MINUTES

APPROVED: 5/21/2020

Regular City Commission Meeting

5:00 PM - Thursday, March 12, 2020 - City Hall

CALL TO ORDER: 5:00 P.M.

ACKNOWLEDGEMENT OF QUORUM AND PROPER NOTICE

PRESENT: Commissioner Marie Aliberti, Vice Mayor Emily Lee, Commissioner Karen LeHeup-Smith, Commissioner Robert Morin and Mayor Michael Holland

1. ORDINANCES, PUBLIC HEARINGS & QUASI-JUDICIAL HEARINGS

1.1 Resolution Number 20-18: Agreement for sale and purchase of property between City of Eustis and SpenceTF LLC

Mary Montez, City Clerk, announced Resolution Number 20-18 by title: A Resolution of the City Commission of the City of Eustis, Lake County, Florida; approving and ratifying an agreement for sale and purchase of property between the City of Eustis and Spence TF, LLC.

Spencer Follmar provided an overview of the proposed drive-in theater project with an accompanying slideshow and emphasized the movies they show are first-run popular movies. He stated three of the screens would be dedicated to first-run movies with the other two dedicated to classics and independent films. He provided handouts to the Commission concerning the funding and marketing costs for the project. He commented on additional aspects of the project including connection to Trout Lake Nature Center. He cited over 25,000 impressions through Facebook with most of the comments being positive. He reviewed the anticipated property tax revenue to be generated by the project.

Mayor Holland opened the public hearing at 5:10 p.m.

The following individuals addressed the Commission regarding the proposal: 1) Gail Isaac Thomas; 2) Daniel DiVenanzo; 3) Michael Croak; 4) Alexander Macevicius; 5) Patricia Duncan; 6) Keith Ware; 7) Charlene Edwards; 8) Jeremiah Sams and 9) Eileen Tramontana.

Public comments included the following: 1) Concern about increased traffic; 2) Environmental issues and the effect on Trout Lake; 3) The low sales price and the competition with downtown businesses; 4) Impact on the wetlands and wildlife; 5) The actual number of full time jobs that might be created; 6) The possibility of other developers being interested in the property; 7) The need for positive activities within the City; and 8) The need for a wildlife corridor through the property and a good stormwater plan to address the wetness of the property.

Mayor Holland closed the public hearing at 5:28 p.m.

The Commission commented on the following: 1) Number of emails sent regarding the drive-in project; 2) Other parties interested in the property; 3) The possibility that the project will be a fad and then be abandoned; 4) The possibility of having a theater downtown rather than on the outskirts on a vacant parcel; 5) The possibility of the City selling the property for a higher amount and the possibility of getting more tax dollars for a different type of project; 6) The concerns expressed regarding the impact on wildlife, the environment and the traffic; 7) The lack of detail in the contract regarding what's going to be built on the property; 8) The continuous change in the concept from when it was first proposed; 9) The need to allow the developers their due diligence; 10) The possibility of a missed opportunity for the City; 11) The need for the Commission to consider what is best for the City; 12) The cost to the City for residential developments; 13) The need for the contract to be written to protect the City and to allow the due diligence; 14) The amount of discord on social media regarding the issue and negative phone calls; 15) The need to be able to guarantee to the residents that the project proposed is what is built; 16) The possibility of a trailer park being built on the site; and 17) The need to put the project requirements back in the agreement.

Mr. Follmar emphasized his desire to build a drive-in and the time he has spent looking for appropriate property. He asked he be given the opportunity to do his due diligence. He explained that the films he makes are not the same as the films shown at their theaters. He indicated his willingness to add a restriction against trailer parks or possibly language restricting to a family entertainment venue. He asked they restrict against what they don't want to see not to a specific project.

The Commission confirmed that the property will stay with the City if his due diligence shows they can't complete the project with Mr. Neibert explaining the agreement is for the option to purchase. If they do not exercise the option, then the City retains ownership. He further explained the City would be exclusively tying up the property for a year to allow them to do their due diligence to ensure they can do the project. Regarding the openness of the project, he stated the contract will not restrict him from doing something other than the theater.

