if there was no Mayor's message. Commissioner Eckbert suggested that maybe Mr. Knight would be the appropriate person to deliver a non-political message. Commissioner Bridges addressed this being the Mayor's message is part of the communication of the citizenry and that he is entitled to do it. She believed the draft simply outlined the actions that were taken and that the Mayor's message was appropriate. Mayor Strong stated that he would have no objection to Commissioner Eckbert having a message in every Update. Commissioner Eckbert responded that may be the right way to go. Mayor Strong asked that he reach a conclusion about the publication of the message by the shade meeting. Commissioner Eckbert commented that was a fair request.

Commissioner Metcalf agreed with the first three paragraphs being factual but that all the bullet points become political. Mayor Strong suggested editing this to Commissioner Metcalf's satisfaction; delete the bullet points and discuss it on Wednesday, October 15.

3. Attorney Cheek advised the Commission to be careful about what they discuss regarding matters under litigation. He also reminded the Commission that they have a lot of lawyers that speak to them from the podium about these issues and he is not typically in the habit of correcting something that is wrong. He asked the Commission to let him know if they want him to act differently or they can ask him questions. He added if it is causing problems for the Commission or leading them astray, he will jump in but he wants to follow their lead on how much he intervenes on what someone says from the podium. Commissioner Eckbert suggested that he should not get into a debate with a speaker but rather clarify things that he believes to be factually incorrect after they are made. Attorney Cheek agreed to do so.

Non-Action Items:

- a) Update regarding the Outreach Emergency Alerting System notification protocol.

Fire Chief White provided the protocol document regarding the use of the outdoor component of the Outreach System. He explained that there will be an alert when they receive a tornado warning for the Orange County area. He stated that the National Weather Service is doing this by County and they anticipate it will be broken down by zip code in the future. He stated they are 60 days away from the final completion of the outdoor and electronic components. Chief White answered questions asked by the Commission.

- b) Discussion how the City Commission will conduct business.

Mr. Knight explained that at the September 24, 2007 Commission meeting, there was a discussion as to how the Commission would conduct themselves. They included in the discussion how they wanted to handle issues such as resolutions or ordinances that the Mayor or individual Commissioners wished to bring forward for discussion and/or action and whether they should be discussed before they are put on an agenda.

Mayor Strong's recollection of the consensus from the last meeting was they would not take action on an issue brought forward that evening, but if someone wanted to take action on that item, it would be placed on the next agenda. Commissioner Eckbert stated there should be some judgment from the City Attorney and the City Manager on how much is being asked from a Commissioner to do and it essentially comes down to the allocation of City resources by one Commissioner.

Commissioner Eckbert suggested that Commissioners bring issues under New Business or have it noticed for an item for discussion. He explained that the item brought forward for discussion should be something that may have Commission support or they devote City resources to pursuing that issue. Mayor Strong and Commissioner Metcalf agreed with that. Mayor Strong stated that before they ask Attorney Cheek or Mr. Knight to review their request, they should first bring it to the Commission and see if they are interested in it as a group. Mayor Strong commented that things should be placed under New Business (Commission) or Non-Action item and this item should be placed on the next agenda for approval.

New Business (Public):

Marc Hagle, 1220 Park Avenue N., explained a sister ordinance to the tree ordinance; the landscape ordinance and asked that staff review this ordinance. He asked that cellular service be provided in the entire City and also asked that the Commission not bicker between themselves during meetings.

Kit Pepper, 2221 Howard Drive, spoke on school concurrency. She asked for a resolution by the Commission and believed that individual City Commissioners should speak to our elected officials both at the School Board level and the County Commission level.

Will Graves, 3048D George Mason Avenue, addressed the need for a motion/vote tonight on whether or not former City Manager Jim Williams should be reinstated.

