

MINUTES OF THE PLANNING COMMISSION MEETING HELD ON JANUARY 13, 2015, AT 5:01 P.M. IN THE CITY COUNCIL CHAMBERS, APOPKA, FLORIDA.

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

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

OTHERS PRESENT: Glenn Irby, City Administrator, R. Jay Davoll, P.E., Community Development Director/City Engineer, David Moon, AICP - Planning Manager, Jim Stelling, Ed Velaquez, Patricia Delatte, Mary Smothers, Jerry Smothers, Jack Cooper, Miranda Fitzgerald, Alan Goldberg, Gary Singer, John Cloran, David McBee, Lou Haubner, Diann Haubner, Ellen O'Connor, Suzanne Kidd, Pichai Too-chinda, and Jeanne Green – Community Development Department Office Manager/Recording Secretary.

OPENING AND INVOCATION: Chairperson Hooks called the meeting to order and called for a moment of silent prayer. The Pledge of Allegiance followed.

ELECTION OF OFFICERS:

CHAIRPERSON:

MOTION: James Greene nominated Steve Hooks as Chairperson of the Planning Commission. Aye votes were cast by Steve Hooks, Mallory Walters, Melvin Birdsong, James Greene, Robert Ryan, and Pam Toler (6-0).

VICE - CHAIRPERSON:

MOTION: Mallory Walters nominated James Greene as Vice-Chairperson of the Planning Commission. Aye votes were cast by Steve Hooks, Mallory Walters, Melvin Birdsong, James Greene, Robert Ryan, and Pam Toler (6-0).

APPROVAL OF MINUTES: Chairperson Hooks asked if there were any corrections or additions to the December 9, 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 December 9, 2014 at 5:01 p.m.

Motion: Melvin Birdsong made a motion to approve the Planning Commission minutes from the December 9, 2014 meeting at 5:01, and Mallory Walters seconded the motion. Aye votes were cast by Steve Hooks, Mallory Walters, Melvin Birdsong, James Greene, Robert Ryan, and Pamela Toler (6-0).

The Commission agreed to rearrange the agenda to allow the Apopka Woods site plan to be heard first.

MINOR FINAL DEVELOPMENT PLAN AMENDMENT – APOPKA WOODS, LLC – Jay Davoll, P.E., Community Development Director/City Engineer, stated this is a request to recommend approval of the Minor Final Development Plan Amendment to the Apopka Woods Subdivision for the installation of a decorative pre-cast exterior buffer wall in lieu of a brick wall along McCormick Road. The owner is Apopka Woods, LLC. The property is located north of West McCormick Road and east of Irmalee Lane. The existing use is vacant land and the proposed use is a single family residential subdivision with 76 lots.

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The future land use is Residential Low (0-5 du/ac) and the zoning is R-2. The tract size is 24.82 +/- acres. The staff report and its findings are to be incorporated into and made a part of the minutes of this meeting.

The Apopka Woods Final Development Plan (FDP) and Plat was approved by City Council on July 2, 2014. Consistent with the development standards set forth in in the Land Development Code (LDC), the Apopka Woods FDP provides a six-foot high brick wall within the 10-wide landscape buffer located adjacent to McCormick Road. The applicant requests a modification of the FDP to construct a six-foot high pre-cast wall instead of the previously approved brick wall. A copy of the approved brick wall and the proposed pre-cast wall appear as Exhibit A and B.

Section 2.02.06.H, Bufferyard Requirements of the LDC states the following:

“Developments shall provide a minimum six-foot high brick, stone or decorative block finished wall adjacent to all external roadways, erected inside a minimum ten-foot landscaped bufferyard.”

A pre-cast wall is not specifically identified as an approved design standard under Section 2.02.06.H for a buffer wall. Therefore, DRC believes that use of a pre-cast wall with simulated stone or brick is a policy decision that should be made the City Council with recommendation from the Planning Commission. The pre-cast wall proposed by the applicant uses a construction material and appearance that has not appeared with any other residential development application reviewed by the Planning Commission or City Council. If the proposed pre-cast wall is acceptable to the City Council, it will be defined as a “decorative block finished wall.” Pre-cast walls with the same or similar design and material and having an appearance of simulated brick or stone will then be allowed as buffer walls for other proposed development applications.

Based on discussion with development professionals, a six-foot high brick wall cost approximately \$95.00 per lineal foot while a pre-cast wall with the same height costs approximately seventy-five dollars per lineal foot.

The Development Review Committee takes the position that the proposed modification represents a policy decision by the City Council after considering a recommendation from the Planning Commission.

