

CITY COMMISSION MEETING MINUTES
August 23, 2004

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

PRESENT: Mayor Kenneth "Kip" Marchman, Commissioners Barbara DeVane, Douglas Storer, John Eckbert, and Douglas Metcalf; City Manager James Williams; City Attorney Brent McCaghren and Deputy City Clerk Tania Haas.

The invocation was offered by Church of God by Faith Elder Herbert Green, followed by the Pledge of Allegiance.

CITIZEN'S BUDGET COMMENTS:

1. Economic Development Advisory Board Chairperson Jim Barnes spoke about the board's concern of the need to plan future infrastructure development appropriately for Fairbanks Avenue.
2. Commissioner DeVane inquired whether staff is able to plan additional sewer improvements if funds were available. Water and Wastewater Utilities Director David Zusi elaborated on the necessary improvements.

MAYOR'S REPORT:

1. Mayor Marchman commended staff and everyone for their efforts during the hurricane recovery process.
2. Mayor Marchman reported that Orange County School Board Member Joie Cadle has asked to attend the September 13, 2004, City Commission meeting to provide an update on the former Glenridge Middle School site.
3. The following board appointment was made. **Motion by Commissioner Metcalf to nominate Hal Kantor to the Comprehensive Plan Task Force, seconded by Commissioner Storer. Motion passed unanimously.**

CITY ATTORNEY'S REPORT:

- a) RESOLUTION NO. 1880-04: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, DESIGNATING THE PROPERTY LOCATED AT 1285 RICHMOND ROAD, WINTER PARK, FLORIDA, AS A HISTORIC RESOURCE IN THE WINTER PARK REGISTER OF HISTORIC PLACES.

City Attorney McCaghren read the resolution by title. No public comments were provided.

Motion made by Commissioner DeVane to adopt the resolution, seconded by Commissioner Storer. Upon a roll call vote, Mayor Marchman and Commissioners Storer, Eckbert, Metcalf and DeVane voted yes. The motion carried unanimously with a 5-0 vote.

- b) RESOLUTION NO. 1881-04: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, PROVIDING FOR THE ISSUANCE OF \$5,000,000 ELECTRIC REVENUE BOND ANTICIPATION NOTES, SERIES 2004, IN ANTICIPATION OF RECEIPT BY THE CITY OF PROCEEDS FROM THE SALE OF ITS NOT EXCEEDING \$49,000,000 ELECTRIC REVENUE BONDS, SERIES 2005; AWARDED THE SALE OF THE NOTES TO THE PURCHASER AT NEGOTIATED SALE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

City Attorney McCaghren read the resolution by title. Assistant City Manager Randy Knight explained that the purpose of the resolution is for a bridge loan to help with the costs prior to the actual closing of the acquisition of the electric system. No public comments were provided.

Commissioner Storer asked whether an approval of the resolution should be delayed until a total dollar amount of damage is calculated as a result of Hurricane Charley and how that amount can impact the City's reserves. He expressed his reservations of additional debt obligations because of not understanding the total financial impact of the storm.

Motion by Commissioner Storer to table the proposed resolution until more is known on the financial impact of the storm. Motion failed for lack of a second.

Assistant City Manager Knight explained how the proposed resolution replaces funds that have been spent and disencumbers reserves. There was discussion of possible impacts with delaying approval of the resolution.

Motion made by Commissioner Metcalf to adopt the resolution, seconded by Commissioner Eckbert. Upon a roll call vote, Mayor Marchman and Commissioners Eckbert, Metcalf and DeVane voted yes. Commissioner Storer voted no. The motion carried with a 4-1 vote.

- c) BUILDING PERMIT RESOLUTION:

Although not listed on the agenda, the following resolution was considered.

RESOLUTION NO. 1882-04: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AMENDING THE BUILDING PERMIT FEE SCHEDULE OF THE CITY TO WAIVE FEES FOR HURRICANE REPAIRS ON ONE AND TWO FAMILY DWELLINGS.

