REGULAR MEETING OF THE CITY COMMISSION
February 8, 2010

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

The invocation was given by Police Chief Brett Railey, followed by the Pledge of Allegiance.

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

Also present:
City Manager Randy Knight
City Attorney Larry Brown
City Clerk Cynthia Bonham

Approval of the agenda

The agenda was approved by consensus.

Fire and Police Pension Board Update

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

Mayor's Report

a. Police Department Accreditation Assessment recognition

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

b. Presentation of UPPCC Agency Certification Award for 2009

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

c. Proclamation – 2010 General and Referendum Election

Mayor Bradley proclaimed March 9 as Election Day in Winter Park.
Mayor Bradley announced the anniversaries of the Boy Scouts for being 100 years old; the 75th anniversary of the Bach Festival and the 55th anniversary of the Winter Park Memorial Hospital.

City Manager's Report

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

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

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

City Attorney’s Report

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

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

Non-Action Items

a. Update on Winter Park “Outreach” Emergency Alerting Network

Fire Chief Jim White provided a PowerPoint presentation regarding the Outreach Network to include a description of what it is, how it works, when Outreach is used, access to Outreach, the member webpage, how members with special needs are handled, how to enter the member
information, how they can search and select groups, and how they notify the residents. Questions were addressed and responded to. Commissioner Diebel addressed the need to combine the information that Ms. Howard in Communications has from residents with their resident list. Chief White stated they are already working on that.


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

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

c. Fairbanks improvement projects update.

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

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

d. Economic incentive package update.

Economic Development/CRA Director Dori DeBord provided an update on the economic development incentive packages. She summarized what is currently available in the CRA to the businesses within the CRA district. She addressed the Business Facade Program that is very active, the Micro Loan Program, the HUBZone Program where we act as a go between to allow for small businesses to begin, and the Business Recognition Program. She addressed three areas of interest they are working on: the Targeted Job Creation Program, the Anchor Investment Tax Rebate Program, and the Development Fee Rebate Program. She spoke about others areas they have had discussion on regarding expediting the permitting process, the
permitting fee processes, and what we need to do to qualify new businesses for either incentives or opportunities to have those areas also reviewed. Discussion ensued about the need to expedite the permitting process. Ms. DeBord stated she will work with Building Director Wiggins and his department on this. Mr. Knight clarified this is not an efficiency issue but is to expedite the process for specific types of projects.

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

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


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

Consent Agenda:

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

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


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

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

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

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

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

Motion made by Mayor Bradley to table this item until the City Attorney has reviewed the code with appropriate review to state level and bring this within state compliance; seconded by Commissioner Bridges and carried unanimously with a 5-0 vote.
b. **Winter Park Historical Association (WPHA) request for funding.**

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

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

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

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

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

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

**The motion was seconded by Commissioner Dillaha.**

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

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

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

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

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

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

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

The original motion made was further discussed. Commissioner Diebel reiterated her concerns with making an out of budget discretionary expense as a one time item and that they should go back to the CRA Board because the grant process achieves the same goal and monies would not be taken out of the Contingency Fund. Mayor Bradley expressed concerns with expending
funds at this tough economic time and that we do not know what the rest of the budget cycle will bring before them.

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

Public Comments

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

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

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

Public Hearings:

a. ORDINANCE NO. 2792-10: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AUTHORIZING THE ISSUANCE BY THE WINTER PARK COMMUNITY REDEVELOPMENT AGENCY OF NOT EXCEEDING $8,100,000 REDEVELOPMENT REVENUE BONDS, SERIES 2010, IN ACCORDANCE WITH THE COMMUNITY REDEVELOPMENT ACT OF 1969; AND PROVIDING AN EFFECTIVE DATE Second Reading

Attorney Brown read the ordinance by title.

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

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

Commissioner Dillaha reiterated that we go with the $9,100,000 to allow for more flexibility until the projects are determined and what our strategic plan is for the CRA going forward. Discussion ensued regarding whether they need to reconvene as the CRA Agency to change this since this is the second reading. Attorney Brown stated this will have to go back to the CRA
Agency if this is changed. CRA Director DeBord stated the bond counsel is currently preparing the bond documents at the $8,100,000, the closing is set for next week and there is a deadline for this loan with SunTrust. It was clarified that the entire process would have to begin all over if this number is changed.

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


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

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

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

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

Becky Vose, Vose Law Firm, 324 W. Morse Boulevard, summarized their concerns with the proposed code as provided within the letter sent to the City Attorney and Commissioners. The letter is attached as part of the minutes. She addressed discrepancies she believed existed between the comprehensive plan and the Land Development Code regarding the Central Business District Future Land Use designation and Central Business District C-2 zoning concerning properties in the CBD. She stated Mr. Briggs indicated it was not the intent to limit C-2 zoning just to the one area (in the green) showing on the map as there are other properties fronting on four streets in the Hannibal Square neighborhood that also qualify. She stated the matter of adopting a map as published in the LDC has a negative impact on the code.
Ms. Vose also addressed the property at 301 W. New England Avenue that was rezoned in 2003 but now under the LDC is designated commercial so it cannot be C-2. She addressed the importance to address the conflicts that currently exist in the proposed code. She asked not to pass this code as it currently exists, but to make the needed corrections before it is finally adopted. She asked that the LDC be changed to comply with the due process requirements.

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

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

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

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

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

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

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

Motion amended by Commissioner Dillaha to adopt the LDC except for the map and language pertaining to C-2 zoning in the CBD and to expedite those changes to the CBD map and language. The motion failed for lack of a second.
Commissioner Bridges asked Attorney Brown about his recommendation to most expeditiously move this forward. Attorney Brown suggested adopting the LDC as presented on second reading and work with staff and affected land owners to resolve all the issues that we agree with including the 301 W. New England C-2 issue, go through the comprehensive plan amendment process and bring back the amendment to the ordinance to allow for a quick change to the comprehensive plan when it is necessary like this.

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

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

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

Recess from 7:56 – 8:08 p.m.


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

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

The following spoke in favor of adopting the ordinance:

Deede Sharpe, 1599 Highland Road
Phil Kean, 1011 McKean Circle
Steve Feller, 126 Park Avenue S.
Mr. Wiggins thanked Steve Feller, Phil Kean, Gary Hancock and other designers and builders that worked with staff along the way to make this possible. He commented that they spent many hours, as well as the P&Z, on this code.

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

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

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

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

**City Commission Reports**

a) **Commissioner Anderson**

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

b) **Commissioner Dillaha**

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

c) **Commissioner Diebel**

No report.

d) **Commissioner Bridges**

No report.
e) Mayor Bradley

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

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

2. City performance metrics summary

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

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

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

Meeting Adjourned

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

The meeting adjourned at 9:27 p.m.

[Signature]
Mayor Kenneth W. Bradley

ATTEST:

[Signature]
City Clerk Cynthia S. Bonham
EXEMPLARY FROM

MEETING OF THE WINTER PARK CITY COMMISSION

Members Present:

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

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AUDIO TRANSCRIPTION

MEETING DATE: February 8, 2010
EXEMPLARY TIME: 6:30 p.m. - 8:08 p.m.
PLACE: Commission Chambers
        401 Park Avenue South
        Winter Park, Florida 32789

REPORTED BY: CHRISTINA GEROLA
             Court Reporter and Notary
             Public
REPORTER'S NOTE:
All speakers have been designated to the best of
the reporter's ability, based upon the meeting
minutes and voice recognition. "UNIDENTIFIED
SPEAKER" and "UNIDENTIFIED FEMALE COMMISSIONER"
have been used where the reporter was unable to
discern who was speaking. Speaker designations
may be incorrect, since the reporter was not
present at the meeting and has transcribed the
proceedings via CD.

