

City Council  
Regular Meeting  
October 26, 2004

The City Council of the City of Titusville, Florida met in regular session in the Council Chamber of City Hall, 555 South Washington Avenue, on Tuesday, October 26, 2004.

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Mayor Swank called the meeting to order at 6:35 p.m. Present were Vice-Mayor Ken Ward and Members Conrad Eigenmann and Jeff Rainey. Also in attendance were City Manager Tom Harmer and City Attorney Dwight Severs. Member Chris Broome was absent.

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Fire Department Chaplain John DeVoss gave the invocation.

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Mayor Swank led the entire assembly in the Pledge of Allegiance to the Flag. He then read procedures for public comments.

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Approval of minutes – Member Rainey moved to approve the minutes of the regular meeting of October 12, 2004, as submitted. Vice-Mayor Ward seconded the motion and it passed unanimously.

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Special Recognitions – City Manager Harmer introduced Fire and Emergency Services Chief Rick Talbert as City Employee of the Month for October 2004. He then recognized other employees nominated, which included William Poston, Public Works; Erich Barrett, Police Department; Eugene Johnson, Water Resources; and the Hurricane Frances Damage Assessment Team comprised of Richard Wheelus, Tom Floyd, Larry Fuhrman, Carl Jones, Joe Land, Bruce Nelson, Gary Robinson, and Steve Adams. City Manager Harmer then read from Chief Talbert's nomination that listed his many accomplishments and leadership displayed during the past month's emergency management operations before, during, and after the four hurricanes that directly impacted the state. Mayor Swank recognized Chief Talbert's wife Laura who was present. Chief Talbert thanked the community, City Department Heads, Fire and Emergency Services employees and his wife for the support he received. Member Eigenmann thanked Chief Talbert for his service and the Fire and Emergency Services Department for the newsletter routinely published.

City Manager Harmer introduced newly selected People Support Services Director Joe Denaro and City Clerk Jeaneen Clauss. He read from their respective biographies and welcomed them

both to the City of Titusville Team. Both Mr. Denaro and Ms. Clauss thanked the city for their selection and looked forward to the opportunity to serve.

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Consent Agenda – Member Eigenmann moved to approve the following items of consent, subject to reading, as submitted. Vice-Mayor Ward seconded the motion. Member Eigenmann then read the following items of consent:

- A. Approve advisability to proceed with ordinance clarifying method for approval and establishing a process for review and approval for employee recognition.
- B. Approve amendment to deed restrictions for Titusvillage Section Nine Subdivision.
- C. Authorize execution of two, one-year extensions of the professional services agreement with Baskerville-Donovan, Inc. as provided in the original agreement and authorize signature for task order agreement in an amount not to exceed \$116,870 for the preparation of a Stormwater Improvement Master Plan for Watershed Area 3a. Funds were available in the Stormwater Master Plan Capital Project account.
- D. Award contract in the amount of \$10,976.94 to Fuel Tech, Inc. of Mims, Florida for the modification of the Police Department Fuel Storage Facility as required by the Florida Department of Environmental Protection (FDEP). Funds were available in the General Repair and Services Account.

The motion passed unanimously.

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Petitions and Requests from the Public Present Alfonso Gutierrez, 4251 Grovewood Lane, commented on tax referendum questions on the ballot for the November 2, 2004 general election. He urged citizens to vote against increasing taxes and specified the tax referendum that dealt with environmentally endangered land (EEL program.)

Amy Tidd clarified referendum initiatives of the EEL program on the ballot for the November 2, 2004 general election. She urged citizens to support riverfront acquisition referendum and gave council a map of recreational sanctuaries within Brevard County.

Tiffany Johnson, 457 Fern Avenue, commented on a past presentation by a citizen at a 20/20 meeting. She felt the fee for a copy of the presentation was excessive and that citizens were not given proper notice of 20/20 meetings. City Manager Harmer clarified the next scheduled 20/20 meeting would be held October 29, 2004 and that the meeting would be properly posted. He further clarified the availability of records of 20/20 meetings to the public.