City Attorney McCaghren read the resolution by title. He explained the proposed resolution includes a timeline of six months and waives the building permit fees for repairs and reconstruction from hurricane damage to one and two family dwellings.

Mayor Marchman asked for public comments. No comments were provided.

Discussion ensued regarding the estimated cost to the City that would result from uncollected permit fees and the process of applying for reimbursements from FEMA. Building Official George

Wiggins elaborated on the cost to the City over six (6) months and why the resolution only applies to one and two family dwellings.

Motion made by Commissioner Storer to adopt the resolution, seconded by Commissioner DeVane. Upon a roll call vote, Mayor Marchman and Commissioners Storer, Eckbert, Metcalf and DeVane voted yes. The motion carried unanimously with a 5-0 vote.

CONSENT AGENDA:

- a) Approve minutes of 8/9/04 and 8/16/04.
- b) Approve Purchase Order as follows:
 - 1) Change Orders to CH2M Hill to add Task Orders #1, 2, 3, 4 & 5, as noted on the attached memo. Total amount, \$155,133.00 (Budget: Utilities)
 - 2) After-the-fact PO 110633 to Brick America, for the purchase of 128,250 bricks for the W. New England Avenue Streetscape Project; \$66,690.00 (Budget: Public Works)
 - 3) Task Order 2004-02 for CH2M Hill Constructors, Inc., includes the scope and Guaranteed Maximum Price (GMP) for the construction of the Aloma WPT, Phase II of the Magnolia WTP, and impeller and well modifications at the Swoope WTP. The GMP includes engineering services during construction. The GMP for the work outlined above and described in Task Order 2004-02 shall not exceed \$22,712,691.
 - 4) Approve Engineering only, to produce power transformers by March 1, 2005, from General Electric; \$35,000.00 (Budget: Electric Distribution System).

Mayor Marchman asked for public comments. No comments were provided.

Motion made by Commissioner Eckbert to approve the Consent Agenda, seconded by Commissioner Metcalf. The motion carried unanimously.

PUBLIC HEARINGS:

- a) Conditional Use request of AM South Bank to construct 9,000 square feet of office space and bank facilities with three drive-thru tellers on the vacant properties on the north side of W. Morse Boulevard midway between Virginia and Pennsylvania Avenues.

Planner Briggs provided the staff report. He explained that a conditional use approval for the AmSouth Bank to build a new branch on Morse Boulevard was granted last year and that this is the site plan for that project. He continued that the applicant has changed the request from a two-story building to two one-story buildings with similar square footage. He generalized the layout in terms of the buildings, parking and drive-in tellers. He elaborated on the neighborhood compatibility issues that have been resolved and how the applicant addressed the remaining parking by the addition of a screen element. He said the Planning and Zoning Commission (P&Z) did not object to the proposed site plan layout but had reservations with the use of prop walls as screening for parking and the quality of the building materials selected for the two buildings. He reported that solutions for the two outstanding issues will be discussed with the applicant at the next P&Z work session.

Mr. Briggs stated that the P&Z wanted the applicant to continue through the process and obtain an approval provided that the project maintain the same generalized layout that was presented last year. He said that although the P&Z wanted the applicant to obtain an approval, condition #1 states that the final site and building plans, including the architectural detail and materials and the lighting plan, be approved by the P&Z prior to the building permit. Lastly, Mr. Briggs commented briefly on the other three conditions.

Commissioner Eckbert sought clarification with the differences between last year's site plan and the one presented at this meeting. Commissioner DeVane expressed her preference of the loss of a few parking spaces and the addition of heavier landscaping instead of fake walls for screening.

Interplan LLC representative Bill Tamala, explained the requested changes. He said the changes have triggered the conditional use requirement and exhibited elevations of the proposed changes. He stated they are now proposing a wall type structure instead of a facade looking building which is based upon the Planning and Zoning requirement. He commented on how the proposed plans have been improved and unanimously approved by the P&Z. There was discussion regarding why the applicant abandoned the previous elevations that had been approved.

