APPROVED: 4/1/2021

MINUTES
Regular City Commission Meeting
6:00 PM - Thursday, March 18, 2021 - City Hall

INVOCATION: A MOMENT OF SILENCE WAS OBSERVED

PLEDGE OF ALLEGIANCE: COMMISSIONER LEHEUP-SMITH

CALL TO ORDER: 6:01 P.M.

ACKNOWLEDGEMENT OF QUORUM AND PROPER NOTICE

PRESENT: Commissioner Karen LeHeup-Smith, Commissioner Nan Cobb, Commissioner Willie Hawkins, Vice Mayor Emily Lee and Mayor Michael L. Holland

1. AGENDA UPDATE

2. APPROVAL OF MINUTES

2.1 March 4, 2021 - Regular City Commission Meeting

Moved by Commissioner LeHeup-Smith, seconded by Vice Mayor Lee, to approve the Minutes as submitted. Motion carried by the following votes:

Ayes: Commissioner LeHeup-Smith, Commissioner Cobb, Commissioner Hawkins, Vice Mayor Lee and Mayor Holland

3. AUDIENCE TO BE HEARD

3.1 Leslie Campione, Lake County Commissioner, introduced the new County Manager Alan Rosen and provided some background information on Mr. Rosen.

Alan Rosen, County Manager, thanked the Commission for welcoming him. He commented on his experience and living previously in Florida. He expressed support for the County and City working together to benefit the residents.

Bryan Broomfield addressed the Commission regarding the right to vote and commented on the 2020 presidential election. He cited new legislation that has been proposed that will make it more difficult to vote by restricting the use of drop boxes and vote by mail. He cited various historical instances involving Black Americans and voting. He expressed concern regarding voter suppression in the country.

Darius Kerrison announced the next comedy show would be held on April 24th.

4. CONSENT AGENDA

4.1 Resolution Number 21-08: Adopting update to Lake County Multi-Jurisdictional Hazard Mitigation Plan

4.2 Resolution Number 21-16: Approving purchase in excess of $50,000 for replacement of Commission Room audiovisual equipment

Moved by Vice Mayor Lee, seconded by Commissioner LeHeup-Smith, to approve the Consent Agenda as submitted. Motion carried by the following votes:

Ayes: Commissioner LeHeup-Smith, Commissioner Cobb, Commissioner Hawkins, Vice Mayor Lee and Mayor Holland

5. ORDINANCES, PUBLIC HEARINGS & QUASI-JUDICIAL HEARINGS

5.1 Ordinance Number 20-32: Voluntary Annexation of property located on north side of CR 44A, east of East Eldorado Lake Drive
Ordinance Number 20-33: Comprehensive Plan amendment assigning future land use designation to above property
Ordinance Number 20-34: Assigning a design district designation to the above property
Ordinance Number 20-35: Voluntary annexation of property located on the south side of CR 44A and west of Thrill Hill Road
Ordinance Number 20-36: Comprehensive Plan amendment assigning a future land use designation to the above property
Ordinance Number 20-37: Assigning a design district designation to the above property
Ordinance Number 20-38: Voluntary annexation of property located on the east side of Thrill Hill Road and north of Reedy Road
Ordinance Number 20-39: Comprehensive Plan amendment assigning a future land use designation to the above property
Ordinance Number 20-40: Assigning a design district designation to the above property

Derek Schroth, City Attorney, announced that staff was again requesting the continuance of the nine ordinances, Ordinance 20-32 through 20-40. He noted that a joint planning meeting had been scheduled between the City and County Commission for Wednesday, March 31st, at 5 p.m. He opened the public hearing on continuance of the ordinances at 6:11 p.m.

There being no public comment, the hearing was closed at 6:11 p.m. One comment in opposition to the annexations was received by email prior to the meeting from Don Levonius.

Ron Neibert, City Manager, confirmed that staff had confirmed a joint meeting would be held on March 31st and the County Manager is working on confirming a mediator. He stated the City and County would need to submit position papers to the mediator.

Moved by Commissioner LeHeup-Smith, seconded by Vice Mayor Lee, to continue Ordinances 20-32 through 20-40 to the April 1, 2021, Commission meeting. Motion carried by the following votes:

Ayes: Commissioner LeHeup-Smith, Commissioner Hawkins, Vice Mayor Lee and Mayor Holland

Nays: Commissioner Nan Cobb

5.2 Ordinance Number 21-02: Design District Amendment - Approximately 3.9 acres on Orange Avenue between Abrams Rd. and Fruitwood Ave.

