

Minutes from the City Commission meeting called April 27, 2021 at 4:00 P.M.

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**TUESDAY, APRIL 27, 2021
CITY COMMISSION MEETING – 4 P.M.**

Present: Dan Russell, Mayor Pro Tem/Commissioner
Judy Tinder, Commissioner
Brandon Aldridge, Commissioner
Pat Perno, Commissioner
Vickie Gainer, City Manager
Chief Ricky Ramie, Sergeant at Arms
Kevin Obos City Legal Counsel

Item #1. Call to order. By Mayor Pro Tem Russell at 4:00 P.M.

Item #2. Invocation/Pledge of Allegiance. Invocation by City Manager followed by the Pledge of Allegiance.

Item #3. Mayor Pro Tem Russell's Report. Mayor Pro Tem Russell welcomed everyone to the meeting and thanked everyone for attending the informative workshop the previous night. He stated that he was disappointed in FDOT for not being there. The news article about Mr. Gray withdrawing from the race stating he felt threatened disturbed the Mayor Pro Tem. He said he reached out to the Supervisor of the Elections and Chief of Police who both assured him there was nothing to investigate. The Police Chief advised him that the threat was more of an employment type threat than a threat to the family. Mayor Pro Tem wanted to assure everyone that Lynn Haven elections will go forward as planned and the Commission will do everything they can to make sure they are legal and proper.

Item #4. Commissioner's Report. Commissioner Perno thanked everyone for their input and attendance at the workshop the previous night. He assured them they have all been heard by the Commission and the City. Commissioner Aldridge also thanked everyone for their input and attendance at the workshop of the previous night. He said he is glad everyone wants to work together. He thanked City for working so hard on the matter too. Commissioner Tinder said it had been an eventful two weeks with things changing by the hour. She said that Mayor Pro Tem Dan Russell and she have worked together for 4 years, and in all those 4 years he has never ever emailed her because that would be breaking the sunshine law. She believes this is what happened with Brian Gray. She said she received an email from someone else claiming to be the Mayor, and she knew it was not from the Mayor Pro Tem because it was not his language style. All she had to do was respond in any way and it would have broken the sunshine law. She has turned the email over to law enforcement who will be analyzing it and investigating. She assumes the same thing happened to Brian Gray which is why he withdrew from the electoral race. Mayor Pro Tem confirmed the email is exactly the same as one he received, and he had also put it aside. Commissioner Tinder said she is looking forward to the election. Commissioner Perno recalled seeing the same email and enquiring with the City Manager before discarding it himself.

Item #5. City Manager's Report.

(A) Financial Update – Ms. Roman asked if there were questions. There were none.

City Manager advised that the City is currently working on the mid-year budget and hopes to have it with the Commission by mid-May. She also thanked the staff for what they do, saying it is a great city of staff that works day and night for the residents, and she is very grateful. She then thanked the County for coming out to give the City support at the workshop the previous night.

Item #6. City Attorney's Report. Legal Counsel, Mr. Obos reserved his comments till the public hearing and commentary.

Item # 7. Public Commentary.

Mr. Janke addressed the public about a Beautification Board project for the park improvement on 9th Avenue, and naming it after the original donor. He said that the Board did a lot of research about the history of the area to come up with a name for the park. He asked that in future if a resident has a recommendation that the Commission consult with the City staff before making any decisions. Commissioner Tinder said she intended that the park should not be named after the original donor, but that a plaque with his name be placed there.

Mr. Walker stated that we have not had a citizen of the year award in 5 years and have not given credit for anything in this town to a resident. He said that Commissioner Aldridge is very vocal about City employees achievements. Mr. Walker said the residents do not take the City employees for granted as they are paid, but he feels the citizens are being taken for granted. The Garden Club is working in the city, the Heritage Club and Rotary Club do too. He thinks the City should start looking at who is really helping to rebuild the City like some of the citizens.

Mr. Scray said that with the election now moving into the run-off stage, he asked the commission to recommend kicking off some type of citizens committee to start looking at some sort of extensive review. Mr. Scray also applauded Ty Ferris from Parks and Community Services, for doing such a great job at really leveraging the money they have. He believes the parks of Lynn Haven will become a focal point in the years to come and is money well spent, that team is doing a great job and he wanted to draw the Commissions attention to that.

