



AGENDA

APOPKA CITY COUNCIL MEETING @ 7:00 PM City Hall Council Chamber 120 East Main Street – Apopka, Florida 32703 January 21, 2015

INVOCATION

Sr. Pastor Tim Ford - New Direction Church

PLEDGE OF ALLEGIANCE

If you wish to appear before the City Council, please submit a Notice of Intent to Speak card to the City Clerk.

PRESENTATIONS

1. Arbor Day Proclamation - Presented to Jean Jreij, Public Services Director
2. Ocoee Apopka Road Small Area Study - Presented by Littlejohn Engineering

CONSENT AGENDA

1. Award the consulting services contract for Professional Land Surveying and Mapping Services to Southeastern Surveying & Mapping Corp., for one year with the option to extend the contract for two additional one-year extensions.
2. Authorize the Mayor to execute the cost-share agreement, between the City of Apopka and the Saint Johns River Water Management District, for the Trailer Haven Lane septic tank removal project.
3. Authorize the Mayor or his designee to execute the Sewer and Water Capacity Agreement for Rock Springs Ridge, Phase VII-B (102 Lots).

SPECIAL REPORTS AND PUBLIC HEARINGS

ORDINANCES AND RESOLUTIONS

- 1. ORDINANCE NO. 2404 – FIRST READING – VACATE – Letha Ellen Moore – Vacating a portion of a drainage and utility easement located at 2549 Woodside Ridge Drive.

SITE APPROVALS

- 1. MINOR FINAL DEVELOPMENT PLAN AMENDMENT – APOPKA WOODS SUBDIVISION – Owned by Apopka Woods LLC, property located north of West McCormick Road and east of Irmalee Lane, for construction of a pre-cast decorative wall in lieu of the previously approved brick wall.

DEPARTMENT REPORTS AND BIDS

- 1. Administrative Report - Glenn Irby - City Administrator

MAYOR'S REPORT

- 1. Appointment of Finance Director

OLD BUSINESS

COUNCIL

- 1. RECONSIDERATION - 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)

PUBLIC

NEW BUSINESS

COUNCIL

PUBLIC

ADJOURNMENT

All interested parties may appear and be heard with respect to this agenda. Please be advised that, under state law, if you decide to appeal any decision made by the City Council with respect to any matter considered at this meeting or hearing, you will need a record of the proceedings, and that, for such purpose, you may need to ensure that a verbatim record of the proceedings is made, which record includes a testimony and evidence upon which the appeal is to be based. The City of Apopka does not provide a verbatim record.

In accordance with the American with Disabilities Act (ADA), persons with disabilities needing a special accommodation to participate in any of these proceedings should contact the City Clerk’s Office at 120 East Main Street, Apopka, FL 32703, telephone (407) 703-1704, no less than 48 hours prior to the proceeding.



CITY OF APOPKA CITY COUNCIL

- CONSENT AGENDA
- PUBLIC HEARING
- SPECIAL HEARING
- OTHER:

MEETING OF: January 21, 2015
 FROM: Public Services
 EXHIBITS:

SUBJECT: PROFESSIONAL LAND SURVEYING AND MAPPING SERVICES

Request: AWARD THE PROFESSIONAL LAND SURVEYING AND MAPPING SERVICES TO SOUTHEASTERN SURVEYING & MAPPING CORP.

SUMMARY:

On November 24, 2014, the City received qualifications, data, and expressions of interest for Professional Land Surveying and Mapping Services from the following firms.

1. Barnes, Ferland and Associates, Inc.
2. Booth, Ern, Strauhan, & Hiott, Inc.
3. Dyer, Riddle, Mills & Precourt, Inc.
4. Jones, Wood & Gentry, Inc.
5. Miller Legg
6. Omni Communications, LLC
7. Southeastern Surveying & Mapping Corp

Staff has evaluated the data and selected Southeastern Surveying & Mapping Corp. to provide the City with these services under a consulting services contract. The cost for the services will be negotiated on a project basis at the time of required service. The contract will be effective for one year and subject to renewal for two one-year extensions.

FUNDING SOURCE:

N/A

RECOMMENDATION ACTION:

Award the consulting services contract for Professional Land Surveying and Mapping Services to Southeastern Surveying & Mapping Corp., for one year with the option to extend the contract for two additional one-year extensions.

DISTRIBUTION:

Mayor Kilsheimer	Finance Director	Public Services Director
Commissioners	Human Resources Director	City Clerk
City Administrator	Information Technology Director	Fire Chief
City Development Director	Police Chief	



CITY OF APOPKA CITY COUNCIL

- CONSENT AGENDA
- PUBLIC HEARING
- SPECIAL HEARING
- OTHER:

MEETING OF: January 21, 2015
FROM: Public Services
EXHIBITS: Agreement, Map

SUBJECT: COST-SHARE AGREEMENT BY AND BETWEEN THE SAINT JOHNS RIVER WATER MANAGEMENT DISTRICT (SJRWMD) AND THE CITY FOR THE TRAILER HAVEN LANE SEPTIC TANK REMOVAL PROJECT.

Request: AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT WITH SJRWMD

SUMMARY:

Saint Johns River Water Management District (SJRWMD) will provide the city with cost-share in the amount of up to 75%, not to exceed, \$238,375.50, for the construction of a wastewater collection system along Trailer Haven Lane.

The project consists of replacing the wastewater collection systems for 20 single family lots from septic tanks to grinder pumps which will transmit the sewage to the City of Apopka wastewater collection system via an existing 4" diameter force main (FM) which is located along Trailer Haven Lane.

The cost estimate for the entire project is \$317,834.00. The funding assistance for this project is being cooperatively provided to the City from the St. Johns River Water Management District. The City's commitment to the funding of this project will be \$79,458.50.

FUNDING SOURCE:

Sewer Impact Fees and Operating Fund

RECOMMENDATION ACTION:

Authorize Mayor to execute the agreement with SJRWMD.

DISTRIBUTION:

Mayor Kilsheimer	Finance Director	Public Ser. Director
Commissioners (4)	Human Resources Director	City Clerk (4)
City Administrator	Information Technology Director	Fire Chief (1)
Community Development Director	Police Chief	

**COST-SHARE AGREEMENT
BY AND BETWEEN THE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND CITY OF APOPKA**

THIS AGREEMENT ("Agreement") is entered into by and between the GOVERNING BOARD of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT ("the District"), whose address is 4049 Reid Street, Palatka, Florida 32177, and CITY OF APOPKA ("Recipient"), 748 E. Cleveland Street, Apopka, Florida 32703. All references to the parties hereto include the parties, their officers, employees, agents, successors, and assigns.

RECITALS

The waters of the state of Florida are among its basic resources, and it has been declared to be the policy of the Legislature to promote the conservation, development, and proper utilization of surface and ground water. Pursuant to chapter 373, Fla. Stat., the District is responsible for the management of the water resources within its geographical area.

The District initiated a cost-sharing program in Fiscal Year 2013 for construction projects that involve water resource development, alternative water supply development, water conservation, or spring shed nutrient-loading reduction, and address one or more of the following District strategic initiatives: springs protection, North Florida Water Supply Partnership, Central Florida Water Initiative, or minimum flows and levels prevention and recovery.

The District has determined that providing cost-share funding to Recipient for the purposes provided for herein will benefit the water resources and one or more of the above-stated initiatives.

The parties have agreed to jointly fund the following project in accordance with the funding formula further described in the Statement of Work, Attachment B (hereafter "the Project"):

Trailer Haven Lane Septic Tank Removal

In consideration of the above recitals, and the funding assistance described below, Recipient agrees to perform and complete the activities provided for in the Statement of Work, Attachment B. Recipient shall complete the Project in conformity with the contract documents and all attachments and other items incorporated by reference herein. This Agreement consists of all of the following documents: (1) Agreement, (2) Attachment B- Statement of Work; and (3) all attachments, if any. The parties hereby agree to the following terms and conditions.

