

REGULAR MEETING OF THE CITY COMMISSION
December 13, 2010

The meeting of the Winter Park City Commission was called to order by Mayor Kenneth Bradley at 3:33 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 Tom McMacken
Commissioner Carolyn Cooper (arrived at 4:00 p.m.)

Also present:

City Manager Randy Knight
City Attorney Larry Brown
Deputy City Clerk Michelle Bernstein

Approval of the agenda

Mayor Bradley moved Mayor's Report Items 1-5 to the beginning followed by Item 7B, 12A (1&2), and 12B and then followed the agenda as is. Commissioner McMacken moved to table Item 11B for the January agenda and withdrew his motion. **Motion made by Mayor Bradley to approve the agenda as amended; seconded by Commissioner McMacken and carried unanimously.** A short discussion followed by Mayor Bradley asking each Commissioner to provide their definition of a good meeting. They each provided their own input.

Board of Adjustment Update

Building and Code Enforcement Director George Wiggins introduced Lucy Morse, Chairperson of the Board of Adjustment. A Powerpoint presentation was provided that included their mission, their history and procedures, typical variance criteria, limitations, and the cases heard and not heard by the board. Ms. Morse summarized their role in the strategic plan and their future goals. She answered questions of the Commission.

Mayor's Report

1. Presentation of the Winter in the Park Holiday Window Contest

Mayor Bradley mentioned that this is the First Annual Holiday Window Display Competition. He said 25 stores from Park Avenue and Hannibal Square participated and they were judged in two different categories; \$500 Design Excellence Award and \$259 People's Choice Award in electric utility credits. He announced the winner for both categories was Bella, located on 329 North Park Avenue and thanked Susan Johnson for her wonderful display of 7,000 lights, 400 yards of ribbon and 700 ornaments.

2. Proclamation for St. Margaret Mary's Choir

Mayor Bradley introduced Ms. Kathleen Walsh, Principal of St. Margaret Mary School to recognize both the students and their instructors for their outstanding achievement. He noted that 48 children from the choir will be traveling to Rome to perform for Pope Benedict XVI at the Vatican later this month and they are 1 of only 15 choirs representing the United States. Mayor

Bradley proclaimed December 26-January 1 as "St. Margaret Mary School Choir Week". The choir sang two different songs. Mayor Bradley thanked them for their outstanding achievements and wished them a safe trip to Rome.

3. Presentation of the Winter Park Police Department SWAT Team Award

Officer Dave Arnott, Orlando Police Department, presented the members of the Winter Park Police Department with the SWAT Team Award for the best small agency of 100 sworn in staff or less. Officer Arnott explained that 82 teams from around the world attend this on a regular basis. He also commended Winter Park for finishing in second place in the Hostage Rescue Competition. Mayor Bradley thanked the Police Department for their efforts and their outstanding accomplishments.

4. Board appointment - Code Enforcement Board (alternate - to replace Terri Oster)

Mayor Bradley explained that the Chair of the Code Enforcement Board (Terri Oster) resigned and that alternate Larry Sadler has moved up to replace her. Mayor Bradley appointed Carl Sanford as the alternate; seconded by Commissioner Cooper; approved unanimously.

Mayor Bradley said there is an opening on the Environmental Review Board in January because there was a resignation. He recommended addressing this issue in January.

City Manager's Report

Mr. Knight wanted to follow up on the 90 day plan. Mayor Bradley recommended having a January work session. He asked Mr. Knight to provide information to them including the Charter information prior to their meeting date.

Commissioner Dillaha asked about the \$40,000 allocation of funds to go towards educational materials and signage for the plan concerning dog waste in City parks. Mr. Knight said he will get her a report this week on a status with fees and implementation. Parks and Recreation Director John Holland said the Keep Winter Park Beautiful Board is embracing this and will include a staff liaison. She asked Mr. Knight to include in his report a status update on the relief project.

Commissioner Cooper asked Mr. Knight to provide an update on the Procurement Policy. He indicated that he sent them a report via email. She asked for an update on the schedule of deliverables from the pension consultant and the staffing and programming for the Community Center. Mr. Knight acknowledged.

City Attorney's Report

- a. Extension request per SB 1752 of the Conditional Use permit for the Morse/Pennsylvania parking garage expansion.

Planning Director Jeff Briggs provided a brief history and summarized the request for an extension. He stated that Mr. Bellows and the property owners he represents that are involved with the project at Morse and Pennsylvania received a conditional use to add the fourth and fifth

levels to the parking garage. He said that last May they asked for an extension to that conditional use approval because it was about to expire and that the Commission granted a one year extension and added some additional conditions to that approval. He explained that subsequent to that, the property owner became aware of Senate Bill 1752 and felt that he was entitled under that legislation to an additional two year extension.

Mr. Briggs commented that they have a development agreement in place with additional conditions and those conditions have to be incorporated as an amendment to the agreement. It was noted by City Attorney Katie Reischmann that the client is entitled to a two year extension under Senate Bill 1752. Attorney Brown clarified that it is a two year extension from today and that it is probably subject to the conditions. He clarified that if Mr. Bellows came in and invoked his rights under Senate Bill 360, he would have been entitled to a two year extension back in May without any additional conditions and then under SB 1752 he would have been entitled to another two years of the original agreement with no conditions other than what was originally specified. He stated that the years are stacked back to back for a total of four consecutive years but that was not the procedure that was presented. Mr. Briggs clarified the dates saying it would have been from May 2010 for four additional years and as of now it is from December of this year for two additional years.

Commissioner Anderson asked if there is a specific action that is to be taken. Attorney Brown clarified that it would require an action; the minimum would be a two year extension from today with the understanding that there might be an occasion in the future where the City will have to reconsider whether or not to impose certain conditions which may or may not be valid.

Kim Booker, Booker and Associates, representing applicant Mr. Bellows explained that her client has been working diligently with the City since 2000 in meeting their requirements. She said Mr. Bellows would have been entitled to the extension under SB 360 when he requested the extension in May of this year and that they should have advised him. She said the right and fair thing to do is for the City to extend the conditional use permit for a total of four years without the conditions and dating back to May 2010 which is what they are requesting.

Motion by Commissioner Cooper to approve a two year extension under SB 1752 of the existing conditional use; seconded by Commissioner Dillaha. Commissioner Anderson asked if this was the City Attorney's recommendation. Attorney Brown commented if the conditions are sufficiently important to the City, that the City wants to put itself into a position to enforce these conditions then the answer is yes; his advice would be to grant them a two year extension under SB 1752 of the existing development agreement with all of the conditions in place, including those placed in May. **Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Dillaha, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.**

b. Dan Bellows tolling agreement.

Attorney Brown explained that the City has entered into a tolling agreement with three groups of development interests. He referenced the tolling agreement between the City and Mr. Bellows and said the agreement provides that at any time if the City determines that the negotiations are not moving in a productive way the City can terminate. He said at a prior Commission meeting they requested him to provide a status report. He explained that he interpreted it as a consensus that there was not adequate progress so he went ahead and terminated it. He said

since then, an issue was raised that the City did not officially want to terminate and said he may have misunderstood. He stated that he met with Mr. Bellows and if the City is interested in continuing the negotiations, they can reinstate the agreement. There was a consensus to reinstate the agreement for six (6) months.

c. Report on meeting with Supervisor of Elections on November 29, 2010 regarding date of municipal election.

