

MINUTES

**MINUTES
REGULAR COMMISSION MEETING
CITY OF HOLLY HILL, FLORIDA**

MAY 9, 2006

1. CALL TO ORDER

A. Roll Call

Mayor Via called the meeting to order in the Commission Chambers at City Hall, 1065 Ridgewood Avenue at approximately 7:04 p.m. Attending with Mayor Via were Commissioners John Penny, Gilles Blais, Mark Reed and Traci A. Anderson.

Also attending were Public Safety Director Don Shinnamon (sitting in for City Manager Joe Forte), City Attorney Butch Simpson, Acting Public Works Director/City Engineer Chris Hurst, Community Development Director/City Planner Doug Gutierrez, Finance Director Brenda Gubernator, Community Development Coordinator Marsha Radulovich, and City Clerk Valerie Manning.

Absent: City Manager Joe Forte.

B. Invocation

Mayor Via delivered the invocation.

C. Pledge of Allegiance to the Flag

2. PRESENTATIONS & PROCLAMATIONS

• Shadow Day Presentations

Mayor Via presented Certificates of Recognition to the Shadow Day students who came to City Hall on May 3, 2006. Lynn Perkins and Cheryl Manning from Holly Hill Middle School were in attendance.

• Proclamation for Jennifer Grindle – 2006 Medallion of Excellence Profile

Mayor Via presented Jennifer Grindle with a proclamation for her 2006 Medallion of Excellence Profile.

• Proclamation for Public Works Department – Public Works Week: May 21-27, 2006

Mayor Via read the proclamation for Public Works Week.

MINUTES

- **Proclamation for National Peace Officers' Memorial Day – Police Week: May 15-22, 2006**

Mayor Via read the proclamation for National Peace Officers' Memorial Day.

3. **CONSENT AGENDA**

- Minutes from the regular City Commission meeting – April 25, 2006
- Minutes from the City Commission Workshop – April 25, 2006
- Disposal of property – Police Department
- Surplus Vehicles and Equipment – Public Works Department
- Amendment to the Interlocal Agreement – Establishment of the East Volusia Local Government Fire-Rescue and Emergency Medical Services Automatic Aid and Closest Unit Response System

*Commissioner Reed moved **APPROVAL** of the items on the consent agenda, seconded by Commissioner Blais.*

The motion **CARRIED** 5-0 on roll call: Reed – Yes, Blais – Yes, Anderson – Yes, Penny – Yes, Mayor Via – Yes.

4. **AUDIENCE PARTICIPATION** **Regarding items not on the agenda.**

Michael Ann Hallman, Ormond Beach, gave a brief presentation about the Relay for Life that will be held on Friday, May 19th and Saturday, May 20th. The Relay for Life starts at 6:00 p.m. Friday and will run through the night until Saturday morning until 8:30 a.m. over at Hollyland Park. Mrs. Hallman briefly discussed what Relay for Life is all about and stated that this year is extra special because the City will be honoring Milton Hallman who was the City's Public Works Director who had recently passed away from pancreatic cancer. Mrs. Hallman asked the Commission if they would approve a message about the Relay for Life over at Hollyland Park on the digital sign.

*Commissioner Penny moved to **APPROVE** a message about Relay for Life on the digital sign, seconded by Commissioner Blais.*

The motion **CARRIED** 5-0 on roll call: Penny – Yes, Blais – Yes, Anderson – Yes, Penny – Yes, Mayor Via – Yes.

Maureen Monahan, 215 – 5th Street, stated she would like for increase police presence in her neighborhood which encompasses 5th Street down to Riverside Drive up out to Burleigh Avenue out to 3rd Street. They have had some break-ins, car robberies, some car thefts and some home break-ins.

MINUTES

Chief Shinnamon stated he is meeting with Mr. and Mrs. Legary tomorrow to talk about forming a Neighborhood Watch at 10:00 a.m. in his office.

Ms. Monahan stated she had asked for a Neighborhood Watch two years ago and no one ever got back to her so she appreciates that and she will be an active supporter. She also asked if she could get lights put on over at Ross Point Park on the docks. Ms. Monahan stated she is glad to hear about the Relay for Life being hosted at Hollyland Park. It will bring Hollyland Park to the public's attention to see what a lovely park they do have and that they need to preserve it.

Lou Schmitt, 1000 Walker Street, #328, stated first of all, he wants everyone to know that he is not a racist or whatever they want to call anybody that does not believe in immigration because in his own family he has people from Iraq, France, people from all over the world. When he came down to City Hall a couple of weeks ago they were redoing the stairs and he happened to see five or six people from Mexico and he didn't say anything but when he went home he thought about it. He went to Mr. Forte a couple of days later and said, "What I would like to see done when we put these bids out to hire contractors to do work for the City that they give the contractors a level of playing field." Because if they have employee "A" that hires non-documented workers and employee "B" that goes by the letter of the law, as we all know, most of the bill is labor, so it's sort of tilted like this. Also, going back two years ago, which he is a little concerned about, the developer who is building Marina Grande, but for those of you who are new on the Commission, each one of the Commissioners were called in and spoke to Swerdlow and they asked what they wanted and he was very vocal on what he wanted and that was relocation money for the people in Blue Tide Apartments and that the contractor would hire local people for laborers. From what he has seen and heard and he has been over to the site, all there are is Mexicans not the local people and they are taking jobs away from Americans. Why he comes before the Commission tonight, is his tax dollars are going to pay these illegal immigrants. All immigrants do not have to be a citizen but they can be here on a work Visa but he would like to see an added piece of paper stating that all their employees are documented workers that can work in the United States.

