

REGULAR MEETING
And
JOINT PUBLIC HEARING

MAY 4, 2004

A Regular Meeting of the Arcadia City Council and Joint Public Hearing with the Planning and Zoning Board was held on May 4, 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. Planning and Zoning Board members in attendance were: Summers, Smith, Sawyer, Whitlock, Brown and Adamson. Absent board member Fain who was out of town. Also in attendance were: Administrator Strube, City Attorney Holloman, Lt. Gary Evans for City Marshall Lee, Fire Chief Rutherford, Special Project Coordinator Hewett and Ms. Way. Recorder Baumann was attending a conference.

Mayor Fazzone called the meeting to order.

The Invocation was given by Rev. McKnight

Pledge of Allegiance to the Flag.

The minutes of the Regular meeting and Joint Public Hearing of April 6, 2004 were adopted on motion of Johnson; seconded by Whitlock and carried.

Mayor Fazzone called the Joint Public Hearing of the Council and the Planning and Zoning Board to order and stated this joint public hearing as advertised is to provide citizens an opportunity for input regarding the request to rezone lots 13 to 20 inclusive, Block N, Mills Addition to Arcadia from one-family dwelling R-1C District to Residential-Professional and Business RPB District. Susie Hovey, one of the petitioners was present. Attorney Holloman asked members of the Council and Planning and Zoning Board if they had received any written or verbal correspondence or had done a site visit. Ms. Melva Sawyer of the Planning and Zoning Board stated she had visited the site twice and owned property within 300 feet of the property rezoning request. Ms. Sawyer signed the disclosure form. No one else reported any contacts or visits. Proof of publication of notice of the Public Hearing published March 31, 2004 in the Arcadian and notice to 24 property owners within 300 feet of rezoning by certified mail was submitted. No written objections were received. Mayor Fazzone called for petitioners to speak – Susie Hovey stated as a petitioner she was requesting approval. Mayor Fazzone called for objections from the Public – there were none. There were no concerns from Board or Council members. Planning and Zoning Board Chairman Summers stated that the Board recommends that the request be granted. Goodman moved to grant the request to rezone lots 13 through 20, Block N, Mills Addition from one family dwelling R1C District to Residential-Professional and Business RPB District, seconded by Johnson and carried.

The Joint Public Hearing was closed.

Mayor Fazzone reconvened the regular meeting.

Proposed Ordinance 909 was presented on third reading. Johnson moved to waive the rules and read the proposed Ordinance by title only, seconded by Goodman and carried.

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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 adopt Ordinance 909 on third reading, and that it become an ordinance of the City of Arcadia, seconded by Heine. Mayor Fazzone called for comments from the public, there were none. The motion carried on roll call vote: Ayes Heine, Whitlock, Johnson, Goodman and Fazzone. Nays: None. The effective date of this plan amendment shall be: The date a final order is issued by the Department of Community affairs finding the amendment to be in compliance in accordance with Chapter 163.3184, F.S., or the date a final order is issued by the Administration Council finding the amendment to be in compliance in accordance with Chapter 163.3184, F.S.

ORDINANCE NO 909

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WHEREAS, Sections 163.3161 through 163.3215, Florida Statutes, the Local Government Comprehensive Planning and Land Development Regulation Act, empowers and mandates the City of Arcadia, Florida, to plan for future development and growth and to adopt and amend comprehensive plans, or elements or portions thereof, to guide the future growth and development of the City; and

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(Ordinance 909 continued)

WHEREAS, pursuant to Section 163.3184, Florida Statutes, the City Council held meetings and hearings on Amendment 04-1, with due public notice having been provided, to obtain public comment, and considered all written and oral comments received during public hearings, including support documents; and,

WHEREAS, in exercise of its authority the City Council has determined it necessary to adopt this Amendment 04-1 to the Comprehensive Plan, which is marked as Exhibit "A" and is attached and made a part hereof, to insure that the Plan is in full compliance with the Laws of the State of Florida; to preserve and enhance present advantages; encourage the most appropriate use of land, water and resources consistent with the public interest; and deal effectively with future problems that may result from the use and development of land within the City of Arcadia; and

NOW, THEREFORE, BE IT ORDAINED that the Council of the City of Arcadia, Florida, amends its Comprehensive Plan in the following specific manner: the text of the Future Land Use Element is amended as shown in Exhibit "A", specifically, amending the Future Land Use Element to add "Public Schools" to the classifications in which they are a permitted use; and to add a policy to permit co-location of other public facilities on or adjacent to schools.

Severability: If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.

A certified copy of this enacting and certified copy of the City of Arcadia Comprehensive Plan shall be located in the Office of the City Recorder of Arcadia. The City Recorder shall also make copies available to the public for a reasonable publication charge.

This Ordinance shall be codified in the Code of Ordinances of the City of Arcadia, Florida.