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Ordinances, First Reading – City Attorney Severs read, ORDINANCE NO. 75-2004, AN ORDINANCE OF THE CITY OF TITUSVILLE, FLORIDA AMENDING CHAPTER 47 ARTICLE XII OF THE LAND DEVELOPMENT REGULATIONS TO ADD SECTION 47-

250 ALLOWING EXISTING FREE STANDING METAL CARPORTS AS EXISTING NONCONFORMING STRUCTURES AND CLARIFYING THAT PURSUANT TO CODE OF ORDINANCES SECTION 6-56 A PERMIT IS REQUIRED FOR THE CONSTRUCTION OF THE ACCESSORY STRUCTURE; AND PROVIDING FOR AN EFFECTIVE DATE, the first time by title only.

City Manager Harmer reported that a public hearing would be conducted November 9, 2004 and that specified directives by council were addressed within the ordinance. He then requested direction from council to add provisions for inspections.

Member Rainey clarified the intent of the ordinance. Vice-Mayor Ward clarified that permit fees would be assessed and that a grandfather clause was included to address existing structures. Member Eigenmann clarified that citizens would not be found in compliance until such time a permit was issued and an inspection of the structure was obtained and felt a specific timeframe should be established for existing structures to come into compliance.

City Attorney Severs clarified the intent of the ordinance was to grandfather in existing nonconforming structures and that no timeframe was given and suggested the ordinance be rewritten. Member Eigenmann felt the ordinance should address a timeframe given to property owners to obtain permits. Vice-Mayor Ward concurred and Member Rainey felt the suggestion was reasonable. City Manager Harmer reported that most property owners of structures found not in compliance had been identified and notification of a timeframe to pull a permit could be accomplished. Mention of alternative methods of notifying property, such as water bill inserts, were made.

Member Rainey moved to add language that permit fees would be assessed but fines waived for those property owners pulling a permit by March 1, 2005. Member Eigenmann seconded the motion and it passed unanimously.

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Ordinances, Second Readings, Public Hearings and Related Action Mayor Swank announced that the applicant of Rezoning Application No. 11-2004 had requested that consideration of Ordinance No. 70-2004 be tabled to the meeting of November 9, 2004. Member Rainey moved to table Ordinance No. 70-2004 to the regular meeting of November 9, 2004. Member Eigenmann seconded the motion and it passed unanimously.

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Mayor Swank announced that the Planning and Zoning Commission had requested that consideration of Ordinance No. 71-2004 be tabled to the meeting of November 23, 2004. Member Rainey moved to table Ordinance No. 71-2004 to the regular meeting of November 23, 2004. Member Eigenmann seconded the motion and it passed unanimously.

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City Attorney Severs read quasi-judicial rules of procedure for the conduct of public hearings. He then announced that he would not serve in the capacity of City Attorney during discussion and consideration of Conditional Use Permit No. 15-2004 and associated Area Impact Plan identified as item I on the agenda. He reported that Attorney Richard Rogers would serve as City Attorney during that specific period of time. Mayor Swank acknowledged City Attorney Severs' desire and intent.

Mayor Swank read public hearing comment procedures for the public present.

City Attorney Severs then read, ORDINANCE NO. 69-2004, AN ORDINANCE AMENDING ORDINANCE NO. 5-1993 OF THE CITY OF TITUSVILLE, FLORIDA, BY AMENDING THE ZONING MAP MADE A PART OF SAID ORDINANCE BY REFERENCE BY CHANGING PROPERTY LYING ON THE NORTH SIDE OF CHENEY HIGHWAY (STATE ROAD 50) EAST OF HICKORY HILL BOULEVARD FROM ITS NEIGHBORHOOD COMMERCIAL (NC) CLASSIFICATION TO COMMUNITY COMMERCIAL (CC) CLASSIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, the second time by title only.