1. TERM; WITHDRAWAL OF OFFER

- (a) The term of this Agreement is from the date upon which the last party has dated and executed the same ("Effective Date") until September 30, 2015 ("Completion Date"). Recipient shall not commence the Project until any required submittals are received and approved. Recipient shall commence performance within fifteen (15) days after the Effective Date and shall complete performance in accordance with the time for completion stated in the Statement of Work. Time is of the essence for every aspect of this Agreement, including any time extensions. Notwithstanding specific mention that certain provisions survive termination or expiration of this Agreement, all provisions of this Agreement that by their nature extend beyond the Completion Date survive termination or expiration hereof.

- (b) This Agreement constitutes an offer until authorized, signed and returned to the District by Recipient. This offer terminates forty-five (45) days after receipt by Recipient; provided, however, that Recipient may submit a written request for extension of this time limit to the District's Project Manager, stating the reason(s) therefor. The Project Manager shall notify Recipient in writing if an extension is granted or denied. If granted, this Agreement shall be deemed modified accordingly without any further action by the parties.
 - (c) If the construction, which is eligible for District reimbursement, does not begin before September 30, 2015, the cost-share agreement will be subject to termination and the funds subject to reallocation.
2. **DELIVERABLES.** Recipient shall fully implement the Project, as described in the Statement of Work, Attachment B. Recipient is responsible for the professional quality, technical accuracy, and timely completion of the Project. Both workmanship and materials shall be of good quality. Unless otherwise specifically provided for herein, Recipient shall provide and pay for all materials, labor, and other facilities and equipment necessary to complete the Project. The District's Project Manager shall make a final acceptance inspection of the Project when completed and finished in all respects. Upon satisfactory completion of the Project, the District will provide Recipient a written statement indicating that the Project has been completed in accordance with this Agreement. Acceptance of the final payment by Recipient shall constitute a release in full of all claims against the District arising from or by reason of this Agreement.
3. **OWNERSHIP OF DELIVERABLES.** Unless otherwise provided herein, the District does not assert an ownership interest in any of the deliverables under this Agreement.
4. **AMOUNT OF FUNDING.**
- (a) For satisfactory completion of the Project, the District shall pay Recipient seventy-five percent (75%) of the total estimated construction cost of \$317,834.00 for the Project, but in no event shall the District cost-share exceed \$238,375.50. The District cost-share is not subject to modification based upon price escalation in implementing the Project during the term of this Agreement. Recipient shall be responsible for payment of all costs necessary to ensure completion of the Project. Recipient shall notify the District's Project Manager in writing upon receipt of any additional external funding for the Project not disclosed prior to execution of this Agreement.
 - (b) "Construction cost" is defined to include actual costs of constructing Project facilities, including construction management and other capital costs, excluding annual costs. Land acquisition, engineering design, and permitting costs are excluded. Construction cost does not include any costs incurred prior to the Effective Date, unless expressly authorized by the Statement of Work. Costs that are excluded will not be credited toward Recipient's cost-share.
 - (c) Cooperative funding shall not be provided for expenses incurred after the Completion Date.
5. **PAYMENT OF INVOICES**
- (a) Recipient shall submit itemized invoices upon Task completion as per Attachment B for reimbursable expenses by one of the following two methods: (1) by mail to the St. Johns River Water Management District, Finance Director, 4049 Reid Street, Palatka, Florida 32177, or (2) by e-mail to acctpay@sjrwmd.com. The invoices shall be submitted in detail

sufficient for proper pre-audit and post-audit review. Invoices shall include a copy of contractor and supplier invoices to Recipient and proof of payment. Recipient shall be reimbursed for approved expenses in accordance with the Cost Schedule for Reimbursement in Section VI of Attachment B for each invoice submitted until the not-to-exceed amount of the District's cost-share has been expended. The District shall not withhold any retainage from this reimbursement. District reimbursement is subject to annual budgetary limitation, if applicable, as provided in subsection (g). If necessary for audit purposes, Recipient shall provide additional supporting information as required to document invoices.

- (b) **End of District Fiscal Year Reporting.** The District's fiscal year ends on September 30. Irrespective of the invoicing frequency, the District is required to account for all encumbered funds at that time. When authorized under the Agreement, submittal of an invoice as of September 30 satisfies this requirement. The invoice shall be submitted no later than October 30. If the Agreement does not authorize submittal of an invoice as of September 30, Recipient shall submit, prior to October 30, a description of the additional work on the Project completed between the last invoice and September 30, and an estimate of the additional amount due as of September 30 for such Work. If there have been no prior invoices, Recipient shall submit a description of the work completed on the Project through September 30 and a statement estimating the dollar value of that work as of September 30.
- (c) **Final Invoice.** The final invoice must be submitted no later than forty-five (45) days after the Completion Date; provided, however, that when the Completion Date corresponds with the end of the District's fiscal year (September 30), the final invoice must be submitted no later than thirty (30) days after the Completion Date. **Final invoices that are submitted after the requisite date shall be subject to a penalty of ten percent (10%) of the invoice. This penalty may be waived by the District, in its sole judgment and discretion, upon a showing of special circumstances that prevent the timely submittal of the final invoice. Recipient must request approval for delayed submittal of the final invoice not later than ten (10) days prior to the due date and state the basis for the delay.**
- (d) All invoices shall include the following information: (1) District contract number; (2) District encumbrance number; (3) Recipient's name and address (include remit address, if necessary); (4) Recipient's invoice number and date of invoice; (5) District Project Manager; (6) Recipient's Project Manager; (7) supporting documentation as to cost and/or Project completion (as per the cost schedule and other requirements of the Statement of Work); in addition, see Attachment A, "CONTRACT PAYMENT REQUIREMENTS FOR STATE-FUNDED COST REIMBURSEMENT CONTRACTS;" (8) Progress Report (if required); (9) Diversity Report (if otherwise required herein). Invoices that do not correspond with this paragraph shall be returned without action within twenty (20) business days of receipt, stating the basis for rejection. Payments shall be made within forty-five (45) days of receipt of an approved invoice.
- (e) **Travel expenses.** If the cost schedule for this Agreement includes a line item for travel expenses, travel expenses shall be drawn from the project budget and are not otherwise compensable. If travel expenses are not included in the cost schedule, they are a cost of providing the service that is borne by Recipient and are only compensable when specifically approved by the District as an authorized District traveler. In such instance, travel expenses must be submitted on District or State of Florida travel forms and shall be paid pursuant to District Administrative Directive 2000-02.
- (f) **Payments withheld.** The District may withhold or, on account of subsequently discovered evidence, nullify, in whole or in part, any payment to such an extent as may be necessary to

protect the District from loss as a result of: (1) defective work not remedied; (2) failure to maintain adequate progress in the Project; (3) any other material breach of this Agreement. Amounts withheld shall not be considered due and shall not be paid until the ground(s) for withholding payment have been remedied.

- (g) **Annual budgetary limitation.** For multi-fiscal year agreements, the District must budget the amount of funds that will be expended during each fiscal year as accurately as possible. The Statement of Work, Attachment B, includes the parties' current schedule for completion of the Work and projection of expenditures on a fiscal year basis (October 1 – September 30) ("Annual Spending Plan"). If Recipient anticipates that expenditures will exceed the budgeted amount during any fiscal year, Recipient shall promptly notify the District's Project Manager and provide a proposed revised work schedule and Annual Spending Plan that provides for completion of the Work without increasing the Total Compensation. The last date for the District to receive this request is August 1 of the then-current fiscal year. The District may in its sole discretion prepare a District Supplemental Instruction Form incorporating the revised work schedule and Annual Spending Plan during the then-current fiscal year or subsequent fiscal year(s).

6. **LIABILITY AND INSURANCE.** Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party, its officers, employees and agents. Recipient accepts all risks arising from construction or operation of the Project. Nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available under the laws of the state of Florida, nor as a waiver of sovereign immunity of the state of Florida beyond the waiver provided for in section 768.28, Fla. Stat., as amended. Each party shall acquire and maintain throughout the term of this Agreement such liability, workers' compensation, and automobile insurance as required by their current rules and regulations.