The role of the Planning Commission for this development application is to advise the City Council to approve, deny, or approve with conditions based on consistency with the Comprehensive Plan and Land Development Code acceptance of a pre-cast decorative wall, with simulated brick or stone, as meeting the intent of a “decorative block finished wall;” and to recommend a modification of the Apopka Woods Final Development Plan as proposed by the applicant.

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.

In response to a question by Chairperson Hooks, Mr. Davoll stated that this type of buffer is used along expressways. The poles are placed and then the decorative wall slab fits down into the groves on either side of the poles.

Chairperson Hooks opened the meeting for public hearing.

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Jim Stelling, Apopka Woods, LLC, 1667 Astor Farms Place, Sanford, Florida, asked that the Planning Commission recommended approval of their request. He stated that this is a very attractive wall that contains rebar and concrete. He stated that this type of wall also drains better than a masonry wall.

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

Motion: Mallory Walters made a motion to recommend approval of the Apopka Woods, LLC Minor Final Development Plan to accept a pre-cast decorative wall, with simulated brick or stone, as meeting the intent of a “decorative block finished wall;” and that the Apopka Woods Final Development Plan is modified as proposed by the applicant subject to conditions based on consistency with the Comprehensive Plan, the Land Development Code, and the information and findings in the staff report. James Greene seconded the motion. Aye votes were cast by Steve Hooks, Mallory Walters, Melvin Birdsong, James Greene, Robert Ryan, and Pam Toler (6-0).

2015 ADMINISTRATIVE REZONING - David Moon, AICP, Planning Manager, stated the Administrative Rezoning consists of 40 parcels, comprising a total of 462.12+/- acres, that have been annexed into the City of Apopka and assigned Future Land Use designations compatible with the proposed AG zoning designation. All subject properties currently have a City Future Land Use Designation of Rural Settlement (RS) and a County zoning category of either A-1 or A-2 assigned to them. A summary of each zoning case is provided in Exhibits “A” and “B”. Exhibit “A” describes parcels currently assigned a “County” A-1 zoning category while Exhibit “B” addresses those assigned a “County” A-2 category. A brief summary of the administrative rezoning cases:

All Cases

Total Number of Parcels:	40
Total Number of Property Owners:	25
Total Acreage:	462.12

A-1 Properties

Number of A-1 Parcels:	
Number of A-1 Property Owners:	22
A-1 Acreage:	424.43

A-2 Properties

Number of A-2 Parcels:	5
Number of Property Owners:	3
A-2 Acreage:	37.68

The attached exhibits provide a summary of each proposed zoning amendment. Each property owner has been notified via a letter sent certified mail that a zoning category comparable to the County designation will be assigned to their property. An individual zoning report has been prepared for each zoning case. All zoning reports are provided in Exhibit “C”.

Pursuant to the Interlocal Agreement between the City and Orange County (2004), policy of the City’s Comprehensive Plan (Policy 3.9) and State law (s 163.3202, F.S.), the City is required to assign a zoning category to lands that are annexed into the City’s jurisdiction. To comply with these requirements, city

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staff is recommending that the City assign a zoning category that is most compatible to the current zoning category that was assigned by Orange County.

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 recommend approval of the 2015 Administrative Rezoning from “County” A-1 and A-2 to “City” AG subject to the information and findings in the staff report and Melvin Birdsong seconded the motion. Aye votes were cast by Steve Hooks, Mallory Walters, Melvin Birdsong, James Greene, Robert Ryan, and Pamela Toler (6-0).

CHANGE IN ZONING – FLORIDA LAND TRUST #111 – ZDA AT SANDPIPER, LLC –

Hooks: The next item is a change of zoning. Florida Land Trust - ZDA at Sandpiper, LLC from “County” PD to “City” R-1AAA. David.