Attorney Brown said he spoke with Bill Cowles, Orange County Supervisor of Elections regarding the piggybacking and that Mr. Cowles explained the difficulties of having the municipal election in November. He said that Mr. Cowles is willing to come to the Commission and provide detailed information including maps and charts and he can further explain some of the practical difficulties that would be presented if the City attempted to change the election to piggyback onto the statewide and national elections. He said that Mr. Cowles indicated that all of the large counties, such as Broward, Palm Beach, Duval and Pasco do not piggyback, they have a separate municipal election date and because of the overlapping in precincts with Winter Park and non-Winter Park voters, it would be very cumbersome and costly. Attorney Brown asked for direction.

There was a consensus not to have a work session and if it comes back up in six months they will address it at that time. Attorney Brown said he will inform Mr. Cowles in a letter and tell him they appreciate the offer to speak to them but at this time there will not be any movement on this issue.

d. Approval of commuter rail agreement amendment.

Attorney Brown noted that in the last negotiating meeting the individuals they are working with at Orange County made it very clear that they are accepting the redline version that was provided to the Commission on December 8, 2010, which includes the \$350,000 plus an additional \$245,000 in a liability claim year regarding termination if there is not a 100% dedicated funding source. He said that Orange County has this item on their agenda tomorrow for approval. He asked the Commission for direction. Commissioner Dillaha asked about the urgency of this to be signed and did not know why it is on Orange County's agenda and shared her concerns with rushing it through.

Motion made by Commissioner Anderson to approve the commuter rail agreement and send it to the Orange County Commission as presented to them for discussion; seconded by Mayor Bradley.

Commissioner Dillaha said Orange County's language is unacceptable and explained her rationale. She spoke about several issues including the liability and insurance expense language and the termination and indemnification language. Attorney Brown noted that Orange County indicated that this is as far as they will go and informed him to stop negotiating. He explained that this is the best he could negotiate under the deadlines that were imposed and that he cannot force them to accept or agree to our language. He mentioned that the current agreement addresses the glaring issues of legal risk in the existing language and in his opinion they have resolved issues such as the City has the right at any point in the agreement to terminate without any penalty other than the indemnity issue if there is not a 100% dedicated funding source.

Commissioner Dillaha said she would like to wait until the new Orange County Commission comes on board to try and work out a better deal. Commissioner Anderson suggested they sign off on the current deal since it is much better than what they previously had. He said they have accomplished almost everything in the big picture that they needed to and if the next Orange County Commission is going to be friendly, then they can revisit the topic and try to better it. He agreed that they have a great opportunity in front of them and wanted to take advantage of it since it solves and protects the residents, it gives the City the ability to opt out which they did not have and caps have been placed on expenses that otherwise would be uncapped.

Commissioner Dillaha agreed that it is better than what they previously had, but that it could be a lot better and she will not approve this because she feels they have been pressured by Orange County to do this. She preferred that the City Attorney review all of the new amendments and look at the potential impacts in the agreement to ensure we have the best deal that we can possibly get because she believes that once we lock into this agreement we will not be going back to negotiate again. Commissioner Anderson said there is a risk to the City to not approve this. He said there is always the possibility to improve it, but there is a risk that the new Orange County Commission might not agree with these new changes and then we could be worse off than where we are now and miss this great opportunity.

Commissioner Cooper said it is nice that they have been able to simplify the payment process and that the agreement no longer says "defray the cost", but instead says "dedicated funding must cover 100% of the costs." The idea that Winter Park can now terminate unless we have 100% dedicated funding throughout the entire term of the agreement may be an improvement. She is concerned with the new language defining "dedicated funding". In her opinion, the new language gives Orange County permission to take our local option gas tax which is currently included in our budget and call it "dedicated funding." She added that once Orange County defines our gas tax revenue as "dedicated funding" we no longer have a right to terminate and we no longer have a not-to-exceed cap on our annual commuter rail O&M payment. She said that both the "right to terminate" and the "annual cap" only come into play in the absence of a dedicated funding source.

Commissioner Cooper said her other problem is the new language stating we will use non-ad valorem taxes to fund commuter rail operations and maintenance costs and wants everyone to understand why she is so concerned about ad valorem taxes versus non-ad valorem taxes. She said in 2006/2007, citizens in Winter Park went door to door and collected signatures to give this community an opportunity to vote on commuter rail. On January 29, 2007 the Winter Park Commission passed Ordinance No. 2696-07 listing 3 sections requiring approval by the electors of the city: Section 1 – Use of City Owned Lands for Commuter Rail Station. Section 2 – Use of City Funds Related to a Commuter Rail Station. Section 3 – Use of City Funds to Support a Commuter Rail System. She indicated that on February 1, 2007 a special meeting was held by the Commission and only 3 members attended. At that meeting, they voted to delete Section 3, thereby taking away the right for citizens to vote on commuter rail O&M. She said citizens were told if there ever was a time where they would have to pay O&M, citizens were told, if there ever was a time Winter Park was asked to pay O&M, they would have an opportunity to vote on whether they would pay O&M.

She indicated that in this agreement's revised wording, it is very clear that the payment of the commuter rail O&M would come from non-ad valorem funds. The expenditure of ad-valorem funds requires a vote of the citizens but the expenditure of non-ad valorem funds does not. She

stated that in order for her to vote to approve this agreement funding commuter rail O&M with non-ad valorem funds, she would need to put this to a vote of the citizens of Winter Park. She said that they should table this so they can ask the citizens what they think and have our Attorney review the last three amendments. She said she does not care whether Orange County says we must stop negotiating or not, she thinks the people of Winter Park deserve an opportunity to understand the costs and they have a right to vote on it.

Mr. Knight provided input on the gas tax and said they can do it under the existing agreement but he does not concur with Commissioner Cooper's analysis. He believes she is taking a leap of faith as to what they mean. He said clearly if the state decides, which would take a legislative action, for the local option gas tax to be a dedicated funding source we could lose up to \$1,000,000 but that can happen to us with or without this agreement and no one has said the local option gas tax is going to be the dedicated funding source. He explained that the distribution formula for the local option gas tax applies to all of the cities and the county and he believes the other cities will not be excited about giving up their local option gas tax to fund the commuter rail especially if it does not go through their city.

Attorney Brown said there is nothing in this agreement that could or limits a future Commission as a matter of constitutional governmental authority from taking to the voters a referendum question on whether or not the City wishes to fund something. He said the dedicated funding source cannot be from City funds; however, Commissioner Cooper is correct that the City's cost of commuter rail may be funded from the same category or categories of funds due to all municipalities in the county subject to the condition that each municipality contributes its prorated share of such fund or funds for such purpose which means that would require other cities to lose the same tax source. If there is a qualifying funding source then he agrees that the not to exceed caps do not apply.

Commissioner McMacken said throughout this whole process his concern has been the ability for the City to opt out of this agreement if we decided to after the seven year funding which is his number one issue and he believes the current agreement covers his concern. He said he thought we gave clear direction as to where we wanted to be with this and that he does not like the liability deal but indicated that we put a cap on it should it occur, therefore we bought an assurance for ourselves at a cost that it will not exceed a certain amount. He had no doubt that after the seven year period is up, that there is going to be a tax to pay for this because he firmly believes they never pay for themselves and unless there is a dedicated funding source there will be a balloon mortgage that is going to come due on this system. He said his whole concern is to make sure that if it fails that Winter Park can get out of the deal without an enormous financial burden upon the citizens. He said he does not like the liability part of this and thinks the insurance part that is listed should be part of O&M.

