

REGULAR MEETING MINUTES

CITY COMMISSION

January 24, 2002

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Jack Quesinberry at 6:30 p.m. in City Hall Commission Chambers. The invocation and Pledge of Allegiance were given.

PRESENT: Mayor Jack Quesinberry, Commissioners; John Rees, John Harriman, Theo Graham, and Mildred Dixon; City Manager Hollis Holden, City Attorney Dykes Everett, City Clerk Kathy Montoya, Assistant to the City Manager Marshall Robertson, Utilities Director Charlie Tinch, Planning Director Mark Cechman, Public Works Director Dan Ryan, Deputy Police Chief Jon Johnson, Acting Fire Chief John Williamson, and Michael Laval of The West Orange Times

APPROVAL OF MINUTES:

Regular Meeting Minutes of January 10, 2002. Motion was made by Commissioner Rees to approve the minutes as submitted. Seconded by Commissioner Harriman and carried 5-0.

REGULAR BUSINESS

1. **Request for a \$1,000 donation to the West Orange High School Choral Department Spring Tour Competition**

Mr. Jeffrey Redding, Choral Director, 5015 Aventura Blvd., Orlando, Florida, gave a brief overview of the scheduled tour and stated they are again requesting the City's support. City Manager Holden stated that prior donations have been a maximum of \$500 to any one High School group. **Motion by Commissioner Harriman to donate \$500 to the West Orange High School Choral Department for their Spring Tour Competition. Seconded by Commissioner Graham and carried 5-0.**

2. **Recommendation to approve Stoneybrook West Unit 4 Final Replat**

City Planner Cechman stated that some of the lot lines had to be moved in order to accommodate some drainage easements. The Planning and Zoning Board and staff are recommending approval with recommendations submitted in the agenda package. Mr. Bruce Lawson, 1210 Cloverlawn Avenue, Orlando, Florida, stated he has read staff's comments and they have no outstanding issues. **Motion by Commissioner Harriman to approve Stoneybrook West Unit 4 Final Replat with staff recommendations (see attached). Seconded by Commissioner Dixon and carried 5-0.**

3. **FIRST READING OF PROPOSED ORDINANCES:**

A. **Ordinance 02-01: Providing for Child Day Care Centers, by Special Exception, in R-1A, R-1, R-2, C-1, C-2 and C-3 zonings**

City Attorney Everett read Ordinance 02-01 by title only. **Motion by Commissioner Rees to approve Ordinance 02-01, with the first Public Hearing being scheduled for February 14, 2002 and the second Public Hearing being scheduled for February 28, 2002. Seconded by Commissioner Harriman and carried 5-0.**

B. **Ordinance 02-02: Rezoning of Black Lake Estates from R-1 to PUD**

City Attorney Everett read Ordinance 02-02 by title only. **Motion by Commissioner Harriman to approve Ordinance 02-02, with the second reading and Public Hearing being schedule for February 28, 2002. Seconded by Commissioner Dixon.** Commissioner Rees stated that prior to the public hearing he would like to receive the information relative to the development summary regarding the residential and common areas. **Motion carried 5-0.**

4. **SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCE:**

A. **Ordinance 01-82: Rezoning of approximately 22.8 acres on the east side of East Crown Point Road and south of the Corsino Subdivision from R-1 to PUD (Coke)**

City Attorney Everett read Ordinance 01-82 by title only. Mayor Quesinberry opened the public hearing.

Ms. Beverly Ellis, 1212 Thornbury Court, Winter Garden, Florida, asked what is a PUD? Mr. Cechman stated that this PUD is for single family detached houses and that there would not be any duplexes, apartment buildings or mobile homes. The properties abutting the Tuscany Subdivision will be 85-foot wide lots. Mr. Holden stated that a PUD is a Planned Unit Development of single family homes with some amenities, with a combination of lot sizes.

Ms. Bobbie Waldrop, 1332 Corsino Street, Winter Garden, Florida, stated her opposition to the proposed rezoning.

Commissioner Graham noted that the proposed PUD has amenities such as playgrounds. The proposed lot widths in PUD's previously, have been as small as 40 feet, but he believes 50 foot lots are even too small. The side set-backs on this project are 7 ½ feet. Mr. Holden stated that the proposed lots equal thirty-five (35) 55 foot; twenty-two (22) 60 foot; fourteen (14) 70 foot; and twelve (12) 85 feet +. There is almost an acre of recreation area with equipment, which borders a retention pond.