Merrill Ladika, 451 Garfield Avenue, provided a brief history of the project and why she believed the conditional use request should be denied because of a development order that had been executed. City Attorney McCaghren stating that the matter would have to be reconstructed for recollection purposes, explained that if the matter creates a problem, the Commission can still move forward with the conditional use, subject to the clarification of this matter. He stated the property could be rezoned if necessary.

Motion made by Commissioner Storer to approve the conditional use request, subject to the City Attorney's satisfaction that the Carolina Avenue Rezoning Agreement was properly handled, along with the four conditions imposed by the Planning and Zoning Commission; seconded by Commissioner DeVane. The motion carried unanimously.

Discussion ensued regarding P&Z condition #1 and if the applicant needs to return to the City Commission for approval if the P&Z grants an approval. There was a consensus that the applicant is not required to return to the Commission for approval once the approval is obtained from the Planning and Zoning Commission regarding the final site and building plans.

b) Subdivision request of Jay Trent to split the property at 711 N. Lakemont Avenue into two single family lots.

Planner Briggs stated the lot split request includes lots 19 and 20 located on the corner of Taylor and Lakemont. He said the property contains a duplex with a single family residence in the front of the building and a small attached apartment in the back. Mr. Briggs explained that the applicant wants to redevelop the property by splitting the property into a corner and an interior lot which would allow the existing residence located on the front to remain in the corner and permit a new residence on the northern interior lot. He said the zoning for the neighborhood is R-1A and that the applicant

exceeds the 75' lot width requirement but is short in the lot area for both lots which requires a variance from the R-1A zoning.

Mr. Briggs explained that the applicant's request was originally denied by the P&Z and that the applicant submitted a more appropriate design for the northern interior lot. He stated the new design and circular driveway will prevent cars from stacking up to Lakemont Avenue and was instrumental when the P&Z reconsidered the previous denial and recommended approval. He said the applicant has committed to the proposed plan and to build a home that overcomes the traffic issues discussed at the P&Z level. Mr. Briggs reported that the applicant has presented letters of consent from the three adjoining property owners as well as others; and one letter of objection on the opposite side of Taylor.

Mayor Marchman asked whether the applicant was amenable to the P&Z condition that the driveway arrangement on the interior lot be binding. Mr. Briggs responded that the applicant was amenable to that condition.

Applicant Jay Trent explained the legal status of the property when he purchased it in 1979. He said the proposal is to create two conforming single family home lots with no increase in density. He confirmed that all floor area ratio requirements will be met based on City codes. He provided additional details on the proposed project and addressed traffic and other issues that were raised at the P&Z meeting. Mr. Trent agreed to the P&Z condition that the driveway arrangement on the interior lot be binding.

Commissioner DeVane added that the house fronting Taylor should never be allowed access onto Lakemont Avenue. She said the same access restrictions placed on the northern residence should also be placed on the interior residence.

Motion made by Commissioner DeVane to approve the request to split the property with the condition imposed by the Planning and Zoning Commission, with the addition that the house that faces Taylor Avenue be denied access onto Lakemont Avenue and be made part of the deed restriction for the future. Seconded by Commissioner Storer and carried unanimously with a 5-0 vote.

- c) Request of Regent International Hotels to amend the plans and development agreement for the Regent Hotel property at New England and Interlachen Avenues, to increase the hotel rooms from 158 to 197 and parking accordingly.

Planner Briggs provided the staff report. He distributed the fourth amendment to the Developer's Agreement with the Regent Hotel. He explained that the project is moving toward receiving a building permit and that additional modifications are proposed; one being an increase in the number of hotel rooms from 150 to 197. He elaborated on how they are able to accommodate the increase without changing the hotel's height or footprint but have increased the number of parking spaces. He noted that the increase has created a surplus of 37 parking spaces, totaling 404.