Commissioner Reed stated Mr. Schmitt was here at City Hall and saw the workers that were putting in the steps and they appeared to him to be Mexican, does Mr. Schmitt have any evidence to prove that any of those people are illegal aliens?

Mr. Schmitt stated no he doesn't.

Commissioner Reed asked does he have any reason to believe that any company that the City has hired is employing illegal aliens.

Mr. Schmitt stated no but he is sure if they watch television it's beneficial for employers in this Country to hire and he is not getting...

Commissioner Reed stated he understands.

Mr. Schmitt stated he is not getting into a democrat/republican thing but it's beneficial for the republicans to give amnesty...he is really outraged about this.

MINUTES

Commissioner Reed stated Mr. Schmitt, just so you know, whatever amount of tax dollars you pay, you carry the same weight if you paid a tremendous amount so that really is irrelevant. The whole thing though, Mr. Schmitt, is a national problem. We're a City. We're not in charge of the INS. We're not in charge of the borders. Commissioner Reed stated that he would strongly suggest that Mr. Schmitt contact his Congressman and Senators.

Mr. Schmitt stated he has already done that.

Commissioner Reed stated that is the place for this complaint.

Mr. Schmitt stated first of all, it has to start at the local level, he thinks.

Commissioner Reed stated well, Mr. Schmitt, unless you have some evidence of the City of Holly Hill employing one single illegal alien...

Mr. Schmitt stated he is not saying...

Commissioner Reed stated well, he thinks it's inappropriate.

Mr. Schmitt stated he thinks Commissioner Reed has misunderstood what he said. He is not saying that they have hired but this is in the future, because he cannot do anything now with Swerdlow Corporation, he means, that's private enterprise, they can hire who they want but they do have control over...and he is not saying that it's been done before, he doesn't know if these people are legal or illegal, they may have been born here. But after watching TV and reading the newspaper and whatnot, he doesn't want to see his tax dollars...

Commissioner Reed asked if Mr. Schmitt understood that several years ago, on the Federal level, there was amnesty granted to about eight million immigrants and those people are here legally.

Mr. Schmitt stated yes he knows and he realizes that.

Commissioner Reed stated and they are going to see them; they are working.

Mr. Schmitt stated sir, like I said, I come from a family of immigrants.

MINUTES

Mayor Via stated they expressed to Swerdlow through Boca Developers that the City did not want any illegal aliens on the job sites and he has been to the job sites, he has been reassured including the young man who lost his life yesterday at Marina Grande. Yates Construction is the contractor who is from this local area and they have subcontractors. Those subcontractors are all responsible, they have employment applications, they must be resident aliens, they must have a social security number, they have to have Workman's Comp so all those things are legally put into place as far as Boca Developers goes. Now, what Mr. Schmitt is getting at is something that they need to address. Mr. Simpson, when they let a bid, can they have in the performance of that bid to say that the employees that are involved in this are legal aliens or whatever it happens to be that there is no illegal aliens that will be employed on that job site?

Attorney Simpson stated he never researched that issue. But he thinks if it's the City's specifications that they are drafting into the bid and they put it into the bid, initially, he thinks that they could require that.

Mayor Via stated Mr. Schmitt's point is well taken because if they have an un-documented employee that gives an unfair advantage to the bid process that's going on and he simply would not want to pay for an illegal alien working and have the bid process done that way. Mayor Via asked if Mr. Simpson could look into that for them and report to Mr. Forte and then he can talk to them about it.

Marsha Radulovich, 38 Circle Drive, Port Orange, thanked the Mayor and Commissioners for allowing the Holly Hill Kiwanis Club to have their fundraising event for the pancake breakfast to be placed on the sign last month because it turned out to be a great success.

5. PUBLIC HEARING – SECOND READING OF ORDINANCE 2766, AMENDING THE FUTURE LAND USE AND COASTAL MANAGEMENT / CONSERVATION ELEMENTS OF THE COMPREHENSIVE PLAN REGULATING BOATING IMPACTS TO THE HALIFAX RIVER

Mayor Via stated with the permission from the Commission he would like to pull this item from the agenda. The Department of Community Affairs (DCA) considers this a large scale amendment and they can only do two a year so they will do it again later on.

There was consensus from the City Commission to pull this item.

6. SPECIAL EXCEPTION – 1600 BLOCK OF RIVERSIDE DRIVE – FLAG LOT – APPLICANT: CHARLES FLUTIE

Mr. Harbuck gave a brief presentation regarding the flag lot for Charles Flutie. As they can see by the agenda this request was heard first in 1990 and it passed. However, the permission did expire after one year. In 2004 the request was heard again and it failed after some discussion before the City Commission at that time. Charles Flutie is back tonight asking for the same request for the flag lot. Staff has reviewed the site plan and

MINUTES

has determined that it does meet the minimum criteria for a flag lot. There is representation for the applicant here tonight.

Michael Woods, Attorney, Cobb & Cole, 150 Magnolia Avenue, Daytona Beach, stated he is here on behalf of Mr. and Mrs. Flutie for the special exception for a flag lot. This will allow the parcel located in the 1600 block of Riverside Drive to be created into a flag lot. As they know, a special exception, after one year expires unless they renew it for an additional year and Mr. Flutie did not. In 2004 they reapplied for the flag lot but the City Commissioner denied that application. The property is currently zoned R-1 which allows flag lots as a special exception. It does meet the criteria as required by the land development code. He will be available to answer any questions they may have regarding this issue.