Ms. Francis Sauer, 1229 E. Crown Point Road, Ocoee, Florida, stated that when she built on her property 18 years ago she had to build on an acre and doesn't understand why this subdivision doesn't? She asked what the proposed prices of the homes will be. Commissioner Graham stated \$130,000 to \$180,000. She asked how E. Crown Point

Road is going to handle the additional traffic. Mr. Holden stated that this proposed project has 83 homes and any road improvements would be the responsibility of the County.

Mr. Joe Thomas, 1555 Victoria Way, Winter Garden, Florida, stated his concern with smaller lots and the size of homes to be built because his custom home has 3000 square feet and it will devalue his home.

Mr. Dale Kelly, 1559 Victoria Way, Winter Garden, Florida, stated his concerns about changing the zoning from R-1 to PUD because the minimum square footage for R-1 is 1500 and the minimum square footage for PUD is 1200, which will potentially devalue his property.

Ms. Kathy Fairel, 1601 High Hampton Ct., Winter Garden, Florida, stated that she was also in opposition because of the value of her home adjacent to too many houses on too little land.

Mr. Paul Moreau, 1213 E. Crown Point Road, Ocoee, Florida, asked when water and sewer would go through and whether he would be paying frontage and have to tie in. Mr. Holden stated that his property is in the County, not the City, and he would not tie in.

Mr. Byron Dey, 1567 Victoria Way, Winter Garden, Florida, HOA President, stated his development (Tuscany) abuts the proposed subdivision and everyone he has spoken to agrees that it will devalue their houses, create overcrowding and cause more accidents. He favors R-1 zoning, not PUD zoning.

Mr. Bob Cantu, Professional Design Assoc. (Civil Engineers and Project Planners), stated that the developer could not attend this meeting tonight, but that he was representing the developer. The Code's minimum for PUD is 1200 square feet and he is sure Mr. Harrell would have no problem with increasing the square footage to about 1500. He offered to arrange a meeting between the developer and the homeowner's if the public hearing was continued.

Mayor Quesinberry stated that since the developer was not present to speak on his behalf, he recommended continuing the hearing. **Motion by Commissioner Dixon to table adopting Ordinance 01-82 and continue the public hearing until February 28, 2002. Seconded by Commissioner Graham and carried 5-0.**

5. **APPEAL HEARING** of the Planning and Zoning Board decision on December 3, 2001, approving the West Point Commons Shopping Center Special Exception Permit

City Attorney Everett stated the de novo hearing procedure as follows:

- The Planning Director will make the staff report
- Lee Chotas, on behalf of the appellant, will make a presentation
- The applicant will make a presentation

- After the presentations are complete, comments by the public will be open and closed
- City Commission will deliberate

Mr. Everett reminded the City Commission that they must disclose any conversations they had prior to the appeal hearing, as required by the Sunshine Laws on disclosure. He noted that any disclosure made does not mean that any of those conversations have any impact, one way or another, on any decision made after the hearing.

Disclosures made by the Mayor and Commissioners:

Commissioner Harriman: Disclosed that on Monday, whatever date that was, Mr. Wiley Reynolds, who evidently is one of the Winter Garden Shopping Center owners, called him from Colorado and asked him what he (*Harriman*) could do in Hyde Park as far as notifying the citizens about the public hearing. Commissioner Harriman told Mr. Reynolds that there were flyers posted in the park that were distributed by an unknown person, and it was well covered. Mr. Reynolds stated that he was going to call everybody in Orange Tree and that was the extent of their conversation.

Commissioner Dixon: Disclosed that she had a conversation with Mr. Wiley Reynolds. At that time, she didn't have all the facts, but she was questioned what the people thought about it. She stated that she did not have all the facts and had not talked with staff. She also stated that she spoke with an attorney (*Chotas*).

Commissioner Rees: Disclosed that he spoke briefly with Mr. Reynolds and Mr. Chotas and that he indicated to them that he would call them back when he had read the letters. But because he was busy at work, he never got around to it.

Commissioner Graham: Disclosed that he was contacted by the attorney (*Chotas*) who wanted to know if he had seen the appeal. At that time he had not, so the attorney sent him a copy, which is the same that was in their agenda package. One of the owners, who he can't recall his name, contacted him and he told him that he would have to disclose that he has spoken to him. Commissioner Graham told him (*one of the owners*) that there are always two sides to any conversation and he would base his decision at the hearing and he didn't tell him he would go either way.

