

MINUTES

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

AUGUST 9, 2005

1. CALL TO ORDER

A. Roll Call

Mayor Arthur called the meeting to order in the Commission Chambers at City Hall, 1065 Ridgewood Avenue at approximately 7:05 p.m. Attending with Mayor Arthur were Commissioners Arthur Byrnes, Gilles Blais, Lou Schmitt and Roland Via.

Also attending were City Manager Joe Forte, City Attorney Butch Simpson, Public Works Director Milton Hallman, Engineer Chris Hurst, Public Safety Director Don Shinnamon, Finance Director Brenda Gubernator, Community Development Director Stuart Buchanan, Building Official Tim Harbuck, Community Redevelopment Coordinator Marsha Radulovich and City Clerk Valerie Manning.

B. Invocation

Milt Hallman delivered the invocation.

C. Pledge of Allegiance to the Flag

2. PRESENTATIONS & PROCLAMATIONS

- Proclamation for Citizen of the Year – Brian Meyer

City Clerk read and presented the proclamation to Mr. Meyer.

3. CONSENT AGENDA

Minutes of the City Commission Workshop – July 26, 2005
Minutes of the Regular City Commission meeting – July 26, 2005
Minutes of the City Commission Workshop – July 26, 2005
Irrigation System connection for landscaping on U.S. 1

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

The motion **CARRIED** 5-0 on roll call: Via – Yes, Blais – Yes, Byrnes – Yes, Schmitt – Yes, Mayor Arthur – Yes.

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Commissioner Via stated he would like to make a motion to excuse Mayor Arthur from being absent from the July 12 and 26, 2005 City Commission meetings.

Commissioner Via made a motion to excuse Mayor William D. Arthur from the July 12, and 26, 2005 City Commission meetings, seconded by Commissioner Schmitt.

The motion **CARRIED** 4-0 on roll call: Via – Yes, Schmitt – Yes, Byrnes – Yes, Blais – Yes.

4. COMMITTEE REPORTS

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

Commissioner Via stated the WAV will be meeting on Wednesday, August 17, 2005 at 8:30 a.m.

Commissioner Byrnes had no report.

Commissioner Blais had no report.

Commissioner Schmitt had no report.

Mayor Arthur had no report.

5. AUDIENCE PARTICIPATION

Regarding items not on the agenda.

Rick Bacardi, 125 LPGA Boulevard, stated the City has a noise Ordinance and he would like to see it enforced better. He mentioned his concerns about the noise on Riverside Drive at the traffic light with jake-break noises, engine brakes with the big trucks. He would also like to see the speed limit on Riverside Drive enforced.

Matthew Hudson, 131 Daytona Avenue, stated jake-brakes can ball the asphalt up on the roads, just for the record.

Nancy Garcia stressed her concerns about the LPGA Boulevard and Riverside Drive rezoning and stated that it is a sensitive issue with the residents located around that rezoning.

Rebecca Cooper, 14 Mimosa Trail, Ormond Beach, stressed her concerns as well about the rezoning on the corner of LPGA Boulevard and Riverside Drive.

Richard Hanley, 135½ - 12th Street, asked how often does the Commission agree with the recommendation of the Board of Planning and Appeals?

Mayor Arthur stated not always but a lot of the time.

6. **RESOLUTION 2005-R-33, NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS)**

Mr. Simpson read by short title:

RESOLUTION NO. 2005-R-33

A RESOLUTION BY THE CITY OF HOLLY HILL, FLORIDA ADOPTING THE NATIONAL INCIDENT MANAGEMENT SYSTEM, AND PROVIDING AN EFFECTIVE DATE.

*Commissioner Schmitt moved to **APPROVE** Resolution 2005-R-33, seconded by Commissioner Blais.*

The motion **CARRIED** 5-0 on roll call: Schmitt – Yes, Blais – Yes, Byrnes – Yes, Via – Yes, Mayor Arthur – Yes.