PROCEEDINGS

THE MAYOR: Mr. Brown, 11-B, please.
MR. BROWN: An ordinance of the City of
Winter Park, Florida amending Chapter 58 Land
Development Code, Article III, Zoning so as to
adopt new zoning regulations changing the
permitted, conditional and prohibited uses
within the zoning districts of the City,
adopting new development standards, densities
and intensities of development, adopting
changes necessary to implement the City of
Winter Park Comprehensive Plan, Goals,
Objectives and Policies document dated February
23, 2009, and providing an effective date.
THE MAYOR: Thank you, Mr. Brown. This is
on second reading, I believe.
Mr. Briggs, is there something you'd like
to comment on as it relates to this?
MR. BRIGGS: Yes, I'd like to put a couple
of things in the record and address two things.
THE MAYOR: Thank you, sir.
MR. BRIGGS: Number one, Chapter 166
requires this public hearing to start after
5:00, and we advertised for 5:30. It's

after 5:30.

As you know, a comprehensive plan was
adopted in February of last year, accepted by
the State on May 14. And the comprehensive
plan takes precedence over the development
standards and rules in the zoning code. So we
can't have two different sets of rules and have
someone pull up mini code that says they can do
something in zoning when, in reality, they
can't do it per policies of the comp plan. So
that's what started this whole process of
redoing, really repealing and readopting all of
the non-residential as well as the multi-family
R-3 and R-4 zoning districts.

While we are at it, P and Z made some
additional modifications. Staff made some
changes as well in ways to improve the code.
We have been at this, you know, for quite
a while. The first versions of this new code
were put on the website in the beginning of
August. August 18. P and Z recommended
approval of these changes to the code. We went
from there to the next meeting of the City
Commission to ask you how you wanted to proceed
towards adoption. You decided that full
knowledge of the citizenry was what we were
after, so we mailed out notices to all the
14,000 households throughout the city telling
them about the October 28th public hearing that
was advertised, as all of these have been, with
a quarter-page ad in the Orlando Sentinel.
However, the commission decided at that meeting
that it would be a listening session. So you
took no action, but you did direct staff to
prepare that summary of the changes which then
was placed on the website.

And so we went to the November meeting of
the City Commission, where we had another
public hearing. We had just received revisions
from the city attorney's review. It was
determined that there was not enough time in
terms of posting of those modifications, so the
request was tabled for that evening so that
those could be put on the website. They were
on the website for a month prior to your
January 11th meeting, where we did have the
first reading and the adoption of these new
land development code requirements.

Given the hour at the meeting two weeks
ago, the action, again, was to table, which
business district, not out at Kmart, and it
should be used in the areas of the Hannibal
Square neighborhood, where we have had
development that has met the central business
distinct density standards.

And so as you read the previous language,
it wasn't as clear as it could have been to
indicate that C-2 is not to be used anywhere,
except if it is within the map area or if it is
on the four designated streets: Morse, New

It's always been our intention -- it may
not be as clear as it would seem -- need to be
or want to be in the text, but it has always
been the intention of the comp plan and the
zoning code that where you can use central
business district C-2 zoning, which is our most
intense district, is the central business
district and on those four designated streets
in the Hannibal Square neighborhood. So the
addition of those couple of words up there in
yellow, I think, improve the text and make it
more clear.

It's been pointed out to us we may have
some conflicting language in the -- by the map
in the definitions section, and we can clear
that up as well, because this is one situation
where we don't have any question about what the
finish line is. So if it's just perfecting the -- the text, then we can get it there.

So those are two changes that the staff
would recommend that you make if you choose to
move ahead on the second reading.

With that, I'll answer any questions you
may have before we open the public hearing.

THE MAYOR: Questions of Mr. Briggs?
UNIDENTIFIED SPEAKER: I have one, Jeff.
The parking regulations, I guess I'm confused
by what drove this. Could you just give me a
little background on what the thinking was
under parking?

It seems like we're encouraging -- with
the exception of the library, we're encouraging
more parking, which discourages use of public
transportation or other ways to go to a school
or eat in a restaurant or theater, etcetera.

MR. BRIGGS: Well, these are changes not
required by the comp plan, but which came from
the planning and zoning commission review.

They basically felt that there are some
businesses in town that -- that our current code does not sufficiently address required parking. And the first and biggest one is restaurants, based on one for every four seats. It assumes that four people are coming to a car, and it still doesn't provide any parking for the staff or the folks who work there. So we did some research of other cities' codes. We talked to different franchise folks. And really, the industry standard, if you're doing an Applebee's or a Bennigan's or a Ruth's Chris, is one per three. So it felt, in that particular case, that we needed to increase the number of parking spaces for restaurants.

Similar kind of logic in looking at the real world uses for nursing homes, where the requirement was beefed up, and theaters, in terms of the requirement only previously being one for every six seats. It may work most times, but certainly in the peak hours, the Regal Cinema shows us that one per six just doesn't provide enough parking. So those are some -- some of the rationale behind some of those changes.

UNIDENTIFIED SPEAKER: It makes sense. I just feel like it doesn't promote other forms of transportation. It feels like we're saying, hey, use your car, where it might be nice to have people walk to the theater or walk to Park Avenue for a restaurant or something. So it's just a comment.

THE MAYOR: Questions of Mr. Briggs?

I'm going to open the floor for public comment. This is on second reading. We don't have a motion on the floor at this point, unless the commission wants to do that. I'm going to --

Go ahead, Commissioner Anderson.

MR. ANDERSON: Move to approve incorporating the changes suggested by Mr. Briggs.

THE MAYOR: There's a motion.

Is there a second?

MS. BRIDGES: Second.

THE MAYOR: Motion and second, great.

Now the public can comment on our pending Anderson (sic).

MS. VOSE: Thank you. I'm Becky Vose, and I'm an attorney with the Vose Law Firm at 324 West Morse.

Last week I sent a letter to your city attorney, and I copied all of you with it. I'm not going to try to go over all of that again. I just want to hit a couple high points and update you a little bit with some additional information we received.

One of our primary concerns is that the land development code provisions unconstitutionally grant unfettered discretion to the City Commission, and that's not allowed in Florida. The Florida Supreme Court has held that an ordinance whereby the City Council delegates to itself the arbitrary and unfettered authority to decide where and how a particular structure shall be built or where located, without at the same time setting up reasonable standards which would be applicable on -- inaudible -- to all property owners similarly conditioned cannot be permitted to stand as a valid municipal enactment.

That's what -- there is a provision that is scattered throughout this land development code that is not in the comprehensive plan. So this is not something to bring the land development code in compliance with the comp plan. This is just gratuitously put in there.

The provision is -- in addition, in the review and approval of specific projects, the City Commission may limit and restrict the capable floor area ratio if the commission finds the proposed project is not compatible with the adjacent properties.

Now, in the letter that I sent to you, I went carefully through a lot of the Florida cases on this. But it's clear, if you look at the Florida cases, this language, the only criteria for limiting the floor area ratio is if the commission finds the proposed project is not compatible with adjacent properties; that is, they -- it doesn't really mean anything, and this provision is unconstitutional and gives total and absolute power to the City Commission to lower FAR not based on any specific criteria. In that way, no property owner would ever be able to determine what FAR would definitely be approved. And, of course, FAR, in most instances, is the major factor in values of property.

And also, it was mentioned earlier in the meeting of a need to attract businesses to
Winter Park. And businesses need certainty for planning. Vague language --

(Timer interruption.)

THE MAYOR: Continue?

MS. VOSE: May I request --

UNIDENTIFIED SPEAKER: Is there a second to --

UNIDENTIFIED SPEAKER: Second.

UNIDENTIFIED SPEAKER: I mean, is there an additional commissioner who's --

UNIDENTIFIED SPEAKER: Grant an additional three minutes.

THE MAYOR: We're going to grant you another three minutes, if that's appropriate?

UNIDENTIFIED SPEAKER: Thank you. Thank you.

Anyway, vague language that gives the City Commission unbridled discretion on FAR certainly discourages development. People aren't going to want to come here, spend a whole lot of money to do concept plans, to do everything, if they realize that, in fact, once they went to the City Council, City Council could pull the rug out from under them. That's going to hurt development.