Mr. Briggs commented that the developer has provided architectural modifications to the building that have been reviewed thoroughly and extensively by the Planning and Zoning Commission (P&Z). He said the other issues discussed at the P&Z level dealt with the applicant's request to remove the slip lane (which was denied at the P&Z) and the addition of an outdoor dining area to the restaurant

that would be located on the New England Avenue frontage. He explained that residents in close proximity to the project expressed their opposition at the P&Z meeting with the removal of the slip lane and the additional outdoor dining area. Mr. Briggs said the outdoor dining area was added to comply with the constitutional amendment that restricts smoking in restaurants and the 10% rule that requires an outdoor seating area. He explained that the concerns expressed by the surrounding residents with the outdoor seating area deals with the potential noise impact. Mr. Briggs elaborated that the residents were not amenable to a proposed condition that would deal with noise violations if and when they occur which is why the P&Z denied the request for the outdoor seating area.

Discussion ensued regarding whether the decision to remove the slip lane and the addition of the outdoor seating area were mutually exclusive decisions. Mayor Marchman and Commissioners Storer, Eckbert, and Metcalf disclosed they had discussed this issue previously with the applicant and/or their representatives.

Attorney Hal Kantor, representing the applicant, addressed the traffic impact concerns that resulted from the request to increase the number of rooms, the removal of the slip lane, and the addition of the outdoor seating area.

Mark Ellert, Langford Development LLC, provided a powerpoint presentation of the proposed modifications and additions to the project. He also provided a construction time line.

There was discussion concerning the dimensions of the proposed outdoor smoking area, the need to provide an unenclosed area for smokers, the dining deck elevation and recessing it below the street grade, and the number of outdoor tables proposed for the area.

Lou Acosta, Regent Hotels, addressed the issue of accommodating smoking customers.

Candace Chemtob, 141 Alexander Place, expressed her concern with the traffic impact that may result from the removal of the slip lane, and the proposed outdoor dining area.

Sally Miller, 222 Alexander Place, expressed her concern with the outdoor dining area.

Jan Munson, 161 Alexander Place, spoke in opposition to the proposed project modifications.

Sheran Reich, 240 Alexander Place, read her comments made at the Planning and Zoning Commission meeting.

Barbara Ferrero, 250 Alexander Place, spoke in opposition to the proposed changes dealing with the slip lane and the outdoor dining area. She addressed how these changes will impact her property.

John Trbovich, 433 E. New England Avenue, spoke in opposition to the proposed changes.

Todd Betco, traffic engineer for the applicant, addressed traffic concerns expressed during public comments.

Discussion ensued regarding the original intent of the slip lane, the proposed location for the red awning, the status of on-street parking, and the proposed outdoor dining area.

Mr. Kantor addressed the expressed citizen concerns and commented how the applicant is

sensitive to the noise issue. He asked that the Commission approve the recommendation of the P&Z, with the exception that the Commission approve the removal of the slip lane and the use of the outdoor dining area.

Mayor Marchman stated that decisions need to be made concerning architectural enhancements and the number increase that has been unanimously approved by the P&Z. Commissioner DeVane expressed her concern with the architectural enhancements and the proposed red awning that were not originally approved. No additional comments were made regarding the issue of architectural enhancements.

Motion made by Commissioner Metcalf to approve the architectural enhancements as recommended by the Planning and Zoning Commission, seconded by Commissioner Storer. The motion carried with a 4-1 vote. Commissioner DeVane voted no.

Regarding the increase in the number of rooms, Commissioner DeVane expressed her concern that the building itself did not increase in size to accommodate the number of rooms proposed and how that may impact the quality of the final product. She asked that the applicant refrain from submitting additional modifications.

Motion made by Commissioner Eckbert to approve the increase in the number of rooms as recommended by the Planning and Zoning Commission, seconded by Commissioner Metcalf. The motion carried unanimously with a 5-0 vote.

Regarding the removal of the slip lane, Commissioner DeVane, appreciative that the applicant is pursuing a quality project, expressed her concern with the changes made to the entrance way. She noted that she could not support the removal of the slip lane.