7. **FUNDING CONTINGENCY.** This Agreement is at all times contingent upon funding availability, which may include a single source or multiple sources, including, but not limited to: (1) ad valorem tax revenues appropriated by the District's Governing Board; (2) annual appropriations by the Florida Legislature, or (3) appropriations from other agencies or funding sources. Agreements that extend for a period of more than one Fiscal Year are subject to annual appropriation of funds in the sole discretion and judgment of the District's Governing Board for each succeeding Fiscal Year. Should the Project not be funded, in whole or in part, in the current Fiscal Year or succeeding Fiscal Years, the District shall so notify Recipient and this Agreement shall be deemed terminated for convenience five (5) days after receipt of such notice, or within such additional time as the District may allow. For the purpose of this Agreement, "Fiscal Year" is defined as the period beginning on October 1 and ending on September 30.

8. **PROJECT MANAGEMENT**

- (a) The Project Managers listed below shall be responsible for overall coordination and management of the Project. Either party may change its Project Manager upon three (3) business days prior written notice to the other party. Written notice of change of address shall be provided within five (5) business days. All notices shall be in writing to the Project Managers at the addresses below and shall be sent by one of the following methods: (1) hand delivery; (2) U.S. certified mail; (3) national overnight courier; (4) e-mail or, (5) fax. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier are deemed delivered one (1) business day after having been deposited with the courier. Notices via e-mail or fax are deemed delivered on the date transmitted and received.

DISTRICT

Carl R. Larrabee, Jr., P.E., Project Manager
St. Johns River Water Management District
525 Community College Parkway, S.E.
Palm Bay, FL 32909
386-329-4222
E-mail: clarrabe@sjrwmd.com

RECIPIENT

John Jreij, P.E., Project Manager
City of Apopka
748 E. Cleveland Street
Apopka, FL 32703
407-703-1731
E-mail: Jjreij@apopka.net

- (b) The District's Project Manager shall have sole responsibility for transmitting instructions, receiving information, and communicating District policies and decisions regarding all matters pertinent to performance of the Project. The District's Project Manager may issue a District Supplemental Instruction (DSI) form, Attachment D, to authorize minor changes in the Project that the parties agree are not inconsistent with the purpose of the Project, do not affect the District cost-share or Completion Date, or otherwise significantly modify the terms of the Agreement.

9. **PROGRESS REPORTS AND PERFORMANCE MONITORING**

- (a) **Progress Reports.** Recipient shall provide to the District quarterly Project update/status reports as provided in the Statement of Work. Reports will provide detail on progress of the Project and outline any potential issues affecting completion or the overall schedule. Recipient shall use the District's Project Progress Report form, Attachment C. Recipient shall submit the Project Progress Reports to the District's Project Manager and District's Senior Management Analyst within thirty (30) days after the closing date of each calendar quarter (March 31, June 30, September 30 and December 31).
- (b) **Performance Monitoring.** For as long as the Project is operational, the District shall have the right to inspect the operation of the Project during normal business hours upon reasonable prior notice. Recipient shall make available to the District any data that is requested pertaining to performance of the Project.

10. **FAILURE TO COMPLETE PROJECT.**

- (a) Should Recipient fail to complete the Project, Recipient shall refund to the District all of the funds provided to Recipient pursuant to this Agreement. However, the District, in its sole judgment and discretion, may determine that Recipient has failed to complete the Project due to circumstances that are beyond Recipient's control, or due to a good faith determination that the Project is no longer environmentally or economically feasible. In such event, the District may excuse Recipient from the obligation to return funds provided hereunder. If the Project has not been completed within thirty (30) days after the Completion Date, Recipient shall provide the District with notice regarding its intention as to completion of the Project. The parties shall discuss the status of the Project and may mutually agree to revise the Completion Date or the scope of the Project. Failure to complete the Project within ninety (90) days after the Completion Date shall be deemed to constitute failure to complete the Project for the purposes of this provision.
- (b) In the event the Project constitutes a portion of the total functional project, this paragraph shall apply in the event the total functional project is not completed. In such event, the 90-day timeframe provided herein shall commence upon the date scheduled for completion of the total functional project at the time of execution of this Agreement, unless extended by mutual agreement of the parties.

(c) This paragraph shall survive the termination or expiration of this Agreement.

11. **TERMINATION.** If Recipient materially fails to fulfill its obligations under this Agreement, including any specific milestones established herein, the District shall provide Recipient written notice of the deficiency by forwarding a Notice to Cure, citing the specific nature of the breach. Recipient shall have thirty (30) days to cure the breach. If Recipient fails to cure the breach within the thirty (30) day period, the District shall issue a Termination for Default Notice and this Agreement shall be terminated upon receipt of said notice. In such event, Recipient shall refund to the District all funds provided to Recipient pursuant to this Agreement within thirty (30) days of such termination. The District may also terminate this Agreement upon ten (10) days written notice in the event any of material misrepresentations in the Project Proposal.

ADDITIONAL PROVISIONS (Alphabetical)

12. **ASSIGNMENT.** Recipient shall not assign this Agreement, or any monies due hereunder, without the District's prior written consent. Recipient is solely responsible for fulfilling all work elements in any contracts awarded by Recipient and payment of all monies due. No provision of this Agreement shall create a contractual relationship between the District and any of Recipient's contractors or subcontractors.
13. **AUDIT; ACCESS TO RECORDS; REPAYMENT OF FUNDS.**
- (a) **Maintenance of Records.** Recipient shall maintain its books and records such that receipt and expenditure of the funds provided hereunder are shown separately from other expenditures in a format that can be easily reviewed. Recipient shall keep the records of receipts and expenditures, copies of all reports submitted to the District, and copies of all invoices and supporting documentation for at least five (5) years after expiration of this Agreement. In accordance with generally accepted governmental auditing standards, the District shall have access to and the right to examine any directly pertinent books and other records involving transactions related to this Agreement. In the event of an audit, Recipient shall maintain all required records until the audit is completed and all questions are resolved. Recipient will provide proper facilities for access to and inspection of all required records.
- (b) **Repayment of Funds.** District funding shall be subject to repayment after expiration of this Agreement if, upon audit examination, the District finds any of the following: (1) Recipient has spent funds for purposes other than as provided for herein; (2) Recipient has failed to perform a continuing obligation of this Agreement; (3) Recipient has received duplicate funds from the District for the same purpose; (4) Recipient has been advanced or paid unobligated funds; (5) Recipient has been paid funds in excess of the amount Recipient is entitled to receive under the Agreement; and/or (6) Recipient has received more than one hundred percent (100%) contributions through cumulative public agency cost-share funding.
14. **CIVIL RIGHTS.** Pursuant to chapter 760, Fla. Stat., Recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, age, handicap, or marital status.
15. **DISPUTE RESOLUTION.** Recipient is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute involving performance of this Agreement by submitting a written statement to the District's Project Manager no later than ten (10) business days after the precipitating event. If not resolved by the Project Manager, the Project Manager shall forward the request to the District's Office of General Counsel, which shall issue a written decision within ten (10) business

days of receipt. This determination shall constitute final action of the District and shall then be subject to judicial review upon completion of the Project.