The effective date of this plan amendment shall be a date that is at least ten (10) days after the Third Reading of this ordinance and which is either the date a final order is issued by the Department of Community Affairs finding the amendment to be in compliance in accordance with Chapter 163.3184, F.S., or the date a final order is issued by the Administration Council finding the amendment to be in compliance in accordance with Chapter 163.3184, F.S., whichever is earlier.

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(Ordinance 909 continued)

UNANIMOUSLY PASSED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA, IN REGULAR SESSION AT CITY COUNCIL CHAMBERS, ARCADIA, FLORIDA, ON THIS _____ DAY OF _____, 2004.

ATTEST:

CITY OF ARCADIA, FLORIDA

By:s/s Rachelle M. Baumann
Rachelle M. Baumann, City Recorder

By:s/s Richard P. Fazzino
Richard P. Fazzino, Mayor

PASSED ON FIRST READING April 6, 2004.

PASSED ON SECOND READING April 20, 2004.

PASSED ON THIRD READING May 4, 2004.

APPROVED AS TO FORM:
DAVID C. HOLLOMAN, CITY ATTORNEY

If anyone from the Public wishes to be notified by DCA regarding this Ordinance they can fill out a sign up sheet located in the Recorder's office, Monday thru Friday from 8:00 a.m. until 4:30 p.m.

Proposed Ordinance 910 was presented on first reading. Each Councilmember had previously been given a copy for study. Goodman moved to waive the Rules and read the proposed ordinance by title only; seconded by Johnson and carried.

ORDINANCE NO 910

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF ARCADIA, FLORIDA, TO REZONE LOTS 13 THROUGH 20, BLOCK N, MILLS ADDITION TO ARCADIA, FLORIDA AS RECORDED IN PUBLIC RECORDS OF DESOTO COUNTY, FLORIDA, FROM ONE- FAMILY DWELLING R-1C DISTRICT TO RESIDENTIAL-PROFESSIONAL AND BUSINESS RPB DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

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Heine then moved to approve Ordinance 910 on first reading , seconded by Johnson. Mayor Fazzone called for comments from the Public, there were none. The motion carried on roll call vote; ayes: Heine, Whitlock, Johnson, Goodman and Fazzone. Nays: None.

On March 16, 2004 the City Council authorized the Mayor to sign an agreement for Petroleum Cleanup Participation Program with Florida Department of Environmental Protection for cleanup at the City garage site. The State now requires a Resolution ensuring that the City's portion will be paid. Goodman moved to authorize the Mayor to sign Resolution 2004-9 as presented, seconded by Whitlock and carried unanimously.

RESOLUTIONS 2004-9

A RESOLUTION OF THE CITY OF ARCADIA,
FLORIDA DIRECTING THE MAYOR TO ENSURE
THE CITY'S OBLIGATION FOR COPAYMENT OF ITS
STATUTORY SHARE FOR ENVIRONMENTAL SITE
REHABILITATION AT THE CITY'S GARAGE SITE
PURSUANT TO THE STATE PETROLEUM CLEANUP
PARTICIPATION PROGRAM; AND PROVIDING AN EFFECTIVE
DATE.

WHEREAS, the City of Arcadia("City") is the owner and operator of the City's garage site ("garage site"); and

WHEREAS, pursuant to Chapter 376 of the Florida Statutes, the Florida Department of Environmental Protection ("FDEP") is authorized to enter into petroleum Cleanup Participation agreements with applicants seeking funding for environmental site rehabilitation; and

WHEREAS, the City is eligible for funding pursuant to section 376.3071(13) and 376.30711, Florida Statutes, for contaminated sites located on the garage site and pursuant to the Florida Statutes, the City is responsible for up to twenty-five percent (25%) of the estimated cap of \$233,076.70 for the site rehabilitation and Limited Contamination Assessment Reports ("LCAR"), or equivalent subsequent reports; and

WHEREAS, in order to receive Inland Protection Trust Funds, the City desires to acknowledge that it is obligated to pay its cost share for environmental site rehabilitation in accordance with Sections 376.3071(13) and 376.30711, Florida Statutes.

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(Resolution 2004-9 continued)

NOW, THEREFORE, BE IT RESOLVED by the City of Arcadia, Florida:

SECTION 1. By adoption of this Resolution, the City of Arcadia hereby acknowledges that the City is obligated to pay its cost share for site rehabilitation and Limited Contamination Assessment Reports, or equivalent subsequent reports, in order to receive Inland Protection Trust Funds pursuant to the State Petroleum Cleanup Participation Program.

SECTION 2. The City's Mayor is hereby directed to ensure that the City's cost share pursuant to sections 376.3071(13) and 376.30711, Florida Statutes, is paid as required by the statute and in accordance and consistent with the Agreement for Petroleum Cleanup Participation Program between the City and the Florida Department of Environmental Protection.

