

MINUTES OF THE PLANNING COMMISSION MEETING HELD ON NOVEMBER 10, 2014, AT 5:01 P.M. IN THE CITY COUNCIL CHAMBERS, APOPKA, FLORIDA.

MEMBERS PRESENT: Steve Hooks, Melvin Birdsong, James Greene, Robert Ryan, and Pamela Toler

ABSENT: Mallory Walters, Teresa Roper, Orange County Public Schools (Non-voting)

OTHERS PRESENT: David Moon, AICP - Planning Manager, Morgan Voke, Blake Herrera, and Jeanne Green – Community Development Department Office Manager/Recording Secretary.

OPENING AND INVOCATION: Chairperson Hooks called the meeting to order and gave the invocation. The Pledge of Allegiance followed.

APPROVAL OF MINUTES: Chairperson Hooks asked if there were any corrections or additions to the October 21, 2014, at 5:01 p.m. minutes. With no one having any corrections or additions, he asked for a motion to approve the minutes of the Planning Commission meeting held on October 21, 2014 at 5:01 p.m.

Motion: James Greene made a motion to approve the Planning Commission minutes from the October 21, 2014 meeting at 5:01, and Melvin Birdsong seconded the motion. Aye votes were cast by Steve Hooks, Melvin Birdsong, James Greene, Robert Ryan, and Pamela Toler (5-0).

Chairperson Hooks asked if there were any corrections or additions to the October 21, 2014, at 6:30 p.m. minutes. With no one having any corrections or additions, he asked for a motion to approve the minutes of the Planning Commission meeting held on October 21, 2014 at 6:30 p.m.

Motion: James Greene made a motion to approve the Planning Commission minutes from the October 21, 2014 meeting at 6:30, and Robert Ryan seconded the motion. Aye votes were cast by Steve Hooks, Melvin Birdsong, James Greene, Robert Ryan, and Pamela Toler (5-0).

LAND DEVELOPMENT CODE – David Moon, AICP, Planning Manager, stated this is an amendment to the City Of Apopka, Code of Ordinances, Part III, Land Development Code, Section III – “Overlay Zones” to create a new section 3.05 entitled “Designated Grow Area Overlay District.” On June 16, 2014, Governor Scott signed the Compassionate Medical Cannabis Act, also known as the Charlotte’s Web Act,” of 2014 into law, allowing for the cultivation, processing and dispensing of low THC cannabis beginning January 1, 2015. Administrative Rules have been established by the Florida Department of Health (FDH) to govern operation of low-THC marijuana businesses. The Act authorizes the FDH to limit dispensing operations to five organizations or licenses in Florida – one per each of five regional districts. However, legal battles have already commenced to challenge the license limitation. Costa Farms of South Florida, who acquired the Herman Engelmann nursery business in Apopka this past year, is referenced in reports from several news organizations that it intends to legally challenge the State’s limitation on the number of licenses that can be issued.

On November 4th of this year, registered voters had the opportunity to act on Ballot Amendment 2, which addressed medical marijuana in general. The Compassionate Medical Cannabis Act of 2014 is unrelated and separate from the November ballot. While the Compassionate Medical Cannabis Act of 2014 allows only low-THC marijuana, the November ballot would have allowed for all levels of THC marijuana. Administrative rules were not prepared by the FDH to address the November ballot marijuana.

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Regardless of rules and requirements that the State has established for the Act of 2014, legal challenges against the State could result in court rulings that weaken State control. Florida Statutes delegates authority to local governments to address matters such as land use and zoning, in addition to other powers. The proposed medical marijuana ordinance limits the cultivation, processing and dispensing of medical marijuana to two geographical areas of the City. Each area, known as a “Designated Grow Area”, comprises about 450 to 500 acres. Cultivation, processing, or dispensing of non-medical marijuana is prohibited in the City of Apopka, as proposed in the ordinance.

In response to questions by Chairperson Hooks, Mr. Moon stated that he has not heard of any challenges to the number of license to be awarded state wide. He stated that the license would be allowed to cultivate, process and dispense at different locations; however, those locations must be located within a “Designated Grow Area.”

In response to questions by Ms. Toler, Mr. Moon stated the Florida Department of Health is the regulatory agency for these businesses. Each licensee must have the ability to cultivate, process and dispense. Pharmacies and hospitals are exempt from Section 4 of the Designated Grow Area ordinance.