CONSENT AGENDA:

Item #8. Minutes: 4/13/21- regular meeting minutes.

Item #9. Residential Incentive Program Applications – 1607 Montana Ave.

Item #10. Residential Incentive Program Applications – 1611 Montana Ave.

Motion by Commissioner Aldridge: to approve all items on the Consent Agenda as presented.

Second to the Motion: Commissioner Perno

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Commissioner Tinder enquired with City Manager about the property 1608 with the pods and whether we had more information about the issue. City Manager advised she did not have the details in front of her right then.

On Vote:

Aldridge	aye	
Perno	aye	
Tinder	aye	
Mayor Pro Tem Russell	aye	Motion passed: 4-0

OLD BUSINESS:

Quasi-Judicial Public Hearing

Item #11. Discussion and possible approval of Development Order Application – Arbor Landing at Mill Bayou – Highway 390 – Parcel #: 11344-000-005.

Mr. Obos reminded everyone that this matter began at the previous Commission meeting of 4/13/2021 and was adjourned till now, so it is a continuation of the last meeting. He said that he will swear anyone in again who wants to testify. He asked if the Commissioners had any ex-parte communications since the previous meeting. He confirmed that everyone had heard the workshop the previous night so technically it was ex-parte communication so they needed to remember they should only base their decisions on 4/13/2021 Commission meeting information and this meeting, if there is indeed any new information given at this meeting.

Mayor Pro Tem Russell confirmed no ex-parte communication except discussions at the workshop and reading emails from residents but did not respond to any of the emails.

Commissioner Aldridge, and Tinder confirmed no ex-parte communication.

Commissioners Perno confirmed no ex-parte communications outside of the workshop and reading resident's emails.

The City Attorney explained further regarding conceptuality with transportation and transportation concurrency, that in the 2017-2018 timeframe this Commission went away from concurrency and replaced it with an alternative mobility funding system. In 2018 the City adopted an ordinance that set out this multi-model mobility fee which is basically like an impact fee. The concept being that every new developer pays the mobility fee so everyone pays their fair share to alleviate traffic concerns, sidewalks, and walking paths.

Mayor Pro Tem asked, if that is the case, does that mean we do not look at traffic counts but strictly go to the mobility fee to mitigate the issues going forward? Mr. Obos stated that the state still looks at it to ensure their standards are adhered to, but the City then ensures via the ordinance that everyone pays the mobility (impact) fee.

Amanda Richard proceeded to speak about the continuation of this hearing, reading from her report.

Mayor Pro Tem Russell accepted the printed copy of the workshop presentation for the record.

Commissioner Tinder said that we all saw a flier at the previous night's workshop with a timeline for the whole development since 2018, and for over half of the timeline we were under the care of Adam Albritton and asked the City Attorney if that would have any impact on this decision at all,

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Mayor Pro Tem Russell suggested that there already is that problem for Emergency Services access without the new development, stating that when the school and the current homes were developed there should have been more than one egress. He said that this commission is remiss in not doing its job originally and he takes responsibility for not taking care of this situation 3 years ago. He commented that Mosely School is the same, as is the school where he took his own children. He said we all have to take that into consideration when we build a school or other municipality, but do we punish a property owner or developer now because of the City's poor historical decisions?

Commissioner Aldridge agreed with Mayor Pro Tem saying that we do not want to set a precedent to future developers where they end up black balling us and we have no growth in Lynn Haven. He said he would not want that to happen, and this is a hard situation and because of all the entities involved it becomes confusing about who is responsible for what.

Commissioner Perno queried the feasibility of Pipeline Road on the back side, asking if Mr. Lightfoot could talk to the meeting about that now.

City Manager assented. City Manager asked the City Attorney if we could phase this development. City Attorney said that due to the statue, the City cannot enforce this. The City can request it and the developer can agree to it should they wish.