Mayor Quesinberry: Disclosed that he had a conversation with a gentleman in Boca Raton who said that he was a tax paying citizen so he (*Mayor*) asked him if he was a resident of Winter Garden, to which he replied that he was a tax paying resident of Florida, not Winter Garden. They had quite a bit of discussion, which was about other businesses in the shopping center and the rumors about them.

Planning Director Cechman stated that in the fall of 2001, Erickson Point, Inc. applied for shopping center approvals for West Point Commons, which is about 75,000 square feet to include a 44,000 square foot main tenant that they identified as a Publix. The proposed property location is on about a 14-acre site located on the southern portion of SR 50, wrapping around the existing Walgreen's. They were advised that they would have to go through the Special Exception

process that includes a public hearing before the Planning and Zoning Board (P&Z). They also applied for a lot split so the original owner can keep the southern portion of the property that they do not need. They also applied for a preliminary plat for three (3) out parcels on the property. Items submitted include; conceptual site plan, boundary study, preliminary plat (pre-plat), and a traffic study. The property is zoned C-2 and surrounding sites are zoned C-2 to the north, to the west is Park Avenue and Leisure Time RV's (C-2), Giant Recreation World (C-2), to the southwest is Village Groves and Park Avenue Estates zoned R-3. The lot split to the south is zoned C-2 and further south, adjacent to the Turnpike, are the Berkshire Apartments. The site plan submitted includes 3 entrances, one on Park Avenue, one on SR 50 and one on CR 535 to help defuse the traffic. The pre-plat includes 2 out parcels on SR 50 and 1 out parcel on their western driveway that goes out onto Park Avenue. Staff has reviewed the site plan for compliance and with staff's recommendations, was taken to the Planning and Zoning Board on December 3, 2001. At that time, testimony was received at that public hearing. Staff's recommendations included a lot of aesthetics and landscaping, which is much more than the C-2 zoning requires. They (*staff*) also made recommendations regarding the building's appearance were the C-2 code does not really address it. A large development of this nature should include appearance requirements. The P&Z Board approved the petition after hearing all the testimony. The appeal package includes staff's counter arguments, which includes allegations of "Publix poaching" and the fact that nothing in the Special Exception approval required that it be a Publix store, because it could be any grocery store. There is nothing that requires the closing of the Publix across the street. There is nothing to prevent the shopping center from renegotiating a lease with Publix. There is nothing preventing Winter Garden Shopping Center from updating or enlarging the existing Publix. There is nothing preventing Winter Garden Shopping Center from acquiring another grocery store in place of Publix. As part of the City's Code requirements for concurrency, the City goes through a non-binding concurrency process whereby a traffic study is required for review. The binding concurrency is given when the applicant pulls the building permit and pays the impact fees. Staff recommends approving the Special Exception. City Manager Holden stated that the proposed site had previously received a Special Exception approval in November of 2000 for a shopping center with a grocery store. At that time, there was no name on the site and it was approved without opposition from the P & Z Board or the public. The City's Code requires the applicant to pull building permits within six (6) months of receiving a Special Exception approval. In this case, the applicant failed to pull the permits and failed to apply for a six (6) month extension, so staff required the applicants to reapply for the Special Exception. The reapplication process included the name Publix as the anchor store.

Mr. Cechman identified exhibits submitted:

Exhibit "A" Staff conditions to applicant's requests

Exhibit "B" Record from the Planning and Zoning Board hearing of December 3, 2001, upon which the action appealed was taken from, including the staff report submitted to Planning and Zoning Board, minutes and exhibits

Exhibit "C" Petitioner's Appeal Application

Exhibit "D" Staff response to Petitioner's Appeal Application

Exhibit "E" West Point Commons Shopping Center Traffic Study

Mr. Lee Chotas appellant's representative, P.O. Box 2346, Orlando, Florida, stated that he was present to help the City make an informed decision, regarding what is in the best interest of the City of Winter Garden. There will be testimony regarding the devaluation of the Plaza Shopping

Center if there is no anchor store, provisions in the leases for smaller tenants, traffic, impact on residents, current commercial vacancies and blighted areas. He pointed out that the traffic study did not take into consideration the traffic impacts created by all three shopping centers (*the Plaza, the new shopping center across from the Plaza and the Commons*). He stated that all their arguments for the appeal have been previously submitted and are made a part of the record by reference.