Commissioner Eckbert commented on the need to explore on-street parking and spoke about removing the on-street parking to keep the traffic off the street. Commissioner Metcalf commented on how a single lane slip lane could become a future problem. He suggested restricting parking on the south side between the exit of the driveway and the entrance of the garage. Commissioner Storer elaborated on how this issue was not adequately addressed and that eliminating the on-street parking may be a solution to the problem. He suggested the use of landscape medians on New England Avenue.

Commissioner DeVane stated that the slip lane should be used for valet access to park the vehicles quickly into the parking garage. She agreed with the suggestions made to improve New England Avenue but noted those improvements should be dealt with separately from the slip lane.

Regarding the outdoor dining area, Commissioner DeVane expressed her concern with the proposed location being across the street from a residential area. She spoke of the original plan that excluded this and suggested the use of the interior courtyard area. She said she would not support this element because it was a major change from the original plan. Commissioner Storer agreed with Commissioner DeVane and stated there needs to be a better solution other than using New England Avenue as the location for the outdoor dining area.

Commissioner Eckbert, appreciative of the quality of vendors that the Regent Hotel selected,

expressed his concern with possible noise disruptions with the nearby citizens. He spoke of the importance that the outdoor dining area design and location be compatible with the surrounding neighborhood. Commissioner Metcalf commented on how the proposed area is designated more of a dining area and not a lobby bar. He said the developers should be able to provide a solution to this issue. Mayor Marchman expressed his preference of locating a more appropriate area for the outside dining area because of its proximity to the residential area. There was discussion on whether this matter should be tabled.

Motion by Commissioner DeVane to uphold the recommendation made by the Planning and Zoning Commission and deny the request for the outdoor dining area located along New England Avenue.

Commissioner Storer asked if the applicant would have to wait a year before reapplying or to submit changes if this request is denied, and if denying the request would preclude the applicant from submitting a more appropriate solution. Planner Briggs responded that it could and suggested an amendment to the motion on the table. City Attorney McCaghren noted that the motion would not preclude the applicant from returning with a location change for the outdoor dining area. **Commissioner DeVane's motion failed for lack of a second.**

Motion by Commissioner Storer to table the decision on the outdoor dining terrace and the removal of the slip lane and that staff study the use of on-street parking as an alternative or solution to the slip lane issue until the next Commission meeting, seconded by Commissioner Metcalf. Motion carried with a 4-1 vote. Commissioner DeVane voted no.

Commissioner Storer asked that this issue be explored architecturally and procedurally and to possibly enclose the outdoor dining area. Commissioner Metcalf suggested that staff or the applicant provide an accurate illustration of the on-street parking and modified slip lane. Attorney McCaghren noted that although the matter has been tabled, it is the intent of the Commission to hear this matter at the September 13, 2004, Commission meeting.

- d) AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING" SO AS TO AMEND THE R-1AAA, R-1AA, R-1A AND THE WINDSONG PURD ZONING DISTRICTS AND "GENERAL PROVISIONS" TO PROVIDE ALTERNATE REGULATIONS FOR SITE AND BUILDING IMPROVEMENT REGULATIONS WHICH ALLOWS AN INCREASE IN FLOOR AREA RATIO WHERE LARGER SECOND FLOOR SETBACKS ARE UTILIZED AND ALLOWS LARGER FLOOR AREA FOR ONE STORY DWELLINGS SUBJECT TO CERTAIN CRITERIA, PROVIDES FOR DETERMINATION OF FRONT SETBACKS, PROVIDES CRITERIA FOR RESIDENTIAL ATTICS AND PROVIDES SITE DEVELOPMENT STANDARDS FOR CANTON PARK HOMES. First Reading

Attorney McCaghren read the ordinance by title. Planner Jeff Briggs explained that the proposed ordinance is an adjustment to the single family zoning regulations that allows larger homes as a result of an increase of 5% in the floor area ratio in return for an increase to second story setbacks. He provided a brief history of the practice of demolishing old homes and the construction of larger homes as replacements that occurred in the late 1980's, resulting in the floor area ratio which controls the square footage of proposed oversized homes.