Attorney Brown clarified that the \$245,000 will not be used to buy insurance. Commissioner McMacken said he challenged the City Attorney and City Manager to do two things, to get the opt out provision and to cap our exposure and he is going to stand by that. He said there are certain aspects that he does not like but they are at a point where he is very close on this one and believes that it addresses his concerns. Mayor Bradley thanked both Attorney Brown and Mr. Knight for all of their hard work they have done to this point negotiating very well on behalf of our City and with the direction that the majority of the Commission has provided.

Peter Weldon, 700 Via Lombardy, said there is nothing that precludes a future City Commission from asking the voters for approval to spend their money for the O&M costs at that time and that opportunity will always exist for this under this agreement. He urged the full Commission to cast a yes vote for these amendments affirming Winter Park's participation in the Sunrail system.

Patrick Chapin, 151 W. Lyman Avenue, said the agreement is not perfect but it is much better than it was especially since they now have the option to opt out, in which he calls a 7 year safety net in place. He urged the Commission to vote yes.

Tom Shutts, 2010 Brandywine Drive, said he is an advocate of having the best deal possible. He shared his concerns especially with the dedicated funding source and said if it is not enough they could be looking at tapping into the \$350,000 and then the \$245,000.

Nancy Shutts, 2010 Brandywine Drive, said there is no urgency to sign this document and suggested that they look at having better insurance liability issue information included and that we should ask Orange County one more time, because if we do not ask we will never know.

Commissioner Dillaha asked Attorney Brown if it is prudent to have him to look at the three new amendments. He said no and that it will be counterproductive to go back to Orange County and tell them we have decided to keep negotiating. He thinks there is a substantial risk that will be received very poorly and therefore the substantial ground they have gained with this version would be in jeopardy, but if they want to take that risk and instruct him to keep working with Orange County, then he will find out if they have a negotiating partner and if that is the will of the Commission he is willing to do that.

Commissioner Dillaha then spoke briefly about adverse impacts and said she cares about our rights in the event there are adverse impacts and this is one of the reasons she is not going to support this. Commissioner Dillaha said after working on this for many years, she is opposed to the project and has been ever since the beginning. She said the reason is because it is the epitome of everything that the voters on November 2 voted against. She stated for the record, that it is not in the benefit of our citizens and taxpayers.

Commissioner Anderson said he believes we should be doing things in the best interest of our citizens and residents to help protect them and that is precisely why he is voting for it.

Commissioner Cooper said that it is very important that everyone realize that voting yes or no on this agreement is not a yes or no vote for commuter rail. That is already done and they are talking about if this is the best agreement for Winter Park. She did not feel the sense of urgency and wanted to have an agreement that our Attorney feels includes the best words. She said she would like to see what he thinks is the best contract and then she believes it would be the responsibility of this Commission to decide whether they see it as a good contract for Winter Park and if they do to, send it to the Orange County Commission. She thought that asking Mr. Knight or Attorney Brown to go and negotiate again even after they told us they cannot is probably not the best decision, but that does not mean that we have to settle for what we have been given. She stated we can ask the Attorney to write an agreement that he sees is a good agreement for Winter Park and then the five of them can go down to Orange County and tell the new Mayor what we believe is a good agreement for Winter Park and ask Orange County if they can consider it. She did not think this agreement is in the best interest of Winter Park.

Motion made by Commissioner Cooper to table until such time as our Attorney has provided them with an agreement that he believes is in the best interest of the City of Winter Park; seconded by Commissioner Dillaha. Upon a roll call vote, Mayor Bradley and Commissioners Anderson and McMacken voted no. Commissioners Dillaha and Cooper voted yes. The motion failed with a 3-2 vote.

Commissioner McMacken replied to Commissioner Cooper's statement and said that he believes that Attorney Brown and Mr. Knight negotiated with the best interest of Winter Park. He said they did not go down there to say they were going to sell out, they went down there to get the best agreement and he believes they have done that. He indicated that he has a great deal of respect in Attorney Brown's ability to negotiate and that is one of the reasons why he is confident in what he has brought back and also with his assessment of the situation. Mayor Bradley said they did a majority of the negotiating and were able to take care of at least two or three issues of concern.

Upon a roll call vote to approve the agreement, Mayor Bradley and Commissioners Anderson and McMacken voted yes. Commissioners Dillaha and Cooper voted no. The motion carried with a 3-2 vote.

A recess was taken from 9:22 p.m. to 9:38 p.m.

Non-Action Items

No items.

Consent Agenda

- a. Approve the minutes of 11/22/2010. **PULLED FROM AGENDA FOR DISCUSSION. SEE BELOW.**
- b. Authorize the landfill rate increase of 1.9% or \$0.28 per residential unit and 2.7% or \$0.17 per cubic yard for commercial customers in accordance with the City's contract with Waste Pro. **PULLED FROM AGENDA FOR DISCUSSION. SEE BELOW.**
- c. Approve the continuing engineering services contract with CH2M Hill and CDM.
- d. Accept the presentation of the 2011 Fire Rescue Department's Standards of Cover and apply the performance baselines and benchmarks for all services of the agency. **PULLED FROM AGENDA FOR DISCUSSION. SEE BELOW.**
- e. Authorize staff to change the current process of providing meeting agenda packages by having the Commission download the package from the City's website versus copying CD's.
- f. Approve award (contingent upon FDOT concurrence) of IFB-1-2011 to Empower Construction, Incorporated for the Lakemont Avenue Resurfacing Project at \$242,064.51 and for the Phelps Avenue Resurfacing Project at \$78,411.00; authorize the Mayor to sign agreements for Lakemont Avenue and Phelps Avenue projects; Approve Purchase Requisition 145807 for the Lakemont Avenue project; 242,064.51. Approve Purchase Requisition 145808 for the Phelps Avenue project; \$78,411.00
- g. Approve award of IFB-31-2010 to West FL Maintenance, Inc. for the exterior painting of Public Safety Compound; \$28,300.00.
- h. Approve the purchase of limerock roadway base material for special construction projects and roadway maintenance and replacement; authorize staff to use a quote system outside the standard purchasing practice to obtain the most competitive

- price; authorize issuance of corresponding limerock purchases via city credit card to ensure the best available commodity price.
- i. Authorize the purchase of concrete materials for special construction projects and roadway maintenance and replacement; authorize staff to use a quote system outside the standard purchasing practice to obtain the most competitive price; authorize issuance of corresponding limerock purchases via city credit card to ensure the best available commodity price.
 - j. Approve the following purchases and contracts:
 - 1. PR 145817 to Dyer, Riddle, Mills and Precourt, Inc.; \$98,906.23 for Certified Engineering Inspection and EEO/DBE Contract Administration Services for the Fairbanks Avenue Pedestrian Improvement and Intersection Realignment Projects
 - 2. PR 145835 to Software House International, Inc. for annual Microsoft enterprise software support; \$60,299.00
 - 3. PR 145839 to Alan Jay Chevrolet for the purchase of 2011 GMC Savana; \$25,327.50.
 - 4. Authorize the Mayor to execute the Products and Services Agreement with Centurylink Sales Solutions, Inc. for Contract Number 10KCLI89SG8N for the purchase of Cisco Network Equipment
 - 5. Approve Second Amendment to the Technology & Business Services Agreement with GATSO USA, Inc. and authorize the Mayor to execute the Second Amendment.
 - 6. Approve piggybacking Orange County contract #Y10-161 with Cemex Construction Materials Florida, LLC for Limerock Road Base and authorize the Mayor to execute the Piggyback Contract
 - 7. Approve piggybacking Orange County contract #Y8-906A with Nodarse/Page One Joint Venture for Utilities Continuing Geotechnical Engineering Services and Material Testing and authorize the Mayor to execute the Piggyback Contract
 - 8. Approve piggybacking Orange County contract #Y9-906B with Nodarse/Page One Joint Venture for Continuing Geotechnical Engineering and Construction Materials Testing Services and authorize the Mayor to execute the Piggyback Contract
 - 9. Approve piggybacking City of Orlando contract # BI08-2357 with Florida Irrigation Supply, Inc. for the purchase of Irrigation and Sprinkler Supplies and authorize the Mayor to execute the Piggyback Contract
 - 10. Approve piggybacking Seminole County contract #IFB-600325-08 with Fausnight Stripe & Line, Inc. for Roadway Markings, Striping & Brick Texture Surfacing for Traffic Engineering and authorize the Mayor to execute the Piggyback Contract.
 - 11. Approve piggybacking the State of Florida contract #071-000-11-1 the purchase of motor vehicles and authorize the Mayor to execute the Piggyback Contract for specific vehicle purchases.