Mr. Jim Hall, Canin and Associates, Orlando, Florida, submitted a letter as **Exhibit "A"**, from the Closed Store Coordinator for Publix Supermarkets, Inc. notifying Mr. Lee that they will be closing the store sometime between July and August 2003. Mr. Hall stated that the City's Comprehensive Plan has a provision for devaluation of property, and questioned whether or not it is in the best interest to grant one approval if in fact it were going to devalue another piece of property. They have reviewed the Orange County Property Appraiser's data and found that you can add the value of the buildings and the land together and divide by the square footage of the land and the Plaza, with one anchor, currently pays \$7.75 a square foot of land in taxes to the County. Down the street, where Sears, Kash N' Karry and K-Mart are located with three (3) anchors, the value of that property is at \$11.65 a square foot, which means that the additional anchors do add value to the property. Three other centers, Tri-City, Cypress Colony and Village Marketplace who don't really have a true anchor pays \$5.33 a square foot. Therefore, if the Publix relocates, the Plaza will be devalued. There is even a domino affect when an anchor is lost. A factor used commonly in locating a shopping center site is a 3-mile radius population survey, which they did in this case (**Exhibit "B"**), and they cut it in half for SR 50, which shows a population of 15,146 to the north, which is two-thirds of the population, and 9,508 to the south, which is one-third of the area population. This means that 67% of the population at this location does not have to go onto SR 50. In time, the south side of SR 50 will develop. Another factor to consider is "the going home side", which in this case shows most people work east of Winter Garden and so when they are going home, they are going west on SR 50 and the Plaza locations, allows them to make a right (*north*) toward the more populated area. The Commons, which is to the south, causes the traffic to make a left turn, which will exacerbate the traffic conditions. There are about 45,000 cars on SR 50 east of CR 535 and 39,000 on SR 50 west of CR 535 (**Exhibit "C"**). They also looked at the current vacant commercial space on SR 50 (**Exhibit "D"**). Commissioner Harriman asked what the square footage difference is between the two Publix Stores. Mr. Hall stated that the Commons Center would be larger by 2000 square feet. City Manager Holden asked about the statement in Exhibit "A" that states that the lease continues "until 2/25/07 with 4/5 options, Publix would entertain discussions on terminating our lease. If any agreement cannot be mutually agreed upon, then we will initiate our subletting process."? Mr. Chotas stated that the owner would address that question and that while the Commons is a well designed center and if it came up in five years from now, they would support it then because the City would have the population base to warrant another store and not be Publix "poaching". Mr. Holden stated that the history of the City's population in relationship to grocery stores has been as follows:

April 1980 (6,789) Winn Dixie, Thriftway, Food World (Publix)

April 1985 (7,490) Winn Dixie, Thriftway, Food World (Publix)

April 1990 (9,745) Winn Dixie, Thriftway, Food Lion, and Publix

April 1995 (12,098) Hometown Food, Food Lion, and Publix

April 2000 (14,351) Rainbow, Food Lion, and Publix

April 2001 (16,000) Kash & Karry, and Publix

Therefore, as of today, the city has over 16,000 residents, heading towards 35,000, which signifies that the population has more than doubled and the residents may be shopping elsewhere because we do not have enough good shopping centers. Commissioner Graham pointed out that we also have a SAV-A-LOT store.

Mr. Jeff Lee, Ocean Ridge, Florida, representative of the Plaza Shopping Center owners, stated that in response to Commissioner Harriman's question regarding the solicitation of existing businesses in the Plaza to relocate to the Commons, was how they found out that Publix was considering moving. Publix was saying they were going to remodel and the Plaza offered to allow them to expand to a 60,000 square foot store, offered to relocate them to the vacant Zares and to assist them financially, if they needed it. There is no significant increase in space to Publix relocating to the Commons. If the anchor (*Publix*) is encouraged to leave, many of the tenants will either go out of business or move. Some of the tenants have clauses in their leases that allow them to leave or even stay and not pay rent when Publix leaves. It is widely accepted in the shopping center industry, that a center with a vacant anchor, is a dead center. The city has development rules that discourage cannibalization and poaching of tenants. Winter Garden has a level of service of "D" on SR 50, which is the lowest standard allowed. The proposed new Publix is not going to be any bigger than the old store. The Plaza is prepared to upgrade and expand the current Publix store.