Moon: The third and final case before you this evening is the request to change of zoning by Florida Land Trust a.k.a Sandpiper LLC. Planning Commission is familiar with this site. The request is to change the zoning from “County” PD, similar to the cases you just reviewed, it does not have City zoning assigned to it thus by State Law, policies of our Comprehensive Plan, and the Joint Planning Agreement with Orange County, a city zoning category must be assigned to the property. The applicant’s requesting change of zoning from “County” PD to residential “City” R-1AAA. R-1AAA requires a minimum of 16,000 square foot lot with a minimum lot width of 120 feet. The location is south of Sandpiper Street, west of North Thompson Road, east of Ustler Road. Current zoning is “County” PD or what we call “City” ZIP, zoning in progress. The proposed development is a residential subdivision. The future land use designation assigned to the property is residential Very Low Suburban which allows for up to two dwelling units per acre. The tract size is 58.23 acres. Of that, 48.4 are considered developable. The rest is within waters of Lake McCoy or within wetlands. Based on the current land use designation and the developable acreage of the property based on a maximum of two units per acre, the maximum number of units that could be achieved on this property is 97 single family units whether it’s the existing zoning or the proposed zoning. That is the maximum number; however, based on application of the Land Development Code it’s likely that the applicant or developer will achieve much less than that number. Most likely somewhere in the range of 49 to 60 lots. Consistent with requirements for a zoning application notification included a certified letter that was mailed to all property owners within 300 feet of the boundaries of the property. That letter was mailed by the property owner. We have received the certified mail receipts that the notice has been delivered. The property owner, the applicant, has posted the property. Notices were placed in the Apopka Chief according to the City’s policies. In addition, the Joint Planning Agreement with Orange County requires that we provide them with 30 day notice. They are well aware of the activities that have been proposed on the Sandpiper property as notification has occurred in past months for the previous application. A point that I would like to make is that in this rezoning application, as well as past applications on this property, notification has been sent to Orange County government consistent with the Joint Planning Agreement. We have not received any letters of

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concerns or objections from County staff or County officials regarding the proposed or past zoning applications. Just to give you an example the County does read our notices, last month at the December 9th hearing, there was a case called "Property Industrial Enterprises" which requested a small scale land use amendment and a rezoning. That case also abuts unincorporated property. The County was notified. Staff did provide us with a lengthy letter of concerns that was addressed. Based on our response the County did not provide any objection. We proceeded with that application and Planning Commission recommended approval. City Council adopted that application. I believe that Planning Commissioners are aware based on publications within Apopka Chief or by word that City Council, at its last hearing on January the 7th, took up discussion on the previous application for a PUD zoning which they had previously denied. They... At the next Planning Commission we'll have a discussion to reconsider that zoning application and that Ordinance that was denied. I bring that to your attention because this application should stand on its own and consideration of the PUD zoning should not be brought up. Again this application is evaluated on its own merits for consistency with the Comprehensive Plan and for meeting the intent of the Land Development Code and meeting the character and harmony of the surrounding area. Within your package you will find a memorandum that was prepared by the City Attorney. That memorandum was requested by me. This was after this application was received or we were aware that it was pending. Based on my experience and the training I have received and my professional credentials require that I take 1.5 credits of law classes a year related to land use law. So I am already familiar with the issue of establishing conditions on the various techniques of zoning. What we call straight or standard zoning which is before you tonight and the PUD zoning, but for some reason the elected officials, the public, and the Board gave a little more validity to the legal opinion from an attorney. So I asked the City Attorney to opine on the issue of whether conditions could be added to straight zoning. For example, under a PUD ordinance, you could ask for wider buffers, ask for larger lot sizes. What that opinion states, based on course law throughout the State of Florida is that conditions cannot be added to zoning. So this case, the Planning Commission cannot ask for larger lots, cannot ask for larger setbacks, can't ask for additional open space unless the applicant voluntarily agrees to do so. That is essentially what that lengthy memo says. So that needs to be taken into consideration. We shouldn't be demanding any type of conditions based on your recommendation. It's evaluated straight on the R-1AAA application. This case is considered quasi judicial so your evaluation of its merits should be based on substantially competent information, evidence and testimony that is presented to you by staff, by the public, and by the applicant. Your role is advisory to the City Council so your recommendation would be to adopt or not to adopt... to deny. If you chose to recommend denial then that motion needs to be based on findings of fact based on the substantial competent information evidence and testimony presented to you this evening. With the technicalities out of the way, I'll move forward with the staff presentation.

Hooks: Well before you do that, let's go back to discuss some of those technicalities.

Moon: Yes, sir.

Hooks: You made the statement that we can't put conditions on the straight zoning request. I agree with that, but you also alluded to the developer could build the maximum build out. We

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couldn't make larger lot sizes as a condition of zoning. That's true but when he brings a development plan we can put conditions on that. This does not grant the developer to grant to build two dwelling units per acre... up to... it starts with zero to two dwelling units per acre. Not two dwelling units per acre period. So we can put restrictions on it when it comes back with a development plan that is not compatible with the surrounding area. Right?

Moon: Let me preference by response, by saying that one of the differences between a planned unit development application and a standard or straight zoning application, is that our ordinances mandate that an applicant for PUD must submit a master site plan of their project.

Hooks: I'm not I agree and I'm not arguing.