Mayor Strong asked Mr. Knight to follow up on issues brought up such as Mr. Wiggins bringing the Commission a report at the next meeting regarding the landscaping ordinance. Mr. Knight agreed. He also asked Mr. Knight to look into the cell phone situation and asked Commissioner Diebel if she knew anything on this subject. Commissioner Diebel advocated that there are four City owned towers we could potentially negotiate with the wireless providers to take advantage of if the conditions were right. She stated exploring that could substantially improve our cell phone coverage. He also asked that an agenda item to reinstate Mr. Williams be on the next agenda as an action item. Commissioner Eckbert commented that he would like to see the process Mr. Knight would propose for the landscaping ordinance.

Commissioner Eckbert also discussed the item of reinstating Mr. Williams for the next agenda. He wanted to make sure if they are going to have a public hearing about reinstating Jim Williams that it is a discussion about that and not a tax on Commissioners that took positions on either side. Mayor Strong stated he would like to hear from people who do not think that their vote was correct but did not want to take a lot of public input, if any, at the next meeting. He stated he wanted to have one more opportunity to consider the decision they made. Mayor Strong stated his preference would be not to have a public hearing but to only have the Commission consider this item. Commissioner Bridges stated she has received about 30 emails that have asked her to consider reinstating Mr. Williams and would like to enter those at

the next meeting as part of the public record. Commissioner Bridges supported the Mayor on this but believed that it should be advertised but they will not be soliciting public input. Mr. Knight and Attorney Cheek suggested placing this on the agenda under Action Items. Mayor Strong stated he would specifically state on the next agenda that no public input will be taken on this item. Mr. Knight agreed.

New Business (City Commission):

- a) Review of position papers submitted by Planning and Zoning members Michael Dick and Drew Krecicki and the Citizens Vision Committee objection filed with the DCA; discussion of their ongoing P&Z service.

Commissioner Diebel brought this item forward regarding the P&Z members submitting position papers as well as an objection letter to the DCA concerning the Comprehensive Plan that was signed by one of the P&Z members. She stated there was a conflict in the P&Z membership where there was a view that the Comprehensive Plan is non-compliant and they are advocating a review of the process from the beginning because they believed that the work outlined was not sufficient and they are advocating the withholding of the submission of the Comprehensive Plan. She believed it was in the interest of the Commission to discuss this because the responsibility of the P&Z member was to operate under what the Commission has directed and adopted. She asked for comments from other Commissioners if this was objectionable or of concern to any other Commissioner as it was to her. She stated that any board member that is appointed has a responsibility to carry out a fair and impartial responsibility that is unbiased of their personal opinion on whether or not what is adopted is suitable.

Commissioner Diebel stated she called the City Attorney to ask if he viewed this as a conflict. She stated he agreed it was worthy of discussion at the Commission level. Attorney Cheek stated he was not reaching a conclusion on the facts but if they reach a conclusion on the facts that a member on a lower board is not performing that person's function, the Commission can remove them. Attorney Cheek answered questions asked by the Commission.

Commissioner Bridges commented that she has a different perspective and believed the Comprehensive Plan was not compliant. She stated she might be mistaken but she believed that would all be determined by the Department of Community Affairs (DCA). She expressed that she was willing to abide by what the DCA says. She believed having served on the P&Z that they would take the exact position as citizens and as experts in their field and she thought they were following through with their open and honest interpretation of what they viewed. She proposed that they wait and hear what the DCA determines.

Commissioner Diebel responded that in the previous meeting the City Attorney said the City's legal position is that they are compliant. She commented that her cause for bringing the discussion forward was that they all have to abide by the City's position legally and they should acknowledge that and if they are going to have discussion that is in the shade about litigation, they should understand that it is their obligation to support the City's legal point. She addressed that the concern in this letter that was transmitted to the DCA was in direct conflict with the City's legal position with the Comprehensive Plan and it raises a conflict on a lower board. She said it was not an action item she was asking for but was simply creating a discussion.

Commissioner Metcalf agreed with Commissioner Diebel. He stated in positions of authority whether as an advisory board or as Commission, you take on certain responsibilities. He did not believe they could set themselves apart as a citizen on one hand and a board member on the other. He preferred that each board member make decisions on every project based on the standing/existing laws that the City has filed and has approved.