Mr. Gene Godbold, attorney for the West Point Commons owner, stated that there is only one real issue before the City Commission, which is Publix and the City Commission does not have the prerogative to deal in the "free market", whether it is in the best interest of one owner over another. Legislatively, the City Commission does have the right to set rules and regulations regarding the development of properties in Winter Garden, which has been done. There is a special exception process in place with criteria that if the criteria is met, the shopping center must be permitted regardless of whether or not they are taking businesses from next door, across the street or from another city. References to any property devaluation are only assumptions, there is no proof or conclusive evidence. It may occur, if the owner does nothing to get tenants, which is not his or the City Commission's responsibility. There has been talk about traffic, which are also assumptions. He has studied the traffic situation and the growth is to the south, which makes the center eminently better on the south side of SR 50 with access from CR 535, which hopefully will keep a great degree of traffic off SR 50. Concurrency is out of context because how can anyone do traffic studies predicated on every proposal put into play? It is dealt with when a developer pays for a building permit, which initiates the concurrency review. It is not looked at a year to six months in advance because they MAY have too much traffic or because all of these centers MAY be developed and occupied. In order for Planning and Zoning Board to deny a Special Exception application, the opposing party must show competent substantial evidence that the proposed exception does not meet the criteria of the zoning regulations, as quoted from a case involving the Florida Power and Light Company versus the City of Dania decided on by the Florida State Supreme Court in 2000. On page 2 of Mr. Chotas' written argument "Section 118-97 of the City Code states that Special Exception use may only be permitted when the following three (3) criteria area satisfied:

- (i) the use is compatible with the surrounding uses;

Mr. Chotas notes that the proposed use is not compatible with the surrounding uses. Why isn't it? The Florida courts deal with physical compatibility, not economic compatibility. The proposed use fits right in and is physically compatible with all the surrounding properties.

(ii) the use will not create traffic hazards or parking problems; and

Parking is not a problem because they have their own parking lot. The traffic hazard argument is that there may be increased traffic trying to get from one side of the road to the other. If their shopping center remains (*Plaza*) and the south side is developed, you will have the same problem with getting to the other side of the road. There have only been assumptions made. There has not been a traffic report submitted by the Plaza with regard to creating traffic hazards.

(iii) the use does not deviate from the requirements from Chapter 118, of the City Code.

There has been no evidence that staff has failed to follow any Code criteria as far as this developer is concerned. There are just many assumptions being made. This is a market (*economic*) driven appeal, which is not appropriate for the City Commission to decide upon.

Mr. Bob Balcerak, Publix Real Estate Manager, P.O. Box 407, Lakeland, Florida, stated that the site selection process is a thorough and lengthy process which is done before a store is moved from an existing center. They recognized the substantial growth occurring to the south portion of the city and they want to be in a position to serve that market. They also want to serve the existing community. They also considered a site at CR 545 and SR 50, which would serve the south side, but not the current customers as well, which is why they decided on this site across SR 50. The new store would be 44,271 square feet and provide more services such as a pharmacy and seafood department. If they are not able to move across the street, they are still going to serve the residents to the south and it appears they would have to go outside the city limits to accomplish this, if the current lease holder were to object every time. Commissioner Harriman asked if the new store is bigger? Mr. Balcerak stated the current store is approximately 40,000 square feet and the new store is 44,271 square feet. Commissioner Harriman stated he has heard Mr. Balcerak state that they are going to serve the residents to the south, however, there is currently a Winn Dixie a mile away, near the cemetery. Mr. Balcerak stated that it is located further than a mile.

Mr. Ron Henson, Commons Project Engineer, stated that they have made a lot of effort to deal with the aesthetics and to make it pedestrian friendly. There are extensive landscaping and buffers plans which go beyond the Code requirements. They have also addressed the concerns of residents regarding commercial traffic so they will not be affected. Commissioner Harriman stated that he has seen the proposed site plans and it is a tremendous center, but there was a greater issue that Publix never addressed in a letter that was sent on October 29, 2001 regarding the rumors that they might leave, which Publix responded that they were unable to confirm the closing of the store at that time. The concerns are with the residents attending this meeting.