7. **SECOND READING OF ORDINANCE 2730, AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS – STREET SIDE YARD SETBACKS**

Mr. Simpson read by short title:

ORDINANCE NO. 2730

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA, AMENDING THE CONSOLIDATED LAND DEVELOPMENT REGULATIONS, CHAPTER 78 GENERAL PROVISIONS AND CHAPTER 114. ZONING REGULATIONS, ADDING STREET SIDE YARD SETBACKS; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

*Commissioner Via moved to **APPROVE** Second Reading of Ordinance 2730, seconded by Commissioner Blais.*

Mr. Forte stated perhaps one of the things that would resolve this, for most cases, would be a variance request which would come before the Commission and then you could make your decision based on the evidence before you. This is one of those ordinances where no matter what they do, one person is going to benefit and the other person is going to be harmed. It may be in everybody's best interest to look at these things on a case-by-case basis and then based on that evidence the Commission can make their decision. The biggest harm is a piece of property on a corner that's doing new construction would have to set their property back 30 or 35 feet from both of the roads' edges giving them an enormous front yard and a rather small backyard

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with two side yards. That's probably the biggest harm that would come under a new construction type scenario. Everything else that happens, generally if it benefits the person that wants to do the work, it may violate their neighbors aesthetic value in one way or the other. Either their view of something or their ability access or something of that nature.

There was brief discussion amongst the Commissioners and Mayor and they unanimously agreed to view this type of ordinance on a case-by-case basis and have the variances come before the Commission for approval.

John Penny, 119-7th Street, stated he came tonight to try to persuade the Commission to vote against this Ordinance and it looks like they will. He agrees that it should be looked at on a case-by-case basis. He then stated that he had spoken to Tim Harbuck and asked him about the amount of variances that have been requested and there are not that many in recent history. He was concerned about the neighborhood on Riverside Drive, the second, third, and fourth house back, even though the people on the corner have paid a premium for their lot, the second, third, and fourth houses have paid a premium for their lot also and they value the view and they value the community that they live in. He just worries that so often government tends to paint with broad strokes and leave out the individual rights and by having the variance the neighbors that will be directly affected by any change will be contacted by certified mail and will have their opportunity to participate in government.

The motion **FAILED** 0-5 on roll call: Via – No, Blais – No, Schmitt – No, Byrnes – No, Mayor Arthur – No.

8. SECOND READING OF ORDINANCE 2733, RETURN OF UTILITY DEPOSITS

Mr. Simpson read by short title:

ORDINANCE NO. 2733

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA, AMENDING SECTION 70-124 (DEPOSIT) BY ADDING SUBSECTION (J) TO PROVIDE FOR THE RETURN OF UTILITY DEPOSIT UNDER CERTAIN TERMS AND CONDITIONS; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

*Commissioner Schmitt moved to **APPROVE** Second Reading of Ordinance 2733, seconded by Commissioner Via.*

Mayor Arthur stated he thought when they talked about this earlier it would probably cause more trouble than what it was worth.

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The motion **CARRIED** 3-2 on roll call: Schmitt – Yes, Via – Yes, Byrnes – No, Blais – Yes, Mayor Arthur – No.

9. FIRST READING OF ORDINANCE 2734, MULTI-FAMILY MINIMUM AVERAGE UNIT SIZE AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS (LDR)

Mr. Simpson read by short title:

ORDINANCE NO. 2734

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA, AMENDING THE CONSOLIDATED LAND DEVELOPMENT REGULATIONS, CHAPTER 114, ZONING REGULATIONS, ADDING MINIMUM AVERAGE FLOOR AREA FOR MULTI-FAMILY DWELLINGS; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

*Commissioner Via moved for **APPROVAL** First Reading of Ordinance 2734, seconded by Commissioner Schmitt.*

Mr. Buchanan stated currently, the City has three zoning districts that allow multi-family. Those are R-6, R-7, and R-8 and those zoning districts are found primarily along Nova Road. They have many apartment complexes along Nova Road. Right now, the City has minimum square footage of 750 square feet in two of the zoning districts and 900 square feet in the other zoning district. What that means is if someone was to take one of those parcels along Nova Road and choose to build 100 units and they wanted to build a hundred 750 square foot units, there is nothing that the City could do to prevent them from doing that. What's before the Commission tonight is a minimum average square footage. What that means is they could still build 750 square foot one bedroom but on an average they have to build a mixture and average out at 1000 square feet.

The motion **CARRIED** 5-0 on roll call: Via – Yes, Schmitt – Yes, Byrnes – Yes, Blais – Yes, Mayor Arthur – Yes.