In response to questions by Mr. Birdsong, Mr. Moon stated that the State is divided into five agricultural districts. Within each district, one license will be issued. The City of Apopka falls into a district that contains fifteen (15) counties. Each licensed grower will require a substantial amount of land to accommodate the license requirements such as providing a security plan, buildings to grow the plants in, and separate buildings for processing and selling the products.

In response to a question by Chairperson Hooks, Mr. Moon stated that a grower is not prohibited from cultivating the plants and then sending them to another licensed grower for processing or dispensing. They are not permitted to send the plants or product out of the state of Florida.

In response to a question by Ms. Toler, Mr. Moon stated there is no language in the Act regarding subcontractors.

In response to a question by Mr. Birdsong, Mr. Moon stated that number of dispensaries would be dependent upon the demand for the product and the size of the grow areas. The Hogshead/Hermit Smith Road grow area is approximately 450 acres and the Keene/Clarcona Roads grow area is approximately 500 acres. The dispensaries have to be onsite as the processing.

Mr. Moon added there is no language in the Act that controls the number of dispensaries. He stated that the City could limit the number of dispensaries allowed per growing district, or limit them by establishing a distance requirement between dispensaries.

Chairperson Hooks opened the meeting for public hearing. With no one wishing to speak, Chairperson Hooks closed the public hearing.

Motion: Pamela Toler made a motion to recommend approval of the amendment to the City Of Apopka, Code Of Ordinances, Part III, Land Development Code, Section III – “Overlay Zones” to create a new section 3.05 entitled “Designated Grow Area Overlay District.”, subject to staff researching a distance requirement between dispensaries prior to City Council’s adoption of Ordinance No. 2388 and the

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information and findings in the staff report; and James Greene seconded the motion. Aye votes were cast by Steve Hooks, Melvin Birdsong, James Greene, Robert Ryan, and Pamela Toler (5-0).

MASTER SIGN PLAN – CIRCLE K – CLARCONA ROAD - Jay Davoll, P.E., Community Development Director/City Engineer, stated this is a request to recommend approval of the Master Sign Plan for the Circle K Gas Station and Retail Stores to be located north of East Keene Road and west of Clarcona Road. The owner is Clarcona Keene Retail, LLC. The engineering firm is Florida Engineering Group, Inc., c/o Samir J. Sebaali, P.E. The existing use is vacant land and the proposed use is a retail center and convenience store with gas sales. The future land use is Commercial and the zoning is C-2. The tract size is 2.25 +/- acres. The proposed building size is 7,000 sq. ft. for the retail center and convenience store with a fuel station canopy of 5,040 sq. ft. that will have 6 pumps and 12 fuel stations. The staff report and its findings are to be incorporated into and made a part of the minutes of this meeting.

Planning Commission reviewed the final development plan for this project at its October 21, 2014, but the master sign plan was not ready at that time for its review.

The CIRCLE K Master Sign Plan includes existing and proposed signage for their site. The Total Allowable Sign Area (TASA) for phase one (1) is four-hundred and ten (410) square feet based on Section 8.01.00 and 8.04.00, LDC. The proposed total sign area is 362.10 sq. ft.

TASA Calculation:

Sign Type	Maximum Allowed Square Feet Per Sec. 8.01.00 & 8.04.00, LDC (sq.ft.)	Proposed Per Master Sign Plan (sq.ft.)
Primary Freestanding Sign (Clarcona Rd)	100	96
Secondary Freestanding Sign (Keene Rd)	60	60
Anchor Tenant Signs*	100	72
Tenant Wall Signs*	200	87.5
Electronic Reader Board	50	46.6
Total Allowable Sign Area:	410	362.10

(*Maximum signage allowance per occupant/tenant space.)

The applicant is proposing a total of eight (8) signs for phase one (1) of the site; for a combined sign area of three-hundred and sixty two (362) square feet. There will be two (2), eight (8) feet tall freestanding monuments signs totaling one-hundred and fifty-six (156) square feet; the primary freestanding sign will consist of ninety-six (96) square feet and the secondary sign of sixty (60) square feet. There are four (4) proposed wall signs totaling one-hundred and fifty-nine (159) square feet and two (2) electronic reader boards totaling forty-six (46) square feet.