The Commission discussed the City's time limitation which would restrict bringing it back if it is voted down with Mr. Neibert explaining that staff could not bring it back but a majority of Commission could vote to allow reconsideration.

The Commission further discussed if the project would be a benefit to the City.

Mr. Neibert suggested restricting the option to only if he determines to do the drive-in theater. He stated the option could only be exercised if the drive-in was done first. He could do something else after but not until the drive-in was completed with Mr. Follmar agreeing to the change.

Mr. Neibert suggested taking a recess so he could contact the City Attorney regarding the change.

Recess: 5:55 p.m. Reconvene: 6:09 p.m.

Mr. Neibert reported on his discussion with the City Attorney stating the Commission can act at the meeting as long as the amended language adds back the original deed restriction language that was in the previous draft of the agreement. He stated that Mr. Follmar is only willing to commit to a minimum of two screens.

Mayor Holland explained that if the resolution passes, Mr. Follmar will still have to conduct his due diligence. He commented on his concern that the property is not buildable. He noted that if he finds it buildable he will still have to bring the project back to the City regarding what is actually built on the property.

Ms. Montez re-read the resolution by title only with Mr. Neibert explaining that the motion will need to include the amendments.

Moved by Karen LeHeup-Smith, seconded by Marie Aliberti, to approve Resolution Number 20-18 with the addition of a deed restriction that requires the developer to first build the drive-in with a minimum of two screens before anything else is built. Motion carried by the following votes:

Ayes: Commissioner Karen LeHeup-Smith, Commissioner Marie Aliberti, Vice Mayor Emily Lee and Mayor Michael L. Holland

Nays: Commissioner Robert Morin

2. OTHER BUSINESS

2.1 Consideration of Phase I (Pine Meadows) Interlocal Service Boundary Agreement as adopted by the Lake County Board of County Commissioners by Ordinance Number 2020-1

Recess: 6:14 p.m. Reconvene: 6:24 p.m.

Mr. Neibert recalled the Feb. 19th meeting with Lake County Commission stating they have proposed meeting again in May. He reported the County passed a Phase I ISBA concerning Pine Meadows property only. He added they have suggested the City and the County conduct a complete review of the land use regulations and designations and the JPA boundaries. He indicated that Mr. Dyer has a contract on his East Crooked Lake property and the prospective buyer is someone "sympathetic with the East Crooked Lake residents". He recommended considering it as part of the ISBA unless the new owner requests to be left out. He asked to discuss the Pine Meadows agreement first.

Cecelia Bonifay, City Attorney for the ISBA agreement, cited a summary memo sent to all of the Commissioners regarding the agreement. She stated the first question is whether or not the City should adopt the Phase 1 interlocal service boundary agreement which only allows the annexation of the PMCC LLC (Pine Meadows) property and contains language prohibiting Eustis from annexing other lands identified in the JPA agreement (identified as JPA remainder lands adopted by the City in Resolution 19-43) without the County's approval until a final ISBA is negotiated and adopted by both parties. She stated she had received an email the day before from Melanie Marsh stating she wanted to bring to everyone's attention that she had obtained a copy of the draft minutes from the last meeting from the Clerk of the Court. Ms. Marsh indicated there was a lot of discussion regarding the language that Eustis objected to and that was the language that stated "Eustis cannot annex any other areas within the proposed boundaries of the ISBA as such boundaries are currently set forth in the City of Eustis Resolution 19-43." She indicated that the City currently has the ability to annex within its JPA under state statute. She stated that Ms. Marsh stated the County Commission had agreed the City would still have that authority. She reviewed discussion she had with Ms. Marsh and questioned why the County hasn't gone ahead and revised the approved agreement. She indicated her recommendation that, if the City goes forward, that language must be removed in order to protect the City's ability to annex under state statutes properties within the JPA that are contiguous. She cited additional wording from the Phase I ISBA which would indicate that the Phase I agreement would override the JPA agreement.

