

# CITY OF APOPKA

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## **Minutes of the regular City Council meeting held on November 19, 2014, at 8:00 p.m., in the City of Apopka Council Chambers.**

**PRESENT:** Mayor Joe Kilsheimer  
Commissioner Bill Arrowsmith  
Commissioner Billie Dean  
Commissioner Diane Velazquez  
Commissioner Sam Ruth  
City Attorney Clifford B. Shepard

**PRESS PRESENT:** Roger Ballas - The Apopka Chief  
Steve Hudak - The Orlando Sentinel

**INVOCATION** – Commissioner Velazquez introduced Christian Ore, Victory Church, who gave the Invocation.

**PLEDGE OF ALLEGIANCE:** Mayor Kilsheimer said in September of 1620, more than 100 Pilgrims set sail from England aboard the Mayflower and made landfall about two months later at Plymouth, Massachusetts. The Pilgrims lost half of their group during that first winter, but with the help of two members of local Native American Tribes, the settlers were able to successfully farm the lands and by the following fall had reaped a bountiful crop. To celebrate the harvest and give thanks, Governor William Bradford called for a feast and invited the local Native American Tribes who worked alongside the Pilgrims to help them stay in their colony. The Tribes and Pilgrims hunted together and feasted for three days. It became a tradition for colonists to celebrate their harvest annually with the feast of Thanksgiving. Abraham Lincoln proclaimed the final Thursday in November to be a national holiday in 1863. However, Franklin Roosevelt signed a joint resolution of Congress in 1941 which established the fourth Thursday of November as a national holiday, the day we currently celebrate as Thanksgiving. He asked everyone to reflect upon the spirit of collaboration between the Pilgrims and Native American Tribes that made it possible for Thanksgiving as he led in the Pledge of Allegiance.

### **PRESENTATIONS**

1. Proclamation - Presented to the Apopka High School Bowling Team – Mayor Kilsheimer read the proclamation and presented it to the coaches and team members.

### **CONSENT AGENDA**

1. Approve the minutes from the regular City Council meeting of October 15, 2014 at 8:00 p.m.
2. Reject Bid No. 2014-03, from Wright's Landscaping, Inc., for Lawn Maintenance Services for Code Enforcement.
3. Authorize the disposal of surplus equipment/property and their removal from the City's asset list.

4. Authorize the Mayor to execute Amendment II of the Project Renew Agreement between the City of Apopka and the Orlando Utilities Commission.

**MOTION was made by Commissioner Ruth, and seconded by Commissioner Arrowsmith, to approve the 4 items of the Consent Agenda. Motion carried unanimously, with Mayor Kilsheimer, and Commissioners Arrowsmith, Dean, Velazquez, and Ruth voting aye.**

**SPECIAL REPORTS AND PUBLIC HEARINGS** - There were no special reports or public hearings.

## **ORDINANCES AND RESOLUTIONS**

1. **ORDINANCE NO. 2386 – SECOND READING AND ADOPTION - CHANGE OF ZONING** - Florida Land Trust #111 – ZDA at Sandpiper, LLC - From “County” PD to “City” Planned Unit Development (PUD/R-1A) for property located south of Sandpiper Street, west of North Thompson Road, east of Ustler Road. (Parcel ID Nos.: 02-21-28-0000-00-106, 02-21- 28-0000-00-131, 03-21-28-0000-00-015, 03-21-28-0000-00-022, 03-21-28-0000-00- 023, 03-21-28-0000-00-046, 03-21-28-0000-00-047, 03-21-28-0000-00-072, 03-21-28- 0000-00-073, and 03-21-28-0000-00-119) [Ordinance No. 2386 meets the requirements for adoption having been advertised in The Apopka Chief on November 7, 2014.]