Commissioner Penny asked if the applicant is going to reside on this lot or is it still going to be for sale.

Attorney Woods stated when it was originally proposed to the Commission in 1990, he doesn't believe there was an intention to reside. At this point, the applicants mother and daughter are both Holly Hill residents and it is the applicants intent to put them onto those lots.

Mayor Via opened public participation.

Dale Reiman, 1634 Riverside Drive, handed out a copy of the minutes from the April 13, 2004 City Commission meeting and a copy of Sec. 82-345 and 82-346 from the City's Code of Ordinance Book for the Commissions review. Mr. Reiman referred to the request that was denied in 2004 by the Commission. He was opposed to this request back then and he still is. His reasoning for denial has not changed, according to Sec. 82-346 which are it is inconsistent with the purpose or intent of this subpart, it will adversely affect the public interest, it will materially alter the character of surrounding neighborhoods, or adversely affect the value of surrounding land, structures or buildings, and it will adversely affect the natural environment, natural resources or scenic beauty, or cause excessive pollution. He doesn't believe any of these have changed from the last time that it was denied by the Commission.

Debbie Reiman, 1634 Riverside Drive, stated this is the third time she has been here. The first time was in April 2004 and the flag lot was denied and the Commission felt that it was not in the best interest of the neighborhood and that has still not changed. They live on one of the busiest parts of Riverside Drive. There are houses on their side of the street and then they have houses on the river side of the street. It becomes very busy there. If they put two houses on that lot they are going to have twice as many cars. She moved to Holly Hill three years ago because the quality of life was better. They lived in Daytona Beach and they got robbed. They moved to Riverside Drive and have been very lucky so far. The lot is currently zoned for a single-family resident and it was zoned that when she moved there. Mrs. Reiman agreed with her husband's remarks regarding the determination by the Commission and the conditions in Sec. 82-345 and 82-346. Mrs. Reiman stated that it's going to affect the pollution in that area as well as the population. Building one house on that lot is enough and the people who buy it will love it and think it's beautiful. Mrs. Reiman stated that the former Commission indicated that the trend for

MINUTES

this has changed and it is now more common to buy two smaller lots and knock down the existing houses to build one large house. That hasn't changed. None of this has changed. The only thing that has changed is the price of the lot. She doesn't understand what the whole motivation is.

Tim Slater, 1617 Montgomery Avenue, stated he is opposed to having this lot made into a flag lot. There's no need for it. It will increase the traffic on that street. The City Commission will be reversing what they said in the past. Also, the Mayor says that who lives there makes no difference but the person who is asking for this exception seems to think it does because they made sure that their lawyer brought that up. If they want to have their mother and their daughter live there, the City can very well give a special exception for an in-law apartment. The lot could also be split in half with a special exception and then neither person on each side would have to have a driveway come by their living room. There are alternates to what is being proposed.

Herbert Aguiar, 1650 Riverside Drive, which is the lot to the right of this proposed lot. He is against this for the same reasons as his neighbors. In addition to that, he believes that this would somehow not fit in with what's happening on Riverside Drive which he thinks is a very good thing. A lot of the homes that are being built on Riverside Drive are very nice. He doesn't believe a little street going to the back is going to add anything to their neighborhood other than more traffic, more noise and that's not why he bought a house on Riverside Drive and he has been living there for nine years.

Mayor Via closed public participation.

Attorney Woods stated just as a point of clarification, the information regarding Mr. Flutie bringing in his mother and his sister was to answer Commissioner Penny's question and he realizes that doesn't have an impact on their decision. As far as the motivation for the property, at this point they have had the property for a number of years. It is on the market but it is not selling right now and giving the history of trying to get this lot split in the last couple of years, he thinks his client is at the point that he will pretty much take anything. If that means the lot is split with conditions and he knows that it can be conditioned on who occupies it, he thinks Mr. Flutie is ready to put the property to use rather than letting it sit indefinitely on the lot. Mr. Flutie is of the opinion right now that...well, he has waited a very long time to try to get this resolved. What they are asking for is what's provided in the Code, they're not asking for a rezoning. The property is maintained as a zoning and has always had this ability as a special exception to be created into a flag lot so long as they meet the requirements that are put into the Land Development Code so when someone moves to a property that is vacant, that is a possibility that this could happen. The point of the mother-in-law apartment the impact, he thinks they would still have two different homeowners living on the property. The important point that they really need to address tonight is why are they here tonight after it was denied two years ago. The problem that he finds with the denial was that it was not backed by competent substantial evidence. He recognizes that a number of people have spoken about this issue, they have voiced their desire not to see this happen but that in itself cannot be grounds, necessarily, for denial of this special exception. Again, Mr. Flutie meets the requirements of the special exception as outlined by the City's Code and staff has said that he has done that.

MINUTES

Commissioner Reed stated Attorney Woods stated that his client would be willing to go along with any other provisions the Commission would add to this. One gentleman said something about splitting the lot. Now splitting the lot is not an option for the Commission because it's too narrow. The building setback lines in this area that they have laid out here on this map, it appears to him that either one of these houses would be around 6,000 square feet. Would they be willing to, perhaps, increase the setbacks so that instead of a 10 foot setback maybe a larger setback and a smaller house? Right now they are pushing those setbacks limits to the maximum and that allows them to have two buildings of 6,000 square feet each. That's two very large houses.

Attorney Woods stated he is not sure if what they presented to the Commission today if they could then go ahead and adjust it now without additional public notice.