Moon: In straight zoning...

Hooks: I agree.

Moon: The subdivision plan is not required to be submitted.

Hooks: I agree with what you just said.

Moon: So the answer to your question is that it will be answered at the time a preliminary development plan or a final development plan is submitted to the City.

Hooks: Right and that's my point.

Moon: And we'll have the opportunity for the City Attorney to...

Hooks: I just don't want to paint the picture to those that are in opposition here that this is said and done if we recommend approval of the change of zoning tonight because it doesn't. It doesn't end there. It ends when we get to a preliminary and a final development plan where we can say what he's proposed doesn't... is not compatible with the area. We still have that. That's my question. Right? We do have that.

Moon: I can't guarantee that at the time of the development application you can add conditions. There likely that will be debated.

Hooks: I am not saying at the time of the zoning application we're making conditions.

Moon: I mean at the time of the final development plan or the preliminary development plan.

Hooks: Well, sure. We do it all the time. We approve or disapprove a development plan all the time.

Moon: Correct.

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- Hooks: Okay, so we can, not approve a development plan at a later date even though we may recommend approval of this.
- Moon: If that plan does not meet the requirements of the Land Development Code, the Comprehensive Plan, and Development Design Guidelines. Then...
- Hooks: And compatibility with the surrounding area. You always tend to leave that one out. All right, proceed.
- Moon: The application is for R-1AAA zoning. Based on the Land Development Code, there is a chart exhibits under Chapter 2 that creates a hierarchy of zoning categories. R-1AA is under the Very Low Suburban land use designation is considered a permissible zoning district. So it's in our Codes and it is allowed within the Very Low Suburban land use designation which allows up to two units per acre. Within the Comprehensive Plan under Policy 3.1.c – Very Low Suburban Residential, the intent of that policy states that primary use shall be residential dwelling units up to two dwelling units per acre, elementary schools, middle schools, supported infrastructure of less than two acres of neighborhood parks. Within the zoning hierarchy and standards are established for each of the various zoning categories. And you'll notice that on the lot size for R-1AAA the minimum site area is 16,000 square feet. Minimum lot width is 120. Setbacks for the front, side, and rear are shown but they are very similar to the other similar zoning districts in that category. The minimum house size... livable area is 1,800 square feet. I'll point out that within this table that after the R-1AAA designation the next lot size is higher than that is the Rural Country Estates which is one acre. There is no zoning category that allows a minimum lot size of a 1/2 acre or 3/4 acre or 4/5 of an acre. It's either 16,000 square feet or the next step up is RCE-1 which is one unit per acre. Before you is the City Future Land Use map. This is the Sandpiper property. This color green is a very low suburban area. Other zoning categories in the area are low density residential. This color here so those are higher density zoning areas than within the very low suburban area assigned. The remainder of the area... the primary areas around the Sandpiper property are unincorporated. This small piece here on the north side is in the City of Apopka and has not received a future land use designation or zoning category as of yet. This highlights the City's zoning assigned to the property. To show how it is set up with the City policies. The color orange is the R-2. This color here is the ZIP zoning which means that zoning hasn't been assigned. To the southwest of the property is land... a platted subdivision that is R-3. To the south of the property, not including the property, is land that has a zoning of R-1AAA. This property in here is PUD. So this color here is the County PD color. This is the County's future land use map. Sandpiper property sits right here. All this area that is colored yellow is unincorporated Orange County. It has a future land use designation which is low density residential which is up to four units per acre. So taking into consideration of the zoning categories and the densities allowed in the surrounding area the intent of this area is to be urban in character based on density set forth within the Comprehensive Plan. This zoning map outlines the properties in the area surrounding the Sandpiper property in terms of their jurisdiction. This is Wekiva Preserve here and its R-1AA. Properties to the west are R-1AA, A-2. County properties to the west are RCE, which allows for a minimum of one acre lots, R-1AAAA to the south in unincorporated Orange County which allows for minimum lot size of half an acre. For information