The City Clerk read the title as follows:

### **ORDINANCE NO. 2386**

**AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, CHANGING THE ZONING FROM “COUNTY” PD TO “CITY” PLANNED UNIT DEVELOPMENT (PUD/R-1A) FOR CERTAIN REAL PROPERTY GENERALLY LOCATED SOUTH OF SANDPIPER STREET, WEST OF NORTH THOMPSON ROAD, EAST OF USTLER ROAD, COMPRISING 58.23 ACRES, MORE OR LESS AND OWNED BY FLORIDA LAND TRUST #111 - ZDA AT SANDPIPER, LLC; PROVIDING FOR DIRECTIONS TO THE COMMUNITY DEVELOPMENT DIRECTOR, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

David Moon, Planning Manager, stated at the November 5, 2014 City Council meeting a motion was made to adopt the ordinance at first reading with the instructions to staff to discuss mutually acceptable development conditions with the Sandpiper PUD applicant. He advised City staff has met with the applicant to discuss possible changes that would address concerns or comments raised by the general public or discussed by the City Council at the November 5, 2014 public hearing. He went on to review 14 additional development conditions the applicant has agreed to, a copy of which is on file in the Clerk’s office.

In response to Commissioners Dean and Velazquez regarding the minimum square footage of a home, Mr. Moon advised 2200 square feet was the minimum, and there were no criteria or

standard to control diversity above the minimum. He further affirmed the minimal living area was determined based on homes in the surrounding neighborhoods. He added the Council, as part of the conditions, could make a policy decision regarding the minimum livable area of a home as it relates to the character of the homes of the surrounding area.

Commissioner Arrowsmith said he made the motion at the last meeting to approve the first reading, reserving the right to go back and look closer. He stated he has gone to the site and looked at the property and suggested there was room to the west and he would like to see them extend to the west so they could have larger lots. He further suggested condensing the lots of the eastern cul-de-sac to 3 lots.

Miranda Fitzgerald, Esquire, representing the applicant said they have worked very hard with staff to come up with voluntary conditions to respond to comments they have heard. She stated this was the same land and it was adjacent to the same communities as it was when approved by the County in 2007. She stated when annexing into the City it was with the expectation of having 49 lots, as determined by the County, having been reduced down from 58 to 49 lots. These properties will be connected to the City sewer which is a benefit for the City. She affirmed in reviewing the public records, the conveyance and restrictions that apply to Oakwater Estates has a minimum house size of 2000 sq. ft. allowable, and Wekiva Preserve has an allowable minimum house size of 1800 sq. ft., although they have built bigger homes. She stated when Oakwater Estates was built in 1986, it came into an area that had a number of smaller lot subdivisions and they changed the character of the area that already existed and that character still exists. She affirmed the reason Oakwater Estates has half acre lots is due to the necessity of septic tanks. She read off a number of the subdivisions in the area that are part of the character of the neighborhood. She stated there are statutes on the books today that say a local government can't make decisions in a land use context that unfairly burden the property owner, are unreasonable, or unduly burdensome. She submitted that by adding any more conditions than the ones that have been voluntarily agreed to crosses that line between reasonable, unreasonable, inordinately burdensome, and you cannot be arbitrary. She reiterated local governments must base their decision on code, comprehensive plan, and voluntary commitments the developer has agreed to. She said they would appreciate Council recognizing the work to arrive to these conditions and said this development will benefit the city and neighbors.

Mr. Moon asked the developer to attest to the 14 conditions reviewed this evening, to which Ms. Fitzgerald said they were in full agreement with those conditions.

Mayor Kilsheimer opened the meeting to a public hearing.

The following people spoke in opposition to the project, and handed into the record copies of case law, traffic reports, and a letter from Scott A. Smothers, Esquire, excerpts from Florida Land Development Regulations, and other various documents which are on file in the Clerk's office. Concerns expressed included the consideration of all substantial evidence and due process violations. There were many concerns regarding the lot size, the project affecting the surrounding property values, environment, nature and wildlife. Suggestions of sending it back to the Planning Commission for proper recommendations were made with the chair being recused. There were additional concerns regarding the density, traffic and safety.

Mark Ingram  
Ellen O'Connor  
Ginny McGee

Scott Smothers  
Mary Smothers  
Alex Toledo

The Council recessed at 9:45 p.m. and reconvened at 9:50 p.m.