Also, our Fifth DCA, which is the court that our stuff goes to, recognized the need for certainty. And they held, if any additional requirements are to be imposed, the owner or purchaser of property so zoned has a right to know what the requirements are that he must comply with in order to implement the permitted use. These requirements must be of uniform application, and once the requirements are met, the governing body may not refuse the application. And, therefore, this provision that's scattered throughout this land development code just cannot stand.

Also, the -- the revised comprehensive plan and the proposed land development code conflict in major respects, particularly with regard to properties that my client owns. For example, the comp plan prohibits my client from applying for C-2 zoning along New England from Virginia to New York, even though the land development code appears to remit that application. The --

(Inaudible exchange ensued.)

MS. VOSE: If you all could look at the first email that we received after the last meeting, Mr. -- Mr. Briggs, who, by the way, has been extremely cordial to us, but we still have a problem with what's in the land development code, he described this as a misunderstanding, whether my client could get C-2 zoning on property. And C-2 zoning is absolutely critical to make his properties worth what he believes they are worth, what he paid for. And the -- Mr. Briggs said clearly it wasn't the intention of City Commission per the comp plan to permit central business future use designation in central business district C-2 zoning for properties that were in the central business district. This is what Mr. Briggs was talking about. And it's extremely important to --

(Timer interruption.)

THE MAYOR: I'm going to pause and then ask if the Commission desires to extend her comment?

MR. ANDERSON: Yes.

UNIDENTIFIED FEMALE COMMISSIONER: Yes.

MS. VOSE: It's -- thank you.

THE MAYOR: If it's possible, before we go any further, do you have a sense of how long you'll be, because we don't need to do this every three minutes if --

MS. VOSE: That's --

THE MAYOR: If you say you need 10 minutes --

MS. VOSE: I'm almost done.

THE MAYOR: -- I'd like to do that.

Okay. Three minutes.

MS. VOSE: I'm almost done. Okay.

THE MAYOR: And if the clerk would redo the clock, please, I would appreciate it. Thank you.

MS. VOSE: Okay. All right.

And Mr. Briggs just addressed this issue too, to y'all. And if you look on the fourth page of what you were handed, here's the infamous green line and the red line, the -- and the designation as in the comprehensive plan indicates that only C-2 -- the only place where you can have C-2 zoning is within the green line.

This green line/red line is also in the land development code. According to Mr. Briggs, what he just told you and what he said in the e-mail, it was not the intent to
limit the C-2 zoning to just being in the green.

So we implore you, don't make things worse by adopting a map with the red and the green in your land development code. It's just making things worse.

And then also, on the next page there is an email which we just received today, which talked about an error that has occurred as to 301 West New England Avenue. That was rezoned C-2 back in 2003, but right now, under the land development code as it's before you, it -- it's designated as -- so that it can't be C-2.

And they're actually at the -- two more pages here, Mr. Briggs has suggested different ordinances to change what you've got in front of you now in order to take care of this conflict. And we ask you to please just don't pass this now. Make it right the first time. Get rid of that green line in the map and also change the land development code to comply with the due process requirements. I think this -- the City would adopt this code as it's before you at its will (sic).

My client doesn't want to sue the City, but if -- it appears he'll have no choice due to the admitted errors in the land development code that's before you today and due to the clearly confiscatory and unconstitutional provisions strewn throughout the land development code. And we're asking that you get it right the first time. Don't adopt a defective land development code. Doing that will invite lawsuits. And go back and make the changes so that, when you adopt it, it's right.

Thank you very much.

MR. MAYOR: Thank you very much.

Other citizens wishing to make comments?

MR. BELLOWS: Dan Bellows, 511 West New England Avenue.

Mayor, I'm representing three corporations, New England Avenue Development Company, Winter Park Redevelopment Management Corporation and Melbourne Avenue Corporation.

So hopefully I can get some time on this.

The map -- you know, the infamous green and red, when you read the text, this is 338 West Morse Boulevard. And it talks about C-2 zoning being permitted areas to include New York Avenue to the green, and then it talks about Morse Boulevard from Capin to Virginia. So I believe the Douglas Grand is C-2, all of Morse from Virginia to Capin can be C-2, but it specifically eliminates the Smith Barney building from being a C-2. It's within this red line; however, the green says only area potential for C-2. And then, when you go to the text about the Hannibal Square district, and then the Morse Boulevard district, you do not get this parcel of land to be C-2. And it's an issue for us, obviously.

As the previous speaker was alluding to, when you look at the ordinance that was adopted in 2003, where two parcels on New England Avenue were, in fact, zoned C-2 in the CBD, yet you find them located on New England Avenue between Virginia and New York, two lots right here. Again, there is specific language, and we had specific discussion and votes up here of this commission. Where our previous Mayor Strong and Commissioner Diebel voted to make it pink, three others voted not, yet I have two parcels here that are CBD zoning C-2.

And, again, the further frustration comes when you look at the comp plan, and it says you will find C-2 only in the CBD district, which is -- you know, it doesn't say C-2 can be anywhere else, just in the central business district, yet I've got property --

(Timer interruption.)

THE MAYOR: Excuse me one minute,

Mr. Bellows.

Commission, is there any role to have him continue his --

MR. ANDERSON: Yes.

UNIDENTIFIED FEMALE COMMISSIONER: Yes.

THE MAYOR: Okay.

We're going to extend your comments by a few minutes, Mr. Bellows.

MR. BELLOWS: So I have a concern about the property on New England Avenue between Virginia and New York, that I have an ordinance. It was zoned C-2 in 2003. And when you get into this specific language from Mr. Briggs, also clearly that it was the City's intention for 301 West New England Avenue, then the City would have been required to provide notice of such change to you as the property owner. No notice was sent. Instead, there's some GIS mapping here. So I have a real issue
there.

When you get into some of the specifics in the zoning code, C-2, 17 units to the acre. This is what I think is one of the nicest buildings that we've built in Hannibal Square. It's a mixed use building. It has 32 units. If this ordinance is adopted tonight, I will be non-conforming of 21 units. I would only have been allowed to construct 11 units on this .66 acre site. I would have lost $220,500 a year in revenue, just at 875 a month for an apartment.

I have the same issue directly across the street at 430 West New England. Again, I think a very attractive building. That one, I only would have been allowed six units there. I have 16 units. I would have lost a hundred and five thousand a year.

And I can keep going. I mean, 400 West New England, multiple buildings. I don't know where this, right out of thin air, 17 units to the acre came from. The C-2 zoning concept of mixed use allowed for these opportunities.

The previous building that I showed, this is its internal courtyard, which, again, is an issue when we talk about the R-3, R-4 code, where it says you can't have courtyards unless they're viewable by the street. This is the type of product, you know, that we build, and, again, that people have enjoyed.

We get into the -- the off-street parking. All of a sudden the code says I have to reserve one parking space. I'm sorry. You're not going to be able to see what's behind these lines here. But these are all parking spaces all the way around here.

My parking is mixed use. The whole concept behind that was it's open, it's not reserved, and I have people coming and going. Could you imagine if I had 10 of the apartments out of the 130 in Hannibal Square, and 10 parking spaces were marked reserved, and nobody could use them at all.

(Timer interruption.)

THE MAYOR: Mr. Bellows, a moment.

Commission, what is your role?

MR. ANDERSON: Continue.

THE MAYOR: Is there a second for that?

UNIDENTIFIED FEMALE COMMISSIONER: Second.

THE MAYOR: We'll extend your comments

another three minutes, Mr. Bellows.

MR. BELLONS: Okay. Thank you.

So it works because the landlord for all these buildings manages all these parking lots. And if this code gets adopted tonight, 43 of these parking spaces that are now opened, I have to put a reserved sign on it. And you can imagine, during the day, when all these apartment people are off at work and what's going, we would no longer have the shared parking concept. And this is just one area of multiple parking lots we have. I don't know where that came from.

R-3, I can no longer do a bed and breakfast. I have multiple R-3 parcels, and I would like to continue to maintain the conditional use to be able to do a bed and breakfast. Also, on R-3 now it says no three-story buildings east of Denning. And here's an R-3 building I have. You know, it's one that I will tell you the City has used more than once in their different slide presentations of what you're supposed to do, and now all of a sudden you're outlawing it and making it a non-conforming use.