Mr. Lightfoot advised that Pipeline Road is not feasible because of a 54" watermain that is in the way. He said that some residents had queried about using the right of way, but there is also 48" and 36" water line in that area. He said that section of Pipeline Road is not a right of way, but rather it is a utility easement only, so there is no legal way they can build a road through there without an eminent domain. So that road is not an option because of utility conflicts or land use. The County currently has a utility easement through there.

Commissioner Tinder asked if we knew who owns the property. Mayor Pro Tem Russell advised it was owned by St Joe on the Northern side and Ira Hutchins on the Southern side.

Commissioner Tinder asked if there is an opportunity to speak to St Joe, and Mayor Pro Tem Russell reiterated that the road is owned by multiple owners.

Commissioner Perno would like Ms. Richard to explain Ordinances 163, 747 and 390 and the information she received via email from DOT.

City Attorney said he had touched on the first two already and Chapter 163 was about moving to a mobility fee from concurrency. Mayor Pro Tem Russell read the email from the City Planner that FDOT's latest data shows that as of 2019 HW390 is not failing its level of services.

Ms. Richard confirmed that apparently the data they have shown that the section of road is operating at C and they will only have the results of 2020 data probably next month.

Commissioner Tinder asked to go back to her original motion, saying it is even more pertinent now that we are saying the FDOT studies are two years old.

Motion by Commissioner Tinder: To not give Occupancy Certificates to the Southern Corridor of the development until there is a study done for the proper hours of the morning between 7am-9am.

For lack of a second the motion dies.

Commissioner Perno stated that we have to say YES or NO to the development before we can make recommendations to the developer.

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Mayor Pro Tem Russell confirmed we cannot force the developer to pay additional fees or add other conditions.

Commissioner Aldridge asked the developer if we approved and issued the development order what kind of time frame we would be looking at in reality before there is a Certificate of Occupancy even ready to be issued.

The developer Gordon Thames was sworn in before responding that only likely to be completed within a year in the South of Midge Road, but as far as the back part they need some predictability, but it is in their interest as well to have the new road coming in. Commissioner Aldridge said so it is being phased naturally anyway. The developer said their timeline is that it will take about 2 years before anyone will be moving in. Commissioner Aldridge then reiterated that it makes his point that even if they approved the Development Order today it is not likely the construction is even going to start immediately, and the process will give the City time to come up with some solutions to these issues. Then with a natural flow it would be about a 3-year timeframe to build the whole thing.

Mayor Pro Tem commented that they were told the previous night that the only thing holding the Midge Branch from starting is not yet having the FDET permit. Mayor Pro Tem Russell asked the developer if they would consider making an agreement with the City not to ask for any Certificate of Occupancies in that Northern portion for two years.

The developer agreed that he would make that deal with the City, because it gives them predictability on time, and there are a lot of issues, so to not get our first Certificate of Occupancy for two years on that would work. He confirmed that they have a long term interest in Lynn Haven and are not a fly by night developer and would work with the City.

Commissioner Tinder asked if they should not be able to finish the project for any reason, do they have a backup plan or someone that can continue that work?

The developer confirmed they have adequate resources to complete the project, even without the bank.

Motion by Commissioner Aldridge: To approve development order

Second to the Motion for discussion: Commissioner Perno

Mayor Pro Tem Russel stated that before moving on to comments and discussion he requests the commissioners to amend the motion that there will be an agreement drawn up between the developer and the city that they will not request a Certificate of Occupancy for the Northern portion. Commissioner Aldridge agreed to amend the motion.

Amended Motion by Commissioner Aldridge: To approve the Development Order with the understanding that the developer agrees to not apply for the Certificates of Occupancy for the Northern Portion of the development for at least 2 years if we approve the Development Order.

Commissioner Perno agreed to second the motion if Commissioner Aldridge would agree to amend the motion further with an additional caveat that we work diligently with the citizens to get DOT and the County, and utilize the mobility funds, to urgently address any traffic concerns and safety issues.

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Final Amended Motion by Commissioner Aldridge: To approve the Development Order with the understanding that the developer agrees to not apply for the Certificates of Occupancy for the Northern portion of the development for at least 2 years if we approve the Development Order, with an additional caveat that we work diligently with the citizens to get DOT and the County, and to utilize the mobility funds, to urgently address any traffic concerns and safety issues.