Mr. Briggs elaborated on the various control systems which included the current system that were

examined by staff. He said the ordinance under consideration is a modest proposal but helps to some degree because you will see less mass on the street. He said the proposed ordinance also changes the rules to encourage one-story homes and includes an adjustment to the impervious coverage from 50% to 60%. He noted that the Planning and Zoning Commission extensively reviewed the proposed ordinance and unanimously recommended its approval.

Commissioner DeVane commented on the problem of enforcing codes when attics are enclosed for additional square footage. She commended staff for their efforts and said this was a good beginning.

Building Official George Wiggins stated the ordinance offers an alternative for building a single family residence from the current floor area ratios and setbacks which allows for 5% floor area if the second floor is set in. He continued that the ordinance includes an additional incentive to build a one-story residence with the 5% floor area ratio and a 60% impervious coverage. He said these are the two major points of the proposed ordinance.

Mayor Marchman asked for public comments. No comments were provided.

Commissioner Eckbert, acknowledging the hard work that went into this, expressed his expectation of a more revolutionary outcome as a result of this exercise. He suggested a more radical approach from the current structure. Discussion ensued that this is a work in progress and staff will need to continue to look at this.

Commissioner Metcalf expressed his concern that some of the rules that have been implemented may cost the City good projects and architecture. He spoke about how the Sprint project has been jeopardized because of the fourth floor setback requirement.

Mayor Marchman noted that this is the first reading of the ordinance. He suggested that each Commissioner seek additional input if they have reservations with the ordinance.

Motion made by Commissioner DeVane to accept the ordinance on first reading, seconded by Commissioner Storer. Upon a roll call vote, Mayor Marchman and Commissioners Storer, Eckbert, Metcalf and DeVane voted yes. The motion carried unanimously with a 5-0 vote.

- e) AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA RELATING TO MUNICIPAL ANNEXATION; PROVIDING A REQUIREMENT THAT A SEPARATE REFERENDUM BE HELD IN THE CITY WHEN THE PROPOSED ANNEXATION EXCEEDS A CERTAIN SIZE; PROVIDING AN EFFECTIVE DATE. First Reading

Attorney McCaghren read the ordinance by title.

Planner Briggs provided the staff report. He explained the ordinance requires a voter referendum for any or a collection of annexations in a calendar year that exceeds more than 5% of the population or 5% of the area. He summarized the results of the 2001, 2002, and 2004, annexation initiatives. Mr. Briggs explained how the proposed ordinance may affect the areas that staff is looking at for sometime in the future.

Mayor Marchman asked for public comments. No public comments were made.

Commissioner Storer inquired whether the proposed ordinance addresses commercial properties. Mr. Briggs responded that it does in the context of the 5% area growth. He said the ordinance restricts the City growing more than 5% population or physical square miles. Commissioner Storer inquired whether any agreements exist with Orange County regarding future annexations. Mr. Briggs explained why those agreements do not exist.

Commissioner DeVane commented on the appropriateness of discussions and joint planning agreements with the City's municipal neighbors. She suggested staff to staff discussions about the future with Maitland, Eatonville, and Orlando. Mr. Briggs responded that an agreement exists with the City of Maitland and that one is not needed with the City of Eatonville because Winter Park has annexed up to their city limits, but that the City should speak with the City of Orlando. Mayor Marchman stated that he has been lobbied heavily about the proposed ordinance. He expressed his concern with the benchmark and at what point it should be initiated. He said he preferred a lower threshold than 5% and suggested a 2% threshold. City Attorney McCaghren clarified that the lower the benchmark, the more it ties the City's hands. Mayor Marchman stated he wants to tie the City's hands without being too restrictive. Commissioner Eckbert inquired whether the Mayor's concern with the benchmark was related to the population or the area. Mayor Marchman responded that his concern was related to the population. Discussion ensued regarding the benefit of broadening the City's tax base by annexing commercial properties and the appropriate benchmarks for area and population thresholds.