The applicant is proposing a (TASA) calculation in compliance with LDC 8.04.00.

Sign Code Deviations Request

1. LDC 8.04.03C(a)1: The occupant may display, in the leased or owned area, as many as two tenant signs on the side which is the primary entrance/exit to that portion of the premises. A tenant wall sign shall not exceed 18 inches in height, measured from bottom of copy area to the top, and shall not be wider than 75 percent of the horizontal frontage of the tenant space. The total combined area of the tenant wall signs shall not exceed 100 square feet per tenant space.

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Applicant Request: The applicant is requesting to increase the tenant wall sign height by ten inches from eighteen (18) inches to twenty-eight (28) inches in height. The sign area for each tenant sign, even with the increase in sign height by ten (10) inches, complies with the sign code.

Staff Response: The increase in tenant signage height may set a precedent in establishing non-conforming sign code standards. Staff does not support the request for increasing the tenant wall sign. Further, the fuel station canopy will screen the tenant signs from view along abutting public streets. Trees within the landscape plan will also screen the building over time as they mature. Therefore, larger tenant signs will not provide much advantage for off-site visibility. Space has been reserved on the monument sign to accommodate tenant stores, and the monument sign is visible from the adjacent public streets. The master sign plan provides a landscape view corridor (i.e. line of sight) to enhance monument sign visibility.

In granting approval of the Master Sign Plan for Circle K Gas Station and Retail Stores, the City of Apopka finds that the Master Sign Plan for the Circle K Gas Station and Retail Stores has been submitted and reviewed by staff. The Development Review Committee has found the plan meets the intent of the Apopka Sign Code except for the proposed tenant wall sign height.

The Development Review Committee recommends to approve the Circle K Gas Station and Retail Stores, Master Sign Plan, subject to the condition that the tenant wall signs comply with Section 8.04.03C(a)1 of the LDC, limiting the tenant sign height to eighteen (18) inches.

This item is considered quasi-judicial. The staff report and its findings are to be incorporated into and made a part of the minutes of this meeting.

Morgan Voke, 714 Commerce Circle, Longwood, stated that he is the representative for the project. He asked that the Commission recommend approval of the Master Sign Plan including the proposed size of the tenant signage. He stated that they used the FedEx sign example to show that if they are restricted to the 18 inch height, due to the inability to change art work, the sign would not be easily visible. He stated that by allowing their request for 28 inches in height would make the sign legible.

Chairperson Hooks opened the meeting for public hearing. With no one wishing to speak, Chairperson Hooks closed the public hearing.

Motion: James Greene made a motion to approve the Master Sign Plan for the Circle K on Clarcona Road owned by Clarcona Keene Retail, LLC, and located north of East Keene Road and west of Clarcona Road, subject to staff's recommendation not to approve the variance request to allow the increase to the tenant signage height and the information and findings in the staff report; and Melvin Birdsong seconded the motion. Aye votes were cast by Steve Hooks, Melvin Birdsong, James Greene, Robert Ryan, and Pamela Toler (5-0).

OLD BUSINESS:

Planning Commission: None.

Public: None.

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NEW BUSINESS:

Planning Commission:

Chairperson Hooks stated that he wanted to comment on the Sandpiper issue. He said to say that he was disappointed regarding the outcome of that zoning request was an understatement. He said he was even more disappointed with the City Attorney telling the City Council to ignore the Planning Commission's recommendation because of information that was presented at the Planning Commission meeting was presented by Chairperson Hooks as a member of the Commission. He said, as such, he requested that staff provide this Commission with what the authority is of the Planning Commission, where that information comes from, and the purpose and function of the Planning Commission. Also, he said he would like to have the same information for the Development Review Committee, its purpose and its function, the authority for that committee and where it comes from, the makeup of the DRC by department, position title, person, committee, by name of who is on the Committee. He said he would also like someone from staff or the City Attorney explain to the Commission in writing or in person what quasi-judicial means. He said that sometimes it is taken for granted or take things that are presented at face value without question and unfortunately "quasi-judicial" is one of those things. He said that he personally did not know what it meant so he researched it and read what he found: "A quasi-judicial body is an entity such as an arbitrator or tribunal board generally of a public administrative agency which has powers and procedures resembling those of a court of law or judge, which is obligated to objectively determine facts and draw conclusions from them so as to provide the basis of an official action." He said that the Planning Commission does not take official action on zoning requests. He said the Commission only makes a recommendation as an advisory body to the City Council. He stated that eliminates the Planning Commission from being a quasi-judicial body in that item. He said there are some key differences between judicial and quasi-judicial bodies in that judicial bodies are bound by precedent and common law whereas quasi-judicial decisions are usually so bound. Quasi-judicial bodies need not follow strict judicial rules of evidence and procedure as the attorney so eluded. A court may not be a judge in its own calls but a quasi-judicial body may both be a party in a matter and also issue a decision thereon. He said that even if the Planning Commission was a quasi-judicial body, which it is not in the case of zoning, evidence could still be provided as he did. He continued to read, "In general, decisions of a quasi-judicial body require findings of fact to reach conclusions of law that justify the decision." He said that is what the Planning Commission did. "Decisions of a quasi-judicial body are often legally enforceable under the laws of jurisdiction." He stated that the Planning Commission can't enforce anything about a zoning ordinance. He said the Commission is only advisory to the City Council. "With the exception of rulemaking, any decision by an agency that has a legal effect is a quasi-judicial action." Making a recommendation in an advisory capacity to City Council does not qualify. He stated that definition of quasi-judicial is "A judicial act performed by an official who is either not a judge or not acting in his or her capacity as a judge" which the City Attorney eluded to the Planning Commission as being a judge. The legal definition in *Perdue, Brackett, Flores, Utt & Burns v. Lineberger, Goggan, Blair, Samplson & Meeks, LLC*, the court observed that Texas courts have recognized six powers relevant to the determination of whether a body possesses quasi-judicial power: (1) they have the power to exercise judgment and discretion; (2) they have the power to hear and determine and to ascertain facts and decide; (3) they have the power to make binding orders and judgments, in the case of zoning the Planning Commission does not have this ability; (4) the power to affect the personal or property rights of private persons and the fact of a zoning ordinance recommendation the Planning Commission does not; (5) the power to examine witnesses, to compel the attendance of witnesses, and to hear the litigation of issues on a hearing, it is doubtful that the Planning Commission does not have the ability to issue a subpoena; and

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(6) the power to enforce decisions or impose penalties. The Planning Commission has no such powers. He said that he found it highly insulting that the City Attorney advised the City Council to ignore the Planning Commission, or in this case, his findings because it was not presented by someone other than the Chairperson. He feels that it is absolutely ridiculous that the City Attorney told a member of the public that had he handed that packet to them and they read to the Planning Commission it would have legal. Again the Planning Commission is not a quasi-judicial Commission. In a quasi-judicial proceeding that is not a requirement by definition that he read earlier. Secondly the matter before the Planning Commission, the zoning change, by virtue of being only a recommendation to the City Council should not be considered quasi-judicial. It does not meet the requirements as the Planning Commission does not have any authority to affect the homeowner or the individual land owner. That falls to the City Council. The Planning Commission has no power of subpoena, no authority to compel witnesses, and no enforcement power. If the Planning Commission's only duty is to determine whether an application meets certain criteria then that is best left to staff member experts and/or attorneys and some have argued that that is exactly how it should be. He stated that from his limited research on the matter the Courts have so far held that it is not the case that public input is the more appropriate course of action. Perhaps that is in the Planning Commission's case there is one pesky phrase that says "may include any conditions, requirements, or of limitations to be attached to the use which the Commission may believe to be necessary and desirable to protect adjacent properties and the surrounding neighborhoods. The Planning Commission calls that compatibility and that is exactly what the Planning Commission did. He said that he believed that since he presented this information to staff it is incumbent upon staff to relay that information to the City Council and the City Attorney as appropriate before they make a final decision on that Sandpiper issue at the next City Council meeting.

Chairperson Hooks opened the meeting for discussion by the rest of the Commission.