Second to the Final Amended Motion: Commissioner Perno

Mr. Scray queried if the impact fee is something that can be used to get foot bridges created so as soon as the new residents are moved in, their children will have a bridge to walk across 390 to school.

City Attorney confirmed that that is the type of thing that the multi mobility funds can be used for. Commissioner Tinder asked how much the mobility fee was. City Attorney confirmed it was just over \$300k just for this development order.

Commissioner Aldridge asked for confirmation that the cost for the pedestrian bridge built near Publix was less than \$50k. Mr. Lightfoot confirmed. Mr. Lightfoot also confirmed that it is possible for the Commission to work with DOT to get them to add a pedestrian bridge as part of their project.

Crista Heptig handed out a few copies of some Florida Statutes to the Commission. She said that firstly, the previous night's discussion was about 4pm-6pm traffic study, yet the code just states "peak hour" maximum and according to the city's stats peak is the am not pm for Mill Bayou Boulevard. The numbers provided for this Development Order makes it invalid based on this.

Ms. Heptig went on to read from her hand-out.

Susan Long stated that she does appreciate the Commissioners listening, saying we have all learned a lot. She said we go back to the same issue, that if the City allows the development to go ahead as it is currently planned, they are allowing a development that is shown according to statutes to be unsafe.

Ashley Sowell said that no one's rights should out-trump someone else's rights, and if some other developer comes in and wants to develop later, you are going to be bound to give in to them too. She went on to repeat what she had said at the workshop the previous night.

Commissioner Aldridge said that there is an act that started in 1995 in the State of Florida about allowing developers a heavier hand over local governments when they are trying to stop a development. He said he will bring back to next meeting for informational purposes. City Attorney confirmed it is the Burton Harris Act.

Commissioner Tinder asked if we know if John David still owns the property. Mayor Pro Tem and a member of the Public answered Yes.

Holly Spring said she has listened and looked at all that has been presented and wanted to say she

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understands that all the boxes were ticked, but the City approval is still required. Not one person has said they do not want it. The issue is the safety concern and traffic and future capacity we are committing too. She said she understands everyone has rights in this debate and its all important to everyone, and the City is setting a precedent for future developers. We simply have dual concerns that have not been addressed. Titus does not alleviate traffic, but rather adds to the problem.

City Attorney swore in the public who were not at the previous meeting, under oath.

Laurene Lazarno reiterated once again the concerns about safety and emergency services access. Simply asking that if we approve this development, how soon can they get them that fire station and some security in there.

Christy McElroy wanted to go on the record, that there is a hardship, and the Commission is compounding a hardship. The fact that they could not get DOT to a meeting of this magnitude, and they could not get them to the table. That should have been their major drive, and DOT is really good about returning phone calls and turning up to meetings.

Gray Dodge stated that he had no affiliation with the developer, and he is supportive of this development. He said there are people moving here every day and he would like to welcome the new people to the neighborhood. He has a really hard time understanding how the city will block a private developer who legally purchased the land, that is not asking for variances, waivers, or incentives, and has the legal ability to develop this property. The land development use was passed in 2005. He said there is plenty of tried and tested safe street programs around, and that more traffic actually is safer for the children because it is slower, and that empty streets are more dangerous. He recommended that the City increase street trees, and sidewalks. There are smarter ways than prohibiting a perfectly legal development.

Lori Ubowski asked that the motion be repeated because they could not hear it at the back.

Commissioner Aldridge restated the motion:

To approve the Development Order with the understanding that the developer agrees to not apply for the Certificates of Occupancy for the Northern portion of the development for at least 2 years if we approve the Development Order, with an additional caveat that we work diligently with the citizens to get DOT and the County, and to utilize the mobility funds, to urgently address any traffic concerns and safety issues.

Ms. Ubowski asked if that means the Southern portion will be approved as is.

Commissioner Aldridge confirmed yes. Ms. Ubowski queried if this means that there is still access to the Mill Bayou Boulevard right at the parking lot. Commissioner Aldridge confirmed correct. Ms. Ubowski echoed what everyone else said except the last gentleman who spoke and went on to repeat what she said at the workshop the previous night. She queried again why it is so difficult to look at Pipeline Road, when we have to ask only two people to use that road, and even the developer who confirmed he has enough money to complete the development. So, she queried if it is not worth exploring other options with all possible stakeholders. She said that Mr. Thames

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seems reasonable and has already said he would work with the city.