I also have approvals to build three stories for the town and villa style product on Denning, which the courtyard issue and the three-story issue will make those non-conforming before it ever gets out of the ground.

Then we have the provision about terracing. And I bring you, again, back to buildings like -- like this. That's a three-story building. If I have to terrace, it is absolutely going to destroy the value of what -- why I purchased the land, what I have been planning for almost 19 years with every project I've done.

I just submitted five or six applications again last week, with all the checks, all the PowerPoint and everything. This will be the fourth time submitting the same package under the prior code. There's a three-story building. Again, if I have to set it back, it will be an issue.

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

But then people have legal rights that 
could be infringed by doing what you're 
supposed to do, and then we have to deal with 
those case by case.

We have a case right here. And that's 
something my partner can work with Ms. Vose on, 
and then we can come back with -- and 
Mr. Briggs, and we'll come back with 
recommendations case by case.

But just to give a real clear example, in 
my opinion, you can't have C-2 central business 
district property from the mid 2000s or 
whatever the date was you referred to, and 
then, in the comp plan, take that away.

So I guess, to be really clear, I think 
you could and you should go ahead and adopt the 
land development code that is consistent with 
your existing comp plan and then work to fix 
the cases such as this. There may not be any 
other cases that come up.

And then I think it would be in order to 
work with Mr. Briggs and consider proposed 
amendments to the comp plan to -- so that you 
don't adversely affect rights in that manner.

UNIDENTIFIED FEMALE COMMISSIONER: That's 
clear.

MR. BROWN: Yeah, I could address -- as 
far as the 90 days, that doesn't -- I mean, the 
notice issue, the 90-day issue, even the 
discretion issue, if I can say for the record, 
on the discretion issue, one of the things 
Katie did while working with staff is she had 
put in compatibility with the surrounding 
neighborhoods. And when they read the 
question, the provision, they read the 
provision that says it has to -- you know, that 
the commission can look at compatibility of the 
surrounding properties.

There's a court case, Fifth District Court 
of Appeal, 1990, Life Concepts versus Harden, 
which held, in part, that the compatibility 
standard is not void for vagueness; in other 
words, that has been accepted by the court as 
not void for vagueness. And the case that they 
rely on in their letter, the Ahee (phonetic) 
case, is a 1903 case, and the Fifth District 
Court of Appeal in Life Concept versus Harden 
distinguished Ahee, because in Ahee, it 
basically said the government official could 
look at, quote, all other pertinent factors, 
which is vastly different than compatibility 
with the surrounding neighborhood.

So for that reason, I don't think the void 
for vagueness or the unbridled discretion 
argument works. The 90-day issue, I've 
addressed. The notice issue, I don't think, is 

You know, I don't -- clearly, you don't 
have any personal liability. I'm very 
comfortable with that. You've got qualified 
good faith immunity and legislative immunity in 
a federal action. And in state court, you 
766.28. If it's a state action, you have to be 
willfully engaged in misconduct. And so I --
personal liability is just not an issue, and I 
know that was raised in the letter. So I 
wanted to reassure you.

So I do think -- so, in conclusion, 
there's no legal reason to not go forward, in 
my opinion, to adopt the ordinance. But we 
then need to work hard with them to resolve the 
issues that I mentioned, where their -- where 
their property rights might be infringed.

MR. MAYOR: Thank you.

Did you want to speak, Commissioner 
Dillaha? Go ahead, please.

MS. DILLAH: Yeah, and then I've got a 
couple of questions. I -- and they're really 
for Jeff.

I -- number 1, I wanted to give Jeff the 
opportunity to react to what's been said. And 
I did want -- want Jeff to address the -- 
Mr. Bellows refers to an ordinance in 2003 that 
zoned property on New England as C-2. I 
thought you could address that as well.

And then the third was, did all of these 
issues come up with P and Z, or are they just 
coming up now? I mean, I just -- was this 
addressed during the P and Z public hearing?

MR. BRIGGS: No. These specific comments 
weren't addressed at that time.

MS. DILLAH: Or workshops or anything? 
Excuse me?

THE MAYOR: No, ma'am. I'm sorry. I'm
sor"y. We're listening to --

MS. DILLIHA: Well, anyway, I did want to
hear from -- from Jeff on those things and what
you have to say.

MR. BRIGGS: Let me touch on a couple of
those things. First of all, Mr. Bellows will
like to hear that the commission approved
five-foot parapets in all of the zoning
districts. Yes, it says two now. It says
three in the other districts. So all of those
will be changed in every zoning district. So
he's not losing out on it in the C-2 district.

THE MAYOR: Please. I'm sorry.

We're not -- I mean, Mr. Briggs is speaking,
guys, and we'll address questions later.

MR. BRIGGS: He'll be pleased to know that
he is getting what he wants in the C-2 zoning,
which is five-foot parapets, per you're
approval.

The bed and breakfast issue is something
that P and Z has wrestled with over the years.
This is a conditional use in residential zoning
districts. You can do bed and breakfast in
commercial zoned, office zoned property. But
in residential areas, we have had four of these
requests in the last 15 years, and in every
case, people who live next to this bed and
breakfast don't want a business. They don't
want a commercial business next to their house.
And so that's why, if we're never going to
approve any of these, and we never do, because
residents come out and say, I don't want a
business next to my house, there's no point
having that conditional use in the R-3 and R-4
residential districts. You can still do a bed
and breakfast in a commercial and as for one in
office, but not in those multi-family

THE ONE space per unit, we have parking
lots, such as the project that Mr. Bellows
indicated, where we are sharing spaces between
the apartments and the commercial tenants. And
it's P and Z's thinking that people come home for
lunch. Some people work out of their homes.
We ought to have at least one of the two
required spaces reserved for the residents
during the day so they have somewhere to park.

It doesn't affect any of the existing
projects in the city. They are all
grandfathered in. It only relates to the

property we're speaking about. But in the
future, if we get a mixed-use project, and
we're sharing parking, we want to have one
space for each living unit reserved so those
residents have a place to park if they come
home during the day or need to use it during
the day.

There was a mapping issue in the comp
plan, an error, and that was discovered, and we
will correct that. We have advertised the
title to the ordinance to correct that. Go to
P and Z next month and come to City Commission.

Tonight we are adopting the words of the
zoning code. We're not dealing with the map.
So we'll get to the map, and we'll correct the
error that's been brought to our attention.
And there couldn't be anything more committing
than what I wrote today in the email, that it is
something that needs to be corrected, and we
will get to that. It's just that we're dealing
with words today, not the map.

But as I say the word 'map,' this CBD map
has been a problem from day one in terms of
misunderstanding. I think the words in the
comp plan and the words in the zoning code are

pretty clear. And I don't seem to have ever
been able to find, in two years, a way to get
this map to communicate what it's supposed to.
So at this point I'd be happy if we just took
the whole map out, and we relied upon the words
that I just showed you that made it perfectly
clear that you can have C-2 where everyone
expects to have it, both Mr. Bellows as well as
the City.

UNIDENTIFIED FEMALE COMMISSIONER: And,
Jeff, my understanding was always -- and I have
said this before. Terms started to be used
loosely, in my opinion. I thought central
business district was a geographic area. C-2
is zoning. They're different items. But I
hear different people refer to CBD zoning as
opposed to C-2 zoning. I'm just thinking
that's where this has gotten --

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

UNIDENTIFIED FEMALE COMMISSIONER: -- a
little confusing.

MR. BRIGGS: It's gotten confusing because
it's the central business district zoning and a
central business district.

UNIDENTIFIED FEMALE COMMISSIONER: Well,
C-2 zoning, but it's a central business district geographic area.

MR. BRIGGS: So I would suggest, at this point, to eliminate the confusion, to take that map out altogether as an amendment to this.

UNIDENTIFIED FEMALE COMMISSIONER: I'm wondering if -- and this would be a question for Mr. Brown: If the map needs to come out, or does it need to stay in and just make it more clear, the descriptions?