Commissioner Reed stated he knows for a fact that when a flag lot comes forward, that they could always add other conditions before the Commission approves it, as they did on the previous one where they requested that they move the house and increase the setback. What he is thinking is that the homes that are along Elisabeth Street they have a backyard that faces this proposed exception and they have 10 feet from their back fence to that building setback line. He is thinking that maybe it wouldn't be such a burden on the neighbors if that was 25 feet or 30 feet setback. Is his client willing to go along with any other requirements that the Commission puts on this?

Attorney Simpson stated the City Code provides for imposing additional conditions as a part of granting a special exception. This has been properly noticed under the Ordinance and so it's for the Commission's determination here this evening to grant, deny or grant with additional conditions if they see fit. He doesn't know that any representation made by the applicant changes the Commission's right. He means, the applicant can say, "Yes, we agree to it and we won't challenge it," but Attorney Simpson said he is not sure that it would be affective in preventing the applicant from challenging it if he didn't like it. Attorney Simpson stated the folks in the audience could also challenge the condition and the granting.

Mayor Via stated which, in essence, was the same direction they had before when they brought this forward. Mayor Via clarified for Attorney Woods that Section 82-346, Reasons for Denial, there are nine specific reasons not just what the public says and the input but there are nine reasons for denial and all that they have to do is determine any *one* of them.

Attorney Woods stated he understands but there needs to be competent substantial evidence behind those reasons to *support* that and that's the position that he would be taking.

*Commissioner Penny moved for **APPROVAL** the special exception request for the 1600 block of Riverside Drive to create a flag lot, seconded by Commissioner Blais.*

MINUTES

Commissioner Penny stated his concern is reason number eight that it will materially alter the character of the surrounding neighborhoods, or adversely affect the value of surrounding land, structures or buildings. He is like Commissioner Reed that, that 10 foot setback...the people in the front are going to have 25 feet and the people in the back only have 10 feet. He is also troubled with the fact that the applicant could put a house of any size on any location of this lot within 10 feet and meet the setbacks presently.

Commissioner Reed stated he lives next door to a very deep lot and he has a driveway that's right next to his house and they use that driveway to go to the back and he knows the affects of having that car go down through there and he, personally, doesn't feel like it bothers him that much. He went by this proposed lot today and he thought if the driveway was on the other side with the trees, with the bamboo would be less of an impact on anybody but then he started looking at it and those trees and that bamboo would probably be better left alone and also there's almost like a ditch there so it would be more difficult to change that around. He thinks if they expand that setback it could almost be livable.

Commissioner Anderson stated it's going to be very hard to make everybody happy on this but she agrees that 10 feet is nothing. For these people, it's their quality of living and they have to live there. Quality of life is very important and that wouldn't be enough for her.

Mayor Via briefly discussed Section 82-346(8), reasons for denial. The reason why he voted to deny before is because it was not contiguous with the consistency of the neighborhood with the large back lots. These people bought those houses with large back lots and Mr. Flutie bought that lot with a large back lot for a single-family lot and for that reason he can't support this request.

Commissioner Anderson stated as the Mayor touched upon, it's going to change the character of the neighborhood all the way through and she believes it's going to be taking one step backwards if they approve this.

Attorney Simpson stated part of the presentation that Attorney Woods made to them is accurate in that they have to have substantial competent evidence to support a decision to deny. If the Commission decides to hang their hats on Section 82-346(8), that it will materially alter the character of the surrounding neighborhood then it would be appropriate to have Mr. Harbuck come in and describe the character of the surrounding neighborhood whether there are any homes in the backyards, whether all of the yards are large open spaces so that the Commission has on their record, evidence from which they can determine that it would change the character of the surrounding neighborhood. So if they're inclined to do that, it would be appropriate to have Mr. Harbuck come up and testify as their administrative officer who made this recommendation.

Commissioner Reed stated he appreciates that because he was just getting ready to speak about the homes on Elisabeth Street which will be the neighbors for this flag lot. Mr. Harbuck, the

MINUTES

homes on Elisabeth Street, not the corner house on Riverside Drive, but the homes on Elisabeth Street, there are approximately four or five homes that their backyards would abut this flag lot.

Mr. Harbuck stated, that's correct.

Commissioner Reed stated, and those lots are approximately how deep?

Mr. Harbuck stated, approximately 100 feet.

Commissioner Reed asked how close are those homes to each other.

Mr. Harbuck stated just going by memory and based on zoning in that area, 20 to 25 feet apart. Maybe a little less or it may be a little more.

Commissioner Reed stated so that in actuality, the people that live on Elisabeth Street, they're already living fairly close to their neighbor's now.

Mr. Harbuck stated this is true.

Commissioner Reed stated while it may be true that the other lots on Riverside Drive have deep lots, this is a big piece of land, its 275 feet deep. What is the latest standards they just set for R-1?

Mr. Harbuck asked for minimum lot size.

Commissioner Reed stated yes, sir.

Mr. Harbuck stated, 90 x 115.

Commissioner Reed stated there's definitely enough land there. He thinks it needs to be configured in a way that they could push this setback or this house a little bit further back.

Commissioner Penny asked what's the magic number, 20 feet.

Commissioner Reed stated he thinks 25 feet.

Commissioner Penny asked on both sides. Because if they're just pushing it from Elisabeth Street, they've got the other neighbors on the other side.

