

REGULAR MEETING

APRIL 20, 2004

A Regular Meeting of the Arcadia City Council was held on April 20, 2004 at 6:00 p.m. in Room D of the Way Building at 23 N. Polk Avenue. Councilmembers attending were: Fazzone, Whitlock, Heine, Johnson and Goodman. Also in attendance were: Administrator Strube, City Attorney Holloman, City Marshal Lee, Assistant Fire Chief Wells, Special Projects Coordinator Hewett, Ms. Way and Recorder Baumann.

Mayor Fazzone called the meeting to order.

The Invocation was given by Council Member Heine.

Pledge of Allegiance to the Flag.

The minutes of the Regular meeting of March 16, 2004 were adopted on motion of Goodman; seconded by Johnson and carried.

Proposed Ordinance No. 909 was presented on second reading. Johnson moved to waive the rules and read the proposed ordinance by title only; seconded by Goodman and carried.

ORDINANCE NO. 909

AN ORDINANCE OF THE CITY OF ARCADIA, FLORIDA,
AMENDING THE TEXT OF THE COMPREHENSIVE PLAN OF
THE CITY OF ARCADIA, FLORIDA, SAID AMENDMENT BEING
KNOWN AS "AMENDMENT #04-1"; SPECIFICALLY AMENDING
THE FUTURE LAND USE ELEMENT; HAVING TRANSMITTED
SAID AMENDMENT TO THE FLORIDA DEPARTMENT OF
COMMUNITY AFFAIRS (DCA) FOR A COMPLIANCE FINDING;
PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN
EFFECTIVE DATE.

Whitlock then moved to approve Ordinance No. 909 on second reading; seconded by Heine. Mayor Fazzone called for comments from the public, there were none. The motion carried on roll call vote. Ayes: Goodman, Whitlock, Heine, Johnson, and Fazzone. Nays: None. Recorder Baumann stated that if anyone from the public wished to be notified by DCA regarding this ordinance they can fill out a sign up sheet located in the Recorder's Office, Monday through Friday from 8:00 a.m. until 4:30 p.m..

Bob Baumann, owner of the Historic Parker House Bed and Breakfast addressed Council and introduced Leonard and Kay Higley who will be the new owners of the Bed and Breakfast. Johnson then moved to adopt Resolution No. 2004-6; seconded by Goodman and carried.

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RESOLUTIONS 2004-6

**A RESOLUTION GRANTING A NON-TRANSFERABLE
 APPROVAL TO OPERATE A BED & BREAKFAST AT
 427 W. HICKORY STREET AND SETTING FORTH
 CONDITIONS.**

WHEREAS, Leonard & Kay Higley have requested approval to continue to operate a Bed and Breakfast at 427 W. Hickory Street due to a change in ownership, and

WHEREAS, this property is located along State Road 70 and is zoned R-1B, and

WHEREAS, the Higley's plan to utilize up to five bedrooms in the home, and

WHEREAS, the Planning and Zoning Board has recommended that approval be granted based on the fact that it is consistent with the City of Arcadia Comprehensive Plan and Land Development Regulations, which provide for certain owner occupied non-residential uses in the RPB Overlay district, along State Road 70.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Arcadia, that a Non-Transferable approval be granted to Leonard and Kay Higley to operate a Bed and Breakfast with up to five bedrooms, in their home at 427 W. Hickory Street in accordance with the City of Arcadia Comprehensive Plan. This approval is granted subject to the Higley's owning and residing at 427 W. Hickory Street and subject to compliance with current and proposed Land Development Regulations, and with all City, County, and State codes and licensing.

PASSED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA
 IN REGULAR SESSION THIS 20th DAY OF APRIL, 2004.

/s/ RICHARD P. FAZZONE
 RICHARD P. FAZZONE
 MAYOR

ATTEST:

/s/ RACHELLE M. BAUMANN
 RACHELLE M. BAUMANN
 CITY RECORDER

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Mayor Fazzone presented Coach Fred Carter with a tee shirt and a Certificate of Appreciation for his many years of support at the Smith-Brown Gym. Mr. Carter thanked the Council for his plaque and shirt. Council Member Goodman stated that she has known Coach all of her life and she is very happy that he has received this honor and recognition. Council Member Johnson stated that Coach Carter has done a great job working with the community.