Motion made by Commissioner McMacken to approve items 'c', 'e', 'f', 'g', 'h', 'i' and 'j' 1-11; seconded by Commissioner Cooper and carried unanimously with a 5-0 vote.

Consent Agenda Item 'a' – Approve the minutes for 11/22/2010

Commissioner Cooper said an email was sent to the City Clerk relative to their Mead Garden discussion asking to include all of the language from the actual memo because she was afraid it would not be included. That language was added to the minutes. Commissioner Anderson said he was hoping to go back to the audio file and listen to what he said because he thought he said they wanted a feasibility of the botanical garden as well. Mayor Bradley and Commissioner McMacken also recalled that. Commissioner Anderson asked to table the minutes until he has listened to the tape and to adopt them at the next meeting.

Motion made by Commissioner McMacken to approve all but the Mead Gardens section which will come back for approval at the next meeting for finalization; seconded by Commissioner Anderson and carried unanimously with a 5-0 vote.

Consent Agenda Item 'b' - Authorize the landfill rate increase of 1.9% or \$0.28 per residential unit and 2.7% or \$0.17 per cubic yard for commercial customers in accordance with the City's contract with Waste Pro.

Mayor Bradley asked Mr. Knight if they are forced by their agreement to do this or is it something they can negotiate. Mr. Knight indicated that Orange County landfill raised their costs and our contract allows for it to be a straight pass through to us because it is something that is beyond their control. He clarified that the approval is for this year's increase. He said that currently we do not have a long term contract and they have started to investigate other options since Orange County will not take our hazardous waste. He said they have a meeting scheduled for January 18, 2011 with them to try and resolve both of these issues. Mayor Bradley asked the City Manager to add this to his report and update them on this issue. Mr. Knight acknowledged. Commissioner Dillaha said she cannot approve it because she does not know what the alternative is.

Motion made by Commissioner Cooper to approve Consent Agenda item 'b'; seconded by Commissioner McMacken and carried with a 4-1 vote; Commissioner Dillaha voted no.

Consent Agenda Item 'd' - Accept the presentation of the 2011 Fire Rescue Department's Standards of Cover and apply the performance baselines and benchmarks for all services of the agency.

Commissioner Cooper asked to change the population reference on page 20 so that Winter Park's population is included in the demographics section. She said she spoke to Fire Chief White regarding the impact of call volume from the Ravaudage property as referenced on page 50. Chief White said he will speak to the property owner Mr. Bellows. He also clarified the definition of Suburban and the difference between Benchmark and Baseline measurements as referenced on page 114. She shared her concern with the current and future level of service and suggested they should start looking at and talking with the citizens about a potential future tax increase to help with the escalating costs of fire and police services.

Motion made by Mayor Bradley to accept the presentation and the continuation of it as part of our accreditation process; seconded by Commissioner Cooper, and carried unanimously with a 5-0 vote.

Action Items Requiring Discussion:

a. State Office Building

CRA Director Dori DeBord said as of the December 6, 2010 work session, Concord Eastridge has not come forward with a revised proposal to the City. Since they could not take an official action at the work session, Ms. DeBord asked the Commission to formally authorize staff to continue to move forward with negotiations with Concord Eastridge and ask them to provide a conceptual financial lease term for consideration as part of the overall lease. She asked the Commission to put a delivery due date. She explained that they would like to present it to the Commission by January 24, 2011 which would give them ample time to review the terms, provide them with an analysis and to allow enough time to put it on the agenda.

Commissioner Dillaha said she likes the idea of going forward with what they had discussed at the work session which is the valuation of the property and continue with CEI negotiations. Commissioner McMacken said he is in favor of continuing discussions with CEI. Discussion ensued regarding the due date.

Motion made by Commissioner Dillaha to continue negotiating with CEI on the topic of the valuation of the property and that CEI would have to come back to them in time for our second meeting in January for it to be an agenda item; seconded by Commissioner McMacken.

Motion amended by Mayor Bradley that the minimum value be at \$3.75 million; seconded by Commissioner Anderson.

Motion amended by Commissioner Cooper that the minimum value be at \$3.5 million; seconded by Commissioner Dillaha.

Discussion ensued regarding the minimum threshold dollar amount. Mayor Bradley said he is concerned with no response from CEI since the work session on December 6, 2010. Commissioner Cooper clarified that the dollar amount they are talking about is net present value of the entire deal and there was a consensus that she is correct.

Peter Weldon, 700 Via Lombardy, said it is very important to thank CEI for their interest in investing their capital in Winter Park. He said he can see a valuation of \$3.5 million but only if there is an escalation clause that captures the future value of this land over the next 50 years for the benefit of the citizens.

Craig Starkey, 401 W. Colonial Drive, representative of Concord Eastridge, apologized for them not responding due to a Federal court related matter. He said they heard the \$3.5 million number and that is the figure they are shooting for.

Motion amended by Commissioner Cooper to allow our inaction to be action and she clarified by saying that they make no further motions. Mayor Bradley said she could table but moving to not act she could probably vote no and let the motion die, which led to a short discussion regarding the clarity of her motion. **Commissioner Cooper withdrew her motion.**

Upon a roll call vote on the amendment (that the minimum value be at \$3.5 million), Mayor Bradley and Commissioner Cooper voted no. Commissioners Anderson, Dillaha and McMacken voted yes. The motion carried with a 3-2 vote.

Upon a roll call vote on the amendment (that the minimum value be at \$3.75 million), Mayor Bradley and Commissioner Anderson voted yes. Commissioners Dillaha, Cooper and McMacken voted no. The motion failed with a 3-2 vote.

Upon a roll call vote on the motion as amended (to continue negotiating with CEI on the topic of the valuation of the property and that CEI would have to come back to them in time for our second meeting in January for it to be an agenda item and that the minimum value be at \$3.5 million), Mayor Bradley voted no. Commissioners Anderson, Dillaha, Cooper and McMacken voted yes. The motion carried with a 4-1 vote.

- b. Extension of Tennis Center Management contract of the Winter Park Tennis Center with High Performance Sports Management, Inc.

Commissioner Dillaha said there are recommendations or changes that she would like to make and asked if it can be addressed at the next meeting or in a work session. Parks and Recreation Director John Holland said there is a contract term that states approximately 60 days prior to the expiration of the contract, which is February 15, 2011, they have to notify the Contractor as to the City's intent to continue or not. He pointed out that they have a few days to decide; however, they also have a 30 day cancellation clause in the contract which would override any action.