City Manager Harmer outlined the ordinance based on the request by Aarons Rents, Inc., as permitted by the owner, Donald Mancini, to rezone the property in order to allow the retail sales and rental of household appliances. He then outlined a past rezoning request for the property and associated conditions related to the request. He further compared the request to that of the Rex store under construction west of the property adjacent to Sonny's BBQ on Cheney Highway and highlighted an additional condition given that specific application as granted by council in October 2003. He then reported that the Planning and Zoning Commission unanimously recommended approval with conditions.

Vice-Mayor Ward and Member Eigenmann reported receipt of email from a citizen that opposed adoption of the ordinance.

Mayor Swank opened the public hearing.

Lamonte Artis, 309 East Paces Ferry, represented the applicant and made himself available for questions.

Mayor Swank asked Mr. Artis if Aarons Rents would be able to meet all conditions as recommended by the Planning and Zoning Commission. Mr. Artis acknowledged his organizations intent on meeting all conditions.

Bruce Powers, 4141 Lookout Court, opposed adoption of the ordinance. He was concerned with traffic impacts the business would create on Hickory Hill Boulevard and suggested council table to item to allow for traffic studies to be conducted and construction plans to be reviewed.

Mayor Swank provided Mr. Powers a copy of the applicants conceptual site plan. Vice-Mayor Ward clarified the property was located approximately 600 feet east of Hickory Hill Boulevard

and that there were no access to the property from Hickory Hill Boulevard identified on the conceptual site plan submitted.

Member Eigenmann asked Mr. Powers for suggestions of alternative forms of development of the property. Mr. Powers replied he needed more time to respond but felt the requested use of the property was not proper.

Lamont Artis rebutted Mr. Powers' comments and gave council an updated site plan for the property that identified additional buffers and outlined how recommended conditions would be incorporated.

Mayor Swank closed the public hearing.

Member Rainey moved to approve Ordinance No. 69-2004 with conditions of, a 40-foot drainage setback from residential properties to be reserved by deed restriction within 90 days; a stucco finished concrete block wall to be provided where commercial property abutted residential; and to allow all Neighborhood Commercial uses and limit the Community Commercial uses to the sales and/or service of household appliances. Vice-Mayor Ward seconded the motion and the roll call was:

Vice-Mayor Ward	yes
Mayor Swank	yes
Member Rainey	yes
Member Eigenmann	yes

The motion passed unanimously and Ordinance No. 69-2004 was adopted.

Mayor Swank called a break at 7:38 p.m. and reconvened at 7:47 p.m.

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City Attorney Severs then read ORDINANCE NO. 72-2004, AN ORDINANCE OF THE CITY OF TITUSVILLE, FLORIDA AMENDING SECTION 7, CHAPTER 63-2001, LAWS OF FLORIDA, SPECIAL ACTS OF 1963, BY ANNEXING CERTAIN PROPERTY LOCATED ON RIVEREDGE DRIVE APPROXIMATELY 1,178 FEET SOUTH OF THE NORTHERN TERMINUS OF RIVEREDGE DRIVE TO BE INCLUDED WITHIN THE CITY LIMITS; AND PROVIDING FOR AN EFFECTIVE DATE, and he then read,

ORDINANCE NO. 73-2004, AN ORDINANCE OF THE CITY OF TITUSVILLE, FLORIDA AMENDING THE CODE OF ORDINANCES BY AMENDING ORDINANCE NO. 60-1988 WHICH ADOPTED THE COMPREHENSIVE PLAN OF THE CITY, BY AMENDING THE VARIOUS ELEMENTS OF SAID PLAN AND MAPS BY CHANGING THE FUTURE LAND USE MAP TO INCLUDE CERTAIN PROPERTY TO BE ANNEXED INTO THE CITY LIMITS OF THE CITY OF TITUSVILLE, FLORIDA AND DESIGNATING A LAND USE CLASSIFICATION; AMENDING THE FUTURE LAND USE MAP TO INCLUDE CERTAIN PROPERTY LOCATED ON RIVEREDGE DRIVE APPROXIMATELY 1,178 FEET SOUTH