MR. BRIGGS: If you'll direct the city attorneys to clarify that language. Either way, I think we're all trying to get to the same finish line as the speakers.

And then one last comment that was made by Ms. Vose, I mean, when we put this sentence into the code, in addition, in the review and approval of specific projects, the City Commission may limit and restrict floor area ratio. All we were thinking about was, when you're reviewing conditional uses and you're grading them by the criteria, you can decide that someone doesn't get -- they're not entitled to the maximum floor area ratio. Anywhere they're located, we don't want to give them a hundred percent of what the floor area ratio would allow because of the compatibility issues. So all we were thinking about was in the context of conditional use reviews.

You read this, and you read it as though a city commissioner can say, I heard they're going to get a building permit over there on Holt Avenue. Can you bring those plans in here? And when you're reviewing it, you can decide to limit the floor area ratio. And that certainly wasn't the intention. This is only supposed to apply to where you can legally exercise that authority in the review of conditional uses. So perhaps adding that phrase, within the review of specific projects via conditional use, the City Commission may limit -- will avoid the --

UNIDENTIFIED FEMALE COMMISSIONER: Well, I had understood that there was a phrase saying that --

MR. BRIGGS: FAR is not an entitlement.

UNIDENTIFIED FEMALE COMMISSIONER: Yeah, the maximum FAR is not an entitlement, because there are sometimes situations where -- maybe it's a drainage situation or maybe it's a land feature or something that would limit the maximum amount. And I understood that that was the intent of having that language in there. That was my understanding when we went through this, gosh, a long time ago with your comp plan.

Is that right?

MR. BRIGGS: Yes. Um-hmm.

THE MAYOR: Other questions?

MS. DIEBEL: Address the specific example to properties that Mr. Bellows brought up on the New England portion, where it is properly zoned C-2 and reflects as such, but the map is not consistent. I don't understand how you resolve those.

MR. BRIGGS: We don't resolve it tonight, but we can resolve it in a month by correcting the map. We've only got advertised the words in the zoning, but we have advertised the P and Z next month, and to come to you to correct that map error. And now that we've discovered it, what we've known about this earlier, we've discovered it, we will legally do the ordinance to correct it.

MS. DIEBEL: But you just advocated taking the map out.

MR. BRIGGS: We don't have a map in here to start with -- oh, I'm sorry, the map, in the definitions section of the central business district.

But Dan's talking about the color on his property at 301 West New England. We have the wrong color on the comp plan map, and we'll correct that next month.

MR. BROWN: Mayor, if I could just --

THE MAYOR: Yes, Mr. Brown, a question for you.

MR. BROWN: Thank you. I'd like to address also what Commissioner Diebel asked. In addition to going back and amending the map so the C-2 is not down zoned by the comp plan, you can also settle Bert Harris Act claims, even if it means the settlement agreement is inconsistent with your comp plan. So my contemplation was, as these individual issues came up, once we evaluated them, if, in fact, we determined that the comp plan impermissibly down zoned their property -- we have a specific example, I think it was 301 New England in the one Mr. Bellows was referring to. Specific
example, we can settle that through a settlement agreement. And one of my associates
found authority that you can do that, even if it's inconsistent with the comp plan, in the
settlement of a Bert Harris claim.

UNIDENTIFIED SPEAKER: And I've already advertised the settlement.

THE MAYOR: I don't disagree with that, but if we -- and I don't want to say --
(Inaudible exchange ensued.)

THE MAYOR: I don't want to say willfully, but if we said it was this way, and then through whatever process we said it's a different zoning and know that going into this, I don't want to pay your fees and other --

MR. BROWN: But you've already done that in the comp plan --

THE MAYOR: -- to address that.

MR. BROWN: You've already done that in the comp plan. The comp plan --

THE MAYOR: But I guess my point is, then the comp plan ought to be amended.

MR. BROWN: Yes, it should be. Yes, it should be. I agree.
(Inaudible exchange ensued.)

THE MAYOR: And I guess at some point I'd like to ask the process of staff as to how we would get a comp plan approved with what, in my opinion, is a pretty large mistake. Now, I don't know if it's a mistake or an omission or whatever, but, I mean, that's pretty serious, if I've got C-2 and you make it parks or something completely different.

MR. BROWN: That's wrong to do, yes, sir. It should not -- I mean, you shouldn't down zone property in the comp plan. That's as simple as it can be.

THE MAYOR: Can I ask you a question on a different matter which is comparable to this, and that is, to go from 25 units per acre to 17, which is sprinkled throughout the land development zone, is that a similar type of action?

MR. BROWN: If someone has a right to -- to 25 units per acre under an existing code, and then the comp plan comes along, if it -- and I'd have to --

THE MAYOR: And this came right out of the comp plan, the yellow sections.

MR. BROWN: Okay. If it was just in the land development code, that could cause a Bert Harris claim, if the land development code purports to say that the person doesn't even have the right to ask for a variance or permission to -- to use his property as it was previously entitled, which was 25 units.

So in my opinion -- and Katie Reischmann has been working with staff on this. And I'm -- you know, it's my understanding that in several places in the comp plan it does say that, purportedly, certain areas don't have the right to request. And I think we'll have to look at those situations case by case and evaluate each one on the facts.

But to answer your question, it is possible that a person who had a right to 25 units per acre or whatever, you know, unit of land, and then we say, in the land development code or the comp plan or both, if we say they don't have the right to get back to 25, you create a potential Bert Harris claim. Okay.
And you can do that. You can steadfastly refuse to deviate. But you'll pay damages.

THE MAYOR: So I guess my question is, is that something that should be fixed, because some of this stuff in the land development code, as I understand, is not in the comp plan today, is that correct, Mr. Briggs, especially, like, the 25 to 17?

MR. BRIGGS: There are a number of things that aren't in the comp plan, and that's one that is in there.

THE MAYOR: The 25 to 17 is?

MR. ANDERSON: Yes. So if you want to fix that --

THE MAYOR: I'm confused, because I thought the yellow items weren't.

Am I misreading the document you've sent to us?

MR. ANDERSON: The yellow highlighted items are comp plan required, and the white -- the un-highlighted ones are not.

THE MAYOR: Thank you, Mr. Anderson. I've been reading it the opposite. Thank you for that.

MS. DIEBEL: So, Mayor, I have a question of our attorney, then.

THE MAYOR: -- inaudible --

MS. DIEBEL: That's okay. I just want to make sure I have the floor.
So to our counsel, procedurally, if we accepted a land development code that has -- effectively has a Bert Harris claim, because you’ve clearly said that acceptance of the comp plan has created several, and I was very vocal about that as well on the acceptance process and dissented because of that reason, and the fact that we have a restriction where we can request amendments to our own comp plan every six months, and we have an ordinance that says we need a supermajority to do those kind of things, what is the minimum amount of time that we would be able to correct our own mistake in this situation? Because we attempted to at least have a consensus to correct our own comp plan before.

So I’m very, very skeptical that the City would be able to take the appropriate action to correct this mistake in less than a six-month time frame.

MR. BROWN: I’m going to defer to Katie Reischmann working with Jeff Briggs, but I think that’s right. I think there will be some time delay. I think what you need to do is to, as expeditiously as possible, let Katie work with Jeff and correct those issues, come back and amend the comp plan, and amend the land development code at that point. But I do think you need a land development code which is essentially consistent with your comp plan. And in that period of time, that gap -- and I’m sorry, this is the way it is. In that period of time, we’ll just have to work diligently with property owners, because they have potential claims.

This is another point of legal discussion I’ve been having with the Vose Firm. They can bring a declaratory judgment action, not for damages, with respect to some facial invalidity of the ordinance. I’m not concerned about that, because I don’t think the ordinance is facially invalid. But you do need a case.

So just -- just because there may be property owners in that gap between the red line and the green line doesn’t mean that each and every one of them is going to want to do something that could raise a Bert Harris Act issue. So the ones that do try to do the development, then you have a -- what’s referred to in the law as a case in controversy, and then we can resolve those in that period of time before you can amend everything so that you’re totally solid, and we can work and settle those claims.