Ms. Bonifay then reviewed Section 14 regarding the amendment of comprehensive plans. She indicated it states that the City would have to, within six months of the effective date of Phase 1, amend its intergovernmental coordination element of the comp. plan to establish consistency and compliance with the Phase I agreement and that Eustis would make a good faith effort to adopt a municipal service area as an amendment to its comprehensive plan to address future possible municipal annexations. She indicated that the City did that per statute when it adopted its JPA which is its municipal service area. She stated it was another way to try and come up with a limitation and questioned why the City would adopt a new MSA when it had one for a number of years.

Ms. Bonifay stated another concern addressed in the memo says "Can the final ISBA contain specific land use and zoning conditions on lands to be annexed? She stated the ISBA cannot bind the City to specific land use and zoning restrictions as Florida law does not allow contract zoning and singling out PMCC LLC land for annexation could lead to claims for violations of the equal protection clause of the US Constitution applicable to states under the 14th Amendment, Section 1983 claims and claims under the Bert Harris Act. She expressed surprise with the County approving the Phase 1 ISBA which is not how ISBA's are done. She expressed concern that limiting the ISBA to one property provides the potential for a challenge from other properties not included.

Ms. Bonifay then expressed concern regarding including zoning, land use and densities within the ISBA. She explained that the purpose of the ISBA is to handle the prohibition about annexing properties that create enclaves and to define who provides services. She emphasized that state law is clear that counties control unincorporated property and municipalities control incorporated property. She stated that the only way the County has a say is if the County and all of the cities entered into a form of ISBA. She cited Part II Chapter 171 which used to say that a City could not change an annexed property's land use for two years after annexation. The legislature recognized the errors with that and changed it.

Mr. Neibert reported that the Mount Dora City Manager believes their Council will eliminate most property from their proposed ISBA except within their innovation district and a few other parcels due to the County also wanting them to revise their land use regulations. He indicated Mount Dora and the County are discussing noncontiguous annexations. He commented on his belief that the County will not require Mount Dora to change its land use regulations. He stated the City's position is that it has already established its land use regulations, comprehensive plan and joint planning area and determined what its destiny should be. He stated that the County is trying to create a ring of low density around the cities. He emphasized that cities have higher densities and explained that the problem is that it is not cost effective to run utilities to low density development. Low density development does not generate sufficient revenue to pay for the extension of the utilities which results in the current residents subsidizing the extension. He stated that three to four units per acre makes it financially feasible to extend the utilities.

The Commission discussed the location of Mount Dora utilities and why the City should not approve the Pine Meadows ISBA with Mr. Neibert explaining that the Pine Meadows owner does want to annex and receive utilities. He stated they could receive utilities without annexing by approving a developer's agreement that would require annexation once they are contiguous. He expressed concern that the County will not approve any further ISBA agreements if the City approves the Pine Meadows agreement. He emphasized that the City needs the ISBA in order to expand and indicated that no other city was asked to piecemeal an ISBA.

The Commission then discussed whether or not the pending owner for the Dyer property near East Crooked Lake should be included in the ISBA with Mr. Neibert indicating they should be included only if the new owner wants to be included.

The Commission discussed how other cities were treated in their agreements and the possibility of getting copies with Ms. Bonifay indicating her familiarity with a number of the agreements. She stated that primarily the County has followed what's in the JPA and they have not over-restricted zoning or densities. She noted that they have not done agreements for just one piece of property with the requirement for them to redo their comprehensive plan and JPA before giving them anymore. She explained that the purpose of the legislation for ISBA's was to help clean up enclaves and to make annexations be more reasonable and allow cities and counties to work together. She commented on the desire of Lake County to not provide utility service but defer to the cities.

The Commission expressed frustration with the lack of progress with a suggestion that the City re-submit its original proposed agreement with the East Crooked Lake property taken out.

Mr. Neibert indicated they could do that but unless the property was sold they would lose their counsel due to the conflict of interest. He indicated that the property was originally left in as the owner wanted to annex into the City. He added that they could leave that property in or omit it based on what the new property owner desires. He explained it was originally left in due to the City's desire to use the JPA boundary as the ISBA boundary.