Commissioner Reed stated right now, according to this sketch, this house is 80 feet wide by 60 feet deep – the back house, which is really the one you would be concerned about if you create a flag lot. The front house is going to be the one that is going to be for sale on Riverside Drive at a high price. It's his contention to make those setbacks 20 feet on both parcels.

Mayor Via stated Attorney Simpson, I gave you my idea of denial. However, the motion is to approve.

MINUTES

Attorney Simpson stated right, but you could vote against the motion.

Mayor Via stated, yes.

Attorney Simpson stated he just wants to make sure that they have some evidence on the record to support a decision to vote against the motion. One of the questions that they need to, he thinks, address to Mr. Harbuck is whether or not the lots that are...and he doesn't know how they want to define neighborhood, but in the neighborhood on Riverside Drive, how many flag lots have been created in that block, in the next block? Are flag lots the predominant method to develop these large lots or are single-family homes not flag lots but just one home on these large lots, is that what they find predominantly in that neighborhood?

Mayor Via asked how many and is that the predominant way of getting more lots Mr. Harbuck.

Mr. Harbuck stated he didn't know he would have to address that tonight or he would have researched it thoroughly but just going by memory and the zoning in the area, he doesn't believe that there are *any* on this block. Further South, possibly from there, maybe to the City limits, going by memory, they may have three. They may have three, what they call flag lots. Now, pre-existing, as they know, they could drive up and down Riverside Drive and they could see homes in the front and garages with two stories that have been converted to homes in the back but actual flag lots that have been recorded as such, maybe three on all of Riverside Drive.

Commissioner Penny stated Attorney Simpson, based on that information, that there's only three on Riverside Drive, would that materially alter the character of the surrounding neighborhood?

Attorney Simpson asked adding another one to it.

Commissioner Penny stated, yes.

Attorney Simpson stated this is the determination that the Commission has to make, what he is trying to do is give the Commission some evidence from which they can make that determination. He thinks what the Commission should take into consideration, this was created to allow use of large lots in a way that was more economically feasible. You have a large lot and somebody didn't want to build a house that occupied the whole lot and you had enough room to create another lot and so they use the flag, in effect, subdividing this one big lot into two lots by using this flag lot. The neighborhood along Riverside Drive is single-family residences but the Commission has created the opportunity for people to apply for special exceptions and provided they meet the setbacks the City requires, the Commission has created the opportunity for them to come in and demonstrate to the Commission that they should be granted a special exception. To deny the special exception the Commission has to make one of the findings that is in Section 82-346 and there has to be evidence that satisfies the Commission and perhaps subject to court review that there was substantial competent evidence that one of these conditions exists for which they should deny or they could deny, may deny the application. The only one he has heard discussed by the Commission is it will materially alter the character of surrounding neighborhoods, or adversely affect the value of surrounding land, structures, or buildings. Mr.

MINUTES

Harbuck is probably not competent to address the adverse affect as to the value but if the Commission were to determine that they only have three flag lots created out of forty (40) opportunities for flag lots and that most of what is being built on Riverside Drive today is a single-family home on a large lot as opposed to everyone who has a large lot is applying for a flag lot. The Commission may determine that granting flag lots would materially affect the character of the surrounding neighborhood because it's primarily homes on large tracks of land. The Commission may not determine that. The Commission may say that they don't think it materially affects the character of the surrounding neighborhood. That's your decision. He is just pointing out things that they should consider based on what they have heard from the applicant and based on what they have heard from Mr. Harbuck. That's the evidence. Most of which they have heard from the neighbors are their conclusions or opinions and they have value but he thinks the Commission needs a little more than that to deny the application before them tonight.

Commissioner Reed asked if Attorney Simpson could speak to reason number one for denial, is it inconsistent with the purpose or intent of this subpart.

Attorney Simpson stated, yes. They would go back to essentially, why was the flag lot special exception created. As being the City Attorney when it was created, he guesses this is valid evidence, it was created to give people the opportunity to utilize a large lot that was big enough to meet the setback requirements and the dimension requirements under the City's Code two times. The lot was very big so they said how can we have two lots...because there's not a street that fronts on this back lot so how can we have two homes built on this very large lot and the solution was, and other municipalities have done similar things, by using this flag lot where they essentially subdivide a very big lot. That has been in the Code of Ordinances for a long time, probably since 1993. It has been utilized to subdivide these large lots.

Mayor Via stated he wants to bring to the Commission's attention that previously part of their discussion was, is the character of the development they have seen along Riverside Drive, is that it's common for two lots to be bought to put in one big house. That the tendency was to go with the bigger houses along that particular area and that was one of the reasons why they denied the request in the past.

Commissioner Penny stated if they impose greater setbacks and they decrease the footprint of the rear house, if they make the footprint too small it's going to become three dimensional and it's going to be three stories tall and it will not fit in to the neighborhood at that point. They are just imposing a footprint and setbacks, they're not imposing how big is the building going to be.

Commissioner Reed stated he will remind them that the allowance for a two story structure or up to 30 feet, that could happen. They can build a 30 foot house even if it's one house.

Commissioner Penny stated he understands that.

Commissioner Reed stated he believes this request for reducing this setback still leaves almost 4,000 square foot for a house. That's still a fairly large house. It's twice the size of his and he is very comfortable. He would also like to impose not only the double setback but also with the

MINUTES

fence a vegetative buffer along the fence to mimic the bamboo on the other side and it would really enclose it and he thinks it would actually increase the privacy for the people on Elisabeth Street. Those are his proposals.

Commissioner Penny asked if Commissioner Reed would like to amend his motion then.