Mr. Bob Balcerak, stated that as far as economics are concerned, Publix entered into a lease with the Plaza that allows them to either "go dark" at any time or they could sublet, which is a contractual right they have. Publix has entered into a contract with the Commons that they will build them a store in a complex they intend to develop, which is also a contractual obligation, which should be left to the parties involved. Commissioner Harriman asked if Publix moves out of

the Plaza, can no other food store go in there as long as they (*Publix*) pay the lease for 20 years. Mr. Balcerak stated that he cannot answer that question, but the landlord Jeff has told him that he doesn't have the ability to recapture. The current lease does give the landlord the ability to recapture, after 180 days whereby they take the lease back and they (*Publix*) would not pay rent. If the landlord does not recapture, they (*Publix*) could hold the property, but they would rather negotiate a termination.

Mayor Quesinberry opened the public hearing:

Speaking in opposition:

Ms. Betty Ellis, 83 Valencia Road, Winter Garden, Florida, stated that she is adjacent to the current Publix location and finds it convenient to walk to the store. If it is allowed to relocate, she will not cross SR 50, for safety reasons, and will shop at other locations on the north side of SR 50.

Mr. Robert Bakker, 710 Hyde Park Circle, Winter Garden, Florida, stated that he is the President of the Hyde Park Homeowner's Association of 370 homes. He previously wrote a letter to Publix detailing the convenience of the current location for his community and adjacent residential areas on the north side of SR 50. Access is achieved by walking, bicycles, golf carts and cars without crossing busy SR 50, which is to be widened by two more lanes in the future.

Mr. Sergi Franks, 320 Douglas Way, Winter Garden, Florida, Town Homes of Winter Garden (90 units) which is directly behind the Publix, stated that if Publix moves in all likelihood the shopping center will turn into a ghost town and vacant shopping centers become ugly and affect property values.

Mr. Steven Koliski, 406 Douglas Way, Winter Garden, Florida, stated he shops at Publix and he is opposed to them moving. His attendance will decline if they move. He is against building more shopping centers in Winter Garden when there are already vacancies on Dillard and Plant Street.

Ms. Linda Franks, 302 Douglas Way, Winter Garden, Florida, stated that she is opposed to Publix moving because of accessibility of adjacent residents will be eliminated, particularly those walking. There is also increased crime associated with a store going "black" as evidenced in Pine Hills and Seminole County areas. She is concerned they (*adjacent residents*) will become a crime target.

Speaking in Favor:

Mr. Mark Miller, with the law firm of Gray, Harris & Robinson, Publix's legal counsel, stated that Publix has an existing contract that allows them to close their current store and continue to pay rent and they have decided to move either inside Winter Garden or outside the city. This is a market (economic) decision. They hope customers will understand that they want to serve other citizens of Winter Garden and it is a land use issue. This center (*Commons*) was previously approved and the only thing that has changed is that there is going to be a Publix in the center.

Hearing no one else to speak on the matter, Mayor Quesinberry closed the public hearing and their deliberations began.

Commissioner Harriman:

Stated he lives in Hyde Park with 560 residents of which 80% are 55 and older; Orange Tree has 180 residents with 100% being 55 and older; Winter Garden Town Homes has 93 residents with 55% 55 and older; Winter Garden Campground has 53 full-time residents, 110 renting month-by-month and 101 are residents 6 months of the year. These locations total 960 residents that will be affected by the move and most are seniors that bought in these locations to be able to walk to business locations. There is a good possibility that moving Publix across the street will cause the seniors to lose the businesses they frequent now such as the bank, hairdresser, etc. A lot of people do not drive and they rely on being able to walk or bicycle. Some seniors refuse to walk or drive on SR 50 and since SR 50 will enlarge to 6 lanes in 3-5 years, it will be a mess for anyone walking or driving. There is also the possibility that Winter Garden will lose K-Mart. He favors a commercial site across the street with another grocery store because the seniors need the grocery store in its current location on the north side of SR 50.

Commissioner Dixon:

Stated she was more confused than ever. She has heard the lawyers say they are going to sue if we do and the others are going to sue if we don't. The P & Z Board has followed the rules when they approved the Special Exception. The public is saying they can't cross 50, but she has seen three different ways to access the new center including the side and back. She pointed out that the P & Z Board has said that he (*the Commons applicant*) has dotted all the i's and crossed all the t's. She has to listen to someone else and she knows Theo has the answers.