Mr. Schroth read Ordinance Number 21-02 by title on second and final reading: An Ordinance of the City Commission of the City of Eustis, Lake County, Florida; changing the Design District Designation of approximately 3.9 acres of real property on the south side of East Orange Avenue (between Abrams Road and Fruitwood Ave.) from a mixture of Suburban Corridor and Suburban Neighborhood to Suburban Corridor.

Mr. Schroth opened the public hearing at 6:13 p.m. There being no public comment, the hearing was closed at 6:13 p.m.

Moved by Commissioner LeHeup-Smith, seconded by Commissioner Cobb, to adopt Ordinance Number 21-02 on final reading. Motion carried by the following votes:

Ayes: Commissioner LeHeup-Smith, Commissioner Cobb, Commissioner Hawkins, Vice Mayor Lee and Mayor Holland

6. OTHER BUSINESS

6.1 Discussion regarding making an offer to Lake County for purchase of the fairgrounds

Mr. Neibert explained that, as discussed at the annual retreat, he and the Mayor had met with County Commission Chair Sean Parks to discuss the possibility of the City purchasing back the fairgrounds property. He noted he previously provided information to the Commission including the property record card showing the value of the property, as well as notes from the City's Building Official from a walk-through inspection of the site. He stated the property record card shows the value of the buildings is approximately $700,000 with total value of the property being $1.3 million including the land value. He commented on the history of the property, citing the City's donation of the property to the County, and stated the possibility of the County donating the land back with the City only paying for the improvements.

Mr. Neibert then emphasized the existence of flood plain property on the site. He indicated the existing large building is partially in the flood plain which makes it a nonconforming use. He stated that would necessitate that any improvements over a certain amount would require the structure being brought completely into compliance. He stated it may be possible to have the flood plain lines re-surveyed.

Commissioner Cobb commented on her experience with the fairgrounds and stated she has never seen it flood.

The Commission discussed the need for it to be thought through and possibly re-surveyed for the flood plain. Discussion was held regarding what might necessitate the structures having to be brought up to code.

Lori Barnes confirmed that a substantial improvement is valued at 50% of the fair market value. Any improvements over that would require the structure to be brought up completely to current code.

Commissioner Cobb asked County Commissioner Campione about improvements done to the livestock building with Commissioner Campione confirming that building was completely redone. Commissioner Cobb confirmed the main building was constructed by the County; however, the rest of the buildings were constructed by the Fair Board.

Discussion was held regarding what type of renovations the City would need to do in order to utilize the property, how the property could be used and what programs could be offered.

Commissioner Campione suggested that the City request the County's financial records on the property and noted that it is very highly used for both large and small events.

CONSENSUS: Following further discussion, it was a consensus of the Commission for staff to obtain the financial records for the property and obtain suggestions from staff regarding what programming could be provided. It was agreed, staff would also confirm the accuracy of the flood plain map.

6.2 Fence Regulation Review

Lori Barnes, Development Services Director, provided an overview of the City's fence regulations and the history of how the regulations have been developed. She stated staff is not recommending any changes to the regulations and requested that, if the Commission desires any amendments, that there be a consensus of the Commission prior to staff proceeding.

The Commission discussed the use of barbed wire and noted that anyone who currently has a chain link with barbed wire on top cannot replace it if it gets damaged. Opposition was expressed with the City being allowed to utilize barbed wire but not the public. Concern was also expressed regarding not requiring specific types of material.

Ms. Barnes explained there is a portion of the code that addresses nonconformancies and which allows a property owner to obtain a variance to replace a nonconforming fence that has been damaged through no fault of the property owner. She further explained that an owner can replace up to 50% of a fence without a permit.

Further discussion was held regarding the City being allowed to utilize barbed wire when the public cannot and various alternate materials that have been utilized.

Ms. Barnes stated the materials allowed are broad and the City has been more concerned with height and location. It does not regulate the aesthetics. She suggested requiring any corrugated metal being required to be coated and not shiny.

CONSENSUS: It was a consensus of the Commission to not further regulate the fencing materials.