OF THE NORTHERN TERMINUS OF RIVEREDGE DRIVE TO BE ANNEXED INTO THE CITY WITH MEDIUM DENSITY RESIDENTIAL LAND USE; AMENDING THE CODE OF ORDINANCES BY AMENDING ORDINANCE NO. 60-1988 WHICH ADOPTED THE COMPREHENSIVE PLAN OF THE CITY, BY AMENDING THE VARIOUS ELEMENTS OF SAID PLAN AND MAPS BY CHANGING THE FUTURE LAND USE DESIGNATION FOR CERTAIN PROPERTY LOCATED ON SOUTH WASHINGTON AVENUE APPROXIMATELY 1,178 FEET SOUTH OF THE NORTHERN TERMINUS OF RIVEREDGE DRIVE FROM COMMERCIAL HIGH INTENSITY TO MEDIUM DENSITY RESIDENTIAL DESIGNATION; AND PROVIDING FOR AN EFFECTIVE DATE, and he then read,

ORDINANCE NO. 74-2004, AN ORDINANCE AMENDING ORDINANCE NO. 5-1993 OF THE CITY OF TITUSVILLE, FLORIDA, BY AMENDING THE ZONING MAP MADE A PART OF SAID ORDINANCE BY REFERENCE BY DESIGNATING PROPERTY LOCATED ON RIVEREDGE DRIVE APPROXIMATELY 1,178 FEET SOUTH OF THE NORTHERN TERMINUS OF RIVEREDGE DRIVE AS MULTI-FAMILY MEDIUM DENSITY RESIDENTIAL (R2) CLASSIFICATION; AMENDING ORDINANCE NO. 5-1993 OF THE CITY OF TITUSVILLE, FLORIDA, BY AMENDING THE ZONING MAP MADE A PART OF SAID ORDINANCE BY REFERENCE BY CHANGING PROPERTY ON SOUTH WASHINGTON AVENUE APPROXIMATELY 1,178 FEET SOUTH OF THE NORTHERN TERMINUS OF RIVEREDGE DRIVE FROM LIGHT INDUSTRIAL SERVICES AND WAREHOUSING (M1) TO MULTI-FAMILY MEDIUM DENSITY RESIDENTIAL (R2) CLASSIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, the second time by title only.

City Manager Harmer outlined the ordinances based on the request by Riveredge Development, LLC. to annex, designate land use, and establish zoning in order to construct a residential complex of multi-family structures outlined in Small Scale Amendment No. 14-2004 and Small Scale Amendment No. 15-2004. A developer's agreement included with the application indicated the site would be developed with approximately 55 multi-family units and that the developer had agreed to add to the agreement that the minimum square footage of each unit would be 1,600 square feet. He then reported that the Planning and Zoning Commission unanimously recommended approval.

Vice-Mayor Ward announced he would participate in discussion and voting on the items.

Mayor Swank opened the public hearing.

Kohn Bennett, 1000 Shorewood Drive, Cape Canaveral, represented Riveredge Development, LLC and outlined the site plan and unit floor plans. He commented on support received from meetings with neighborhood residents. He then clarified that density would be capped at six units per acre.

Mayor Swank asked if, as part of the site plan, a sidewalk along U.S. Highway One would be included. Planning Administrator Keith Cunningham clarified that sidewalks were required along any public Department of Transportation right-of-way.

Victoria Weinberg, 5089 Riveredge Drive, supported the project but did not support any further high-density development on Riveredge Drive.

John Evans, 1702 South Washington Avenue, represented the applicant and urged approval of the request. He highlighted two meetings with citizens of the area, the submission of a developers agreement, the conduct of a traffic impact analysis, and the zoning compatibility.

William Kolodney, 603 Indian River Avenue, supported the project and felt the development was good for the City.

Laura Ward, 5317 Riveredge Drive, supported the project and that it was a transition from high intensity to the north and single-family residential to the south. *The condition of Ms. Ward's support was for the project to be the last multifamily project on Riveredge Drive. (Correction was requested by Laura Ward and approved by council at the November 9<sup>th</sup> meeting.)* She commented on a Small Area Plan for the Riveredge Drive area and felt council would accept it.