16. **DIVERSITY REPORTING.** The District is committed to the opportunity for diversity in the performance of all cost-sharing agreements, and encourages Recipient to make a good faith effort to ensure that women and minority-owned business enterprises (W/MBE) are given the opportunity for maximum participation as contractors. The District will assist Recipient by sharing information on W/MBEs. Recipient shall provide with each invoice a report describing: (1) the company names for all W/MBEs; (2) the type of minority, and (3) the amounts spent with each during the invoicing period. The report will also denote if there were no W/MBE expenditures.
17. **FLORIDA SINGLE AUDIT ACT**
- (a) **Applicability.** The Florida Single Audit Act (FSAA), section 215.97, Fla. Stat., applies to all sub-recipients of state financial assistance, as defined in section 215.97(1)(q), Fla. Stat., awarded by the District through a project or program that is funded, in whole or in part, through state financial assistance to the District. In the event Recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such Recipient, Recipient must have a state single or project-specific audit for such fiscal year in accordance with section 215.97, Fla. Stat.; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, Recipient shall consider all sources of state financial assistance, including state financial assistance received from the District, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements. Recipient is solely responsible for complying with the FSAA.
- If Recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of section 215.97, Fla. Stat., is not required. In such event, should Recipient elect to have an audit conducted in accordance with section 215.97, Fla. Stat., the cost of the audit must be paid from the non-state entity's resources (i.e., Recipient's resources obtained from other than State entities).
- (b) **Program Information** This Agreement involves the disbursement of state funding by the FDEP in the amount of \$119,187.75. Funding is provided under Florida Catalog of Financial Assistance (CSFA) number 37.052 – Florida Springs Grant Program for \$72,000.00 and CSFA No. 37.039 – Statewide Surface Water Restoration and Wastewater Projects for \$47,187.75. The District is providing funding in the amount of of \$119,187.75.
- (c) **Additional Information.** For information regarding the state program under the above CSFA number, Recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa/catalog.aspx> for assistance. The following websites may be accessed for additional information: Legislature's Website at <http://www.leg.state.fl.us/>, State of Florida's website at <http://myflorida.com>, District of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.
- (d) **Allowable Costs.** Recipient may only charge allowable costs to this Agreement, as otherwise provided herein. Any balance of unobligated cash that have been advanced or paid

that is not authorized to be retained for direct program costs in a subsequent period must be returned to the District.

- (e) **Audit Requirements.** Recipient shall ensure that the audit complies with the requirements of section 215.97(7), Fla. Stat. This includes submission of a financial reporting package as defined by section 215.97(2), Fla. Stat., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Recipient shall comply with the program requirements described in the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/catalog.aspx>]. The services/purposes for which the funds are to be used are included in the Statement of Work.
 - (f) **Financial Reporting.** Recipient shall provide the District with a copy of any reports, management letters, or other information required to be submitted in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable, no more than twenty (20) days after its preparation. Recipient shall indicate the date the reporting package was delivered to Recipient in correspondence accompanying the reporting package. This information shall be directed to: St. Johns River Water Management District, Mr. Greg Rockwell, Finance Director, Office of Financial Services, 4049 Reid Street, Palatka, FL 32177. A copy of the report shall also be provided to the Auditor General's Office at the following address: State of Florida Auditor General, Room 401, Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.
 - (g) **Monitoring.** In addition to reviews of audits conducted in accordance with section 215.97, Fla. Stat., as revised, monitoring procedures may include, but not be limited to, on-site visits by District staff, limited scope audits, and/or other procedures. Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the District. In the event the District determines that a limited scope audit of Recipient is appropriate, Recipient agrees to comply with any additional instructions provided by the District to Recipient regarding such audit. Recipient agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the District's Inspector General or the state Chief Financial Officer or Auditor General.
 - (h) **Examination of Records.** In addition to the District's audit rights otherwise provided for herein, Recipient shall permit the District or its designated agent, the state awarding agency, the Department of Financial Services, the state's Chief Financial Officer and the state's Auditor General to examine Recipient's financial and non-financial records to the extent necessary to monitor Recipient's use of state financial assistance and to determine whether timely and appropriate corrective actions have been taken with respect to audit findings and recommendations, which may include onsite visits and limited scope audits.
 - (i) **Records Retention.** Notwithstanding any other provision of this Agreement to the contrary, Recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five (5) years from the date the audit report is issued, and shall allow the District, or its designee, state Chief Financial Officer, or Auditor General access to such records upon request. Recipient shall ensure that audit working papers are made available for such access for a period of three years from the date the audit report is issued, unless extended in writing by the District.
18. **GOVERNING LAW, VENUE, ATTORNEY'S FEES, WAIVER OF RIGHT TO JURY TRIAL.** This Agreement shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. As used herein, "shall" is always mandatory. In the event of any legal proceedings

arising from or related to this Agreement: (1) venue for any state or federal legal proceedings shall be in Orange County; (2) each party shall bear its own attorney's fees, including appeals; (3) for civil proceedings, the parties hereby consent to trial by the court and waive the right to jury trial.

19. **INDEPENDENT CONTRACTORS.** The parties to this Agreement, their employees and agents, are independent contractors and not employees or agents of each other. Nothing in this Agreement shall be interpreted to establish any relationship other than that of independent contractors during and after the term of this Agreement. Recipient is not a contractor of the District. The District is providing cost-share funding as a cooperating governmental entity to assist Recipient in accomplishing the Project. Recipient is solely responsible for accomplishing the Project and directs the means and methods by which the Project is accomplished. Recipient is solely responsible for compliance with all labor and tax laws pertaining to Recipient, its officers, agents, and employees.
20. **INTEREST OF RECIPIENT.** Recipient certifies that no officer, agent, or employee of the District has any material interest, as defined in chapter 112, Fla. Stat., either directly or indirectly, in the business of Recipient to be conducted hereby, and that no such person shall have any such interest at any time during the term of this Agreement.
21. **NON-LOBBYING.** Pursuant to section 216.347, Fla. Stat., as amended, Recipient agrees that funds received from the District under this Agreement shall not be used for the purpose of lobbying the Legislature or any other state agency.
22. **PERMITS.** Recipient shall comply with all applicable federal, state and local laws and regulations in implementing the Project and shall include this requirement in all subcontracts pertaining to the Project. Recipient shall obtain any and all governmental permits necessary to implement the Project. Any activity not properly permitted prior to implementation or completed without proper permits does not comply with this Agreement and shall not be approved for cost-share funding.
23. **PUBLIC ENTITY CRIME.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.
24. **PUBLIC RECORDS.** Records of Recipient that are made or received in the course of performance of the Project may be public records that are subject to the requirements of chapter 119, Fla. Stat. If Recipient receives a public records request, Recipient shall promptly notify the District's Project Manager. Each party reserves the right to cancel this Agreement for refusal by the other party to allow public access to all documents, papers, letters, or other material related hereto and subject to the provisions of chapter 119, Fla. Stat., as amended.
25. **ROYALTIES AND PATENTS.** Recipient certifies that the Project does not, to the best of its information and belief, infringe on any patent rights. Recipient shall pay all royalties and patent and license fees necessary for performance of the Project and shall defend all suits or claims for infringement of any patent rights and save and hold the District harmless from loss to the extent allowed by Florida law.

IN WITNESS WHEREOF, the St. Johns River Water Management District has caused this Agreement to be executed on the day and year written below in its name by its Executive Director, and Recipient has caused this Agreement to be executed on the day and year written below in its name by its duly authorized representatives, and, if appropriate, has caused the seal of the corporation to be attached. This Agreement may be executed in separate counterparts, which shall not affect its validity. Upon execution, this Agreement constitutes the entire agreement of the parties, notwithstanding any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. This Agreement cannot be changed by any means other than written amendments referencing this Agreement and signed by all parties.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

CITY OF APOPKA

By: _____
Hans G. Tanzler III, Executive Director
or Designee

By: _____

Typed Name and Title

Date: _____

Date: _____

Approved as to Form and Legality

Attest: _____

William Abrams, Sr. Assistant General Counsel

Typed Name and Title

ATTACHMENTS

- Attachment A- Contract Payment Requirements for State-Funded Cost Reimbursement Contracts
- Attachment B - Statement of Work
- Attachment C – Progress Report Form
- Attachment D – District Supplemental Instruction Form

Cost-share: 2015 Initiative
Last updated: 10-29-14

ATTACHMENT A

**CONTRACT PAYMENT REQUIREMENTS FOR
STATE-FUNDED COST REIMBURSEMENT CONTRACTS**

Invoices for state-funded cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation must be provided for each amount for which reimbursement is being claimed, indicating that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation shall clearly reflect the dates of service. Only expenditures for categories in the approved contract budget will be reimbursed.

Listed below are examples of the types of documentation representing the minimum requirements by cost category:

Salaries: Submit a payroll register or similar documentation showing gross salary charges, fringe benefits, other deductions, and net pay. If an individual is paid by the hour, a document reflecting the hours worked times the rate of pay is acceptable.