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purposes this is the County's FLUM designation to show that area with the low density residential allows up to four dwelling units per acre and they list zoning districts that are considered permissible within that low density residential that includes Rural Country Estates, R-1, R-2, R-1A, R-1AA, all the way up to R-1AAAA. Those are all acceptable zoning categories within the County's land use designation of low density residential. This isn't the first case that the City has addressed in terms of R-1AAA zoning adjacent to properties that have zoning that allow for a minimum lot size larger than the minimum 16,000 square feet within the R-1AAA zoning. For example, Wekiva Preserve, located at this location has R-1AA. Minimum lot size is 12,500 square feet. The property across the street, unincorporated, has A-2 zoning assigned to the property. To the northeast "County" zoning of Rural Country Estate which is a minimum of one acre lot. To the south is R-1AAA and A-2 zoning and A-2 to the southwest. The property to the north is also "County" A-1 or annexed into the City but hasn't received a City zoning and is a ZIP property but retained the "County" A-1 zoning. There is a subdivision called Wekiva Glen. It has R-1A zoning. It's across the street from "City" Rural Country Estate with a minimum of one acre and "County" A-1 zoning. "County" A-1 and A-2 zoning allow a minimum of a half acre lot; however, the number of homes that are allowed are based on the future land use designation. So if it's designated a rural category it can be one unit per acre or it could be one unit per ten acres. The number of homes is based on what the future land use designation is assigned by the "County." There's a platted residential community called "Oak Ridge" on the north side of the City. It has R-1AAA zoning as does all this property in here as well as land north of it. The other properties to the west, to the south, and scattered through the north are "County" A-1, A-2 or "City" Agriculture. So the City, in the past, has found that R-1AAA is compatible with lands that have larger parcel sizes or larger lot sizes than the R-1AAA. This application was reviewed by the Development Review Committee. It found that it meets the intent of the Comprehensive Plan, its compatible with the harmony of the character of the area, it's based on similar R-1AAA zoning applications to property that are abutting similar densities and character of surrounding the property and its consistent or meets the intent of the Land Development Code. So that completes my recommendation. I'll address any questions that you might have and again your role is advisory based on the findings of fact, the evidence and testimony presented to you this evening. Thank you.

Hooks: If I didn't know any better I would say you were a representative of the applicant. Cause you presented a lot of information that didn't need to be presented tonight and you conveniently left off all the zonings of the surrounding properties that's in the County. What is the zoning? You gave us the land use. What is the Zoning?

Moon: Would you like me to go through the zoning?

Hooks: I want you to go through the zonings of the properties that are adjacent to this property.

Moon: Okay. Starting to the northeast, that subdivision....

Hooks: No, adjacent. Across the street, to the south, and to the southwest.

Moon: Those properties are R-1AAA...

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- Hooks: Okay, David... There's one or two that are adjacent.
- Moon: Please let me continue my presentation, Chairman.
- Hooks: Go ahead.
- Moon: Okay and not dictate the course of the presentation.
- Hooks: You said you were done. I asked you a question and that's what we do with staff because you said you completed your presentation. I waited through the entire thing.
- Moon: Correct.
- Hooks: Okay.
- Moon: To the north the unincorporated land is assigned a zoning category of A-2. To the northeast unincorporated property is zoned a A-1. To the east immediately adjacent to the property the zoning category is Rural Country Estates and A-1. To the south the zoning category is R-1AAA...
- Hooks: R-1AAAA.
- Moon: R-1AAAA and Rural Country Estates. This is all a part of the same subdivision here, Wekiva Landing. To the southwest the zoning on this property is PUD. It's unincorporated. This property is located the City and it has an R-1AAA zoning assigned to it. This property here has a zoning of A-2. Okay. From the corner of the property is a platted subdivision with an R-3 zoning assigned to it and that's within the City. This property here is unincorporated has a A-2 zoning assigned to it. There is R-1AAA zoning in the City located at this point with A-2 here at the northwest of the Sandpiper property. So I went full circle in terms of what is adjacent to it. If you look at the surrounding area, look at Thompson, there's zoning categories that allow for smaller lots. I have a list of subdivision in that area that shows the lot sizes and lot widths both for what is abutting and what's in the general area. We can address that is that is of interest to the Planning Commission.
- Hooks: No, I was interested in the ones that are adjacent which you just pointed out and, you know, not a question just a comment. It's interesting that your whole presentation earlier left that out but provided a whole lot of others that are in support of this project.
- Moon: I don't think it was intentional, Chairman. So I'm glad that you caught it. It was in your package so it's still considered evidence that's submitted for your consideration.
- Hooks: All right. Does the Board have any questions or Commission have any questions of staff? All right, before I open it up to public hearing, we did get an e-mail today with an additional item, from a gentleman that could not be here. I want to read part of that. His name is Alex Toledo. This was sent to the City Clerk, Linda Goff. "I am a resident