Commissioner Metcalf supportive of the 5% threshold in population, elaborated on the benefit of annexing certain commercial areas even when it exceeds the 5% area threshold. There was discussion that some annexation opportunities may be missed because the process may be too cumbersome or time consuming. Commissioner Metcalf expressed his preference of eliminating the commercial element in case an opportunity presents itself to annex commercial properties.

Commissioner Storer suggested the 2% threshold on population and 5% on commercial to see how that works out. He spoke of the prevailing perception of large areas being annexed into the City in one large initiative and counteracting that perception. Commissioner Storer encouraged staff to conduct feasibility studies to understand the financial ramifications of all annexations prior to any

proposed initiative. He said 5% in land area and 2% in municipal population for a cumulative year sounded reasonable.

Mayor Marchman stated the ordinance can be accepted on first reading and any changes that need to be made can be made by the second reading. Attorney McCaghren stated that if the ordinance is accepted on first reading with the 5% thresholds, and later changed to 2% and 5% for the second reading, that may be a substantive change that would require the second reading to become the first reading of the ordinance.

Commissioner Metcalf elaborated on why the ordinance is under consideration because of mis-characterizations that have been made based upon performed studies. He cautioned the Commission on rushing into an ordinance for the purpose of setting something in place to solve a problem that may not truly exist. Mayor Marchman expressed his preference of providing citizens more of a comfort level with an ordinance.

City Attorney McCaghren noted that the ordinance re-inserts the previous statutory requirement that imposed a referendum before the 1999 amendment. He said the State mandated the 5% for population and land area which required the referendum and that this ordinance puts the City back where it was prior to the amendment. Mr. McCaghren provided examples of problems that can occur by changing the area to specifically commercial. He stated that the City would be better served by returning to the previous statutory requirement because there is law that would apply to it. He suggested dealing with only the population or the land area which is easily measured and quantified.

Discussion ensued regarding the number of acres that are included in the proposed thresholds. Mayor Marchman suggested replacing the 5% with 2%. Discussion ensued regarding appropriate percentages for population and land mass. Commissioner DeVane spoke about replicating what was a Florida Statute prior to the 1999 amendment.

Motion made by Commissioner Metcalf to accept the ordinance with the 5% threshold (on population) and 5% threshold (on land area) on first reading, seconded by Commissioner Eckbert. Upon a roll call vote, Commissioners Eckbert and DeVane voted yes. Mayor Marchman and Commissioners Storer and Metcalf voted no. The motion failed with a 2-3 vote.

Motion made by Commissioner Storer to accept the ordinance and use the percentages of 5% for land area and 2% for population. Commissioner Metcalf requested to change his vote. Commissioner DeVane seconded the second motion and asked if a vote can be taken on the current motion on the table. Commissioner Eckbert inquired if Commissioner DeVane preferred the 5% and 5% or the 2% and 5% thresholds. She responded that she voted affirmatively for the 5% and 5% thresholds. City Attorney McCaghren clarified it was indicated that perhaps a vote was made in error. Commissioner Storer asked for clarification on the vote. Mayor Marchman stated that a vote was given but was misunderstood. **No vote was taken on this motion.**

The first motion was voted on again with the following outcome: Upon a roll call vote,

Commissioners Eckbert, Metcalf and DeVane voted yes. Mayor Marchman and Commissioner Storer voted no. The motion carried with a 3-2 vote.