Commissioner Graham:

Stated that the City can deal with whether or not a business comes or goes based upon the adopted ordinances. The City can restrict some businesses from being too close to other businesses and they are not grocery stores. Under the Comprehensive Plan Policy #3.10, the City has the right to determine whether it is hazardous traffic etc. and the devaluation of property as was stated in one of the testimonies given in regard to the County Appraiser's Office valuing a shopping center with no anchor store, less than others with an anchor. However, the exhibit with regard to the population figures does not agree with the census maps used to re-establish the Commissioner's district boundaries, which shows more residents on the north side SR 50 than the south side. Also, there are three shopping centers currently on SR 50 and this would be the fourth. There is another in the planning stages, which will also increase traffic to create a safety problem for people crossing SR 50 at Park Avenue.

Commissioner Rees:

Nobody likes shopping centers where they lose a major tenant. He would like to personally see Publix stay on the same side of SR 50 where he lives, but this is a free enterprise system and

Publix has chosen to move the store. Let the people get with Publix to get them to stay or the tenant and landlord work it out.

Mayor Quesinberry:

Stated that the City Commission is not a party to anyone making or losing money. The decision made must follow the Code. He cannot see penalizing Publix for wanting a bigger and better building. If there were another grocery store wanting to locate in the Commons, nobody would be here tonight. He can see far enough ahead to know that if a Publix grocery store in the commons were denied, in another six months if another grocery store wanted to go in, they couldn't approve it.

Commissioner Harriman motioned to deny. Seconded by Commissioner Graham. Commissioner Dixon asked the motioner (*Harriman*) to state what his motion was denying. Commissioner Harriman stated his motion was to deny the shopping center from moving across the street. City Manager Holden stated that was not the proper motion. Commissioner Graham stated that they were opposing the West Point Commons Shopping Center from being put in. Commissioner Graham asked Commissioner Harriman if that was correct. Commissioner Harriman stated yes. Mayor Quesinberry stated that the Planning and Zoning Board (P&Z) approved it (Commissioner Dixon stated yes) and the motion was to deny the P&Z Board's approval. City Attorney Everett stated that the motion was to grant the appeal and reverse the P&Z Board action approving the special exception and related approvals. Commissioner Harriman stated that was correct and he wanted it noted in the record. The Mayor asked Commissioner Graham if that was what he seconded. Commissioner Graham stated yes. Mr. Holden asked if that included the lot split as well as the preliminary plat. City Attorney Everett stated that was correct. Commissioner Graham stated that issue was the fifth item on the agenda. City Attorney Everett stated that the appeal was for all three items; the special exception approval, the preliminary plat and the lot split and that Commissioner Harriman's motion is to grant the appeal and to reverse the P&Z Board's grant of those approvals, which has been seconded by Commissioner Graham. The Mayor called for the vote; All in favor: Harriman and Graham; Opposed: Mayor and Rees. The Mayor asked Commissioner Dixon how she voted. Commissioner Dixon stated that she could not oppose something like that. Mayor asked if she voted with him. Commissioner Dixon stated yes. The Mayor declared that the motion failed and the P&Z Board's action was approved.

Mr. Holden asked the City Clerk to read the vote. The City Clerk stated that she was still trying to determine the vote because of some confusion between the Commissioners. Mr. Holden stated that the vote was Commissioners Harriman and Graham for upholding the appeal. Opposing the upholding of the appeal were Commissioner Rees, Mayor Quesinberry, and Commissioner Dixon. He asked the Mayor and Commissioners if that was correct? They all indicated that he was correct. Commissioner Harriman stated that he was confused as to where this item stands. City Attorney Everett stated that his motion failed by a vote of 3-2.

The meeting was recessed at 8:46 p.m. and reconvened at 8:51 p.m

6. **Recommendation to expend forfeiture funds**

Deputy Police Chief Johnson stated that the request submitted is to purchase less lethal taser guns to help prevent potential injury to officers and suspects. **Motion by Commissioner Rees to approve the expenditure from the Law Enforcement Trust Fund as requested**

(\$27,312.75). Seconded by Commissioner Harriman and carried 5-0.