Fringe Benefits: Fringe benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage, rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

Travel: Reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved State of Florida (State) or District travel voucher.

Other direct costs: Reimbursement is based upon paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in section 273.02, Florida Statutes, for subsequent transfer to the State.

In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.

Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

The "Reference Guide for State Expenditures" prepared by the Florida Department of Financial Services can be found at this web address: http://www.fldfs.com/aadir/reference_guide.htm

**ATTACHMENT B - STATEMENT OF WORK
CITY OF AOPKA
TRAILER HAVEN LANE SEPTIC TANK REMOVAL**

I. INTRODUCTION/BACKGROUND

The St. Johns River Water Management District (District) is continuing its Cooperative Cost Share Initiative Program in FY2015 to develop and implement resource and water supply development projects and promote conservation. Each project selected for funding will have a positive benefit to Minimum Flows and Levels (MFLs), water quantity, water quality, and/or natural systems and supports the District's Strategic Initiatives. The City of Apopka (Recipient) has requested and been selected as a participant in this cost share program.

On October 14, 2014 the District's Governing Board approved funding for the Recipient's Trailer Haven Lane Septic Tank Removal. This District's will provide funding in the amount of \$119,187.75 towards the estimated capital cost of \$317,834.00. An additional \$119,187.75 in funding will come from the Florida Department of Environmental Protection through the District.

II. OBJECTIVES

The objective of this contract is to provide cost share dollars that will enable the Recipient to construct individual grinder pump stations for 20 single-family homes along Trailer Haven Lane currently served by septic tank systems. Each pump station will connect to a force main sending the sewage to a wastewater treatment plant. These homes are on property adjacent to the Wekiva Springs State Park. The quantity of nitrogen removal from the springs is 600 pounds per year.

III. SCOPE OF WORK

Recipient is designing, permitting, and constructing 20 individual grinder pump stations with control panels and force main connections to a force main fronting the properties. On site septic tanks will be abandoned and lines from the homes tied into the pump stations. Work will be accomplished with City and outside contractor forces.

The Recipient shall ensure the responsibilities in the Project Administration section of the Statement of Work are completed.

IV. PROJECT ADMINISTRATION

The Recipient shall be responsible for performing the following:

- Complete and obtain final project design, construction plans, and specifications;
- Provide a copy of Recipient's executed construction contract documents to the District's Project Manager;
- Provide a copy of any subsequent change orders to the contract to the District's Project Manager;
- Obtain all required permits, including right of access to the project sites related to project construction and subsequent operation and maintenance of the completed work;
- Assure compliance with all permits and permit conditions;
- Provide procurement for project construction;
- Perform supervision and inspection of construction;
- Perform construction contract administration;

- Submit timely invoices for actual construction costs in accordance with this cost share agreement to enable proper review by the District’s Project Manager prior to payment authorization;
- Provide Project Progress Reports, Attachment C, quarterly to the District’s Project Manager and the District’s Senior Management Analyst, Email address mlicourt@sjrwmd.com. Information shall include project progress to date, key milestones reached, overall project schedule versus time for project completion, key issues to be resolved, projected costs versus actual cost to date, and other required information. If no work has been done within the quarter, Recipient must submit the quarterly progress report indicating “no progress to report.”
- Provide certification of partial or completed construction for each reimbursement request by a Professional Engineer registered in the state of Florida; and
- Assure compliance with cost accounting practices and procedures required for reimbursement of cost share funds expended.

V. TIME FRAMES AND DELIVERABLES

The expiration date of this cost-share agreement is September 30, 2015. The projected schedule for the Project construction is as follows:

Anticipated Construction Start Date: February 2015
 Anticipated Construction Completion Date: September 30, 2015

VI. BUDGET/COST SCHEDULES

For satisfactory completion of the Project, the District shall pay Recipient approximately seventy-five percent (75%) of the actual capital cost of the Project, estimated at \$317,834.00, but in no event shall the District’s cost-share exceed \$238,375.50. Recipient shall invoice the District upon Task completion in accordance with the table below. The invoices shall include a copy of the contractor’s invoices submitted to the Recipient, proof of payment by Recipient, and other required supporting documentation. If the total construction cost of this project is less than originally estimated, the District’s cost-share amount shall be reduced proportionally.

Cost Schedule for Reimbursement

Estimated capital cost is \$317,834.00; District’s 75% is \$238,375.50.

Task #	Task Description	District’s Percent of Reimbursement of \$238,375.50	District’s Reimbursement Amount at Completion of Task
1	Labor, Material, Equipment & Restoration for the conversion of 8 SFR from septic tanks to grinder pumps	40%	\$95,350.24
2	Labor, Material, Equipment & Restoration for the conversion of 7 SFR from septic tanks to grinder pumps	35%	\$83,431.46
3	Labor, Material, Equipment & Restoration for the conversion of 5 SFR from septic tanks to grinder pumps	25%	\$59,593.80

ATTACHMENT C

**St. Johns River Water Management District
Project Progress Report**

Date: _____
month/day/year

Report Number: _____

Contract/Project Identification

Project Name:	Trailer Haven Lane Septic Tank Removal		
Recipient:	City of Apopka		
SJRWMD Contract Number:	28147	SJRWMD Project Manager:	Carl R. Larrabee, Jr., P.E.
		Recipient's Project Manager:	John Jreij, P.E.

Construction Schedule

Start Date (mm/dd/yy):	
Completion (mm/dd/yy):	

Reporting Period

Beginning Date (mm/dd/yy):	
Ending Date (mm/dd/yy):	

Budget

Total Budget:	\$
Expended To-date:	\$
Expended This Period:	\$
Percent Budget Expended:	%

Duration

Planned Duration:		Weeks
Duration To-date:		Weeks
Duration This Period:		Weeks
Percent Duration Expended:		%

Anticipated Future Payment Requests:

3 Months	6 Months	9 Months	12 Months

Tasks/Milestones/Deliverables Scheduled for this Reporting Period or Within the Next 60 days:

Task Number	Tasks/Milestones/Deliverables	Start Date	Finish Date	Percent Complete	Projected Finish Date

Problems, Issues, Solutions, Anticipated deviations from schedule:

ATTACHMENT D — DISTRICT'S SUPPLEMENTAL INSTRUCTIONS (sample)
DISTRICT SUPPLEMENTAL INSTRUCTIONS #

DATE:

TO:

FROM: _____, Project Manager

CONTRACT/PURCHASE ORDER NUMBER:

CONTRACT TITLE:

The Work shall be carried out in accordance with the following supplemental instruction issued in accordance with the Contract Documents without change in the Contract Sum or Contract Time. Prior to proceeding in accordance with these instructions, indicate your acceptance of these instructions for minor changes to the work as consistent with the Contract Documents and return to the District's Project Manager.

1. CONTRACTOR'S SUPPLEMENTAL INSTRUCTIONS:
2. DESCRIPTION OF WORK TO BE CHANGED:
3. DESCRIPTION OF SUPPLEMENTAL INSTRUCTION REQUIREMENTS: _____

Contractor's approval: (choose one of the items below):

Approved: _____ Date: _____

(It is agreed that these instructions shall not result in a change in the Total Compensation or the Completion Date.)

Approved: _____ Date: _____

(Contractor agrees to implement the Supplemental Instructions as requested, but reserves the right to seek a Change Order in accordance with the requirements of the Agreement.)

Approved: _____ Date: _____
_____, District Project Manager

Acknowledged: _____ Date: _____
_____, District Contracts Administrator

cc: Contract/Purchasing file
Financial Management

A
N

ROCK SPRINGS ROAD





CITY OF APOPKA CITY COUNCIL

CONSENT AGENDA
 PUBLIC HEARING
 SPECIAL REPORTS
 OTHER:

MEETING OF: January 21, 2015
FROM: Community Development
EXHIBITS: Vicinity Map
Agreement

SUBJECT: ROCK SPRINGS RIDGE, PHASE VII-B (102 LOTS)

Request: AUTHORIZE THE MAYOR OR HIS DESIGNEE TO EXECUTE THE SEWER AND WATER CAPACITY AGREEMENT.