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concerned about the developments plans for the Sandpiper property which is on the agenda for the Planning Commission today. Unfortunately, I will not be able to attend the meeting. Would it be possible for you to share this e-mail with each of the Planning Commission members and the City Attorney? I reviewed the supporting documentation for the agenda items for today's Planning Commission Meeting and as near as I can tell, the only change to Mr. Goldberg's application is the inclusion of an opinion letter from the City's attorney (which he attaches) [a copy is included in the record]. The opinion centers around the question: "When in receipt of a "straight zoning" application is it lawful for the City Council of the City of Apopka to impose additional conditions for zoning approval that are not specified within the City's code if all criteria of the City's zoning ordinance are met?" This question seems inherently flawed in that it presumes that the City Council has set "additional conditions" for the approval of this project. As far as I'm aware, they didn't set any additional conditions for approval. They merely denied the application. The denial was based on competent and substantial evidence promulgated by the Planning Commission and reiterated and adopted by the public (myself included) as their own. Namely that the development plan, as proposed, was not compatible with the adjacent area due to lot sizes. The other thing the City Attorney's letter does is cite case law from the 1950's and 60's in support of approval of this application. I note that absent from his analysis is any mention of the Florida Supreme Court's 1993 decision in Snyder v. Brevard County Commissioners (also attached) [a copy is included in the record] which, in my opinion, gives the City firm footing upon which to deny this application. Taken in isolation, the cases that the City Attorney cites would leave the reader with the impression that the Council's hands are tied and that any input from the public should be completely disregarded as futile. I don't believe that's the case and Snyder v. Brevard makes it quite clear that citizen input is to be considered in a local government's rezoning decisions. I am curious as to whom presented the question that the City Attorney is answering in his opinion letter. Did it come from an elected or appointed official or from staff? Please consider this question a public records request. Also, if the City Attorney is inclined to answer questions from persons other than elected/appointed officials or city staff regarding this application, might he be inclined to answer this one as well: Is the City required to approve an application (even if deemed complete) where the Council has previously decided to deny the application based on competent, substantial evidence (that the lot sizes proposed are not compatible with the adjacent area) and the decision was rendered in a non-arbitrary, non-discriminatory and reasonable manner (as evidenced by the fact that the vast majority of the public is in opposition to the development plans as written)? Thank you in advance, Alex Toledo." And I mentioned in the letter, he mentioned in the letter there's a copy of a Supreme Court case that he attaches. And with that I will ask the applicant if they would like to give their presentation.

Fitzgerald: Thank you, Mr. Chairman, Commissioners, I am Miranda Fitzgerald with Lowndes, Drosdick, Doster, Kantor & Reed law firm, representing Florida Land Trust #111.

Hooks: Give us your address please, ma'am.

Fitzgerald: 215 North Eola Drive, Orlando, Florida.

Hooks: Thank you.

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Fitzgerald: We are here in agreement with staff's position and we are going to be relying on the staff report as competent, substantial evidence in the record to ask for your recommendation for approval of this application. And I wanted to... I just want to make one thing clear, I'm not sure, I know you all are clear about this but based on the letter you just read, I think I need to clarify that this application that is before you tonight is completely different from the application for the PUD.

Hooks: Correct.

Fitzgerald: And apparently the person that wrote that letter didn't get that exactly. And the other thing that I wanted to just say really in response to some of the Chairman's comments, my view, very clearly is that once we pass the zoning stage in a land use process the discretion that this Board and that the City Council has is over on a conventional zoning, a straight zoning, when we get to the next step, when we get to site plan, when we get to subdivision, if we meet the minimum adopted standards that the City has said are appropriate under that zoning category we are entitled to have site plan approved or a plat approved. Whatever the application is as long as you meet the minimum adopted standards you are, as a matter of law, entitled to have your application approved. And there are a number of cases where plats have been denied or site plans have been denied even though the applicant has clearly come in met the minimum standards for those approvals and staff has said they meet the minimum standards and the elected officials or the appointed officials have said no you've got to go back to the drawing board, we don't like it, we're going to increase the lots, we're going to do something different. And in that circumstance the Court not only considers it that they consider it in the form of a petition that is called a writ of mandamus. That's different than the type of petition you would file to challenge a zoning application as an example. In that circumstance the courts have directed the local governments to approve those plans that meet the minimum standards. I just wanted to point that out because I disagree with the Chairman's comments that once we get past this stage that there might be another opportunity for the Council to add additional conditions or deal with compatibility issues. That in my point of view of having done this for a long, long time that is simply not the case. We're dealing... the zoning stage, where we are at tonight, is really the last opportunity to deal with compatibility issues. Once this zoning is approved and, as you heard from the staff and in the staff report, the R-1AAA is a compatible zoning district with what the City has done numerous times before and it will be deemed compatible with the surrounding areas if you chose to recommend approval and then the Board goes over... the Council goes ahead and approves it. So with that, Mr. Chairman, I would simply ask that you do recommend approval of the application before you and just might like to reserve a little bit of time for rebuttal. Thank you very much.