Continuation of speakers:

Lou Haubner  
Doug Bankson

Ray Shackelford  
Bryan Nelson

Ms. Fitzgerald presented her rebuttal stating there was no current zoning on this property. She again reviewed the lot sizes, both for that being proposed and what was approved in 2008. She stated the burden of proof to show what they are requesting complies with the comprehensive plan and zoning. She declared they have complied with everything required, and now the burden shifts to the governing board. She reiterated they have worked with staff to come up with conditions to make the property more compatible.

No others wishing to speak, Mayor Kilsheimer closed the public hearing.

City Attorney Shepard advised this was a quasi-judicial proceeding, and the Council must make their decision based upon competent substantial evidence. He affirmed their decision must be based on substantial evidence that is real, fact-based, material, and reliable, and tends to prove the points that must be proven. He went on to review the standards and stated opinions of anyone, lay witness or expert, are not enough if they do not rise to the level of competent substantial evidence. The Council, in considering what evidence has been presented, needs to determine if it rises to the standard of what he just reviewed.

Commissioner Arrowsmith said he appreciated the findings of fact they were looking for from the other side being brought out tonight. He stated he would be in favor of sending it back to the Planning and Commission Board with this information and work more towards a compromise.

Commissioner Velazquez asked if it could be sent back to Planning and Commission and inquired what would be the difference between a third reading and sending it back.

City Attorney Shepard said there was still the problem that exists with the prior hearing at the Planning and Commission Board due to the way things occurred. He advised he had not researched if it would be sent back to them under those circumstances. He declared he would be concerned about it and suggested the chair be excluded from the mix if it is sent back, and he would be concerned that someone would argue it would be tainted by what had happened previously.

Mayor Kilsheimer said sending it back to the Planning Commission was an option. However, the facts that have been presented to Council are not going to change.

Discussion ensued with regards to sending the matter back to the Planning Commission or moving forward, and Commissioner Arrowsmith said he did not recall previously having had all

of the findings of fact from qualified third parties on the other side. He declared at this point he felt they had enough information to not approve it.

**MOTION was made by Commissioner Arrowsmith, and seconded by Commissioner Ruth, to deny Ordinance No. 2386 on Second Reading.**

Commissioner Dean said he felt most of the homeowners in the area would be more receptive if the lot size was increased.

Mayor Kilsheimer said that issue has been presented by the surrounding residents who believe there should be half acre lots and the applicant has represented that, in light of the fact, all of the lots being required to be on City sewer is an economic burden which is why they have presented this plan with this number of lots.

**Motion carried by a 3-2 vote with Commissioners Arrowsmith, Dean, and Ruth voting aye and Mayor Kilsheimer and Commissioner Velazquez voting nay.**

- 2. ORDINANCE NO. 2388 – SECOND READING AND ADOPTION** - Amending 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.” [Ordinance No. 2388 meets the requirements for adoption having been advertised in The Apopka Chief on November 7, 2014.]

The City Clerk read the title, as follows:

**ORDINANCE NO. 2388**

**AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, AFFECTING THE USE OF LAND IN THE CITY OF APOPKA, AMENDING ARTICLE III OF THE LAND DEVELOPMENT CODE TO INCLUDE A NEW SECTION 3.05 TITLED “DESIGNATED GROW AREA OVERLAY DISTRICT”, PROVIDING THAT CANNABIS CULTIVATION AND PROCESSING AND MARIJUANA DISPENSARIES/MEDICAL TREATMENT CENTERS ARE SPECIAL EXCEPTION USES WITHIN A “DESIGNATION GROW AREA OVERLAY DISTRICT” AND PROHIBITING SUCH USES WITHIN ANY OTHER ZONING DISTRICTS OR LOCATIONS WITHIN THE JURISDICTION OF APOPKA; PROVIDING ADDITIONAL STANDARDS AND CONSIDERATION FOR APPROVAL OF A SPECIAL EXCEPTION FOR CANNABIS CULTIVATION OR PROCESSING OR MARIJUANA DISPENSARY\ MEDICAL MARIJUANA TREATMENT CENTER; PROVIDING DEFINITIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, CONDITIONS; AND SETTING AN EFFECTIVE DATE.**