Connie Pontius, 5435 Riveredge Drive, opposed the project and was concerned with the increased traffic on Riveredge Drive the project would create. She stated she would support the project if the access to Riveredge Drive was eliminated.

Tiffany Johnson457 Fern Avenue, opposed the project and felt the annexation created an enclave and made it in violation of Florida Statutes. City Attorney Severs clarified that Riveredge Drive in its entirety is considered an enclave and that the statutes were not applicable.

Kent Brown, 140 Bellewood Street, opposed the project and felt the increased traffic on Riveredge Drive created by the development would create a negative impact. Mayor Swank clarified data submitted in the traffic analysis report.

John Evans rebutted those opposed to the project and stressed that his client was entitled to access to Riveredge Drive but the developments main entrance would be from U.S. Highway One.

Mayor Swank closed the public hearing.

Vice-Mayor Ward moved to approve Ordinance No. 72-2004, Ordinance No. 73-2004, and Ordinance No. 74-2004 with additions to the developers' agreement being that each unit would be a minimum 1,600 square feet and that no building would be east of Riveredge Drive. Member Eigenmann seconded the motion for discussion stated that the project was an improvement and he supported its approval but cautioned council there would be more projects requested for Riveredge Drive in the future.

Member Rainey expressed appreciation for actions taken by the developer. The roll call was:

Mayor Swank	yes
Member Rainey	yes



Member Rainey moved to allow additional time to Mr. Evans. Vice-Mayor Ward seconded the motion and it passed unanimously.

Mr. Evans presented and outlined two site plans to council. First, a five-story plan second, a ten-story plan. He commented on meetings with surrounding residents and gave council a copy of a letter from the Pelican Pointe Condominium Association that supported the project. Mr. Evans then introduced Joyce Gumpher, 106 Dixie Lane, Cocoa Beach, of Allen Engineering to serve as an expert witness for the applicant. Ms. Gumpher gave her credentials and clarified that the applicant's site plan met the requirements for a conditional use permit as outlined in the Land Development Regulations of the City.

James DeRiso, 1420 South Banana River Drive, Merritt Island, the Developer, outlined considerations made in the project in terms of safety issues.

Kathleen Burson, 385 Delespine Avenue, opposed the project and gave council a copy of the Master Plan Vision for the City of Sanford, Florida. She felt the riverfront should be used for parks and other recreational activities and not single development high-rise projects.

City Manager Harmer clarified that the Community Redevelopment Agency was developing a master plan for the downtown district.

Joe Doherty, 4594 Helena Drive, opposed the project and felt the river should be preserved. He suggested high-rise development being placed on the west side of U.S. Highway One.

Pinky Yount, 715 Indian River Avenue, opposed the project and was concerned for the preservation of the river and its view. She suggested council table the item for further review. She then mentioned the passing of former Titusville Mayor, Clyde Pirtle.

Peter Petyk, 1237 Little Oak Circle, opposed the project and felt a plan should be in place prior to council granting conditional uses and that submerged land was being used for density calculation. He felt the heritage of the space program should be preserved along the riverfront. Mayor Swank clarified that council was bound to govern according to established laws. Mr. Petyk replied that he felt the City did not work from its own Land Development Regulations.

Jim Tulley, 1305 Rancho Avenue, felt the project may have been contrary to public interest and that the application did not meet all criteria of the City Comprehensive Plan and Coastal Management Element. He felt a master plan as to how the City would maximize the access to the riverfront was necessary and that the project should not be approved.

Vice-Mayor Ward felt the City Comprehensive Plan addressed the City and its parks to totality and was not intended to address individual projects. He further felt the project was not contrary to public interest.

Member Rainey clarified that the application dealt with private property and that existing public access was not affected.

John Evans rebutted those citizens opposed to the project. He felt a 100-foot tall building was better for the City than a 50-foot tall building.

Mayor Swank closed the public hearing.

Member Eigenmann clarified that staff and the Planning and Zoning Commission only make recommendations to council. He felt past projects approved by council that dealt with submerged lands were done so in error. He did not feel the project met the criteria for approval and would not support the project.