Hooks: Thank you. All right, we're open up for public hearing. Yeah. We'll open it up for public hearing. Anybody in the audience want to speak and I have some that we'll get to first. Mary Smothers?

Smothers: Mary Smothers, 1005 E. Sandpiper Street, and I will try to be brief. I do want to kind of pass out this little letter that I wrote to the Apopka Chief. It didn't get printed in the Apopka Chief, but Mr. Ballas did quote just about all of it. I appreciate that but I still want

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you to have a copy. I just recommend that you turn this zoning down simply because it is not compatible and consistent. In my view, and all the evidence that has been presented, I understand there is a difference of opinion here but that is what is being said. I totally recommend for future the RCE-1 which would be compatible and that's all I'm going to have to say because we have more expert witness to come I think. Thank you.

Hooks: Thank you. Bryan Nelson?

Nelson: Thank you, Chairman, thank you members, guys. You got it right the first two times and I hate that we have to come back here tonight to represent. When we talk about compatibility with surrounding properties all of the properties are either RCE-1 one per acre or the Oak Water Estates that would be on the south side of the property are half acre. There is nothing contiguous to the property that is less than half an acre. So I think this... Unfortunately, the City does not have, like we have in the County, R-1AAAA. If you had R-1AAAA I'd think we could all move on and we'd all be happy with that. Unfortunately we don't have that. I think... I thought that the PUD that was to be presented... I think we could tweak what was presented at the Council last time with a few tweaks we could come up with something that would be representative of our community as well as giving him something that is saleable for his project. So thank you so much.

Hooks: Thank you. Lou Haubner?

Haubner: I'm not exactly sure how many lots we can get out of this property. Do you have any idea at this point or does the developer have any idea at this point how many lots you're going to be able to ask for on the 16,000 square foot lots? I'm like Bryan I think that the RCE would be more compatible with the area. If you take the area around that and there's no lots that are less than a half an acre. Oak Water Estates, and I have a list here of Oak Water Estates, and its zoned R-1AAAA, the average lot size is 1.2 acres. The average house size is 2,680 square feet. In Wekiva Landing, the average lot size is 1.57. The average house size is 2,466 square feet. If you take the properties to the north of Sandpiper, leaving a couple out that are 15 acres which would bring the average up tremendously, the average would be 2.23 acres. Those are the properties that adjoin the subject property. Now when we send out a letter or Zoning sends out a letter they send it to folks, and its required, to everybody within 300 feet. That doesn't include north of Wekiva Springs Road. It doesn't mean north of Welch Road. It doesn't mean west of Ustler Road. It means 300 feet. These are the lots within 300 feet except for a few others that may exist in the southwest corner of Ustler and Sandpiper. I am a resident of this area. I would like to see them go to a half an acre but they said we can't do that. We can only go to either 16,000 square feet or one acre, that's our next alternative. One thing that wasn't mentioned and something that I think needs to be looked at is the depleted value of surrounding homes if this development were to go in with 1,800 square foot homes. As you saw from the other homes in the area probably the average in one area of over 2,400, one was 2,600. Some of the other things that we need to look at which weren't brought up is that the buffering yard requirements. Development in area... in the R-1AAA shall provide a minimum six foot high brick, stone, or decorative block finished wall adjacent to the external roadways erected inside a minimum ten foot landscape buffer yard. Can you picture this? Landscape material shall be placed adjacent to the right-of-way on the exterior of the buffer wall. The City may

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allow the developer the option to provide up to fifty percent of the buffer wall length in a six foot wrought iron fence between solid columns. Columns shall be a minimum of 32 feet offset, shall have stone, brick or decorative block finish. Where wrought iron is used additional landscape materials and irrigation may be required. This will be determined by the City on a case by case basis. So areas adjacent to agriculture districts or activities shall provide a minimum five foot buffer yard and a minimum of six foot high brick, stone, or decorative finished all unless acceptable alternatives are submitted. So there are a few other things that you might consider knowing what we know of the area and the country atmosphere in the area. I would highly recommend that we take a look at this closely and possibly look at approving an RCE zoning for an acre lot. I would rather see it go to an acre than down to 16,000 square foot based on the surrounding area and one thing that all of us need to consider, as Mr. Hooks said, the compatibility of the area. It's not compatible with the area. RCE is compatible with the area because now we're bringing it up to almost to what the average is that adjoins the property. Thank you.