Jackie Tucker addressed Council for clarification regarding parade policies and procedures. Ms. Tucker believes that parades bring the community together and hopes that the City has funds budgeted for community service. There had been some discussion at the last Council meeting about the possibility of charging a permit fee for parades in order for the Police Department to recoup some of the cost for providing extra officers during parades. Ms. Tucker suggested that only on duty officers be used instead of paying overtime for off duty officers. Mayor Fazzone stated that there is no question to the value of parades; he was the Council Member who mentioned the idea of charging fees when they were discussing the putting up of banners and possibly charging fees for the banners. Mayor Fazzone stated that he spoke with a County Commissioner to see if the County would help offset the cost for parades. Mayor Fazzone does not want to see an end to having parades and stated that the Council will continue to support parades. Marshal Lee addressed Council and agreed that parades do benefit the community; however his overtime budget is to be used for an emergency such as a hurricane.

A report of Police Fines and Forfeitures for the Month of March 2004 indicates fines \$6,142.38, law enforcement \$50.00 and radios \$337.50.

The Recorder's report of Revenues and Expenditures for the month of March 2004 was presented.

Mr. Paul Seusy, Attorney for former Council Member Eugene Hickson addressed Council to request that Council consider awarding retirement benefits retroactive to October 1, 1993 to Mr. Hickson. Mr. Seusy presented a worksheet which detailed what he believes would be Mr. Hickson's retro active pay of \$22,087.47. Mr. Seusy then presented his reasons for a settlement noting that Mr. Hickson is appreciative of his retirement since November 2003. Mr. Seusy questioned if the City is not paying Mr. Hickson retro active based on the Attorney General's Opinion and this goes to court what would the court fees be. Mr. Hickson is willing to settle for \$14,950.00, and an estimate of attorney fees could run anywhere from \$2,000.00 to \$35,000.00 if this were to go to a federal court. Goodman moved to pay Mr. Hickson \$14,950.00 ; seconded by Johnson. Motion failed on roll call vote. Ayes: Johnson and Goodman. Nays: Heine, Whitlock and Fazzone.

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Attorney Holloman stated that the Council is bound to abide by the Laws of the State of Florida and the Attorney General's Opinion. The Council had requested Attorney Holloman to write the Attorney General to get a recommendation and Attorney Holloman did write in favor of Mr. Hickson. The Attorney General responded by saying that Council can not pay the retirement benefit retroactive. Attorney Seusy stated that the Attorney General's Opinion is not based on the set of facts that he just presented to the Council. Attorney Holloman noted that Mr. Hickson had a letter from him (Attorney Holloman) before he sent the request to the Attorney General and at that time he requested that Mr. Hickson have his attorney read the letter before it was sent. Attorney Holloman then read his letter to the Council. Mr. Hickson met with his Attorney Mr. Waldron who per Mr. Hickson stated that the letter was ok to send to the Attorney General.

Council Member Whitlock stated that the Attorney General is the highest lawyer in the State and we need to abide by his decision.

Mayor Fazzone stated that he has been on the Council for eighteen (18) years and he was never aware of this law until Council Member Johnson returned from a conference where he learned of it. Council Member Johnson met with Administrator Strube and Attorney Holloman to discuss this law at which time Attorney Holloman stated that Mr. Hickson should also be made aware of this law. Council Member Johnson is the next council member who would be eligible for retirement pay.

Council Member Goodman requested that Attorney Holloman read the Attorney General's letter after which she stated that she still stands on her motion. Council Member Goodman stated that the Council was not previously aware of the law authorizing retirement benefits; however they are aware of it now and Mr. Hickson is entitled to his benefit. Council Member Goodman said that she would not think of not following the Florida Statutes; she hears the Attorney General saying that the Council "may not" which leaves it open to her.

Attorney Holloman reported that in his letter to the Attorney General he argued in favor of Mr. Hickson receiving a retirement benefit based on his leaving office in 1993. Attorney Holloman again advised Council to follow the Attorney General's Opinion.

Mr. Hickson stated that the Council and Attorney Holloman should be up to date on all of the laws of the State of Florida to which Mayor Fazzone responded that it is not possible for Council to know all of the laws.