10. FIRST READING OF ORDINANCE 2735, FEEDING OF FERAL OR STRAY ANIMALS, TAMPERING WITH ANIMAL TRAPS – AMENDMENT TO CODE OF ORDINANCES CHAPTER 10, ANIMALS

Mr. Simpson read by short title:

ORDINANCE NO. 2735

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA, AMENDING THE CONSOLIDATED LAND DEVELOPMENT REGULATIONS, CHAPTER 10, ANIMALS, ADDING SECTION 10-48 FEEDING OF FERAL OR STRAY ANIMALS; SECTION 10-49 TRAPS SET BY ANIMAL CONTROL OFFICERS; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

*Commissioner Schmitt moved for **APPROVAL** the First reading of Ordinance 2735, seconded by Commissioner Blais.*

Mr. Forte stated this Ordinance is brought to the Commission primarily because the City has a couple of people that go around and feed these feral cats.

Mr. Buchanan stated currently they have a business owner that feeds between 40 and 50 cats a day and feeds them everyday and because he feeds them everyday, they are continuing to multiply. It has gotten to the point where staff has walked around his parking lot and they pick the kittens up off the ground and put them into a basket and put them in the City truck and bring them to the Humane Society. Unlike the rest of the cities in Volusia County, this City doesn't have this Ordinance so when staff puts the traps out the business owner sets them off. The City has all of his neighbors calling and asking for the City to do something. Currently, the City has nothing in place to help control it.

Matthew Hudson, 131 Daytona Avenue, stated over at Sonics Restaurant there are a couple of kittens that the girls feed periodically. He would hate to see an ordinance that says they can't feed a stray cat.

Ralph Johnson, 244 - 14th Street, stressed his concerns about his own private house cats being trapped illegally in a cage some years ago and how he had to come up with the expense of getting them back.

Rebecca Cooper, 14 Mimosa Trail, Ormond Beach, stated responsible pet ownership is the answer. The traps, if staff could find a way to leave the traps alone then they can get the cats spayed or neutered.

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The motion **CARRIED** 4-1 on roll call: Schmitt – Yes, Blais – Yes, Byrnes – Yes, Via – Yes, Mayor Arthur – No.

11. FIRST READING OF ORDINANCE 2736, TAMPERING WITH RECYCLE CONTAINERS AND DUMPSTERS – AMENDMENT TO CODE OF ORDINANCES CHAPTER 54, SOLID WASTE

Mr. Simpson read by short title:

ORDINANCE NO. 2736

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA, AMENDING THE CONSOLIDATED LAND DEVELOPMENT REGULATIONS, CHAPTER 54, SOLID WASTE, AMENDING SECTION 54-4 UNLAWFUL TAMPERING WITH OR MOVING GARBAGE, RUBBISH, YARD WASTE OR WASTE CONTAINERS; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

*Commissioner Schmitt moved to **APPROVE** the First Reading of Ordinance 2736, seconded by Commissioner Via.*

Mr. Forte stated the only thing they are adding to this *existing* ordinance is staff is including a recycling container and a dumpster to what is already in the ordinance so that people don't go picking through them.

The motion **CARRIED** 4-1 on roll call: Schmitt – Yes, Via – Yes, Blais – Yes, Byrnes – Yes, Mayor Arthur – No.

12. WATER TREATMENT PLANT IMPROVEMENTS

Mr. Forte stated this is the engineering portion of the water treatment improvements for a dollar amount of \$80,750 for Quentin L. Hampton Associates, Inc., to do the work.

*Commissioner Via moved to **APPROVE** Quentin L. Hampton Associates, Inc., for the design phase of the Water Treatment Plant Improvements for a lump sum fee of \$80,750 as outlined in their letter dated July 20, 2005, seconded by Commissioner Blais.*

The motion **CARRIED** 5-0 on roll call: Via – Yes, Blais – Yes, Byrnes – Yes, Schmitt – Yes, Mayor Arthur – Yes.

13. WASTEWATER TREATMENT PLANT EXPANSION

Mr. Forte stated this is for the wastewater treatment plant expansion in the amount of \$250,000 for engineering services.

*Commissioner Via moved to **APPROVE** Quentin L. Hampton Associates, Inc., for the design phase of the wastewater treatment plant expansion for a total lump sum fee of \$250,000 as outlined in their letter dated July 20, 2005, seconded by Commissioner Blais.*

The motion **CARRIED** 5-0 on roll call: Via – Yes, Blais – Yes, Schmitt – Yes, Byrnes – Yes, Mayor Arthur – Yes.