And they may be few. It may be just Mr. Bellows who has an interest in developing property and pushing projects through at this time.

THE MAYOR: Mr. Brown, I appreciate your counsel on this matter, but I’m confused as to why we wouldn’t amend the comprehensive plan before we enacted the land development code. It appears at this point we think we may be opening ourselves up to some liability.

MR. BROWN: You’ve got the liability issue because of what’s in the comp plan anyway.

THE MAYOR: Comp plan anyway. So that doesn’t matter. Okay. I see your point.

MR. BROWN: And the law requires you to have a land development code which is consistent with your comp plan.

THE MAYOR: But does it require it within a time frame? Does it require --

MR. BROWN: Within a reasonable period of time, and I think we’re bumping up against that.

THE MAYOR: Approaching that.

MS. DIEBEL: But Counsel, my question is that, if we have an inconsistency in our comprehensive plan, rather than compound the error with -- with validating it against a land development code that also contains the same error, why wouldn’t we bring forth amending the comprehensive plan in the right order and then adopting the language in the land development code, which is what I think you said you wanted to do in parallel?

MR. BRIGGS: There’s only one error. It pertains to the property at 301 New England. Staff has already advertised the ordinance to correct the error. It’s going to P and Z March 2nd and will be at the City Commission at the end of March. So within those two months, the error will be corrected. That action is already underway. So I think the only reason to bring that to your attention tonight is to let you know that this is something that needs to be done and voted on in the future.

MS. DIEBEL: Well, I disagree, Mr. Briggs. I heard our counsel say that we -- that, quote
you shouldn't have down zoned the property in
the comprehensive plan, which you've done, and
you've done a regulatory taking in it. And it
was more than one.

MR. BROWN: There's been -- there's been
one that's been brought forward. Is that what
you meant, Mr. Briggs? There's been one
landowner with one parcel, 101 New England --
MR. BRIGGS: This one parcel.

MS. DIEBEL: And I'm just hearing our
counsel say that --

UNIDENTIFIED SPEAKER: There could be
others.

MS. DIEBEL: -- there could be others. So
rather than adopt a land development code that
compounds the error, why don't we fix the
comprehensive plan so we don't go down this
path?

MR. BRIGGS: Because we don't know where
those others are. We have heard about Bert
Harris claims for over two years, about how we
are harming property values. And what you do
is, you bring in a specific case of a specific
property that's harmed by your comp plan, and
you bring in appraisals, and you show the

a few things that I guess I just need to say.

Well, number one, I understand the
recommendation from the city attorney to adopt
the land development code and then go back and
make whatever amendment to the comp plan and
associated land development change. And that
makes sense to me, because we have to have a
land development code so we can move forward.

But here's where I'm really confused. And
I don't know if this is a matter of legal
opinions and differing opinions. But this
whole issue of Bert Harris, it was my
understanding that a municipality or county has
the right to change zoning or zoning
regulations from time to time if it's in the
best interest of the community, or whatever the
language is. I've read some of the U.S.
Supreme Court cases on that. And I think Lake
Tahoe is one of the examples.

But anyway, if what you're saying is true,
then I want to understand -- I want to
understand how we had a previous attorney and
law firm sitting up here when we adopted the
comp plan, and none of that was made --

MR. BROWN: Let me just address -- can

difference in value for how you were harmed by
the enactment of these rules.

Then the City reacts. It either says, no,
we don't think we harmed you. Here's our
appraisals. See, this property is just as
valuable as it always was. Or we say, oh, I
guess we did harm the property, and we didn't
mean to, so we'll correct it.

So we are waiting for those specific,
on-point properties to be brought to us, backed
up by appraisals demonstrating the diminution
of value, and we've yet to receive any of
those.

MR. BROWN: Mr. Briggs is correct in his
statement. I've been trying to say that. But
I think, as a policy matter, you should analyze
your comp plan, and if you act on my
recommendation, your land development code, and
we should proactive amend it so that citizens
aren't put to the burden of having to do that.

In the meantime, we're aware of a specific
case that can be resolved, as Mr. Briggs
indicated.

THE MAYOR: Commissioner Dillaha?

MS. DILLHA: Okay. I've got -- I've got

I -- I'm sorry to interrupt.

MS. DILLHA: Yeah. I'm finding it
frustrating.

MR. BROWN: The Supreme -- and I
understand. This has been extremely
frustrating for Katie and Jeff, and we're
having to get to know each other very well
through this process. And it's very
frustrating for all of us. And I'm sorry for
that.

The Supreme Court cases you've read are
the common law constitutional cases, where, in
order to have a regulatory taking, you
essentially have to deprive the landowner of
virtually all use of his property. But then
the Florida legislature passed the Bert Harris
Act, where any regulation that diminishes the
value, down zoning. We can change zoning, yes.
But you may down zone a property, and if that
property owner can show that as a result of the
down zone, he's lost value, then you can suffer
damages. It's as simple as that.

So the Bert Harris Act is something the
legislature layered on that's far more
protective of property rights than the common
law standard for constitutional regulatory
taking.

THE MAYOR: Commissioner Dillaha?

MS. DILLAH: Okay. Well, I was just

finishing up with, if we had these problems

with our comp plan, I don't understand why they

weren't brought forward when our comp plan was

adopted.

MS. DIEBEL: Commissioner Dillaha, I mean,

that was part of the debate that we had. I

mean, adopted -- repealing, readopting the comp

plan was the exact action was coming forward.

I mean, I don't understand why this would be --

why this would be nes.

MS. DILLAH: No. What I'm saying is,

when we had another city attorney sitting up

here and we were going through the process, it

was not brought forward that we might be down

zoning property or violating the Bert Harris

Act. None of that was discussed.

MS. DIEBEL: It absolutely was. I was

calling for the legal counsel on the opinion,

which he stated you can do this, but here's

some potential risk and ramification. I'd be

happy to go pull the minutes and the tapes of

those meetings. I was very vocal about that

and asked for counsel opinion.

THE MAYOR: Commissioner Dillaha?

MS. DILLAH: I don't recall counsel

ever -- ever saying that. But --

THE MAYOR: We have a disagreement here,

but --

(Inaudible exchange ensued.)

THE MAYOR: Commissioner Anderson has a

question for counsel.

MR. ANDERSON: Based on -- I mean, I'm

sure there is a mixture of things that we've

heard tonight, some of which are comp plan

controversies, some of which are land use

controversies, and some of which are plain

differences of opinion on what the entitlements

truly are. So I'm looking at this, and I'm

thinking we've got sort of three different

things going on.

The comp plan changes we can't do anything

about tonight. There's nothing we can do about

it tonight. But do we know -- could we put in

place, in this land development code, within --
or make the changes within the next two weeks

the things that we don't have a difference of

opinion on? I mean, is there a process where

that could happen?

MR. BROWN: I would like to go back and
talk to Katie Reichmann, who's more of an

expert on this than I am. You can't adopt a

land development code that is inconsistent with

your comp plan, that perhaps there could be

almost settlement-type language that, you know,

until the thing is amended, we could -- we

could possibly settle, you know, disputed

claims.

But let me -- let me address something you

said, Commissioner. Your third -- your third
category of possibility was, there could be

disputes on whether or not. in a given case, we've really violated their rights. And I want

to make that clear. We have to look at each
case, case by case.

The 301 New England I think we do need to

settle. But that doesn't mean that we wouldn't

look at another set of facts and disagree that

they have a valid Bert Harris claim. We might

say they don't, okay. So I want to emphasize

that.

But if you'd like, I can come back in two

weeks and, under the Newtown [phonetic] case, a

fairly recent case, that would not change the

substance of the ordinance, in my opinion. So

you could adopt, on second reading at the next

meeting, with as much flexibility-type language

in to give comfort to people, and then start

the comp plan review process and amendment

process, which can't [phonetic] be done

quickly.