Vice-Mayor Ward felt the project met all criteria outlined in the Land Development Regulations and moved to approve Conditional Use Permit No. 13-2004 and associated Area Impact Plan as submitted and recommended by staff and the Planning and Zoning Commission. Member Rainey seconded the motion.

Mayor Swank asked for clarification of the breezeway. Senior Planner Don Land clarified that 40% of the property would be used for breezeway. Mayor Swank had concerns with the height of the building. Member Rainey felt the 100-foot height created less parking lot impervious pavement and was more desirable. Vice-Mayor Ward concurred.

Mayor Swank asked if the property would have gated access. Mr. Evans replied there would be no public access to the property. The roll call was:

Member Eigenmann	no
Vice-Mayor Ward	yes
Mayor Swank	yes
Member Rainey	yes

The motion passed by 3 to 1 majority vote and Conditional Use Permit No. 13-2004 was approved.

Mayor Swank called a break at 9:27 p.m. and reconvened at 9:39 p.m.

City Attorney Severs exited the dais and Attorney Richard Rogers assumed the position of City Attorney.

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Member Eigenmann moved to table the Small Area Plan for Riveredge Drive, under Old Business, to the meeting of November 23, 2004. Vice-Mayor Ward seconded the motion and it passed unanimously.

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City Manager Harmer outlined Conditional Use Permit No. 15-2004 and associated Area Impact Plan as submitted by Maurice Kodsi, owner in order to allow building height greater than fifty

feet in a Shoreline Mixed Use (SMU) zoning district for property at 2103 South Washington Avenue in order to build condominiums. Mr. Harmer reported the applicant had submitted an Area Impact Plan that proposed five six-story condominiums with a density of 132 units. The plan did not address the additional setback requirements due to the property fronting Riverside Drive, a local street, and the plan provided an access point onto Riverside Drive but did not address the reduced density requirement. He then reported that staff and the Planning and Zoning Commission had recommended denial.

Mayor Swank opened the public hearing.

Acting City Attorney Rogers reminded council to disclose any contact with anyone prior to the meeting that concerned the application. Mayor Swank disclosed he was contacted in the past that concerned the application. Members Rainey and Eigenmann both disclosed no previous contact. Vice-Mayor Ward disclosed a past discussion many months previous that dealt with a conceptual plan for the project.

Philip Nohrr, 1800 West Hibiscus Boulevard, Melbourne, represented the applicant and requested additional time. Member Rainey moved to grant Mr. Nohrr additional time to speak. Vice-Mayor Ward seconded the motion and it passed unanimously.

Mr. Nohrr outlined the project and discrepancies found between Ordinance No. 33-2003 and minutes from the regular meeting of August 26, 2003 that pertained to the adoption of the ordinance. He commented on different attempts made to resolve differences between the applicant and neighborhood residents. He felt the differences would not be resolved. He informed council that the applicant had offered the southern most parcel to dedicate to the City and that the middle parcel would remain without buildings.

Z. Sid Chehayeb, 2910 Garden Street, gave a history of the proposed project and highlighted adjustments made by the developer. He urged council approval of the application.

Ron Norris, 1240 Riverside Drive, opposed the project and requested additional time. Member Rainey moved to grant Mr. Norris additional time to speak. Vice-Mayor Ward seconded the motion and it passed unanimously.

Mr. Norris commented on setbacks and density issues associated with the proposed project on a local street. He felt the applicant should follow the code.

Member Rainey asked if the application was for one parcel or more. Acting City Attorney Rogers was unable to answer and replied that he would find the answer and report back.

Member Eigenmann clarified that Ordinance No. 33-2003 addressed Riveredge Drive and not Riverside Drive.

Dwight Severs, 1308 Riverside Drive, opposed the project and requested additional time. Member Rainey moved to grant Mr. Severs additional time to speak. Vice-Mayor Ward seconded the motion and it passed unanimously.

Mr. Severs felt the applicant purchased the property after adoption of Ordinance No. 33-2003. He further felt the proposed project did not meet established criteria for density and discrepancies found in the application did not meet the minimum criteria established in the Land Development Regulations.