David Moon, Planning Manager, said the Planning Commission held a public hearing on this proposed ordinance November 10, 2014. Their motion was to recommend approval of this ordinance with the addition that staff should consider a distance separation requirement between dispensaries within the proposed designated grow area. He advised the purpose of this

recommendation was to control the number of dispensaries that could locate within any of the two designated areas. He stated, based upon his research, the Land Development Code under special exceptions already requires a minimum separation distance. He pointed out on page 6, under paragraph 10, based upon the Planning Commission's recommendations, it should not read "*no marijuana dispensary/medical marijuana treatment center shall be located within 1,000 feet of any school or church.*" and the rest of the condition read "*or another marijuana dispensary, medical marijuana treatment center would be added based on the Planning Commission's direction*".

Mayor Kilsheimer opened the meeting for a public hearing.

Heather Zabinofsky, representing Baywood Nursery, said she was purchasing Baywood Nursery and would also be purchasing adjacent properties that will be approximately 109 acres, some of which is wetlands and will cultivate out at approximately 87 +/- acres. She commented on the ordinance and pointed out some areas she felt were a conflict within the ordinance and with state law. She spoke further regarding concerns on the security requirements and having visibility from the street.

Kenneth Sumner spoke with regards to property he owns on South Binion Road stating the proposed ordinance is drafted to allow currently existing nurseries to apply for one of the state issued licenses to grow and process Charlotte's Web cannabis. He stated his location is excluded from the grow areas allowed in the ordinance declaring without this ordinance his nursery is one of the limited number of businesses that may apply for such a state-issued license. He requested the proposed ordinance be amended to include and accept a phrase that would indicate the exclusion section of the ordinance not apply to his location.

No one else wishing to speak, Mayor Kilsheimer closed the public hearing.

Mayor Kilsheimer recommended holding off on this ordinance waiting for clarity from the state and rules that will be promulgated and approved by the Department of Health. He recommended tabling this ordinance for a period of 60 to 90 days.

**MOTION was made by Commissioner Ruth, and seconded by Commissioner Velazquez, to table Ordinance No. 2388 for 60 days. Motion carried unanimously with Mayor Kilsheimer, and Commissioners Arrowsmith, Dean, Velazquez and Ruth voting aye.**

**3. ORDINANCE NO. 2390 – FIRST READING - COMPREHENSIVE PLAN – SMALL SCALE – FUTURE LAND USE AMENDMENT – Metzler Family Trust, from "County" Low Density Residential (0-4 du/ac) and "City" Very Low Suburban Residential (0-2 du/ac) to "City" Agriculture (1 du/5 ac), for property located east of Vick Road, north of West Lester Road. (Parcel ID #: 28-20-28-0000-00-010 & 28-20-28-0000-00-075) [Ordinance No. 2390 meets the requirements for adoption having been advertised in The Apopka Chief on November 7, 2014.]**

The City Clerk read the title, as follows:

**ORDINANCE NO. 2390**

**AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, AMENDING THE FUTURE LAND USE ELEMENT OF THE APOPKA COMPREHENSIVE PLAN OF THE CITY OF APOPKA; CHANGING THE FUTURE LAND USE DESIGNATION FROM “COUNTY” LOW DENSITY RESIDENTIAL (0-4 DU/AC) & “CITY” RESIDENTIAL VERY LOW SUBURBAN (0-2 DU/AC) TO “CITY” AGRICULTURE (1 DU/5 AC) FOR CERTAIN REAL PROPERTY GENERALLY LOCATED EAST OF VICK ROAD, NORTH OF WEST LESTER ROAD, COMPRISING 9.97 ACRES MORE OR LESS, AND OWNED BY METZLER FAMILY TRUST; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Kilsheimer opened the meeting for a public hearing. No one wishing to speak, he closed the public hearing.