Motion made by Commissioner McMacken to extend the current contract for a period of 30 days; seconded by Mayor Bradley. There was a brief discussion regarding the timing. There was consensus to have it completed by January 10, 2011 otherwise they can extend it for another 30 days. **Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Dillaha, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.**

- c. Design and construction process for golf course Starter's House

Mayor Bradley requested to table this item and to discuss it in a work session format either before the first meeting in January 2011 or for the second meeting in January. There was a consensus to do so. Mayor Bradley asked if there are any time constraints. Mr. Knight indicated that they were asking to reject the current process and they were going to present a new process. Mayor Bradley asked if they have to reject the other process. Mr. Knight said formally it was an RFP process and that it can wait. Mayor Bradley said they will hold off on it at this point.

- d. January 13, 2011 town meeting format

Communications Director Clarissa Howard asked the Commission for direction concerning the format they would like to use for the upcoming town meeting and indicated that staff recommended following the January 2009 format. There was a consensus to have a 5 minute introduction video, followed by a 5 minute speech by Mr. Knight and then Mayor Bradley. Mayor Bradley recommended providing an opportunity for the citizens to submit their questions either

via email or some other way in case they could not attend. Ms. Howard said the town meeting information is listed on our website allowing citizens to submit their questions ahead of time or at the meeting or they can ask their question during the meeting. He also suggested using the rules that they currently have under public comment. Discussion also included whether residents should be given first priority to ask their questions.

Ms. Howard noted that there will be ground rules in place for questions to be addressed as a Commission body and not towards individual commissioners and no slanderous or personal comments will be allowed. It was agreed to hold the meeting at the Civic Center starting at 7:00 p.m. and ending at 8:30 p.m. Ms. Howard mentioned that the meeting will be tweeted and face booked but it will not be broadcasted live. Commissioner Cooper recommended to have the meeting recorded and then put the audio file on the website. She asked the City Manager to provide a highlight of all the departments. There was a consensus to use the timer with a 3 minute maximum.

Public Hearings

- a. (1) Ravaudage update.
- (2) AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING ORDINANCE NUMBER 2789-09 TO EXTEND THE DEADLINE ESTABLISHED IN SECTION TWO BY ONE YEAR. First Reading

Attorney Brown read the ordinance by title. Planning Director Jeff Briggs provided a brief history and update on the Home Acres/Ravaudage project. He explained that the approval of the Ravaudage project by Orange County is a two step process. Step One is the Comprehensive Plan amendment process to establish PD future land use, which was adopted on October 19, 2010. Step Two is the establishment of PD zoning. This is the step at which conditions of approval are placed upon the project/zoning. He indicated that the applicant has submitted the plans and traffic study to Orange County. These are conceptual plans as to the entitlements and development standards. Unlike in Winter Park, there is no specific approval process in Orange County for the individual buildings (other than building permits). So this is the only time (unless annexed) that the cities of Winter Park and Maitland can influence the development standards for this project. Pursuant to the action of the City Commission on May 10, 2010, a letter has previously been sent asking for two conditions of approval on the Ravaudage PD zoning which are:

1. That the development shall have a maximum floor area of 100%, and
2. That the net density shall not exceed 17 dwelling units per acre.

Generally, the Ravaudage project, as presented to Orange County, meets these two criteria. However, there are three other major issues that need to be decided which involve the maximum building height, the perimeter setbacks and traffic impacts from this project. He then explained by indicating that the Ravaudage project is requesting up 8-12 story buildings in the middle of their project and 1-4 stories on the exterior of the project. In the combined 15 square miles of the cities of Maitland (east of I-4) and Winter Park, the tallest buildings permitted are 6 stories and 80 feet in height (not counting architectural appendages). It does not seem to make sense for this property surrounded by the two cities to have 8-12 story buildings inconsistent with the character of the adjoining cities.

Mr. Briggs then spoke about the perimeter setbacks and that Orange County PD zoning has flexible building setbacks within the interior of a project but it requires a minimum of 25 feet as a setback on the perimeter of the project. Ravaudage is asking for a variance to have 15 foot building setbacks on the perimeter of their project such as along 17-92 and Lee Road. In order to avoid a repeat of the situation in Maitland at 17-92/Lake Kennedy, it would seem logical to ask Orange County to maintain the 25 foot perimeter setback requirement.

Mr. Briggs commented on the traffic impacts and said that no one knows if the actual development of Ravaudage will come close to the almost 1.7 million square feet of entitlements or whether the density and height of buildings will be far less. In any case, the new traffic generation is a cause for concern. This project is part of Orange County Transportation Concurrency Exemption Area. Their "big picture" philosophy is to concentrate growth in urban areas and not to encourage growth/sprawl in suburban areas of the county. As a result, this project has to do "a whole lot of nothing" to comply with Orange County's transportation concurrency requirements.

Since there will be no road widenings or other traffic capacity improvements, a key ingredient will be to construct new traffic lights to accommodate safely, the turning movements into and out of this project. A new traffic light is proposed on 17-92 at Solana Avenue and on Lee Road at Bennett Avenue (realigned to line up with Executive Drive). Both the developer and the cities agree that these new traffic lights are needed improvements. The important condition at this time is to establish thresholds or triggers of construction that will necessitate the new traffic lights. Mr. Briggs asked the Commission for direction to request that Orange County establish the following conditions of approval on the PD zoning:

1. That the development shall have a maximum floor area of 100%, and
2. That the net density shall not exceed 17 dwelling units per acre, and
3. That the maximum building height be 6 stories and 80 feet, exclusive of architectural appendages, and
4. That the project be required to maintain the PD requirement of 25 foot perimeter building setbacks, and
5. That the project be required to implement the first of two new traffic light improvements (on US 17-92 at Solana Avenue and/or on Lee Road at Bennett Avenue realigned with Executive Drive) when building permits exceed 151,000 square feet of construction and that the second traffic light must be implemented when building permits exceed 490,000 square feet.

Peter Weldon, 700 Via Lombardy, asked about the recommendations to Orange County and for clarity regarding the maximum residential density allowable under Orange County PD plan for this space. Mr. Briggs clarified the item.

Mr. Briggs then explained the de-annexation ordinance and said there are five parcels that are involved. Mr. Briggs explained that Benjamin Partners Ltd. is asking the City Commission to extend the deadline for the de-annexation Ordinance No. 2730-08 that was originally adopted on February 11, 2008. The City Commission previously extended the deadline until January 28, 2011, via the adoption of Ordinance 2789-09. It is Orange County's position that when a property is de-annexed, it has no zoning of any kind until Orange County subsequently establishes a Comprehensive Plan designation and zoning category. As a result, Orange County originally asked the City in 2008, to put a deadline for them to establish zoning into this

de-annexation ordinance; otherwise until the zoning is established by Orange County, the properties are not officially de-annexed.

Mr. Briggs noted that staff is recommending approval of the proposed ordinance providing another year for the process to be completed. Commissioner Cooper asked what the pros and cons are of the de-annexation agreement whereby Mr. Briggs elaborated. Commissioner Dillaha shared her concerns with no open space or park space being provided because Orange County has very minimal open space requirements and recommended that open space or park space be required in the development agreement. An overall discussion ensued regarding the setbacks and building heights with each Commissioner providing input. Commissioner Cooper shared her concerns with the need for a potential future fire station location. Attorney Brown said there will be another time to deal with the specifics of this item and that it is not required to be addressed at this time.