Mayor Strong stated he did not have a problem with approving any plan that is compliant with the Comprehensive Plan but that he did have a problem with approving something before the Comprehensive Plan is approved. He said they have an existing Comprehensive Plan until it is superseded by an approved one, not only by the DCA but now also by the court. He spoke about there being ways for a private citizen to express their opinion freely and would not hesitate from allowing that person to express themselves. He did not think Mr. Dick expressed his opinion as a P&Z member but rather as a member of another group. Mayor Strong stated that he would like to add this discussion in the shade meeting.

Commissioner Eckbert addressed his frustration with some of the content of the communication and what he believed to be the absence of factual misrepresentation in some of the communications. He contemplated if you could be on the P&Z board and have the power and responsibility and also have the ability to exercise your rights and free speech and authority as an independent citizen and pursue something against the position the City has taken. He thought that a petitioner in front of the City has a reasonable expectation to a fair hearing under the law of the City and that applies to boards as well. He believed that an applicant to the City could have a reasonable expectation that someone who has written a letter like this to the DCA would not be able to deliver a fair hearing to an applicant under the new Comprehensive Plan. He stated ultimately it is in that capacity that the Commission could perhaps appropriately assert its authority to remove or consider the service of a board member.

Mayor Strong agreed. He stated when there is an applicant the staff makes a recommendation to the boards and predicted that those boards give great weight to the staff recommendations, generally speaking. He believed this is delicate ground where they want people to have an open and honest debate about issues but at the same time follow the laws, actions, ordinances, and rules and regulations of the City.

There was further discussion on the content of the position papers. Mayor Strong reiterated discussing this in the shade meeting. Attorney Cheek stated that he would consider this and he would advise them at the beginning of the shade meeting and as they continue through it as to what they can and cannot talk about. He stated that the topic of the merits of the lawsuit is for the shade meeting but specifically speaking about the actions of a subordinate board member probably is not a shade meeting topic. He added that they would be dealing with the substantive issues related to the merit of Comprehensive Plan. Attorney Cheek read the P&Z removal provision from the Charter.

Attorney Cheek stated they would notice the special meeting and could have a public agenda at the special meeting as well. He stated this was not the kind of decision they could reach in a private meeting, it would have to be public. Mayor Strong stated if they were going to discuss this he would rather it be in a regular scheduled meeting on October 22 or a subsequent meeting.

Attorney Cheek commented he would encourage not only the Commission but any member of any board to refrain from participating in discussion or debates with the DCA about the merits of this lawsuit.

Discussion ensued regarding the Commissioner's schedules and when this would be discussed again. Mayor Strong asked that this be placed on the November 12 agenda for further discussion and possible action.

Mr. Knight reminded the Commission that the shade meeting was October 10 at 3:00 p.m. and the work session begins at 1:00 p.m. on October 15. Commissioner Eckbert stated they should have Mr. Fawcett at the shade meeting. Attorney Cheek stated he had sent him an email to see if he was available for that meeting but he has not heard from him yet. Attorney Cheek commented that hiring a special counsel is a legitimate topic of that meeting.

Not on agenda:

Commissioner Eckbert expressed concerns with residents discussing items not on the agenda such as the comments made this evening concerning a recall and that he believed the comments should have been stopped. He believed the comments made were inappropriate and stated this is a public policy making body and they were here to discuss actions that the Commission would take and it is not meant for political grand standing. He commented that he would attempt to protect any Commissioner whether he agreed or disagreed with them. He thought the ability to say whatever you want undermines true free speech and it would be appropriate to have more stringent assertion of that authority. He asked for consideration of that. Mayor Strong stated he agreed with him generally and he tends to air on the side of free speech to a fault and apologized if it offended him. He stated he would try to take note of that, it was a fair criticism and he accepts that and encouraged him or any Commissioner to let him know if he is not responding properly.

The meeting adjourned at 7:59 p.m.



Mayor David C. Strong

ATTEST:



City Clerk Cynthia Bonham