**MOTION was made by Commissioner Arrowsmith, and seconded by Commissioner Dean, to adopt Ordinance No. 2390. Motion carried unanimously with Mayor Kilsheimer, and Commissioners Arrowsmith, Dean, Velazquez and Ruth voting aye.**

- 4. ORDINANCE NO. 2391- FIRST READING - CHANGE OF ZONING - Metzler Family Trust, from “County” A-1 and “City” R-1AA to “City” AG, for property located east of Vick Road, north of West Lester Road. (Parcel ID #s: 28-20-28-0000-00-010 & 28-20- 28-0000-00-075) [Ordinance No. 2391 meets the requirements for adoption having been advertised in The Apopka Chief on November 7, 2014.]**

The City Clerk read the title, as follows:

**ORDINANCE NO. 2391**

**AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, CHANGING THE ZONING FROM “COUNTY” A-1 (0-4 DU/AC) (RESIDENTIAL) AND “CITY” R-1AA (0-10 DU/AC) TO “CITY” AG (1 DU/5 AC) (CONTAINER NURSERY) FOR CERTAIN REAL PROPERTY GENERALLY LOCATED NORTH OF LESTER ROAD, EAST OF VICK ROAD (2127 AND 2133 VICK ROAD), COMPRISING 9.97 ACRES MORE OR LESS, AND OWNED BY METZLER FAMILY TRUST; PROVIDING FOR DIRECTIONS TO THE COMMUNITY DEVELOPMENT DIRECTOR, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

Mayor Kilsheimer opened the meeting for a public hearing. No one wishing to speak, he closed the public hearing.

**MOTION was made by Commissioner Ruth, and seconded by Commissioner Velazquez, to adopt Ordinance No. 2391. Motion carried unanimously with Mayor Kilsheimer, and Commissioners Arrowsmith, Dean, Velazquez and Ruth voting aye.**

5. **ORDINANCE NO. 2392- FIRST READING - CHANGE OF ZONING** – Norman E. Sawyer, from “County” I-1/I-5 (ZIP) (Industrial) to “City” I-1 (Industrial) AG, for property located north of 13th Street, east of Lambing Lane. (Parcel ID #s: 15-21-28-0000-00- 095 & 15-21-28-0000-00-096) [Ordinance No. 2392 meets the requirements for adoption having been advertised in The Apopka Chief on November 7, 2014.]

The City Clerk read the title, as follows:

**ORDINANCE NO. 2392**

**AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, CHANGING THE ZONING FROM “COUNTY” I-1/I-5 (ZIP) (LIGHT INDUSTRIAL) TO “CITY” I-1 (INDUSTRIAL) FOR CERTAIN REAL PROPERTY GENERALLY LOCATED NORTH OF 13TH STREET, EAST OF LAMBING LANE, COMPRISING 2.3 ACRES MORE OR LESS, AND OWNED BY NORMAN E. SAWYER; PROVIDING FOR DIRECTIONS TO THE COMMUNITY DEVELOPMENT DIRECTOR, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

Mayor Kilsheimer opened the meeting for a public hearing. No one wishing to speak, he closed the public hearing.

**MOTION** was made by Commissioner Velazquez, and seconded by Commissioner Dean, to adopt Ordinance No. 2392. Commissioner Arrowsmith reported he would be abstaining from voting due to the owner being a client of the bank he serves as Executive Vice President. Motion carried by a 4-0 vote with Mayor Kilsheimer, and Commissioners Dean, Velazquez and Ruth voting aye, and Commissioner Arrowsmith abstaining and filing a Form 8B.

**SITE APPROVALS** – There were no site approvals.

**DEPARTMENT REPORTS AND BIDS** –

1. **Administrative Report** – Mayor said the Administrative Report was included in the agenda packet.

**MAYOR'S REPORT** - Mayor Kilsheimer reported the City has been conducting a search for a new City Administrator over the last couple of months. He stated the results have been narrowed down to one candidate, Glenn Irby, who was in attendance. He said there were more than 50 applications received who were all sent a questionnaire. This questionnaire was returned by 32 potential candidates. The Committee consisting of Dr. Shackelford, Frank Hooper, Paul Faircloth, Jay Davoll, Sharon Thornton, and Chief Manley. Mayor Kilsheimer advised he also attended the meetings and the 32 candidates were narrowed down to six, then down to three. He affirmed Mr. Irby's name was at the top of almost everyone's list. He reviewed the interview process that took place last Thursday and Mr. Irby stood above and beyond the other candidates. He advised Mr. Irby is currently the City Manager in Umatilla and has been there for the past eight years.