Discussion was held regarding the use of barbed wire fencing throughout the City with Mr. Neibert suggesting staff draft regulations to create a middle ground for use of barbed wire.
Ms. Barnes explained why the regulations were previously changed to not allow the barbed wire due to concerns that it sent a "keep out" message.

The Commission further discussed bringing back something that equalizes the use of barbed wire fencing unless there are specific state and federal guidelines regarding government use of barbed wire.

CONSENSUS: It was a consensus for staff to try and draft a middle ground use of barbed wire fencing.

6.3 Textile Recycling (Approaches to Regulation of Clothing Donation Bins)

Ms. Barnes reviewed information provided to the Commission regarding two different options for the handling of the clothing donation bins. She cited limitations to the restriction of the donation bins. She reported that Lake County, Tavares and Minneola do have ordinances regulating the donation bins as accessory structures. She reviewed how those are regulated. She then stated the City has approximately 30 bins throughout the City and four or five different entities placing the bins. She explained the benefits to using the franchise agreement including it would result in increased revenue through the franchise fees. She stated staff's recommendation that, if the Commission desires to regulate them, they do it through an amendment to Chapter 42 and require a franchise agreement for all textile recycling bins.

The Commission discussed use of the franchise agreement and the companies that have placed the bins not actually being not-for-profits.

CONSENSUS: It was a consensus of the Commission for staff to bring back an amendment to the code to allow the use of the franchise agreement option.

6.4 Discussion regarding Thrill Hill joint meeting with Lake County

Mr. Neibert explained there are several routes the City could take. He stated that one option would be to negotiate with Lake County. He noted staff has been working to schedule a negotiating, mediated, meeting. He added there were a number of items to consider. He stated the City has been working on a straight interlocal agreement to try and regain the contiguity with the park; however, the County has been pushing for an ISBA which would allow noncontiguous annexations. He explained that a considerable amount of time has been spent arguing that the City's proposed contiguous annexation does not meet the statutory requirement. He further stated that argues the question as to why the City would negotiate an agreement for a contiguous annexation that has been opined to be illegal and could be challenged by multiple parties. He stated the City disputes the claim that unincorporated residents could not sue to challenge the annexation. He added that the City Attorney has opined that they do have standing to file litigation.

Mr. Neibert then explained, regarding the suggestion that the City negotiate specific land use densities, uses and other land development regulations, that Florida law prohibits contract zoning. Therefore, they are being asked to negotiate an agreement that Florida law strictly prohibits. He indicated he spoke with another attorney that suggested, if the landowner agreed to certain deed restrictions, then the City could negotiate that. He stated that the City is being asked to negotiate on specific things that the law prohibits them from doing.

Mr. Neibert then stated that, if the City goes into negotiation on the ISBA provision, the ISBA would be limited to the three properties that have applied for annexation. He explained that would require the City to go back to the County to expand that ISBA for any subsequent properties that request annexation.

Mr. Neibert then reported that the state has informed Lake County that their property dedication to the Taylor Foundation violated the statutory provisions of their grant due to them not providing proper notification and also because they did not give it to a qualifying organization. He stated staff has documentation that the County is proceeding to try and find a new not-for-profit to deed the property to. They are trying to get a direct dedication from the Taylor Foundation to the Friends of the Wekiva not-for-profit group in order to break the contiguity the City previously had.

Mr. Neibert then summarized the City's options stating they could challenge the legality of the deed transferred to the Taylor Foundation and ask a court to overturn the legality of that which would allow the City to proceed with the lawful public hearing and determine whether or not they want to proceed with the annexations.

The Commission questioned the cost of the mediator with Mr. Neibert estimating about $3,000 for the first meeting. The Commission then asked if there were representatives from the property owners present.

Tim Green, Green Consulting Group, read an email from Jerry Brown commenting on their community involvement, indicating they currently have no development plans for the property, and stating their desire to annex into the City.

Mr. Neibert confirmed that the Harpers have filed a lawsuit against the County. He stated the City Attorney has opined that the City could join that lawsuit as a co-litigant.

The Commission discussed whether or not they should spend City taxpayer dollars on an issue the City may never benefit from.

Mr. Neibert explained the long term consequences stating, if the City does not prevail, the City will have no way to annex to the east of the City.

The Commission discussed whether or not to continue with mediation and whether or not the City could institute a moderate land use designation at a 3 to 1 density with Mr. Neibert explaining that with the City's form based code, the design district further restricts any density. He emphasized the City needs at least 3 units per acre in order to provide cost effective City services.