SUMMARY:

The City's standard Sewer and Water Capacity Agreement has been prepared for Rock Springs Ridge, Phase VII-B, located west of Rock Springs Road and south of Kelly Park Road.

FUNDING SOURCE:

Not applicable

RECOMMENDATION ACTION:

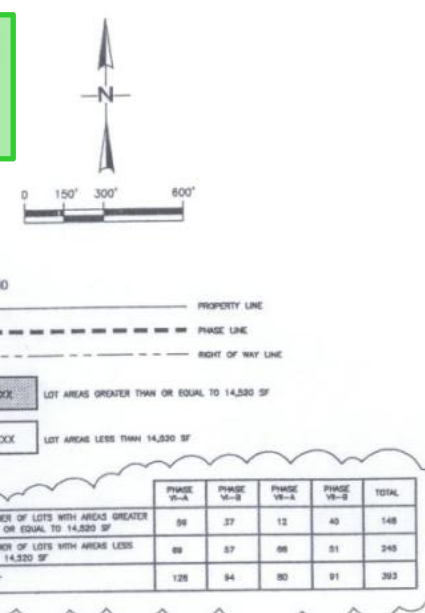
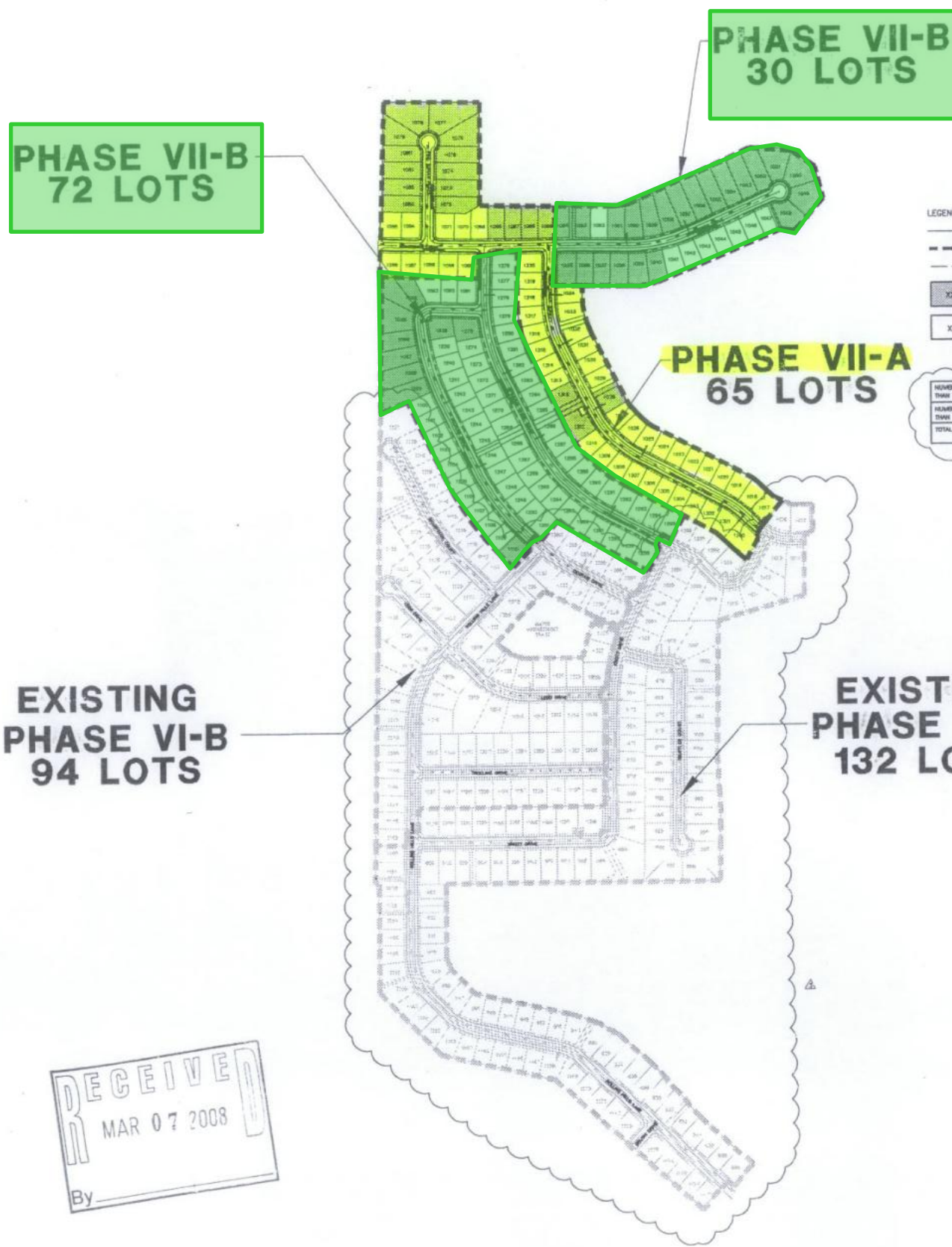
Authorize the Mayor or his designee to execute the Sewer and Water Capacity Agreement for Rock Springs Ridge, Phase VII-B.

DISTRIBUTION

Mayor Kilsheimer
Commissioners (4)
City Administrator Irby
Community Dev. Dir.

Finance Dir.
HR Director
IT Director
Police Chief

Public Ser. Director
City Clerk
Fire Chief



LEGEND

- PROPERTY LINE
- PHASE LINE
- RIGHT OF WAY LINE
- XXX LOT AREAS GREATER THAN OR EQUAL TO 14,520 SF
- XXX LOT AREAS LESS THAN 14,520 SF

	PHASE VI-A	PHASE VI-B	PHASE VII-A	PHASE VII-B	TOTAL
NUMBER OF LOTS WITH AREAS GREATER THAN OR EQUAL TO 14,520 SF	86	37	12	40	148
NUMBER OF LOTS WITH AREAS LESS THAN 14,520 SF	86	57	88	51	248
TOTAL	128	94	90	91	303

PROJECT DATA:

A. PROJECT SIZE:	1,141.33 AC.
B. GOLF COURSE:	300.70 AC.
C. ZONING:	PD
D. USE:	SMALL FAMILY RESIDENTIAL SUBDIVISION
E. PD DENSITY:	1.0 DU/ACRE
F. UNITS:	PHASE I (EXISTING) = 177 PHASE II (EXISTING) = 171 PHASE III (EXISTING) = 107 PHASE IV-A (EXISTING) = 142 PHASE IV-B (EXISTING) = 188 PHASE V-A (UNDER CONSTRUCTION) = 163 PHASE V-B (UNDER CONSTRUCTION) = 163 PHASE V-C (UNDER CONSTRUCTION) = 163 PHASE VI-A & VI-B (PROPOSED) = 303 TOTAL = 1,395

MINIMUM LOT SIZE, WIDTH, & DEPTH:

PHASE I (EXISTING)	= 15,300 SF; MIN. WIDTH = 85 FT & MIN. DEPTH = 100'
PHASE II (EXISTING)	= 14,520 SF; MIN. WIDTH = 85 FT & MIN. DEPTH = 110'
PHASE III (EXISTING)	= 12,750 SF; MIN. WIDTH = 85 FT & MIN. DEPTH = 150'
PHASE IV-A (EXISTING)	= 10,200 SF; MIN. WIDTH = 85 FT & MIN. DEPTH = 120'
PHASE IV-B (EXISTING)	= 10,200 SF; MIN. WIDTH = 85 FT & MIN. DEPTH = 120'
PHASE V-A (EXISTING)	= 14,520 SF; MIN. WIDTH = 85 FT & MIN. DEPTH = 130'
PHASE V-B (UNDER CONSTRUCTION)	= 14,520 SF; MIN. WIDTH = 85 FT & MIN. DEPTH = 130'
PHASE V-C (UNDER CONSTRUCTION)	= 14,520 SF; MIN. WIDTH = 85 FT & MIN. DEPTH = 130'
PHASE VI-A & VI-B (PROPOSED)	= 11,475 SF; MIN. WIDTH = 85 FT & MIN. DEPTH = 135'
PHASE VI-A & VI-B (PROPOSED)	= 11,475 SF; MIN. WIDTH = 85 FT & MIN. DEPTH = 135'