MR. ANDERSON: But if you're asking could

we come back in two weeks and take care of all

these objections, the answer is no. There are

things such as them wanting to keep the option

for bed and breakfast that you either have to

give it to them -- I mean, you can't solve all

of the complaints about what's before you.

MR. BROWN: I'm referring to the C-2 issue

now.

UNIDENTIFIED SPEAKER: May I --

(Inaudible exchange ensued.)

UNIDENTIFIED SPEAKER: That to me was --
go ahead. I'm sorry.

UNIDENTIFIED SPEAKER: I'm really

cconcerned about the 25 to 17. I don't know if

that unilaterally does something or not. So I
MR. BROWN: I think, if the comp plan says that you don't have the right to come in and ask the City Commission and -- P and Z, then the City Commission to go back to 25, then I think you have a similar type --

(Inaudible exchange ensued.)

Yeah. Because I know that Katie was telling me that in some places in the comp plan, we -- we say that you can't try to change the zoning. There's some areas like that. But if the 17-25 issue is not one of them, then we're okay.

THE MAYOR: And maybe that opens up another can of worms. But that something that should be addressed too. Because if we don't give the people -- if we down zone or adjust and we don't give them the right to ask for that --

MR. BROWN: That's a problem.

THE MAYOR: That's a problem. And you're saying, based on your review or your firm's review, Katie had that in the comprehensive plan today?

MR. BROWN: Yes. She mentioned to me that there are a couple of places where the property owner doesn't have the right to seek any conditional or use --

THE MAYOR: I'm assuming we're going to fix that when we fix these other issues.

MR. BROWN: Yessir.

THE MAYOR: I would assume. We want to. Maybe we don't want to. But --

MR. BROWN: When we were -- we came into this position, we had a comp plan. It was already done. And then Katie worked with Jeff just to make sure the land development code was consistent with the comp plan. And she saw a lot of these things, which caused her some concern.

There's a lot that's good in your comp plan. Of course. And it's possible to do it legally on the redo and still achieve, you know, a lot of the protections that the City wants.

THE MAYOR: Commissioner -- I'm sorry.

I'm listening for a comment.

Go ahead, sir.

MR. ANDERSON: So let me -- so I've talked about the three categories, just -- and I know we may be revisiting it again. But the areas -- I think what I'm hearing our counsel recommend is that we really have to adopt a land use code that's consistent with the comp plan, that failure to do that is a problem.

MR. BROWN: I think you open yourself up to even more liability in the interim.

MR. ANDERSON: Yeah. And so -- I think that's what I'm hearing, is that that's the box we're in on comp plan issues, is that it's a box, and you have to deal with that box.

And then there's the second category, which is things that weren't required in the comp plan but are imposed in the land use -- the land use code that perhaps, in the specific instance brought forward, were not intended. And that's the category that I'm wondering, can we make changes in the next two weeks.

And then the final category is, you know, we just don't have this -- there's no commonality of opinion, and so we can't make those changes unilaterally.

UNIDENTIFIED SPEAKER: Right.

MR. ANDERSON: Yeah. And I've heard a litany of things that perhaps is a -- a constructive list of specifics tonight that have been absent since this thing was filed in December and -- you know, but I think that that's interesting. You know, there's now a litany of very detailed discussion points which I'm not sure is timely. I don't think it, you know -- but it is what it is.

I mean, would it be appropriate for the parties to see if there's -- if Jeff can reach an agreement on that middle group of items and bring it back?

UNIDENTIFIED SPEAKER: Before we adopt, you mean, Commissioner Anderson, or --

MR. ANDERSON: Yeah.

MR. BROWN: I think -- yeah. As you were speaking, I was thinking that maybe staff should meet with the landowner and identify areas where there's an agreement. And I could look at bringing some language in that wouldn't be in opposition to the comp plan, but would allow a process for disputes in the gap period while we're amending the comp plan to be corrected or settled or resolved.

UNIDENTIFIED SPEAKER: Right.
MR. BROWN: That would be something that would be appropriate.

MR. ANDERSON: I mean, I hate table this yet again. We've been table this since November, trying to give everyone ample opportunity to examine this code. And, you know, while it's - inaudible -- it's waited until this late to come out. It's only 60, 90 days. But, I mean, if we can find an agreement on those few things that reduce the pain for this particular situation, I'd be ready to table it until two weeks from now, or frankly, until a special meeting.

MR. BRIGGS: I would say that all the issues that have been raised have been raised in the C-2 district. So the rest of the document, the other 95 percent of the document, hasn't been raised at issue, from what you've heard tonight --

UNIDENTIFIED SPEAKER: R-3, R-4, C-2.

MR. BRIGGS: I'm talking about things that you spoke about --

THE MAYOR: I'm sorry. I'm sorry. We're not going to debate in the public.

MR. BRIGGS: We could move forward on the document, taking out C-2 then we'll work on those changes in the interim two weeks.

UNIDENTIFIED SPEAKER: Some of them aren't resolvable. So if we separated this with the two different components, I mean, what does that do to the notice requirements and the adoption requirements and --

MR. BROWN: You wouldn't have to renotice if you table. I mean, you have to renotice that it's coming back, but you wouldn't have to go through the super notice and advertise in the paper or anything.

UNIDENTIFIED SPEAKER: Okay. But, I mean, you could adopt tonight except for the C-2 zoning?

MR. BROWN: Oh, I think you could, yes. You could adopt but for the C-2.

UNIDENTIFIED SPEAKER: And then the second reading, the C-2 portion of it, would carry on until next --

MR. BROWN: Yes. I don't think there's any problem with that.

MR. ANDERSON: And then we'll work out --

MR. BROWN: It's not -- it's not routine, but, yes, you could sever the C-2 out. It's all part of the same ordinance, which is properly noticed to the public. So that would be a solution, one way to approach it.

THE MAYOR: Mr. Brown, I have a question, back on the comp plan, if I might. The thing that's slowing us down is our arbitrary decision to go twice a year. Could we amend that ordinance to say, if there are issues which present themselves, such as this, which, again, I -- I am assuming were mistakes of human kind, that we could say or hold back a right for the City to adjust --

MR. BROWN: Yeah.

THE MAYOR: -- for such matters as this and not have to wait six months?

MR. BROWN: That would require an amendment by ordinance, but we could get on that right away. I don't recall if --

THE MAYOR: I think the every six months was we didn't want developers coming in every meeting and trying to adjust the code. But, I mean, this is something that, frankly, I don't want to have a personal timetable to my head. Since we put that timetable to our head, that -- it appears we've got some liability on the surface, at least from what I'm hearing. And, you know, I'd like to fix that sooner rather than later, personally.

MR. ANDERSON: But, Mr. Mayor, are you talking about putting something into the adopting or ordinance that would say that --

City cleanup issues --

THE MAYOR: Yeah. I don't know what you'd call them, but --

MR. ANDERSON: -- more frequently than twice a year?

UNIDENTIFIED FEMALE COMMISSIONER: City administrative.

THE MAYOR: I mean, administrative. I like that term. I mean, if we even looked at where we're at with the post office, this probably doesn't -- well, it may fall under that type of a category, but this is certainly much more onerous to me. And I think our citizens, as well as -- well, our citizens would appreciate us not having to create liability that we might have to defend. I mean, there's a cost to doing that, whether people win or lose at the end. It's the time and the cost.
Mr. Brown, I'd rather be paying your time in another way rather than in litigation.

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

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

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

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

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

THE MAYOR: Amendment to the ordinance, yes.

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

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

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

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

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

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

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

UNIDENTIFIED FEMALE COMMISSIONER: So just to --

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

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

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

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

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

MS. DILLAHAN: Right, and to expedite those changes or corrections to that CRD map and language.

UNIDENTIFIED SPEAKER: Are you making a --

UNIDENTIFIED FEMALE COMMISSIONER: I have a question --

UNIDENTIFIED SPEAKER: -- form of a motion?

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

THE MAYOR: That's a -- we have a motion to amend. Is there a second to that? Carrying on, the amendment fails.

Commissioner Bridges?