Mr. Greene stated that it is his opinion that what the Chairman did to find the fact, that's really what he found, was facts and those facts were clearly relevant. At the first meeting, the size of lots and the size of homes was a major issue. What the Chairperson did was discover the facts. He said he does not believe that the Chairperson is required to keep those secret. So if the Planning Commission is to do the job that it is called upon to do, the Commission needs to do that sort of thing. The Commission needs to arm itself with factual information. He said that when he heard the part of the Commission [City Council] meeting he was surprised by the legal advice given to the City Council. It may well be that is not what caused them to take the action they took, and they have the right to take any action they want to take. Staff had recommended approval of the project. The Planning Commission recommended disapproval. The Council could go with either of those or with something different, but what the Planning Commission did, specifically what the chairperson did, served to enlighten the issues and he felt that is the type of thing that should be done.

Mr. Birdsong stated that one of the things that he liked about the Planning Commission as a whole is not a "yes" group. The Planning Commission looks at the information given to it, it is reviewed, and then each Commission member makes a decision on which way to vote regardless of whether it is to recommend approval or disapproval. The Commission goes by what is presented at that time to make a sound decision on the recommendation that is best suited for the City and the community as a whole. He said that he serves with truth and honesty and not convenience and being a "yes" person.

Mr. Moon stated that just to clarify where that originated from, the position taken by the City Attorney was initiated by a letter from the applicant's attorney. The complaint or the comment regarding the

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Planning Commission action, its recommendation, came from the applicant's attorney. It wasn't generated by staff. He said with regard to Chairperson Hooks' reference to Planning Commission procedure is related to training. He said that as long as he has been with the City there's been no formal training session regarding process. He said that his profession is in Urban Planning and not in land use law. Court cases often dictate what the procedure can be. The court cases occur from time to time. That's where the role of the City Attorney's office comes into play in terms of recognizing what those change are. That's why regular training is important with the Planning Commission. The City hasn't done that in the past with the Planning Commission. It really wasn't a decision by the Community Development Department. It was above our Department. The other issue related to procedure of the Planning Commission. Most communities that have a population of 40,000 or more, such as Apopka, they have a City Attorney attending these meetings because of the complexity of land use law. If you went to most cities in Central Florida, such as Oviedo or Winter Springs, they likely, at their Planning Commission meetings, will have an attorney there representing the Planning Commission. It won't be the same attorney that sits on the City Council because the City Council attorney represents City Council. It is actually a separate attorney that represents the Planning Commission.

Chairperson Hooks said that he is all for that. He said he has been involved in this process with the City of Apopka for 25 years or so. He said he has had zero training in the process.

Mr. Moon said that over those 25 years he could give the Commission a lengthy list of court cases that affect the process.

Chairperson Hooks said that's fine but the Commission needs to hear from an attorney that tells us if we are a quasi-judicial body in regards to zoning issues, then there's no point in having the Planning Commission. If all we can do is listen to evidence presented and then determine based on development guidelines and laws and regulations, there is no point to having a Planning Commission. Obviously, that is not the intent. We are to hear the public and make a recommendation based somewhat on what they believe and in the case of this particular issue the compatibility issue was the issue and that is outlined in our job description under the City Charter and the Code of Ordinances. He said the Planning Commission has the right to do that and for the City Attorney to say to ignore the Planning Commission is insulting to say the least and he called the Planning Commission a judge and if anybody researches what quasi-judicial means and it doesn't mean what he alluding it says to us. It is printed on the staff reports that these proceedings are quasi-judicial and that all the minutes and proceedings everything has to be a part of the minutes. He said that might be for the City Council but not for the Planning Commission. The Planning Commission minutes and the Commission's discussions become quasi-judicial once it reaches City Council but does not apply to the Planning Commission in an advisory capacity. The Planning Commission cannot make a decision and cannot enforce anything about land use, zoning, etc. He said that if the City Attorney has a better definition or court cases that say differently than what he stated earlier, the Planning Commission needs to hear it. The Planning Commission needs to know what its function is and based on the City Attorney's observation the Commission has been misguided. He stated that the Planning Commission needs information and training of what their powers and functions are. He reiterated the he was highly insulted by the City Attorney's advice to the City Council to ignore the Planning Commission's recommendation.

Mr. Greene said that in addition, that leaves a question as to whether the City Attorney's legal advice was correct or incorrect.

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With no one else wishing to speak, Chairperson Hooks adjourned the meeting.

Public: None.

ADJOURNMENT: The meeting was adjourned at 5:56 p.m.

/s/ _____
Steve Hooks, Chairperson

/s/ _____
R. Jay Davoll, P.E.
Community Development Director