SECTION 3. Effective Date.

PASSED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA,
in Regular Session this 16th day of March, 2004.

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

ATTEST:

/s/RACHELLE M. BAUMANN
RACHELLE BAUMANN
CITY RECORDER

Mr. William Baldy of Peace River Cab was scheduled to appear concerning a 30 day extension of time for paving off street parking at 106 E. Dickhaut. Mr. Baldy did not appear.

Mr. Samuel Morgan Jr., President of the DeSoto County Branch NAACP appeared before the Council to discuss former Council Member Eugene Hickson's Retirement Benefit. He asked the Council to consider what would be right and fair and could bring the community together. He urged the Council to find a way to grant his request. Mr. Morgan thanked the Council for permitting him to speak.

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Attorney Holloman stated he had prepared a statement which he read recapping his letter to the attorney General citing his reasoning for Mr. Hickson to receive a retirement benefit and that it be retroactive. Attorney Holloman then recapped the Attorney General's response whereby the Attorney General assured that Mr. Hickson was eligible to receive a retirement benefit, but the City was not authorized to pay it retroactively.

Goodman thanked Attorney Holloman for his effort and report. After several questions of the attorney she stated she was not convinced the Attorney General was correct in regard to the City not being authorized to pay the retroactive retirement benefit and made a motion that the City pay Mr. Hickson \$14,950.00, seconded by Johnson. The Mayor called for discussion.

Attorney Paul Seusy representing Mr. Eugene Hickson thanked Councilmember Goodman for her efforts in behalf of Mr. Hickson. Attorney Seusy then stated he had not heard in the attorney generals opinion any mention of estoppel. Someone told Mr. Hickson there was no retirement which was not a question for the Attorney General.

Further discussion was given to counter the offer, the amount of attorney fees should a suit be filed, and Johnson and Goodman receiving calls from constituents urging them to give Mr. Hickson what was due him.

Rev. Matthews suggested the Council should give Mr. Hickson what is just and right and stop any appearance of a racial issue. Also should a suit be filed the cost would far exceed the amount Mr. Hickson agreed to accept.

Councilman Whitlock assured Rev. Matthews he had a great deal of respect for Mr. Hickson, and had considered him to be a friend for many years, and voted for him when Mr. Hickson served on the Council, however he did not consider this a racial issue and resented the implication.

After further discussion Goodman called for the question. Mayor Fazzone stated there was a motion and a second to award the retroactive money to Mr. Hickson – all in favor of the motion say aye: Goodman and Johnson. Nays: Heine, Whitlock and Fazzone. Motion lost.

Goodman requested permission to leave the meeting which was granted by the Mayor.

The City Marshalls report for April 2004 was presented.

Specific authorization No. 40 for Boyle Engineering services for phase I Improvements Final Design and Bid Services for the Wastewater Treatment Plant was presented. This authorization will not exceed \$197,425.00 without the City's prior authorization. Administrator Strube gave a brief overview of this project. Whitlock moved to authorize the administrator to sign the agreement, seconded by Johnson and carried.

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The March 2004 Public Works report was presented.

The March 2004 Fire Department report was presented.

The April 2004 Golf Course report of receipts and number of play was presented.

Lorenzo Dixon spoke in behalf of Mr. Eugene Hickson getting the retroactive retirement benefits.

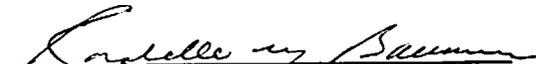
Jerry Williams also spoke in behalf of Mr. Hickson receiving the retroactive retirement as it appears this amount would be far less than a court suit, also she asked what the Council had learned from this? Johnson answered he had learned if elected one more time he will automatically retire.

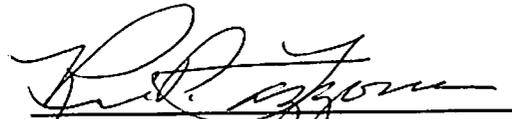
Bert Daly also spoke in behalf of Mr. Hickson getting paid his retroactive retirement. However in light of the Attorney Generals opinion he did not see how the City could make the retroactive pay. He also inquired how the Golf Course was doing with the 18 holes. He was assured it was doing good and was paying for itself. He also suggested the welcome sign should be repainted so it would be more visible. Heine moved to have the painter look at the sign and possibly repaint, seconded by Whitlock and carried.

Darby Ellis also spoke in behalf of Mr. Hickson. He was also concerned about the Smith Brown Gym stating it was going down hill along with Anderson Park. He feels Smith Brown should offer after school programs along with athletics. The Mayor suggested he contact Tara Anderson and Victor Blanding.

Mayor Fazzone expressed concern about the fact he had served the City for some 16 years with Mr. Hickson as a friend and he was still hopeful that a compromise could be worked out.

There being no further business the meeting was adjourned.


CITY RECORDER


PRESIDENT