Motion made by Mayor Bradley to recommend to Orange County that properties that are or could be within the City of Winter Park at some point in the future fall under our Planned Development Code; seconded by Commissioner Anderson. Commissioner Cooper asked for discussion regarding floor/area ratio and shared her concerns. **Mayor Bradley asked that his motion include the following: to adapt it to a 100% FAR and 17 per acre as previously acted. Mayor Bradley then restated his motion to recommend to Orange County that properties that are or could be within the City of Winter Park at some point in the future fall under our Planned Development Code and the agreement of 100% FAR and 17 per acre; seconded by Commissioner Anderson.**

Motion amended by Commissioner Cooper that the width of a building at a perimeter street frontage be limited to 200 feet; seconded by Commissioner McMacken.

Mr. Briggs defined open space or park space and said our requirement and Orange County's is 25%; however, our definition is completely different. Commissioner Dillaha asked for clarification regarding the setbacks. Mr. Briggs said it is a sliding scale of 20-25-30 feet depending on the height of the building. She shared her concerns with setbacks for traffic impacts and wanted to make sure the setbacks are adequate for the location.

Motion amended by Commissioner Cooper to include:

1. That the development shall have a maximum floor area of 100%, and
2. That the net density shall not exceed 17 dwelling units per acre, and
3. That the maximum building height be 6 stories and 80 feet, exclusive of architectural appendages, and
4. The traffic light as per staff's recommendation with associated turning lanes for stacking; seconded by Commissioner McMacken

Upon a roll call vote on the amendment, Mayor Bradley and Commissioners Anderson, Dillaha, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

Upon a roll call vote on the main motion, Mayor Bradley and Commissioners Anderson, Dillaha, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

Motion made by Mayor Bradley to accept the ordinance on first reading to extend the deadline per the ordinance which has been presented before them; seconded by Commissioner McMacken. Mr. Knight clarified Commissioner Dillaha's concern regarding our recommendations and that Orange County does not have to approve our annexation. Attorney Brown further clarified that the developer would have to approve it. **Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Cooper and McMacken voted yes; Commissioner Dillaha voted no. The motion carried with a 4-1 vote.**

A recess was taken from 5:26 p.m. to 5:47 p.m.

- b. Request of the Winter Park Towers: Final Conditional Use Approval pursuant to the Preliminary Conditional Use Approval granted on June 28, 2010 at 1111 S. Lakemont Avenue.

Planning Director Jeff Briggs provided a brief history. He noted that the Winter Park Towers at 1111 S. Lakemont Avenue is requesting "Final" Conditional Use approval pursuant to the "Preliminary" Conditional Use approval granted on June 28, 2010. In summary, the "preliminary" approved development plans allow the construction of a four level parking garage, a lakefront four story residential building of twenty-four units, 47 feet above existing grade; a five story, 55 foot tall, 30 unit residential building adjacent to the northern side of the proposed parking garage and a 20 unit, two story, garden apartment residential building in the area of the western portion of the existing parking lot. He spoke about the stormwater retention, the building height and proximity to Lake Berry, the tree preservation and compensation, the garden apartment building, architectural considerations, and the development agreement.

Mr. Briggs said that staff is recommending final conditional use approval, subject to the following conditions: (1) that a tree compensation split calculation between phase I and phase II be submitted to the City; (2) that a certified arborist be on-site during demolition and construction as necessary to ensure the protection and safeguard the survival of the existing trees to remain; (3) that a stormwater maintenance plan be adhered to for both the exfiltration system and the swale/berm along the lakeside; and (4) that landscaping be added lakeside of the curb retaining wall for the oak tree on the lakeside. He noted that the final Development Agreement has been prepared by the City Attorney to incorporate these approvals and the conditions/restrictions that were previously approved.

Commissioner Cooper asked about the encroachment of the building on the drainage ditch. Mr. Briggs said the building adjacent to the drainage ditch is 10' away from the bank. Stormwater Director Don Marcotte said the building does not encroach into the drainage ditch area and there is a ditch pipe system that goes down parallel to that building. Commissioner McMacken asked if as-built information is required at the end of the project and the verification of building heights. Mr. Briggs said even for a two story home they require a surveyors certificate of the building height at the roof framing stage so at an early part of the construction process of this lakefront building, they will need to bring in a surveyors certificate that it meets the 47' from the specified elevation.

Commissioner Dillaha asked what is asked of the applicants for final approvals. Mr. Briggs noted that there is a list of submittal requirements in the code and a checklist to adhere to. He further explained the process by saying that the applicant must submit proper and sufficient

paperwork in order to obtain final approvals. Mayor Bradley asked if the southernmost road and main entrance road are being aligned or realigned. Mr. Briggs provided clarity.

Commissioner Anderson disclosed that he had no ex-parte communication with anyone at Westminster regarding this project since their last vote. He did disclose his involvement with Westminster Retirement Communities as a previous board member and that he currently serves on a finance committee, but there is no compensation in any of those services.

Commissioner Dillaha disclosed that she had ex-parte communications with receiving emails from Mr. John Webb concerning this issue and she contacted the St. John's River Water Management District to verify project requirements.

Mayor Bradley disclosed his ex-parte communications with receiving numerous emails concerning this issue, but he has not had any other communication with any representatives of the applicant since their last vote. He stated that he has also received an anonymous letter but because it was anonymous he did not declare it as ex-parte communication.

Commissioner Cooper disclosed that she had ex-parte communications with receiving emails from Mr. John Webb and an anonymous letter concerning this issue. She also contacted Linda at the Winter Park Towers to inform her that some citizens at the Towers were interested in attending the Commission meeting so that they could provide a bus. Beyond that, she told everyone that she could not meet with them and she has not.

Commissioner McMacken disclosed that he had ex-parte communications with receiving the same emails from Mr. John Webb and an anonymous letter concerning this issue. He also has indicated to anyone that requested to meet with him that he would not be able to do that due to the nature of this project and has not had any further conversation involving that.

Rebecca Furman of the Lowndes, Drosdick, Kantor and Reed law firm and representing the residents of WPT explained that the process has taken over 4 years and to date they have spent over \$850,000 in professional fees. She informed the Commission that this money is paid by the residence fees and it shows how serious they are with the submittals produced. She explained that they are in compliance with the Comprehensive Plan, the zoning and the conditions of approvals that were placed during the preliminary approvals and are not asking for any waivers or variances. She mentioned that the architecture has improved significantly between the preliminary and final and was approved at the beginning of November 2010 by the P&Z Commission. A slide presentation was provided by Ms. Furman illustrating the final site plan, grading and drainage plan, site utility plan, stormwater report, tree protection/compensation/landscape plans, cross section plan and perspective elevations. She spoke about each item including the entrance points of the site, the updated survey, the setbacks, the Lake Berry elevations, the building heights and limitation, and the developer's agreement. She then answered questions of the Commission.

Mr. Sam Sebaali, President of Florida Engineering Group, spoke regarding the stormwater requirements, the approval process and the steps they have taken to be sufficient for the criteria required by the SJRWMD and the maintenance. He also explained the environmental water swale and said they felt they needed that flexibility because if the SJRWMD requests it, they will have it. He said they felt from an environmental standpoint it would be a good benefit for both the City and the public even though the City had made a suggestion not to provide any facilities

on the lake side. He said they could permit the project without the swale but they felt it is a good element for everyone that is concerned with the lake. He said the drainage system consists of three facilities and explained each component. He indicated that the system improves the current stormwater conditions and that it does not disturb the drainage ditch or floodplain. He said the environmental swale helps protect Lake Berry and that it would be important to include since it will be a good measure of adding to the water quality and from a drainage standpoint it will improve the existing conditions. Mr. Sebaali then answered questions of the Commission.