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Council Member Johnson stated that when he asked a question regarding retirement benefits it created a state wide survey to see how many others might qualify for benefits under this law.

Mr. Hickson stated that when he was elected to the Council in 1971 he inquired of City Recorder Way if it was possible for Council Members to put into a retirement plan and was informed that he could not.

Ms. Way addressed Council stating that when Mr. Hickson inquired about retirement benefits she was not aware of the State Law; she told him that unless he were a city employee he could not be in the City's retirement plan.

Since Council Member Goodman's motion failed Mayor Fazzone asked if Mr. Hickson would settle for a lesser amount. Mayor Fazzone then asked if the City has insurance to defray the cost of a law suite and was informed that the City does have errors and omissions insurance.

Attorney Holloman stated that he can not represent the City if this were to go to trial, they would need to hire an attorney. Attorney Holloman then advised the Council to settle based on an estimate of attorney fees, noting that no one could find fault with this action.

Mr. Seusy's letter to the Council gives them until May 1, 2004 to respond. Mr. Seusy stated again that he does not believe that the Council would be going against the Attorney General's Opinion to pay Mr. Hickson his retirement benefit retro active.

Council Member Johnson asked how much Mr. Hickson would have received if he had been paid from 1993 and was informed that with out interest it would be \$18,150.00 and that Mr. Hickson has agreed to settle for \$14,950.00.

Administrator Strube stated that an important aspect of this question is that the Attorney General's Opinion was based on Mr. Hickson retiring and not being defeated.

Council asked Mr. Seusy if he would allow them to place this as an item on the next agenda which would be May 4, 2004 at which time they would propose a counter offer. Mr. Seusy accepted.

The Planning and Zoning Board at a meeting on April 13, 2004 recommended the following to the City Council.

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1. That the request of J. T. and Sandra McLellan to operate a child day care facility at 726 E. Magnolia Street for no more than seventy (70) children be granted by a Special Resolution subject to meeting all City, County and State codes. Goodman moved to grant the request by Resolution No. 2004-7; seconded by Whitlock and carried.

RESOLUTIONS 2004-7

A RESOLUTION GRANTING A NON-TRANSFERABLE APPROVAL IN ZONING LAWS TO J.T. AND SANDRA McLELLAN TO OPERATE A CHILD DAY CARE FACILITY AT 726 E. MAGNOLIA STREET AND SETTING FORTH CONDITIONS.

WHEREAS, J.T. and Sandra McLelland have requested approval in zoning laws to permit them to operate a Child Day Care Facility open Monday through Friday from 6:30 a.m. to 5:30 p.m., with no more than seventy (70) children at 726 E. Magnolia Street, and

WHEREAS, a petition was presented to the Council signed by five (5) property owners in the surrounding area, stating they had no objections to the Child Day Care Facility being operated at 726 E. Magnolia Street, Monday through Friday from 6:30 a.m. to 5:30 p.m., and

WHEREAS, the Planning and Zoning Board has recommended that approval be granted based on the fact that a Nursery and Day Care Center has been permitted at this location, with Council approval since February 19, 1985,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Arcadia, Florida, that J.T. and Sandra McLelland be granted approval in zoning laws to permit them to operate a Child Day Care Facility, with no more than seventy (70) children approved by H.R.S. at 726 East Magnolia Street.

BE IT FURTHER RESOLVED that this approval is subject to the following:

1. All regulations and licensing required by the State, County and City, pertaining to child care be met.
2. The daily hours of operation shall be between 6:30 a.m. and 5:30 p.m.
3. The current plot use shall be in accordance with Section 110-281 (5) of the City Zoning Code.

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(Resolution 2004-7 continued)

- 4. This approval is non-transferable.

PASSED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA
IN REGULAR SESSION THIS 20th DAY OF APRIL, 2004.

/s/ RICHARD P. FAZZONE
RICHARD P. FAZZONE
MAYOR

ATTEST:

/s/ RACHELLE M. BAUMANN
RACHELLE M. BAUMANN
CITY RECORDER

- 2. That the request of Steven Bushouse to have a Consulting, Engineering and Land Surveying Business in his home at 216 East Magnolia Street be granted by Special Resolution subject to being owner occupied and meeting all City, County and State codes. Johnson moved to grant the request by Resolution No. 2004-8; seconded by Goodman and carried.