MINIMUM/MAXIMUM LOT SIZE DISTRIBUTION:

PHASE	AREA (AC)	NO. LOTS	TOTAL AC	% TOTAL
PHASE I	114	88	177	13.4
PHASE II	108	88	171	13.8
PHASE III	9	8	107	8.1
PHASE IV (A&B)	128	184	310	23.9
PHASE V-A	73	8	73	5.8
PHASE V-B	75	8	75	5.7
PHASE V-C	14	0	14	1.1
PHASE VI-A	88	88	128	9.7
PHASE VI-B	27	57	84	6.4
PHASE VI-A & VI-B	12	88	100	7.7
PHASE VI-A & VI-B	82	88	170	12.7
TOTAL	774	303	1,077	80.9

L. PHASE AREA:

PHASE I (EXISTING)	= 177.00 AC
PHASE II (EXISTING)	= 171.00 AC
PHASE III (EXISTING)	= 107.00 AC
PHASE IV-A (EXISTING)	= 142.00 AC
PHASE IV-B (EXISTING)	= 188.00 AC
PHASE V-A (UNDER CONSTRUCTION)	= 163.00 AC
PHASE V-B (UNDER CONSTRUCTION)	= 163.00 AC
PHASE V-C (UNDER CONSTRUCTION)	= 163.00 AC
PHASE VI-A & VI-B (PROPOSED)	= 303.00 AC
PHASE VI-A & VI-B (PROPOSED)	= 303.00 AC

A. SETBACK REQUIREMENTS:

FRONT = 30 FT
 REAR = 30 FT
 CORNER = 30 FT

K. MINIMUM LIVING AREA:
 LOTS LESS THAN 14,520 SF MUST HAVE A MIN. LIVING AREA EQUAL TO 1,750 SF
 LOTS GREATER THAN OR EQUAL TO 14,520 SF MUST HAVE A MIN. LIVING AREA EQUAL TO 2,000 SF

L. MAXIMUM BUILDING HEIGHT: 35 FT

M. RIGHT-OF-WAY: 60 FT (MIN.)

N. PHASING SCHEDULE:

PHASE	BEGAN	COMPLETED
PHASE I-B	DEC. 2003	JUNE 2004
PHASE II-A	JAN. 2004	DEC. 2004
PHASE III-A	JAN. 2005	MAY 2006
PHASE IV-A	MARCH 2006	OCT. 2008
PHASE IV-B	OCT. 2006	MAY 2007

- NOTES:**
- EASEMENTS AND TRACTS SHALL BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION OR GOLF COURSE.
 - Gopher tortoise mitigation areas shall be owned and maintained by the HOMEOWNER'S ASSOCIATION.
 - LANDSCAPE ISLANDS LOCATED WITHIN A DEDICATED RIGHT OF WAY SHALL BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.
 - ALL LOTS ALONG THE PROPERTY BOUNDARY SHALL DRAIN ON-SITE OR HAVE REAR YARD DRAINS WITH INLET COLLECTION SYSTEM PER CITY OF APOPKA REQUIREMENTS. NO OFF-SITE PROPERTY SHALL RECEIVE RUNOFF FROM THE PROJECT.
 - DRAINAGE FACILITY LOCATED WITHIN THE GOLF COURSE WILL BE OWNED AND MAINTAINED BY THE GOLF COURSE. ALL OTHER DRAINAGE FACILITIES WILL BE OWNED AND MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.
 - WATER WILL BE SUPPLIED BY THE CITY OF APOPKA.
 - WASTE DISPOSAL WILL BE PROVIDED BY THE CITY OF APOPKA WASTEWATER COLLECTION SYSTEMS.
 - PROJECT SIGNAGE SHALL COMPLY WITH THE CITY OF APOPKA CODE.
 - GEOLOGICAL CERTIFICATION FOR EARTH BERM STABILITY SHALL BE SUBMITTED WITH THE CONSTRUCTION PLANS.
 - GOLF COURSE AND OPEN SPACE AREAS NOT INTENDED TO BE OWNED BY THE HOMEOWNER'S ASSOCIATION WILL BE PLATTED AS TRACTS CONCURRENTLY WITH THE PLATTING OF PHASE VI OR SOONER.
 - ALL AREAS IRRIGATED WITH RECLAIMED WATER WILL NEED TO BE METERED.
 - THE RESOLUTION OF ANY CONFLICTS WHICH MAY OCCUR BETWEEN DRIVEWAY PLACEMENT AND EITHER WATER, RECLAIMED WATER, OR SANITARY SEWER PLACEMENT, WILL BE THE RESPONSIBILITY OF THE DEVELOPER.
 - ALL UTILITY EASEMENTS ARE TO BE VERIFIED BY A REGISTERED SURVEYOR PRIOR TO CONSTRUCTION PLAN SUBMITTAL.
 - ALL CURBING TO BE TYPE "T" CURBING PER FOOT INDEX NO. 300.
 - THE ENTIRE PUD IS TO BE UNDER ONE CONTROL.
 - STREET SIGNAGE FOR ALL FUTURE PHASES WILL BE CONSISTENT WITH PHASE I AND WILL BE MAINTAINED BY THE HOME OWNER'S ASSOCIATION.
 - PROJECT PHASE JUMPING SHALL NOT BE PERMITTED. PHASES DEPICTED ON THE MASTER PLAN DOCUMENT SHALL BE REVIEWED AND APPROVED IN SEQUENTIAL ORDER (PHASE I THROUGH PHASE VII). CONSTRUCTION OF ANY AND ALL PHASES MAY BEGIN UPON RECEIPT OF THE PROPER APPROVALS AND PERMITS. MODIFICATION TO THE PHASE PROGRAM SHALL REQUIRE AN AMENDMENT TO THE PUD MASTER PLAN WITH REVIEW AND CONSIDERATION BY THE CITY.
 - THE 9 HOLE GOLF COURSE IS COMPLETE.
 - THE GOLF COURSE AND ALL THE PROPERTY COMMON TO THE GOLF COURSE WILL BE OWNED AND MAINTAINED BY ROCK SPRINGS RIDGE GOLF CLUB, INC.
 - ALL PHASES SHALL BE UNDER A MASTER HOME OWNER'S ASSOCIATION.
 - PHASES I, II, AND III (A.K.A. I-B, II-A, III-A) ARE DEVELOPED UNDER THE PD MASTER PLAN PHASE IV (A&B) IS DEVELOPED UNDER THE 2ND PUD MASTER PLAN AMENDMENT.
 - THIS PUD MASTER PLAN AMENDMENT INCLUDES PHASES V (A,B,C) THROUGH VII AND REPLACES THE TERMS AND CONDITIONS OF THE ORIGINAL PD MASTER PLAN FOR PHASES II THROUGH VI, AND THE 2ND PUD MASTER PLAN AMENDMENT FOR PHASES IV THROUGH VII.
 - PHASES I, II, AND III (A.K.A. I-B, II-A, III-A) AND THE ORIGINAL 18 HOLES OF THE GOLF COURSE SHALL MAINTAIN THE ORIGINAL PD ZONING TERMS AND PHASE IV (A&B) AND THE ADDITIONAL 9 HOLE GOLF COURSE SHALL MAINTAIN THE 2ND PUD MASTER PLAN AMENDMENT ZONING TERMS, UNLESS OTHERWISE AMENDED.
 - ALL FLAG LOTS MUST MEET CITY OF APOPKA REQUIREMENTS.
 - PHASE III IS KNOWN AS PHASE III-A ON CITY OF APOPKA FINAL DEVELOPMENT PLANS.
 - THE "BEGIN DATE" WITHIN THE PROJECT TABLE LETTER "N" INDICATES THE APPLICANT HAS FINAL DEVELOPMENT PLAN APPROVAL AND THE "COMPLETE DATE" INDICATES THE CERTIFICATE OF ACCEPTANCE HAS BEEN ISSUED OR THE PROJECT IS ON-GOING AND BEING CONSTRUCTED IN GOOD FAITH.