Pinky Yount, 715 Indian River Avenue, opposed the project and felt the property could be developed in some way other than the proposed project. She suggested a teen center.

Sheldon Brown, 1118 Riverside Drive, opposed the project and felt it was too excessive for the area. He commented on the absence of sidewalks and the setback requirement.

It was 10:30 p.m. Vice-Mayor Ward moved to extend the meeting to 11:00 p.m. Member Eigenmann seconded the motion and it passed by majority vote 3 to 1 with Member Rainey voting no.

Jim Tulley, 1305 Ranchero Avenue, opposed the project and the granting of conditional uses to property on the riverfront. He felt the project was not consistent with the Comprehensive Plan and suggested the item be tabled in order for citizens to attempt to purchase the property.

Orville Bell, 657 Bay Court, Orlando, opposed the project and was concerned for the future view of the river. He felt the City needed a plan for the riverfront.

John Evans, 1702 South Washington Avenue, opposed the project and felt that ordinances meant what they said and that the City should not ignore its codes.

John Herring, 3345 South Washington Avenue, stated he was neutral and requested additional time to speak. Member Rainey moved to grant Mr. Herring additional time to speak. Vice-Mayor Ward seconded the motion and it passed unanimously.

Mr. Herring commented on the applicants past attempts to meet with residents on past actions that concerned Riverside Drive. He suggested that Riverside Drive be vacated in order to build the project. He felt the conflict stemmed from a personality conflict and the developer being misunderstood.

Philip Nohrr rebutted the opposition and felt the applicant had tried to work within the code and that the criteria did not apply to the particular property.

Mayor Swank closed the public hearing.

Member Rainey supported the south two buildings of the project and if the road was vacated he would support the entire project.

Mayor Swank was concerned that unity of title was not available and that the street would have to be vacated prior to going before council.

Senior Planner Don Land confirmed that the plan did not meet all criteria in the code for building height and density on a local street.

It was 11:00 p.m. Vice-Mayor Ward moved to extend the meeting until the current item was addressed. Member Eigenmann seconded the motion and it passed unanimously.

Vice-Mayor Ward concurred that there were many inconsistencies with the application and cautioned that if the item was tabled, clear guidance would have to be given.

Acting City Attorney Rogers clarified for Member Rainey the number of parcels in the application as being three.

Member Eigenmann supported growth in the community but felt he could not support the project.

Member Eigenmann moved to deny Conditional Use Permit No. 15-2004. Mayor Swank seconded the motion and the roll call was:

Vice-Mayor Ward	yes
Mayor Swank	yes
Member Rainey	yes
Member Eigenmann	yes

The motion passed unanimously and Conditional Use Permit No. 15-2004 was denied.

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Member Rainey moved to address Boards and Commissions. Member Eigenmann seconded the motion and it passed unanimously.

Acting City Attorney Richard Rogers departed the dais and City Attorney Dwight Severs resumed his duties as City Attorney.

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Boards and Commissions – Member Rainey moved to reappoint Jean Hillock as a regular member to the Municipal Code Enforcement Board to a three-year term to expire October 31, 2007. Vice-Mayor Ward seconded the motion and it passed unanimously.

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City Attorney Severs reported that Member Rainey could serve on council at its regular meeting scheduled for November 9, 2004. He then reported that Brevard County had withdrawn its lawsuit against the City.

He then reported that litigation with the Airport Authority may have been due to the Comprehensive Plan. He recommended council authorize staff to review the comprehensive plan to identify any possible changes necessary.

Vice-Mayor Ward moved to direct staff to prepare an amendment to the comprehensive plan. Member Eigenmann seconded the motion and it passed unanimously.

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Member Eigenmann moved to adjourn. Vice-Mayor Ward seconded the motion and it passed by majority vote 3 to 1 with Member Rainey voting no.

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The meeting adjourned at 11:23: p.m.

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Ronald G. Swank, Mayor

ATTEST:

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Jeaneen P. Clauss, CMC, City Clerk