Further discussion was held regarding how the City's form based code affects the density with Mr. Neibert stating the most the City could negotiate is a specific land use for that area otherwise it becomes spot zoning which has legal ramifications.

He expressed concern regarding what the City could negotiate. He commented on the conflict with new development and the need of the City to expand its tax base. He stated the City's only option for that is to the east, other than enclaves, which would provide only minimal benefit to the City.

Mr. Schroth reported that he had spoken with DEP and they informed him that they have received all of the information; however, it is still under review and they have not made a determination at this time.

Mr. Neibert noted the various letters sent to DEP from legal counsel of the Harpers and Browns. He discussed the County's grant agreement and, under the agreement, the County illegally deeded the property; however, under general law the deed is valid. He opined that the only legal decision the State could make is to require the County to put the property back in their name. They could then follow the proper procedures in the grant agreement and deed the property to a qualified organization. He questioned if the Commission believes that the City should be the one to dictate and determine how the City develops within its joint planning area which has been in place since 1987. He stated that one of the City's legal options is to say the County did the property transfer illegally and not for any conservation purposes but strictly to block the annexation and question if that is the spirit of the grant. He emphasized that the record clearly shows that the County's action was strictly to block the City Commission's legal right to plan for the City, to conduct legal legislative processes, and for them to be trusted to make the decisions and planning for the City of Eustis.

The Commission questioned what Mr. Neibert's recommendation was with him responding that he has no recommendation that he is just outlining the Commission's options. He expressed concern regarding issues with negotiation that cannot be overcome legally. He asked how the City can negotiate a contract for densities which cannot be legally done. He further expressed concern regarding the City being required to spend an extensive amount of time redeveloping their land development regulations to try and accommodate the terms of one agreement for three pieces of property which gets them into a spot zoning circumstance. He stated that, if they do agree to that and they can make it legal, then anytime anyone wants to connect to those pieces of property, the City will have to go back to the County and ask for permission which no other City in Lake County has to do. He stated hopefully the City can get a judge to say that Lake County acted in bad faith and affirm the City's right to act on the annexation applications. He stated the State could fine the County and they could leave the deed with the Taylor Trust and suffer the penalties under the grant. He indicated that the County could not correct the error unless they got the property back in their name.

Mr. Schroth explained DEP could tell the County that they did wrong and here is what you need to do to cure it and they do it. He added DEP could make them rescind it. If the County got the deed back, the City would have to act quickly or they could deed the property to another organization.

Mr. Neibert noted staff's understanding that the grant requires a 60-day notification to the state for permission to do that. He stated they do not know what the state's latitude is regarding waiving those requirements. He emphasized his belief that requirement is statutory. He indicated that the State could say they can deed it to the Friends of the Wekiva; however, they have to first get it back and then provide the 60-day notice. He stated the notice window would give the City the opportunity to process the annexation applications and give the Commission the opportunity to make their decision.

The Commission asked if Mr. Neibert was recommending to negotiate or not. He indicated he was only providing options; however, he did not believe negotiations would get the City very far, would be a long drawn out process and would be expensive.

The Commission asked what would happen if they don't negotiate with Mr. Neibert indicating it would depend on whether or not the Harpers proceed with their lawsuit. If they don't, the City would have to decide if it wants to file a lawsuit.

The Commission expressed concern regarding the City's relationship with the County if they don't try to negotiate.

Mayor Holland stated his belief they need to have the joint meeting with Lake County. He stated there is more to talk about than just Thrill Hill such as the enclaves. He stated he is not sure they need a mediator at the first meeting but instead need to determine what they want to talk about. He expressed concern regarding the erosion of home rule by the County. He stated they need to discuss issues and parameters at the first meeting. He indicated he is not willing to spend any more City money on lawsuits. He indicated the property owners need to fight the fight. He recommended moving forward with negotiations and letting the situation with the park property play out between the State and Lake County. He commented on the need to address enclaves within the City. He emphasized his belief that the City has the legal right to process the annexations.

Commissioner LeHeup-Smith noted the City and County have been working on an ISBA for 5.5 years. She expressed concern about how the City has been treated by Lake County. She indicated the City has the right to do the annexation; however, they do not have the support of the County. She indicated the City can't protect or control growth in the area unless they annex it in. She commented on how things have happened since the Wekiva Parkway was built and how nothing has been accomplished at previous meetings. She stated her belief that a facilitator would be needed to try and accomplish anything.