Commissioner Reed stated, yes. He would like to amend the motion for approval to include a setback of 20 feet on either side for both houses and a 6 foot privacy fence along the driveway with a vegetative buffer in that additional space.

*Commissioner Reed made an **amendment** to the original motion for **APPROVAL** as follows: to include a setback of 20 feet on either side for both houses and a 6 foot privacy fence along the driveway with a vegetative buffer in that additional space, seconded by Commissioner Penny.*

Mayor Via stated he does not favor that fence along there because again, what they're doing is cutting off scenic beauty, and a fence going all the way down the side of somebody's property in an area that's been open for a long time and now they're cutting down the people's access to look either north or south. They only allow fences 6 foot tall to come up to the sides of the house. If they put a 6 foot fence down the entire side of the driveway they're blocking out the scenic beauty.

Commissioner Reed stated Mr. Harbuck, for a 6 foot fence on my property line, starting at the back of my property, how far forward can I go? To the front corner of my house? This is a generic "my" house.

Mr. Harbuck stated the ordinance requires for a flag lot to be buffered from the front of the front house to the back of the back house.

Commissioner Reed stated, and they're allowed to put a 6 foot privacy fence from the front of your house all the way to the back.

Mr. Harbuck stated if they're talking about a flag lot, it's required.

Commissioner Reed stated it's required on a flag lot but for any other lot...

Mr. Harbuck stated, absolutely.

Commissioner Reed stated from the front of your house to the back, all around the back and all the way up the other side...

Mr. Harbuck stated, yes, to the front.

Commissioner Reed asked anybody is allowed to do that today with just a simple permit.

Mr. Harbuck stated, yes sir.

MINUTES

Commissioner Reed stated that 6 foot privacy fence would start at the front of the front house and would go back to the back house.

Mayor Via stated they are voting only on the amendment at this time.

The motion **CARRIED** 4-1 on roll call: Reed – Yes, Penny – Yes, Anderson – Yes, Blais – Yes, Mayor Via – No.

Mayor Via stated now the question before them as amended is to approve the flag lot or not. Mayor Via stated he is utterly surprised that they would change the character of that neighborhood as they're doing. They are setting a precedent that they're setting something in the motion at that end of the City that they will see repeated over and over again.

The motion **CARRIED** 3-2 on roll call: Penny – Yes, Blais – Yes, Anderson – No, Reed – Yes, Mayor Via – No.

Assistant City Attorney Scott Simpson took over for City Attorney Butch Simpson at approximately 8:30 p.m.

7. SPECIAL EXCEPTION – 1410 RIVERSIDE DRIVE – APPLICANT: STEVE SMITH

Mr. Harbuck stated not too long ago the Commission passed an ordinance allowing gazebos to be built on waterfront yards with certain conditions. They do have an application from Steve Smith for a gazebo to be placed and installed. Staff has reviewed it and has determined that it meets the criteria and recommends approval.

Steve Smith, 1410 Riverside Drive, thanked the Commission for the opportunity to put a nice gazebo on the waterfront to make a better and higher use of that property. Referring to the drawing of the gazebo he wanted to inform the Commission that the required setback was 35 feet from the road but he went 70 feet instead. The setback from the side was 10 feet but he increased it to 15 feet. The gazebo is 20 feet out into the river from the high tide mark for the north. So it's far away from the neighbor's property and exceeds the setbacks.

Mayor Via opened public participation. Mayor Via called off the following people who signed up to say that they were in favor of the gazebo: Maureen Monahan, Russell Hanson, Mike Gleeson, Tom Fusco and Sheila Smith.

Sid Sharples, 1418 Riverside Drive, stated he owns the property due north of Mr. Smith's property. He is not against the gazebo but at its present location their view of the river will be diminished. If Mr. Smith is able to put it slightly further South at its location, close to the seawall, that would be much to their advantage of maintaining their view of the river which is why they live there.

Mayor Via asked Mr. Smith if there is any consideration for moving it further South.

Mr. Smith stated he thinks he already did.

MINUTES

Mayor Via stated by 5 feet.

Mr. Smith stated, yes and 35 more feet from the road.

Mayor Via stated the 35 feet could have been more encumbering than leaving it further forward.

Mr. Smith stated well, not for everybody else's view who drives down the road. No one owns the view. The view is on both sides of the road.

Mayor Via stated he was just asking if there was any consideration for moving it further South.

Commissioner Reed asked Mr. Smith how did he pick that corner? What was his thinking?

Mr. Smith stated there's water on both sides and its 20 feet further East from the neighbor's lot; it's out in the river in front of the neighbor's house. There's water on both sides and they can drive a vehicle clear around it to service the seawall. It's in line with the end of the neighbor's dock, the next neighbor down.

*Commissioner Reed moved for **APPROVAL** the special exception request for a gazebo located at 1410 Riverside Drive, seconded by Commissioner Penny.*

Commissioner Penny stated he wants to applaud Mr. Smith for complying with one of his wishes which was to push it back as far as possible.

The motion **CARRIED** 5-0 on roll call: Reed – Yes, Penny – Yes, Anderson – Yes, Blais – Yes, Mayor Via – Yes.