- f) AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA RELATING TO ABANDONMENT OF A PORTION OF RIGHT-OF-WAY; ABANDONING A PORTION OF THE WESTERN 15 FEET OF THE RIGHT-OF-WAY OF VIA TUSCANY LYING EAST OF 2499 VIA TUSCANY, MORE PARTICULARLY DESCRIBED HEREIN; RESERVING A UTILITY EASEMENT; PROVIDING AN EFFECTIVE DATE. First Reading

Attorney McCaghren read the ordinance by title. He explained that the difference with the ordinance distributed tonight from the one included in the agenda packages is that it includes the street address where the right-of-way is located and a new section that imposes a 25-foot building setback from the new property line along Via Tuscany. He said the setback has been imposed with prior abandonments at Via Tuscany in order to keep similar setbacks along the street.

Dwight Holloway, Holloway Custom Homes, stated that he was unaware of the 25-foot setback.

Commissioner Eckbert asked for clarification on the 25-foot setback. Planner Briggs stated that the setback is consistent with the abandonments that have occurred in the past. The applicant was amenable with the setback since it was consistent with what was done previously. Planner Briggs noted that properties remain that may potentially come in on a case-by-case basis.

Motion made by Commissioner Storer to accept the ordinance on first reading, seconded by Commissioner DeVane. Upon a roll call vote, Mayor Marchman and Commissioners Storer, Eckbert, Metcalf and DeVane voted yes. The motion carried unanimously with a 5-0 vote.

- g) AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA RELATING TO CITY DEPARTMENTS; CREATING A NEW DEPARTMENT OF WATER AND WASTEWATER UTILITIES; CREATING A NEW DEPARTMENT OF ELECTRIC UTILITIES; PROVIDING FOR THE SERVICES AND FUNCTIONS OF THE DEPARTMENTS; PROVIDING AN EFFECTIVE DATE. First Reading

Attorney McCaghren read the ordinance by title. He explained that a change was made from Water and Sewer Utilities to Water and Wastewater Utilities within the ordinance.

Mayor Marchman asked for public comments. No public comments were made.

Commissioner Metcalf inquired whether the Streets Division was being separated from the Water Department. City Attorney McCaghren explained they are proposing a Public Works Department to consist of Streets, Stormwater and similar matters; and a separate Department of Water and Wastewater which will be called Utilities. He said additionally there will be a separate department for the electric utility. He said this removes Wastewater from under Public Works and creates its own department.

Motion made by Commissioner DeVane to accept the ordinance on first reading, seconded by Commissioner Metcalf. Upon a roll call vote, Mayor Marchman and Commissioners

Storer, Eckbert, Metcalf and DeVane voted yes. The motion carried unanimously with a 5-0 vote.

CITY MANAGER'S REPORT:

- a) Discussion of Special Commission meetings on August 30 and 31, 2004, for the Comprehensive Plan Amendments for the Howell Branch Preservation Grant.

Planner Briggs presented this item. He explained the purpose of the two upcoming special meetings necessary for the scoring and ranking process for the Howell Branch Preservation Grant and the three policies that deal with the City's Comprehensive Plan that need to be adopted to provide additional points required for the grant. Commissioner DeVane explained that the proposed changes to the Comprehensive Plan are minor and provided additional details regarding the grant. Commissioner Eckbert sought clarification on whether the outstanding issues deal with points or funding. Commissioner DeVane explained that applicants rarely challenge the point system. She said this needs to be done in order to obtain the additional points required for the grant.

- b) Budget discussion.

City Manager Williams stated staff has presented three lists entitled: Likely To Be Funded, Unlikely To Be Funded, and Organizational Support. Finance Director Wes Hamil provided a visual of the budget spreadsheets that were used for deliberation purposes.

Mayor Marchman asked for public comments. No comments were provided.

Topics deliberated included funding provided by the proposed millage increase; Contingency Fund; Vehicle Replacement Fund; deferring items; lobbyist fees; and budget items 12-13, 15-21 and 23; FEMA reimbursements; and organizational requests. Following additional discussion, budget consensus on various items was made (spreadsheet attached.).

NEW BUSINESS:

No new business.

The Mayor adjourned the meeting at 8:45 p.m.

Mayor Kenneth R. Marchman

ATTEST:

City Clerk Cynthia Bonham