The Commission discussed the problem with City residents subsidizing outside City water recipients and where they go from there. The Commission emphasized the need to make it clear that it is not financially feasible to provide water and sewer at one unit per acre with Mr. Neibert responding that the City would address that once they find out who the new owner is. He noted that the County proposed meeting dates for the next meeting are May 12th and 18th with the possible closing date on the property being around mid-April.

Mr. Neibert stated that the County has asked the City to approve the Phase I - Pine Meadows agreement. He noted that the City Commission previously stated it was not interested in a Pine Meadows only agreement and were frustrated when the County Commission passed it anyway. He reviewed the City's concerns noting that if the City accepts the agreement with a stand-alone project, for which the County Commission chair indicated a concept plan shows approximately 500 houses on 137 acres, how do the Pine Meadows residents feel about having 500 houses on that property. He stated the question is why is the County advocating low density in one area and high density in another and asking the City to annex a property without considering the adjacent land uses but wanting the City to consider adjacent land uses throughout the rest of the City.

The Commission read a statement from the City Attorney's memo which stated "in communications with the County it is our understanding that the County intends on imposing land restrictions - i.e. lot sizes, density, intensity - as part of the ISBA negotiation. This is unauthorized under Florida law as contract zoning."

The Commission further discussed the County's attempts to micromanage and the property owner's desire to develop in the city so he could get a higher density, the difference between the Pine Meadows property and the East Crooked Lake property and the County Commission's lack of trust.

The Commission discussed whether or not to approve a Pine Meadows only ISBA with Mr. Neibert stating that staff's recommendation is for the City not to proceed with the Pine Meadows agreement and to not acquiesce to the requirement for the main ISBA agreement of the land use changes they are proposing.

The Commission further discussed whether or not omitting the East Crooked Lake property would help move the overall agreement forward.

Mr. Neibert noted the next meeting would not be until May and stated staff could contact the County and confirm that the City is not interested in the Pine Meadows agreement or to revising their land development regulations. He added that the City could contact the new East Crooked Lake property owner to see whether or not they want to annex and leave them out if they don't.

Discussion was held regarding whether or not the City could provide water and sewer to the property if they want that without annexation with Mr. Neibert indicating they would have to do a cost analysis and the developer would have to pay for running the sewer line. It was noted that property that close to a lake should have to use City sewer and not septic tanks.

Discussion was held regarding whether or not Mount Dora would be interested in annexing the East Crooked Lake property with Mr. Neibert noting it is within the City's JPA so they couldn't annex it.

Discussion was then held regarding the problems that would arise if the City accepted the Pine Meadows agreement and the issues with the Keating property.

CONSENSUS: It was a consensus of the Commission for staff to notify the County of the City's willingness to meet in May; however, the City is not interested in a Pine Meadows only agreement and they are not interested in making the requested changes to the City's land development regulations.

Mr. Neibert indicated he would find out the new property owner's intent and communicate that back to the Commission. He commented on the issues that have arisen throughout the ISBA process beginning with the City's first proposal in 2016 and the ways in which the City has been treated differently than the other cities. He confirmed that the proposed dates are between May 12th and 18th and asked for the Commission to provide their availability.

CONSENSUS: It was a consensus to schedule the meeting for 4:30 p.m. on Monday, May 18th.

Mayor Holland noted staff would be holding a meeting the next day regarding virus protocols. He indicated the City would keep the public updated through the website. He commented on the need to discuss with the City Attorney on how meetings may be held in the event of a shutdown.

Ms. Bonifay noted previous Attorney General opinions that indicated local government cannot hold meetings other than in person even in the event of a natural disaster.

Mayor Holland indicated that, if the City Attorney has a suggestion, staff can place something on the next agenda with Mr. Neibert stating that the City can operate under its hurricane management provisions but that would not include legislative meetings.

3. ADJOURNMENT: 7:24 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