Ms. Furman listed the major points of the development agreement and said they have agreed to the following requirements: that this remain senior housing; the garage will not be visible from Lake Berry, use of darksky light features, includes a traffic signal provision, puts a cap on density, provides restrictions on purchases within Water Bridge, build a wall for Water Bridge, provide a certified arborist on site during demolition and construction, stormwater retention requirements including maintenance and retention areas, and to pay impact fees but clarified that school impact fees are not applicable by state law.

Ken Linehan, Principal of Fugleberg Koch Architects, provided a 3-D architectural presentation including a partial interactive "fly-over" showing the entrance to the site, the height of the buildings and view from the lake and provided a cross section through the lake. Commissioner McMacken asked about the survey dimension to be used. It was confirmed 83.57 which are shown on the survey. He also asked what standards they will use for the darksky requirements. Mr. Linehan said they follow the darksky.org requirements and they would typically use those fixtures that are specifically darksky geared. Commissioner McMacken asked if they could include that in the developer's agreement. Mr. Linehan suggested to say that the associated products being used are to be specially deemed darksky required literature or through endorsement and they have no objection adhering to this requirement.

Commissioner Dillaha suggested adding specific language regarding impact fee requirements and to list the dollar amounts in the developer's agreement. Ms. Furman said they will agree to pay their impact fees but she is uncomfortable at the outset and said there is a formula in the city code that they will adhere to, which is based upon the number of units. She explained that they have 10 years to do Phase II and the City may increase their fees so they really cannot agree to those fees since it is very unclear. Attorney Brown said it is not customary to put a dollar amount in the agreement when they have phases since the fee may adjust over time. Commissioner Dillaha had concerns about the monitoring of the tree compensation. Ms. Furman said she believes that is one of the reasons why they are being required to pay a certified arborist to be onsite during both the demolition and construction in which they have agreed to, along with the landscaping requirements.

Mayor Bradley asked staff if the Lake Berry Homeowner association provided any information. Mr. Knight said no.

John Webb, 697 Balmore Road spoke on behalf of Lake Berry HOA, said there are approximately 30 members in their association and they have not taken any formal actions on this. He said he has attended the last three meetings and said the elevation requirements have changed every time. He shared his concerns with SJRWMD requirements, the drainage outfall and the overall approval process. He said the developer's agreement is inadequate and the setback is an important item for them to address.

Motion made by Commissioner Anderson for approval with the recommendations from the P&Z Commission which are: 1) that a tree compensation split calculation between phase I and phase II be submitted to the City; (2) that a certified arborist be on-site during demolition and construction as necessary to ensure the protection and safeguard the survival of the existing trees to remain; (3) that a stormwater maintenance plan be adhered to for both the exfiltration system and the swale/berm along the lakeside; and (4) that landscaping be added lakeside of the curb retaining wall for the oak tree on the lakeside; seconded by Mayor Bradley.

Motion amended by Commissioner McMacken that the light fixtures used, that the product information certifies them as darksky fixtures and that gives us a way to verify that one condition; seconded by Commissioner Anderson. It was agreed that this amendment be included in the original motion so it would now have 5 conditions.

Motion amended by Commissioner Dillaha to include Attorney Katie Reischmann's clause #27 that refers to all impact fee requirements. Attorney Brown said that item is referenced on Page 11 and 12 of the actual developer's agreement; therefore, the amendment was withdrawn.

Commissioner Cooper asked if they have an easement over the drainage. Attorney Brown said it will be forthcoming as a separate item. Mr. Knight said it would be a requirement of the permitting. Ms. Furman clarified that this has never been a building permit requirement and said they will be happy to work through it and provide it but they are requesting not to have it be a requirement for a building permit. Attorney Brown said that Ms. Furman is on the record to provide this easement and he is comfortable that in good faith they will work toward a commercially reasonable form of easement and it should not be an impediment. Public Works Director Troy Attaway said a typical way they have handled it is upon Certificate of Occupancy. Commissioner Dillaha asked about the process if the SJRWMD requires changes. Attorney Brown said if there is a material change to the project as approved they would have to come back through the process for approval. Commissioner Cooper asked if that material change is defined in the conditional use code and it was confirmed as yes.

Motion amended by Commissioner Dillaha to add "City Commission Approval" in Item #14 "Modifications Must Be in Writing" on Page 9 of the Developers Agreement so that it reads "No modification or termination of this Agreement shall be valid unless executed in writing and signed by the applicable duly authorized representative of the City, City Commission Approval and Owner"; seconded by Commissioner Cooper. Attorney Brown said that is a very reasonable request that is consistent with the ordinance that was recently enacted. Upon a roll call vote on the amendment, Mayor Bradley and Commissioners Anderson, Dillaha, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

Upon a roll call vote on the main motion, Mayor Bradley and Commissioners Anderson, Dillaha, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

For clarification purposes, the final adoption motion is as follows:

1) that a tree compensation split calculation between phase I and phase II be submitted to the City; (2) that a certified arborist be on-site during demolition and construction as

necessary to ensure the protection and safeguard the survival of the existing trees to remain; (3) that a stormwater maintenance plan be adhered to for both the exfiltration system and the swale/berm along the lakeside; (4) that landscaping be added lakeside of the curb retaining wall for the oak tree on the lakeside; (5) that the light fixtures used, that the product information certifies them as Darksy Fixtures and that gives us a way to verify that one condition; and (6) to add "City Commission Approval" in Item #14 "Modifications Must Be in Writing" on Page 9 of the Developers Agreement so that it reads "No modification or termination of this Agreement shall be valid unless executed in writing and signed by the applicable duly authorized representative of the City, City Commission Approval and Owner"

A recess was taken from 7:13 p.m. to 7:28 p.m.

- c. ORDINANCE NO. 2833-10: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING" SO AS TO AMEND WITHIN SECTION 58-87 "LAKEFRONT LOTS, CANALFRONT LOTS, STREAMFRONT LOTS, BOATHOUSES AND DOCKS" RENAMING THE SECTION TO INCLUDE WETLANDS AND ADDING A NEW SUBSECTION (f) SO AS TO INCLUDE WETLAND SETBACK PROVISIONS AND PROTECTIONS, PROVIDING FOR SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE. Second Reading

Attorney Brown read the ordinance by title. No public comments were made. **Motion made by Commissioner Dillaha to adopt the ordinance; seconded by Commissioner McMacken. Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Dillaha, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.**

- d. RESOLUTION NO. 2071-10: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, SUPPLEMENTING ORDINANCE NO. 2830-10 OF THE CITY WHICH AUTHORIZED THE REFUNDING OF ALL OUTSTANDING WATER AND SEWER REVENUE BONDS, SERIES 2004, OF THE CITY, AND THE ACQUISITION AND/OR CONSTRUCTION OF ADDITIONS, EXTENSIONS AND IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE CITY, AND PROVIDED FOR THE ISSUANCE OF NOT EXCEEDING \$17,000,000 WATER AND SEWER REFUNDING AND IMPROVEMENT REVENUE BONDS, SERIES 2010, OF THE CITY TO BE APPLIED TO FINANCE THE COST THEREOF, AND PROVIDED FOR THE PAYMENT OF SUCH BONDS FROM THE NET REVENUES DERIVED FROM SUCH SYSTEM; BY MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH AND AUTHORIZING A NEGOTIATED SALE OF SUCH BONDS, SUBJECT TO CERTAIN CONDITIONS; AND PROVIDING AN EFFECTIVE DATE.
- e. RESOLUTION NO. 2072-10: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, SUPPLEMENTING ORDINANCE NO. 2773-09 OF THE CITY WHICH AUTHORIZED THE REFUNDING OF ALL OUTSTANDING ELECTRIC REVENUE BONDS, SERIES 2005A AND SERIES 2005B, OF THE CITY, BY AUTHORIZING THE ISSUANCE OF NOT EXCEEDING \$5,250,000 ELECTRIC REFUNDING REVENUE BONDS, SERIES 2010, OF THE CITY TO BE APPLIED TO FINANCE THE COST OF REFUNDING ALL THE OUTSTANDING ELECTRIC REVENUE BONDS, SERIES 2005B, OF THE CITY; BY PROVIDING FOR THE PAYMENT OF SUCH BONDS FROM THE NET REVENUES DERIVED FROM THE ELECTRIC SYSTEM OF THE CITY; BY MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND BY AUTHORIZING A NEGOTIATED SALE OF SUCH BONDS, SUBJECT TO CERTAIN CONDITIONS; AND PROVIDING AN EFFECTIVE DATE.