14. REDEVELOPMENT DISTRICT WATER AND WASTEWATER IMPROVEMENTS ENGINEERING SERVICES

Mr. Forte stated this is the line that's running through the district down to the Marina Grande project. This portion is being paid for through the surcharge that the developers will reimburse the City on.

*Commissioner Schmitt moved to **APPROVE** Quentin L. Hampton Associates, Inc., to proceed with the professional services for the redevelopment district water and wastewater improvements for Marina Grande. Proposal for engineering services in a total amount of \$80,450 is to be funded out of Special Impact Fees from Marina Grande project, seconded by Commissioner Byrnes.*

The motion **CARRIED** 5-0 on roll call: Schmitt – Yes, Byrnes – Yes, Blais – Yes, Via – Yes, Mayor Arthur – Yes.

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Mr. Forte stated they have an Addenda item that they need to do now.

ADDENDUM ITEM

FIRST READING OF ORDINANCE 2737, LIMITING THE CITY COMMISSIONS' ABILITY TO EXERCISE EMINENT DOMAIN

Mr. Simpson read by short title:

ORDINANCE NO. 2737

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA; PROPOSING AN AMENDMENT TO THE CITY CHARTER LIMITING THE CITY'S ABILITY TO EXERCISE THE POWER OF EMINENT DOMAIN WHEN THE CITY DOES NOT RETAIN OWNERSHIP OF THE REAL PROPERTY; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Commissioner Byrnes stated before he makes a motion on this, he wanted to find out, in the workshop they were talking about 4/5ths or 5/5ths, and in this Ordinance it says 4/5ths but when they look at the fact that it's for property that the City is not going to obtain ownership of, he is sort of thinking along Commissioner Via's line of the 5/5ths vote to make it even tougher for a future Commission to take somebody's property and if it looks like it would pass with 5/5ths he would like to make a motion that it be changed from 4/5ths to 5/5ths, if not then they will just continue on.

At this time Mayor Arthur handed out some information from the Conference of Mayors regarding eminent domain to the Commissioners and strongly suggested that they read the handout before making their decision tonight. He is strongly against doing anything with this subject tonight because he doesn't see eminent domain a problem in this City and there has only been one occasion that eminent domain was ever used and that was with Bellemeade Development over on Riverside Drive for Sunrise Park and that was over 30 plus years ago. He stressed that the Commissioners should leave it alone for now because there is not a problem with eminent domain in the City of Holly Hill. The City has not abused eminent domain and it is not a problem. He suggested for the Commissioners to wait on doing anything at this time because as time goes on they will learn more about it.

Commissioner Byrnes stressed his concerns about what his constituents were telling him about their properties and worries if their properties will be in jeopardy with the Marina Grande project coming in.

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Mayor Arthur strongly told the Commissioners that no one on this Commission has any attempts to use eminent domain on anyone, any where in the City. The City is not interested in taking anyone's house. Why are they trying to solve a problem in the City when there isn't even a problem? Nobody is willing to take away anything from anybody! Eminent domain happened over 30 years ago and has never been considered since then.

*Commissioner Byrnes made a motion to approve Ordinance 2737 on First Reading as read but it **DIED FOR LACK OF A SECOND VOTE.***

15. COMMUNICATIONS

A. City Manager

Mr. Forte took the time to introduce Christ Hurst the Engineer for Public Works who used to work for Daytona Beach. He will be working closely with Quentin L. Hampton Associates, Inc., on some projects and with Milt Hallman.

B. City Attorney

None.

C. Mayor & Commissioners

Commissioner Blais talked about the NASCAR Hall of Fame Rally that was held today in Daytona Beach over in the Speedway.

Commissioner Schmitt thanked everyone for coming tonight.

Commissioner Via stated he appreciated Commissioner Byrnes passion towards the eminent domain subject and he knows that is something he wants to alleviate and he is for that as well but he didn't think it went far enough. He then briefly talked about the speed limits on Riverside Drive. He thanked Mr. Meyer for being at the meeting tonight and congratulated him on being Citizen of the Year.

Commissioner Byrnes stated in the years that he has worked with this Commission, this is the most disappointed and saddened he has been with results that have happened.

Mayor Arthur stated no comment.

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15. ADJOURNMENT TO WORKSHOP

The meeting officially adjourned at approximately 8:50 p.m.

Attest:

City of Holly Hill, Florida

Valerie Manning
City Clerk

William D. Arthur
Mayor