7. **Recommendation to approve West Point Commons Shopping Center Preliminary Plat**

City Planner Cechman stated that the Planning and Zoning Board and staff has reviewed the preliminary plat and are recommending approval. It will allow the owners to petition for final plat approval, which will include 3 out-parcels. **Motion by Commissioner Rees to approve the West Point Commons Shopping Center Preliminary Plat. Seconded by Commissioner Dixon. Motion carried 3-2 (Quesinberry, Rees and Dixon in favor; Harriman and Graham opposed)**

8. **Recommendation to hire Centennial Celebration Coordinator**

City Manager Holden stated that the Centennial Celebration is being scheduled for next year. He has spoken with Mr. Jerry Chicone, and Mr. Ward Britt, the Heritage Museum President, regarding the need for a dedicated person to be the coordinator. The job description and contract are being drafted. The person would report to both he and the Recreation Director and be physically located in the Heritage Center. Mr. Holden stated that he will bring back the final documents for approval and further discussion on the event dates. **Motion by Commissioner Rees to develop the details for the hiring of a Centennial Celebration Coordinator, which are to be brought back to the City Commission for final approval. Seconded by Commissioner Harriman and carried 5-0.**

9. **Recommendation to award the Boyd Street Phase IV Rehabilitation Project Contract**

City Engineer Miller stated that the rehabilitation project covers Woodland from Story to Smith, then Smith to Boyd east to Dillard. This project is essential to completing the raw water line connection between the Boyd Street well and the Palmetto water plant. It will include the upsizing of water lines and upgrading the sewer, curbs and gutters. Staff is requesting approval of the five alternates and awarding of the bid, as detailed in the agenda package, to T. D. Thomson. Commissioner Rees stated he opposes the removal of the brick streets. **Motion by Commissioner Graham to award the contract to T. D. Thomson Construction Company with the five alternates. Seconded by Commissioner Harriman and carried 4-1 (Rees opposed).**

10. **Recommendation to accept a settlement offer in Code Enforcement Case #01-666**

City Manager Holden stated that the Code Case was for violation at 420 Vineland, with the fines accruing to \$2,550. They have agreed to settle the fines for a payment of \$300, which covers the City's administrative costs. **Motion by Commissioner Rees to accept \$300 as full payment for fines levied in Code Enforcement Case #01-666. Seconded by Commissioner Dixon and carried 5-0.** Commissioner Graham stated that we need to be more firm in our fines imposed by the CEB to prevent violators from assuming they will at some future time have them reduced. Mr. Holden stated that he understands the concern, but that staff is not trying to over penalize anyone and has made recommendations that recover the expenses the City has incurred.

11. MATTERS OF CONCERN FROM CITIZENS

Mr. Phil Baker, 125 W. Smith Street, Winter Garden, Florida, stated that with the upcoming Boyd Street renovations, he would like to see the rare herringbone pattern brick intersection at Woodland and Miller, be restored to the same pattern. Also, in regard to the paving of Smith Street he is concerned about any bypass traffic from Plant Street because traffic has already increased significantly. He has witnessed the current traffic running stop signs and attaining speeds of up to 60 mph. There is also a high degree of pedestrian traffic, including baby carriages, from Main Street to Park Avenue. He suggested looking at Story Road to Dillard as an alternate route for bypass traffic.

12. MATTERS FROM CITY ATTORNEY - None

13. MATTERS FROM CITY MANAGER

A. Financial Statement for December 2001

Mr. Holden stated that the financial statement has been distributed, which completes the first quarter of the budget and the City is doing very well.

B. Board Appointments

Mr. Holden stated that Ms. Terri Slack (AKA Collins), City's former Finance Director, now the Chief Financial Officer for the Expressway Authority, has volunteered to fill the vacant seat on the Code Enforcement Board and staff recommends her appointment. **Motion by Commissioner Rees to appoint Ms. Terri Slack to Code Enforcement Board to fill the unexpired term vacated by Bob Buchanan. Seconded by Commissioner Harriman and carried 5-0.**

Mr. Holden stated that Mr. John Connell a Landscape Architect employed by Orange County, has applied for the vacant Planning and Zoning Board seat and appears to be qualified for appointment. Staff is recommending his appointment. **Motion by Commissioner Rees to appoint Mr. John Connell to the Planning Zoning Board to**

fill the unexpired term vacated by Bob Buchanan. Seconded by Commissioner Harriman and carried 5-0.

14. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Rees: None

Commissioner Graham: None

Commissioner Dixon:

Stated that Orange County has requested the Mayor's official resignation from the Community Action Board so she may be appointed to serve as the City Official. She also needs authorization to appoint her alternate included in the letter.

Announced that the Lion's Club International "Right to Sight" project will be offering free eye exams and free glasses this Saturday in Apopka. She will provide the information to the Mayor and Commissioners.

Commissioner Harriman:

Thanked City Attorney Everett for his assistance during the meeting.

Mayor Quesinberry: None

The meeting was adjourned at 9:26 p.m.