Attorney Brown read the ordinance by title. No public comments were made. Mr. Knight addressed the last couple of meetings where they had an ordinance authorizing the water/sewer bonds and the prior ordinance on the electric bonds that authorized funds. He said they went to several banks to bid on both water/sewer and electric loans and that they only received one bid on the water/sewer. He noted that bid was at 3.66% and the rate is not fixed until closing and as of today it has slipped to 3.89%. He said the electric was fixed for 45 days at 3.2% and that one will not move. He indicated that they put it out to bid to try and get bonds that would be callable without penalty and they did not receive that on the water/sewer but did receive several options from the bank. The offer is a 20 year deal with a make whole provision. Mr. Knight said it is better than the indicative rate for a bond issue today because if it was a bank qualified bond issue it would be in the 4.39% range so it is 50 basis points cheaper to do a bank loan versus a bond issue today.

He said if they do not do the deal by December 31, 2010 the chance is that it will not be a bank qualified deal in calendar year 2011 because we have more than \$30,000,000 of refunding to do and the \$30,000,000 limit may drop back to \$10,000,000. He stated they have been hearing through Washington that the \$30,000,000 will not be extended, but they do not know the answer to that yet, which means the 4.39% rate will be somewhat higher because it will not be a bank qualified deal.

Mr. Knight said the electric is at 3.2% and is a 20 year deal with a 15 year put meaning at 15 years they can ask us to pay it off and that we will only owe about \$1,630,000 at that point. He said that every bank deal they have done has the gross up language that says if the tax law changes and it impacts their revenue from this deal they have the right to adjust the terms, so basically they are making the same amount of money which is another risk in these deals. He said they have been looking at these for years and they have never seen that invoked, but that is not to say it wouldn't be invoked in the next 20 years and what that would mean is potentially if corporate tax rates are decreased from the current 35% then our interest rate could potentially go up.

Commissioner Anderson asked for clarification regarding the rates on the electric bonds. Mr. Knight confirmed they are 3.2% with a 20 year deal, with a 15 year put but they can call that one with a 1% pre-payment penalty, so if they paid a 1% premium they could pay it off and get out in case rates were significantly below 3.2%. He stated that they both have the gross up provision.

Financial Advisor Craig Dunlap addressed what would take place if the marginal or corporate tax rates go down and how this could be mitigated. He said if they want to mitigate the risk of the bank implementing the tax gross up provisions if the corporate tax rate declines they could ask JP Morgan Chase to price that and see what kind of rate they come back with and then evaluate whether it is in the best interest to move ahead with it, stay at the current rate, or wait until the bond market improves and do a fixed rate bond issue at some point in the future. He said it is up to them and where they think rates are going and he feels it is going to be very hard to beat a 3.89% rate for 20 years. Mr. Knight noted that JP Morgan Chase provided four different options and provided a brief explanation and the risks involved.

Lief Chase, JP Morgan Chase, clarified the tax gross up provision language and said it would be a limitation if the bank intended on selling the loan to another bank but typically the banks do not intend on selling tax exempt loans. He said it is purely standard language for the bank's protection in the event that corporate tax rates change and it is not something that he has the

authority to negotiate out. He also clarified while the BBT loan has the ability to prepay upon any interest payment date at a 1% premium, they have built into this proposal the ability of the City to prepay subject to make whole language so that calculation very simply stated is that if interest rates at the time you prepay the loan are lower than the time you executed the loan, then calculation yields a payment due from the City to the bank, but if interest rates are higher at the time you prepay the loan then there is no prepayment penalty to the City. He also indicated that one of the big differences between the interest rate on the electric utility bonds versus the water/sewer bonds is that the average life of the water/sewer bonds is 15 years because you do not make a principal payment until 2019, whereas the electric bonds are a level debt service kind of mortgage style where you pay the interest rates as you go. An overall discussion ensued as to the risks involved, the different rates options available and level debt service. Mr. Dunlap answered questions and also provided a brief outline on how to mitigate risk.

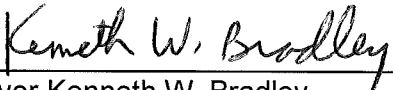
Motion made by Commissioner Anderson to adopt resolution regarding the electric revenue bonds as presented; seconded by Commissioner Dillaha. Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Dillaha, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

Discussion ensued regarding the water/sewer bonds and if they are committed to a level payment schedule for water/sewer. Discussion included total principal and interest and basis points and how much money they could save depending on the option they choose. Mr. Chase addressed the different options. He said if they move it out farther to the 15 years the cost is reduced and he will be happy to run those numbers and provide them to the City and Mr. Dunlap. Mr. Knight reminded them that right now we are paying less than .5% in interest so we are not under the gun in that regard, but the opportunity to refund the bonds with bank qualified debt will expire at the end of the month. He also clarified that the extra cost of issuance in doing a bond deal was factored into the interest rate comparisons provided. Commissioner Dillaha said she thinks it would be in their best interest to wait until January because of all of the questions.

Motion made by Commissioner Anderson if the bank can do an all in deal at 4.1% with the ability to buy back or pay off at par within 10 years and after 10 years no prepayment penalty; seconded by Mayor Bradley. Commissioner Anderson restated his motion: Motion made by Commissioner Anderson for a 4.1% with the ability to pay off at par in 10 years; seconded by Mayor Bradley.


Bond Attorney Judson Freeman with Livermore and Freeman, P.A. stated that under state law they need to have a resolution adopted in order to authorize the bond issue and because of the very specific business terms they want to include per their motion, they need to revise the original resolution either tonight or during the week before it can be adopted. Attorney Brown explained that they need to provide clear direction to Mr. Freeman that they wish to amend the resolution and to list the items they would like changed so that he can revise the resolution for adoption. **Commissioner Anderson withdrew his motion as well as Mayor Bradley as the seconder.** Attorney Brown advised the Commissioners by providing language they could use such as; "I move to approve the resolution which is presented with the following additional language included" and then specify the language. Mayor Bradley suggested that they adjourn the meeting and go home because it seems as if everyone is very uncomfortable going forward. Mr. Freeman asked the Commission for direction as exactly what they want him to include in the resolution. There was a consensus to table this item until Thursday, December 16 at 5:00.

This meeting was ended at 11:08 p.m. Mayor Bradley will continue the meeting until 5:30 p.m. Thursday, December 16, 2010 and noted that the Commission Reports will also be continued at that time.



Mayor Kenneth W. Bradley

ATTEST:



City Clerk Cynthia S. Bonham