Mayor Kilsheimer reviewed the Charter which states the Mayor shall appoint the City Administrator. However, he stated he felt it to be right to ask his appointment to be ratified by the City Council.

Commissioner Arrowsmith said he just received Mr. Irby's resume and stated he has received some calls recommending Mr. Irby. He said he appreciates the work the Committee has done in selecting Mr. Irby, but he feels like in a growing area like Apopka, he was hopeful to have someone with experience managing a city of at least 50,000 rather than 3,500 and declared he did not feel he was the correct candidate for the future of the City.

Mayor Kilsheimer responded by advising there were candidates from larger cities, but their answers to the questionnaire did not make it past the Committee. He stated it was a combination of the questionnaires, and calls to outside parties. He said the three candidates were all qualified based on experience, their knowledge, skills, and demeanor. The discussion came down to what was the best fit for the City of Apopka and who had the right characteristics to take Apopka to the next level. He declared it was unanimous in the room that Mr. Irby fit that qualification.

In response to Commissioner Dean with regards of what kind of vision Mr. Irby would bring to a city of this size, Mayor Kilsheimer advised Mr. Irby has managed a fairly sizeable organization with the Lake County Sherriff's Department, and in terms of vision, he led a visioning exercise on downtown Umatilla that when started had many empty store fronts, and today has no empty store fronts. He declared Mr. Irby will use that experience to help lead staff.

**MOTION by Commissioner Ruth, and seconded by Commissioner Velazquez to ratify the appointment of Glenn Irby to the position of City Administrator. Motion carried 3-2 with Mayor Kilsheimer, and Commissioners Velazquez and Ruth voting aye and Commissioners Arrowsmith and Dean voting nay.**

## **OLD BUSINESS**

- 1. COUNCIL** - There was no old business from the Council.
- 2. PUBLIC** –

Ray Shackelford asked for clarification concerning the City Administrator, inquiring if they were a Charter officer, or a Department Head, to which Mayor Kilsheimer stated it, was not spelled out in the Charter. The Charter says the City Administrator shall be appointed by the Mayor which ostensibly makes him a Charter officer, but it is not spelled out to say Charter officer.

Dr. Shackelford spoke in regards to transparency and inquired if it would be possible to have the Mayor's report placed online prior to the meetings.

Mayor Kilsheimer advised the agenda packets for the City Council meetings were posted online immediately after he took office and prior to that only the agenda was available.

Tenita Reid spoke regarding removal of aquatic plants and she further requested expanding Dream Lake Park.

## NEW BUSINESS

### 1. COUNCIL

In response to Commissioner Velasquez's inquiry about Richard Anderson's report and why more detail was not included, Mayor Kilsheimer advised that Mr. Anderson could not disclose all the information with negotiations, the report was to show the level of his work on behalf of the City to further those projects.

Commissioner Dean asked for an update at the next Council meeting on some of the issues that have been presented to the Council, to include One Apopka for Progress, policy and procedures regarding the bidding process for minorities and women. He stated there were no minorities in supervisory positions that he was aware of, and the past CAO had stated consideration would be given to minorities as positions were filled. He asked for an update on the following: Martin Pond area, and a summer job program for youth.

### 2. PUBLIC

Ray Shackelford said he echoed the concerns of Commissioner Dean stating we cannot leave behind one person of the community.

Kenneth Sumner asked if he understood Mr. Moon to state his property could not be considered as a grow area to which Mayor Kilsheimer advised this item had been tabled and he would have the opportunity to address the matter with Mr. Moon.

**ADJOURNMENT** - There being no further business to discuss, the meeting adjourned at 11:25 p.m.

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph E. Kilsheimer, Mayor

\_\_\_\_\_/s/\_\_\_\_\_  
Linda F. Goff, City Clerk