UNIDENTIFIED SPEAKER: I'm sorry. Go ahead.

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

But for this evening's order of business here, what is the -- what is the most
expeditious way to achieve our goals here?

MR. BROWN: My recommendation is just to adopt, on second reading, the land development code. And we are going to work, as Mr. Briggs has indicated, to resolve all the issues that we agree with, including the fact that we do agree with the 301 New England C-2 issue. We're going to resolve all those issues so that there's no need for citizens to go through an expensive process of getting ready to bring a Bert Harris Act Claim.

So I would recommend just adopting the LDC as presented and then allowing us to work with staff and affected land owners as cases are presented, and then, of course, go through the comp plan amendment process and, of course, bring back the amendment to the ordinance to allow for very quick changes to the comp plan when it's necessary like this.

THE MAYOR: Commissioner Diebel, I am just going to say, I am so uncomfortable adopting something that I know is trouble. It just troubles me. Just let me just say it that way.

I would just rather table it for two weeks and bring it back when everybody's done their work, because at this point, it feels like we've got big gaps. I don't know how we've gotten here. I'd like to know at some point. But that's going to make tonight's meeting go any shorter or longer.

MR. BROWN: I would bring Katie --

MR. MAYOR: I'm just really concerned about what appears to be major gaps. And it feels like you're saying we will compound those gaps less by adopting this ordinance versus by not adopting it. I'm confused by a commission versus an omission.

MR. BROWN: That's an excellent way to put it. I understand. And, intuitively, that's what most logical people would think.

But I'm -- I'm -- as a lawyer, I am -- I keep coming back to the fact that the law requires you to have a land development code which is consistent with your comp plan. But I don't suppose --

MR. MAYOR: So I guess I'd rather have somebody -- maybe I shouldn't talk out loud like this. But I think I'd rather have somebody bring an action against me than that, to bring action against me knowing something is incredibly flawed, or flawed, or partially flawed, or minorly flawed.

MS. DIEBEL: Mr. Mayor --

MR. MAYOR: -- if we, at least, can fix it.

UNIDENTIFIED SPEAKER: Two weeks --

MS. DIEBEL: Mayor, I'd like to support Commissioner Anderson's thoughts and the comments that he made and make a move to table this for two weeks until the inconsistencies can be --

THE MAYOR: There is a motion to table.

Is there a second?

MR. ANDERSON: Second.

MS. DIEBEL: And just discussion, at that time, I would assume we could have the reference to the ordinance that is necessary so that we can have a first review of that, as well as if there are any other inconsistencies that are discovered by the assistant counsel, that those could be brought forward at the same time, and we could vote at that time.

MR. MAYOR: There's a motion to table and a second.

MR. ANDERSON: Can I --

THE MAYOR: Commissioner Anderson, sure.

MR. ANDERSON: -- ask Mr. Briggs another question, please?

THE MAYOR: Sure.

MR. ANDERSON: You made the comment a minute ago that that little category of question, you know, where there may be some agreement on things that do need to change that's not in the comp plan story, is that in the C-2 district? Is that primarily where those areas of agreement, but -- or is it just on the map or --

MR. BRIGGS: The areas where we seem to have the disagreement, and we're not going to resolve them in two weeks, because they're philosophical differences in how buildings should be shaped and formed, are in the C-2 district. So you're not -- we're going to be back here with these same complaints about the C-2 zoning in two weeks, because if it's the philosophy, just as a for instance, of where the third floor should be set back from the second floor, I mean, that was put in the comp plan, but --

MR. MAYOR: Mr. Briggs, I'm sorry, I don't
want to interrupt you, but I don’t see this as philosophical. I see this as potential down zonings or citizens who can claim that we’ve taken something away from them in the comprehensive plan and are about to do that again in the land development code. I don’t see this as a 35-foot gap or not, because, to me, we have the right to do that.

I’m unclear as to whether or not we have one parcel, 50 parcels, multiple opportunities in the comprehensive plan where there have been down zonings, and that’s my concern.

And, today, I’m not getting confidence from staff or counsel that we know how big the problem is. We think it’s one piece of property, but we really don’t know, because we’ve gone months without even figuring this one piece of property out.

MR. BROWN: Right. Right. I think -- I haven’t been involved in the trenches like Katie and Jeff have been, but I -- I’m assuming there are many more property owners who’ve been similarly affected, it’s just that they don’t have development plans that they’re pushing, and they may never, you know, within -- when you amend the comp plan.

UNIDENTIFIED FEMALE COMMISSIONER: Well, I -- just to continue with the discussion, I want to go with the recommendation of our city attorney in that we have to have a land development code by law, and we do know that we need to fix some things in the land development code.

I probably am going to agree with Jeff. I can’t see that it’s going to be done in the next two weeks, or a week, I should say. So I would -- I would just be in favor of going with the recommendation of our city attorney on this matter. So I’m not in favor of the table, I guess what I’m saying.

THE MAYOR: And we’re going to vote it now -- inaudible -- vote on the motion to table this for two weeks until such time as staff has the opportunity to determine the extent of the problems we face.

UNIDENTIFIED SPEAKER: Commissioner Anderson?

MR. ANDERSON: Yes.

UNIDENTIFIED SPEAKER: Commissioner Dillaha?

MS. DILLHA: No.

UNIDENTIFIED SPEAKER: Commissioner Diebel?

MS. DIEBEL: Yes.

UNIDENTIFIED SPEAKER: Commissioner Bridges?

MS. BRIDGES: No.

UNIDENTIFIED SPEAKER: Mayor Bradley?

THE MAYOR: Yes. The land development code will be tabled for two weeks, and personally, I’d like to understand the extent. I know we have one, but it seems like there ought to be a way to overlay our current plans with the current plan and figure out -- I don’t know why it takes people having to tell us that without us knowing that. So I’d like to instruct staff, at least from my perspective, to figure that out.

MR. ANDERSON: And I’d like to make another comment too.

UNIDENTIFIED SPEAKER: Please.

Commissioners.

MR. ANDERSON: This code has been substantially in place and advertised for many, many months. And it will get voted on at the next meeting. It will get voted on on the next meeting. And so there’s been three months of time taken, and I guess there’s five or six days left before it gets voted on.

UNIDENTIFIED FEMALE COMMISSIONER: Thank you, Commissioner Anderson, because I agree that we need to get to the bottom of this.

Randy, what I want to be presented at the next commission meeting under this discussion is exactly which comprehensive plan changes that we need to make as well, instead of just what the land development code inconsistencies are, is actual work that’s come forward there, because I’m uncomfortable that we are matching the two, and to Commissioner Anderson’s point, we should be able to have that in front of us to be able to vote this in the right direction.

UNIDENTIFIED SPEAKER: I agree with you --

UNIDENTIFIED FEMALE COMMISSIONER: And also at the time that the commission is entertaining a discussion, that maybe we should expeditiously correct the comprehensive plan, if need be, in that direction as well, that we can take that under discussion at the next meeting, understanding the notice requirements
that we'd have to be under, and get it done.

THE MAYOR: I'm with you, Commissioner Anderson. I want to get this done. I just don't know how. And if it's just because one person at the second meeting finally decided to look at it, I don't know if that's what's driven it. I'm not clear tonight if staff knew this problem and hasn't addressed it with us. I don't know what the issue is at this point. But, obviously, we all need to have information to be able to make a prudent decision and not be put, frankly, Mr. Brown, in a double-bind.

MS. DILLAHA: Well, and I'm going to --

THE MAYOR: That's an uncomfortable position to be in.

MS. DILLAHA: And --

THE MAYOR: Commissioner Dillahea?

MS. DILLAHA: -- to add onto what Commissioner Anderson said, I feel the same way. This has been out there for months, and this is coming forward at the 12th hour, you know, which is problematic to me. I don't know why none of this ever came forward prior to tonight. And I agree, we need to vote on this at the next meeting.

THE MAYOR: If it's ready, we will.

Commission, I'm going to take a five-minute recess, if that's okay, and then we need to look at the timing for the rest of our agenda.

(Audio excerpt concluded.)