Hooks: Thank you. Ellen O'Connor?

O'Connor: I'm going to pass.

Hooks: Okay. Jack Cooper?

Cooper: I'll be brief. Jack Cooper, 954 Oakpoint Circle, Apopka. I wasn't going to speak until I heard a few things. What they are applying for is actually worse than what they applied for before. You voted it down before and so did City Council and this is actually a worse density... a higher density than what they applied for before. I mean giving the information from Mr. Moon, to me it seems like it should be a minimum now of R-1AAA but a R-1AAA PUD. Why didn't they come in with this as a PUD with the same requirements that Council and you guys put and Council put on them before that they agreed to. And I will just say this, you know, if this was any place else in Apopka, if it was on the brick roads in the City of Apopka, if somebody went in a bought in a couple of blocks and tried to put in this density it wouldn't fly. It wouldn't apply for a second. So that's all I got to say. Let's just vote this down to send a message that we want to keep this area the way it is comparable and compatible. Thank you.

Hooks: Thank you. All right we're still in public hearing. Anybody else want to speak? All right. Do you anything to say? Go head. Okay. We'll close the public hearing. I'm going to bring it back to the Board for discussion but I want to read just two sections out of the Supreme Court decisions that Mr. Toledo provided with us regarding Snyder vs. Brevard County and it was... it essentially dealt with whether or not the County had the authority to tell a land owner, even though the land use compatible with the zoning request, they could do it. And this is the Supreme Court's decision: "Further, we cannot accept the proposition that once the landowner demonstrates that the proposed use is consistent with the comprehensive plan, he is presumptively entitled to this use unless the opposing governmental agency proves by clear and convincing evidence that specifically stated public necessity requires a more restricted use. We do not believe that a property owner is necessarily entitled to relief by proving consistency when the board action is also consistent with the plan. As noted in Lee County v. Sunbelt Equities II, Limited Partnership: Absent

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the assertion of some enforceable property right, an application for rezoning appeals at least in part to local officials' discretion to accept or reject the applicant's argument that change is desirable. The right of judicial review does not ipso facto ease the burden on a party seeking to overturn a decision made by a local government, and certainly does not confer any property-based right upon the owner where none previously existed.. . . Moreover, when it is the zoning classification that is challenged, the comprehensive plan is relevant only when the suggested use is inconsistent with that plan. Where any of several zoning classifications is consistent with the plan, the applicant seeking a change from one to the other is not entitled to judicial relief absent proof the status quo is no longer reasonable. It is not enough simply to be "consistent"; the proposed change cannot be inconsistent, and will be subject to the "strict scrutiny" of Machado to insure this does not happen." And this a point of information to rebut David said earlier, "While they may be useful," and this is talking about the Board of County Commissioners not the Planning Commission in Brevard County, "While they may be used, the board will not be required to make findings of fact. However, in order to sustain the board's action, upon review by certiorari in the circuit court it must be shown that there was competent substantial evidence presented to the board to support its ruling." And again, I still take issue that we're a quasijudicial board when it comes to items of zoning changes and the like, future land use changes, cause we are not the deciding board we are only an advisory board and in my opinion that doesn't apply to us. However, we've presented all the information that has been presented here tonight both in the packets and been presented by the public. Does the Board have any questions, concerns, or what is the recommendation of Board concerning this recommended zoning and if we understand what the attorney said that represents the applicant concerning once it leaves here tonight or City Council approves it then we lose total control over this then my recommendation is that we don't grant this change of zoning yet then. So what's the recommendation of the Board to City Council?

Walters: Chairman I recommend denial of the change in zoning from "County" PD (ZIP/Residential) to "City" R-1AAA (Residential) for the property owned by Florida Land Trust #111 – ZDA Sandpiper, LLC Trustee, Trustee, and the applicant obtaining a School Capacity Enhancement Agreement from OCPS.

Hooks: All right, there's a motion is there a second?

Toler: Second.

Hooks: Motion and a second. Any discussion? All in favor indicate by saying aye.

Walters: Aye.

Toler: Aye.

Hooks: Aye.

Birdsong: Aye.

Greene: Aye.

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Ryan: Aye.

Hooks: Any opposed? That motion carries unanimously.

OLD BUSINESS:

Planning Commission - None.

Public - None.

NEW BUSINESS:

Planning Commission: None.

Public - None.

ADJOURNMENT: The meeting was adjourned at 6:04 p.m.

/s/

Steve Hooks, Chairperson

/s/

R. Jay Davoll, P.E.
Community Development Director