8. FIRST READING OF ORDINANCE 2764, VOLUNTARY ANNEXATION – 1085 AND 1091 NOVA ROAD – APPLICANT: HARRY LEAHEY

Mr. Simpson read by short title:

ORDINANCE NO. 2764

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA ANNEXING BY VOLUNTARY PETITION PROPERTY LOCATED AT 1085 AND 1091 NOVA ROAD (Tax Parcel Number 4242-04-20-0228), and (Tax Parcel Number 4242-04-20-0224) CONTIGUOUS TO THE CITY OF HOLLY HILL; REDEFINING BOUNDARIES OF THE CITY OF HOLLY HILL TO INCLUDE SAID PROPERTY; DIRECTING THE CITY CLERK TO FILE THE ORDINANCE WITH THE CLERK OF THE CIRCUIT COURT, WITH THE CHIEF ADMINISTRATIVE OFFICER OF VOLUSIA COUNTY AND WITH THE DEPARTMENT OF STATE; PROVIDING FOR CONFLICTING

MINUTES

**ORDINANCES; PROVIDING FOR SEVERABILITY; AND
PROVIDING AN EFFECTIVE DATE.**

Mr. Gutierrez gave a brief presentation of the voluntary annexation for 1085 and 1091 Nova Road. The property meets all of the requirements for annexation. Staff recommendations approval and will move forward if it's approved with a small scale land use amendment to general retail commercial with rezoning to CC-1. The current use would be consistent with the zoning.

*Commissioner Anderson moved for **APPROVAL** the First reading of Ordinance 2764, seconded by Commissioner Blais.*

The motion **CARRIED** 5-0 on roll call: Anderson – Yes, Blais – Yes, Reed – Yes, Penny – Yes, Mayor Via – Yes.

**9. FIRST READING OF ORDINANCE 2765, VOLUNTARY ANNEXATION –
1071 NOVA ROAD – APPLICANT: MARY WEEDO**

Mr. Simpson read by short title:

ORDINANCE NO. 2765

**AN ORDINANCE OF THE CITY OF HOLLY HILL,
FLORIDA ANNEXING BY VOLUNTARY PETITION
PROPERTY LOCATED AT 1071 NOVA ROAD (Tax Parcel
Number 4242-04-20-0223) CONTIGUOUS TO THE CITY OF
HOLLY HILL; REDEFINING BOUNDARIES OF THE
CITY OF HOLLY HILL TO INCLUDE SAID PROPERTY;
DIRECTING THE CITY CLERK TO FILE THE
ORDINANCE WITH THE CLERK OF THE CIRCUIT
COURT, WITH THE CHIEF ADMINISTRATIVE OFFICER
OF VOLUSIA COUNTY AND WITH THE DEPARTMENT
OF STATE; PROVIDING FOR CONFLICTING
ORDINANCES; PROVIDING FOR SEVERABILITY; AND
PROVIDING AN EFFECTIVE DATE.**

Mr. Gutierrez stated this is the property north of Mr. Leahey's property. They had to have Mr. Leahey's property first because it would have created an enclave without that. Both are willing to go under voluntary annexations simultaneously. This meets all the criteria and staff recommends approval.

*Commissioner Blais moved for **APPROVAL** the First reading of Ordinance 2765, seconded by Commissioner Anderson.*

The motion **CARRIED** 5-0 on roll call: Blais – Yes, Anderson – Yes, Penny – Yes, Reed – Yes, Mayor Via – Yes.

10. REQUEST FOR REZONING FROM R-3 (MEDIUM DENSITY SINGLE-FAMILY RESIDENTIAL) TO R-4A (ZERO LOT LINE SINGLE-FAMILY RESIDENTIAL)

Mayor Via informed the Commission that this is for **DISCUSSION ONLY** tonight; there's no direction to be taken on it. All they can do is if they want to build consensus for Mr. Forte to bring this back to them in an ordinance.

Mr. Gutierrez stated this is an administrative rezoning request. The reason for the rezoning is that the property can allow three single-family homes on it but it has a 72 inch oak tree on the property. Significantly, it's an historic oak tree which he has been told it could be over 300 years old. Staff reviewed the application for this and thought the solution would be to put town homes instead of three separate single-family homes. What this would do is keep the family units together and give them a great separation from that tree in order to preserve it. At the Board of Planning and Appeals meeting the neighbors came and they had two concerns. First, the town home configuration would promote something like multi-family. Staff redefined or defined that town homes are actually single-family homes that share common walls and a roof; they're still single-family homes. Secondly, they were concerned that rezoning to town homes would set precedence in that area and change the character of the neighborhood. This was generated from the fact that staff was trying to preserve the oak tree and that every rezoning is on a case-by-case basis. He is not sure what parcels in that area would qualify or meet the dimension requirements and the criteria for R4-A. He didn't research that. He is not sure if there are many available. Again, he would like to stress that staff would review this on a case-by-case basis. Staff still supports this recommendation to R4-A zoning.

Attorney Scott Simpson stated if he could say one thing because he was at the Planning Board meeting and just to try to address some of the concerns that may be raised that were raised during that meeting. This is not a situation where the developer was trying to circumvent or rule, there was something that was said during the Planning Board meeting, as Mr. Gutierrez indicated was initiated by City staff to try to preserve a tree. Also, he thinks it's important to note that the property owner could go forward and build on these separate lots, three separate single-family detached homes without any approvals from the City other than going through the normal building permit process. The representations the developer has made...it doesn't matter to him which way it goes. It's however the community feels in that area.

Mayor Via stated to clarify, to build a three single-family home the tree would have to be removed.

Attorney Simpson stated that is correct.

Mayor Via stated these are three single-family homes, essentially with zero lot lines for the middle guy and from the outside of the left and right.

Attorney Simpson stated they will share two common walls. The person in the middle will have a common wall on each side.