Commissioner Cobb commented on the need to spend the first meeting getting everything out in the open. She stated she is not interested in spending City money on lawsuits and commented on what may occur between the State and the County. She agreed they may not need a mediator at the first meeting.

Commissioner Hawkins agreed they need to proceed with the negotiations; however, they may not need a mediator at the first meeting. He agreed there a lot of things that need to be discussed.

Vice Mayor Lee agreed with proceeding with the negotiations. She further agreed they don't need a mediator at the first meeting. She indicated they need to go in and address their concerns. She cited the City's need to negotiate in good faith and show the City's willingness to negotiate.

Mayor asked each Commissioner to send the City Manager an email stating what they would like to discuss at the meeting on the 31st.

Mr. Schroth stated that the Lake County Commission had a consensus to proceed with a mediator.
Mr. Neibert stated he would contact the County Manager. He noted that the mediator had requested position papers from both parties. He asked that, if the County agrees to move forward without a mediator, was the Commission comfortable with him and the County Manager working out the topics for discussion.

CONSENSUS: It was a consensus of the Commission to proceed with the negotiation meeting without a mediator and for the City and County Managers to work out the topics for discussion.

7. FUTURE AGENDA ITEMS

7.1 Mayor Holland inquired about the status of the fire assessment study with Mr. Neibert indicating they have signed the agreement with the consultant and they are in the process of gathering the required data.

Mike Sheppard, Finance Director, responded the City should receive the report and recommendations in April or May.

Mr. Neibert explained staff would be bringing the recommendations back to the Commission and then there would be a legal process to be followed.

The Commission confirmed that they have the ability to stop the process at any time.

CONSENSUS: It was a consensus of the Commission to have the fire assessment on the agenda for discussion at the next meeting.

8. COMMENTS

8.1 City Commission

Commissioner Cobb thanked Parks & Recreation for allowing the sheriff's office to use Carver Park. She stated that Joe Ziler, Kevco Construction, expressed interest in providing a nicer sign and replacing the banners. He said he would do it at his expense. She asked about the status of the kayak launch.

Rick Gierok, Public Works Director, reported that the City has a permit for waterfront cleanup and the City has a company under contract. He indicated he is including construction of a more substantial kayak launch in the next year's capital budget.

Commissioner LeHeup-Smith reported on LEASH activities noting they gave out 140 certificates for free spaying and neutering equaling approximately $10,000 and would be giving out more the following weekend.

Commissioner Hawkins thanked everyone for helping the Fellowship of Christian Athletes with their community clean up.

Vice Mayor Lee complimented the Commissioners for all they do in the community.

8.2 City Manager

Mr. Neibert reported that the final interviews with the Police Chief finalists would be the next day. He stated he would, hopefully, make a decision early the next week. He reported that the federal government approved the America Recovery Act. He stated the City would be receiving $8.95 million but don't know yet what the restrictions on uses will be. He noted there were some conflicts regarding scheduling for the Strategic Plan workshop. He indicated staff is working on reports for the workshop.

The Commission discussed possible dates with an agreement to hold the workshop on April 14th at 5:00 p.m.

8.3 City Attorney - None

8.4 Mayor

Mayor Holland thanked the audience for attending and staying and thanked staff and the Commission for their efforts. He extended condolences to the Hayes family on the passing of Tommy Lee Hayes. He noted four Commissioners were able to attend his funeral. He commented on how much the family has touched the community. He announced the community yard sale to be held Saturday at 9 a.m. at the Chamber of Commerce and Community Fun Day at Carver Park. He reminded everyone that the next weekend would be the Busker's Festival with street performers from around the country.

9. ADJOURNMENT: 7:53 P.M.

These minutes reflect the actions taken and portions of the discussion during the meeting. To review the entire discussion concerning any agenda item, go to www.eustis.org and click on the video for the meeting in question. A DVD of the entire meeting or CD of the entire audio recording or verbatim transcript of the meeting can be obtained from the office of the City Clerk for a fee.

Mary C. Montez

MARY C. MONTEZ
City Clerk

MICHAEL L. HOLLAND
Mayor/Commissioner