John Dossa echoed what everyone said. Explained how another development is being built to push traffic from Star avenue towards 390 so people from Callaway and the new development will have easier access to Lynn Haven. He complimented the Arbor Landing rebuild that looks amazing and will attract new residents. He appreciates the workability with the Developer. He asked to please push Florida DOT to come out and work with us.

Commissioner Aldridge encouraged everyone to come out at 3.30pm on 11th Street over by the Juvenile Justice Building so they can have a voice in the state as well, and that the TPO is typically overlooked by the public, so reiterated to please come out to that meeting on the Thursday night.

On Vote:

Aldridge	aye	
Perno	aye	
Tinder	no	
Mayor Pro Tem Russell	aye	Motion passed: 3-1

NEW BUSINESS:

Item #12. Discussion and possible approval of Task Order for the design, permitting, surveying, and bidding of the 390 East (phase two) FDOT Project number: 440149-1.

Mr. Kidwell spoke to the agenda report.

Mayor Pro Tem explained that he had already been in discussion with Mr. Kidwell regarding this project and had asked a number of questions. One question he had asked was why we are doing this now and spending the money if even the 4-lane is not going to go ahead. He stated that at the time of asking the questions he was not aware that there are bike lanes going in relatively soon as well, so they are going to have to move stuff and do something with the utilities. Mayor Pro Tem said that his next question was are we doing it in a way to make sure we are not going to have to do it again when FDOT does eventually come in to widen the road, and Mr. Kidwell confirmed they are widening it enough to ensure that the utilities do not have to be moved again for the FDOT work. Mr. Kidwell also confirmed that they are actually doing a repaving project as well as the bike lane.

Mr. Kidwell explained that the watermain on that corridor is right on edge of the payment and being an asbestos cement pipe, it is fragile. He said that meant if anything breaks, we would be dealing with catastrophic failure in a high traffic area. He went on to say that starting the planning now we should be able to spread it out over phased construction of the project, and as long as DOT do not go outside of the proposed scope that they had planned we will be fine.

Commissioner Perno asked if this was from Indiana Street, and Mr. Kidwell confirmed it was from Indiana Street all the way to 231, which includes the new bridge to move traffic over and the rebuild the other side.

Mayor Pro Tem Russell queried if there was also an issue about removing lead from pipes.

Mr. Kidwell confirmed that the EPA has come out with some new rules for lead and copper. They

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want to remove all lead service lines connected to the City drinking water systems. Commissioner Tinder asked if this is in the budget currently. Mr. Kidwell advised yes. Commissioner Perno asked if the whole project is in this year's budget. Commissioner Aldridge confirmed it was just the study. Mr. Kidwell stated that the designs, construction plans, and conflict resolutions will be tackled in this and then we will have a construction bid document that we can select a contractor from. Confirming that this has nothing to do with construction and it is just the planning start. Commissioner Perno queried if it is \$123,180 total amount only for the design. Mr. Kidwell again confirmed it was just for the design, permitting, bid documents, conducting the bid, and Q&A as well as conflict resolution. Commissioner Tinder asked who is doing the part they just spoke of. Mr. Kidwell advised it is Panhandle Engineering, and that DOT advised they anticipate awarding the construction of that road sometime this week and the City will probably hear by Friday who they will select to do that roadwork.

Motion by Commissioner Perno: To approve the Task Order not to exceed the amount \$123,180


Second to the Motion: Commissioner Tinder

On Vote:

Perno	aye	
Tinder	aye	
Aldridge	aye	
Mayor Pro Tem Russell	aye	Motion passed: 4-0

Item #14. Adjourn. There being no further City business, the meeting adjourned at 5.45 P.M.

APPROVED THIS 11th DAY OF MAY 2021.


Dan Russell, Mayor Pro Tem

ATTEST:

Vickie Gainer, City Manager

prepared by Cicelia J Holliday