MINUTES

Mayor Via asked Mr. Gutierrez if he was familiar with the town homes that are off of 10th Street; Great Oaks Phase II.

Mr. Gutierrez stated no sir.

Mr. Harbuck stated these homes would be similar to Great Oaks Phase II.

Mayor Via stated but those are four units.

Mr. Harbuck stated, that's correct.

Mayor Via stated and they're talking about doing three units.

Mr. Harbuck stated, that's correct.

Mayor Via asked if each of them have a separate garage.

Llyod Davis, TYL Construction, 238 Treeline Lane, Ormond Beach, stated he is the property owner.

Mayor Via stated if they're single-family homes or if they're town homes, what's the difference in them? Are they going to have garages? Will the size change?

Mr. Davis stated both of them square footage wise, are going to be very comparable, somewhere between 1400 or 1500 square foot living area. His initial drawings on the town home or three single attached or whatever they want to call it, was to put in two car garages for each particular unit. He does have some concept drawings that they were starting with.

Mayor Via stated he just wants to know that these town homes are the same thing as homes, they just don't have any space between them.

Mr. Davis stated, that's correct.

Mayor Via asked what is the price for these homes.

Mr. Davis stated he wants them, either way, to be \$200,000 or less.

Mayor Via stated, okay.

Mr. Davis stated they won't be exactly like the ones off of 10th Street but they would be similar in the nature of the construction. Probably, single-story, two bedrooms, two baths, and then the common area of the home, living room, kitchen.

Mayor Via asked what are the side yard setbacks.

MINUTES

Mr. Davis stated for a single-family home, 7½ feet for each one which would give them 15 feet between one and two and another 15 feet. It was staff's idea that if they could pick up that 30 feet and bring it over that it would save this tree on the end.

Mayor Via opened public participation.

Susan Huggins, 802 Magnolia Avenue, stated she is here to represent the community and the neighborhood. They did receive the letter in the mail regarding what was going to take place with this property but the last time she spoke at the Planning Board meeting and took a consensus and even got signatures from those around them who live in the neighborhood of what their opinion was on the development of this land with a lake, other properties that are there, she really feels that it's going to hinder...and she knows there is the issue of the tree. From what she's been told the tree is going to be torn down anyway. Has any arborists been called in to determine whether or not the tree is going to be able to sustain any type of development? They want to keep their neighborhood single-family dwelling homes. They don't want to have town homes in their neighborhood for various reasons. If given enough time, she really doesn't want to see any decision made tonight but possibly give them time to look into other areas. If more research needs to go into the tree, especially if this is the issue, then she thinks they should take a look at that. They don't want town houses. They want their community to stay single-family homes.

Jeaneen Langford, 837 Magnolia Avenue, stated she lives across and diagonal from the property this is being discussed and she has lived there for nearly 30 years and own some of the properties surrounding this request for rezoning. She would like to keep the community as it is single-family residential homes.

James Brownell, 843 Jasmine Avenue, stated he has no opposition with Mr. Davis building but he would like to see it single-family homes and opposes the town houses.

Mayor Via stated he knows that Mr. Davis asked for the three single-family homes and they have setbacks but is there any way, any other little setback exceptions or anything they can do to keep that tree there with the three homes?

Mr. Harbuck stated they tried everything. The problem is the drip line of the tree is the area that would kill the tree.

Rick White, 802 Magnolia Avenue, stated he is against the town homes and would like to keep it single-family residential.

Mayor Via closed public participation.

Mayor Via stated if they want to bring forward the triplex, R4-A zoning then they need to give direction to Mr. Forte to put forth an ordinance by building consensus.

MINUTES

Commissioner Reed stated in this particular case, to make those people happy, they're going to have to save the tree. If the applicant was the homeowner, maybe it would change it a little bit, unfortunately, they have to vote against the tree.

Commissioner Penny stated he applauds Mr. Davis for being open to the fact of even talking about saving the tree. Since he is not married to either way and the citizens of the neighborhood say they would rather see it single-family homes, he agrees with Commissioner Reed and sacrifice the tree for the good of the neighborhood.

Commissioner Anderson stated she promised the citizens that she would follow what they want. She loves the tree herself but they would like to keep it single-family.

Commissioner Blais agreed with his colleagues.

Mayor Via stated their action then is no action and that means that the applicant does not have the special exception and that means that he is free to build his three lots or two lots. He wants to applaud Mr. Davis though for wanting to work with the City and do what they want. Truly, he wants the neighbors to know that Mr. Davis was trying to save the tree and he had no ulterior motive to change the characteristic of their neighborhood. He is going to build three quality structures. The consensus is to not bring forth the special exception for the rezoning.

11. COMMITTEE REPORTS

Members of the Commission are encouraged to give a brief report from the various committees on which they serve.

None.

12. COMMUNICATIONS

A. City Manager

None.

B. City Attorney

Attorney Simpson briefly discussed a memo that was sent to the Mayor and Commissioners regarding the City's situation with CNA.

C. Mayor & Commissioners

Commissioner Reed asked to pull one of the goals that was on their list and that was in regards to exploring the privatization of City services. There was consensus from the Commission to pull that as a goal. There was direction from the Mayor and Commission to have Mr. Forte have the Resolution prepared for adoption at the May 23, 2006 City Commission meeting.

MINUTES

13. ADJOURNMENT

The meeting officially adjourned at approximately 9:50 p.m.

Attest:

City of Holly Hill, Florida

Valerie Manning
City Clerk

Roland D. Via
Mayor