RESOLUTIONS 2004-8

A RESOLUTION GRANTING A NON-TRANSFERABLE
APPROVAL IN ZONING LAWS TO OPERATE A
CONSULTING, ENGINEERING AND LAND SURVEYING
BUSINESS IN HIS HOME AT 216 EAST MAGNOLIA
STREET AND SETTING FORTH CONDITIONS.

WHEREAS, Steven Bushouse has requested approval in zoning laws to permit him to operate a Consulting, Engineering and Land Surveying Business in his home at 216 East Magnolia Street, and

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(Resolution 2004-8 continued)

WHEREAS, the Planning and Zoning Board has reviewed the request and recommended to City Council that a non-transferable Special Approval be granted based on the fact that it is consistent with the City of Arcadia Comprehensive Plan and Land Development Regulations, under the Historic Preservation overlay policy which provides for certain owner occupied non-residential uses along State Road 70.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Arcadia, Florida, that Steven Bushouse be granted a Non-transferable Special Approval to operate a Consulting, Engineering and Land Surveying Business in his home at 216 East Magnolia Street. This approval is granted subject to compliance with current and proposed Land Development Regulations, and with all City, County and State codes and licensing being met.

PASSED BY THE CITY COUNCIL OF THE CITY OF ARCADIA,
FLORIDA IN REGULAR SESSION THIS 20th DAY OF APRIL, 2004.

/s/ RICHARD P. FAZZONE
RICHARD P. FAZZONE
MAYOR

ATTEST:

/s/ RACHELLE M. BAUMANN
RACHELLE M. BAUMANN
CITY RECORDER

Special Projects Coordinator Hewett addressed Council stating that as soon as he has Councils' list of roads for restoration work can begin. Council would like Hernando Avenue down to Baker Street placed on the list. It was noted that the section of Pine Street to Hernando Avenue and down to Baker Street is the worst section and will cost the most because of the underground utilities. Council Member Johnson requests that Court Street and Orange Avenue be looked at as the road appears to be getting lower with each rain.

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Mr. Hewett reported that all of the railroad crossings are done with the exception of Orange Avenue, the railroad company is still configuring this section.

Martha Craven representing the Main Street Association thanked Council for paving the parking lot next to the old Silver Spur Lounge. Ms. Craven then addressed the need for better signage coming into town especially on SR 70 East by Lake Katherine. She then presented a proposed design for a new sign which would be paid for by the Main Street Association. Johnson moved to approve the design for a new entrance sign to be placed on SR 70 East by Lake Katherine which will be paid for by the Main Street Association; seconded by Goodman and carried. There was additional discussion regarding the actual location/placement of the sign and the possibility of putting up additional signage.

Special Projects Coordinator Hewett requested a copy of the "as built plans" for the electrical circuits which were recently installed around the grounds of the Chamber of Commerce.

Danny Lee addressed Council regarding the Sunday basketball league at Smith Brown Gym which was recently shut down. Marshal Lee stated that his deputies shut the game down and request that it be scheduled for daylight hours due to gang fights and excessive violence which were placing his officers in danger. Marshal Lee reported that he had three (3) officers scheduled to patrol the Smith Brown area on Friday, Saturday, and Sunday. Danny Lee will get with Marshal Lee to see if they can re-schedule the game for earlier in the day.

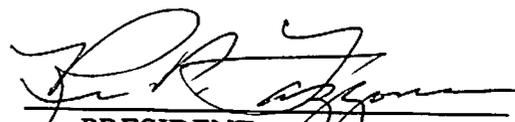
Recorder Baumann reported that she will not be at the next Council meeting as she will be attending the Florida Government Finance Officers Conference in Tampa.

Council Member Johnson stated that he had a good time at the legislative conference in Tallahassee and Lexington Kentucky. The Kentucky meeting focused on youth groups and what cities could do with them. He will share a power point presentation when he receives it.

Mayor Fazzone asked about the lights not being on around Lake Katherine and was informed by Administrator Strube that there has been a problem with the electrical service. It was also noted that the Health Department is working on a grant to construct an exercise station around the lake.

There being no further business the meeting was adjourned.


CITY RECORDER


PRESIDENT