RECEIVED
 MAR 07 2008
 By _____

ENGINEERING & ENVIRONMENTAL DESIGN, INC.
 Environmental and Planning Consultants

SITE DATA

ROCK SPRING RIDGE PHASES VI & VII

DATE	02/09/08
REVISION	REVISED PER CITY OF APOPKA
SCALE	AS SHOWN
SECTION	AS SHOWN
DESIGNER	AS SHOWN
CHECKER	AS SHOWN
DATE	02/09/08
APPROVED	AS SHOWN
FILE NO.	AS SHOWN

SHEET NO. 6 OF 47

SEWER AND WATER CAPACITY AGREEMENT
Rock Springs Ridge, Phase VII-B (102 Lots)

THIS AGREEMENT, made as of this ____ day of _____, 20__, by and between the City of Apopka, Florida, a municipal corporation, hereinafter sometimes referred to as "City" or "Utility" or both; and D.R. Horton, Inc., a Delaware corporation, sometimes hereinafter referred to as "Owner" or "Developer" or both.

WHEREAS, in the City of Apopka Comprehensive Plan it has been established that land development shall not be permitted unless adequate capital facilities exist or are assured; and

WHEREAS, in the City of Apopka Comprehensive Plan the policy has been established that land development shall bear a proportionate cost of the provision of the new or expanded capital facilities required by such development; and

WHEREAS, the City of Apopka Comprehensive Plan established that the imposition of impact fees and dedication requirements are the preferred methods of regulating land development in order to ensure that it bears a proportionate share of the cost of capital facilities necessary to accommodate the development and to promote and protect the public health, safety and welfare; and

WHEREAS, the City Council of the City of Apopka has determined that the City of Apopka must expand its water and sewer systems in order to maintain current water and sewer standards if new development is to be accommodated without decreasing current standards; and

WHEREAS, the City Council of the City of Apopka enacted an Ordinance providing for Water and Sewer Capital Facilities Fees and Tap Fees; and

WHEREAS, Developer owns or controls lands located in City of Apopka or Orange County, Florida, and described in **Exhibit "A"** attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as the "Property," and Developer intends to develop the Property by erecting thereon, individually metered units, general service units, or combination of these; and

WHEREAS, Developer has officially requested that the Utility provide central water distribution and sewage collection service for Developer's property herein described in **Exhibit "A"**; and

WHEREAS, the Utility is willing to provide, in accordance with the provisions of this Agreement, Utility's main extension policy and the City's Code of Ordinances, central water and sewer services to the Property and thereafter operate applicable facilities so that the occupants of the improvements on the Property will receive an adequate water supply and sewage collection and disposal service from Utility; and

WHEREAS, Developer's project and the receipt of water and sewer service is contingent upon the construction and utilization of existing and contemplated water and sewer service facilities and the availability of capacity of those facilities; and

WHEREAS, the Developer is obligated to pay certain Capital Facilities Fees in conjunction with this commitment for capacity and does desire to execute a Service Agreement with the City.

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Compliance.

The Owner agrees that both he and his successors and assigns will abide by the provisions of this Agreement and the relevant Ordinances of the City and that he will

install or have installed the improvements required by the City in accordance with the provisions of this Agreement and of said Ordinances. The Owner further understands and agrees that, in the development of the subject property, failure to abide by the terms of this Agreement, the provisions of the City's Ordinances, or any other applicable regulations, ordinances, or laws from time to time existing, shall constitute grounds for refusal by the City, or the appropriate authority thereof, to allow such development, to obtain building permits, to institute utility services, or to permit occupancy of completed improvements.

Section 2. Definitions.

A. "ERU (Water)" means Equivalent Residential Unit defined as having the average demand of 400 gallons per day.

B. "ERU (Sewer)" means Equivalent Residential Unit defined as having the average demand of 350 gallons per day.

C. "DEP" shall mean the Department of Environmental Protection of the State of Florida.

D. "Notice To Proceed" - A document executed by the Developer requesting specific water.

E. "Point of Delivery" - The point where the pipes or meter of the Utility are connected with the pipes of the consumer or Owner. Unless otherwise indicated, Point of Delivery shall be at the Owner's lot line.

F. "Property" - The area or parcel of land described in **Exhibit "A"** attached hereto.

G. "Service" - The readiness and ability on the part of the Utility to furnish and maintain water and sewer service to the point of delivery for each lot or tract pursuant to

applicable ordinances, laws, rules, regulations, permits and Utility policies.

Section 3. On-Site Installation.

To induce the Utility to provide the water treatment and sewage collection and disposal facilities, and to continuously provide Owner's Property with water and sewer services, unless otherwise provided for herein, Owner hereby covenants and agrees to construct and to transfer ownership and control to the Utility, as a contribution-in-aid-of-construction, the on-site water distribution and sewage collection systems located on Owner's Property. The term "on-site water distribution and sewer collection systems" means and includes all water distribution and supply mains, lines and pipes, and related facilities and sewage collection lines facilities and equipment, including pumping stations, constructed within the boundaries of Owner's Property adequate in size to serve each lot or unit within the property or as otherwise required by Utility. Owner shall install at its sole expense all of the aforesaid facilities within the Property in accordance with the plans, specifications and all other pertinent documents approved by the Utility. Developer will furnish Utility with three (3) copies of the plans and specifications for the water distribution system, sewage collection main lift stations and other facilities necessary to serve the property described in **Exhibit "A"**.

Developer shall obtain approval of plans and specifications from all necessary agencies. No construction shall commence until utility and appropriate regulatory agencies have approved such plans and specifications in writing. If construction commences prior to all such approvals and any other approvals required hereunder, Utility shall have no responsibility to accept such lines and facilities and Utility may elect to terminate this Agreement and/or not provide service to Developer until such time as

Developer obtains all such required approvals. When permits and approved plans are returned by appropriate regulatory agencies to Developer, Developer shall submit to Utility one copy of the water and/or sewer construction permit and approved plans. Developer shall also supply to the Utility a copy of the final estimate or payment covering all contract items and Release of Lien from Contractor(s).

After the approval of plans and specifications by Utility and appropriate regulatory agencies, Developer, or the engineer of record, shall set up a preconstruction conference with engineer of record, utility contractor, appropriate building official(s), all other utility companies involved in the development of the Property, and Utility, as may be appropriate.

Developer shall provide to Utility's representative forty-eight (48) hours written notice prior to commencement of construction and forty-eight (48) hours written notice prior to any inspections or tests being performed as described herein. "Notice" shall be complete when Utility actually receives same.

During the construction of the water distribution and sewage collection systems by Developer, Utility shall have the right to inspect such installations to determine compliance with the approved plans and specifications. The engineer of record shall also inspect construction to insure compliance with the approved plans and specifications. The engineer of record and Utility contractor shall be present for all standard tests and inspections for pressure, exfiltration, line and grade, and all other normal engineering tests and inspections to determine that the systems have been installed in accordance with the approved plan and specifications, and good engineering practices.

Upon completion of construction, Developer's engineer of record shall submit to Utility a copy of the signed certification of completion submitted to the appropriate regulatory agencies. If certification is for the water distribution system, a copy of the bacteriological results and a sketch showing locations of all sample points shall be included. The engineer of record shall also submit to Utility paper copies of the as-built plans prepared signed and sealed by the engineer of record. Developer will provide Utility with two (2) copies of the approved paving and drainage plans. Developer will provide Utility with three (3) copies of the approved subdivision plat.

Section 4. Off-Site Installation.

The Developer will construct and install water mains, gravity sewer lines, lift station(s) and force main(s) from Developer's property to the Utility existing facilities in accordance with overall master plans of the utility system and in accordance with approved engineering plans and specifications. At all times prior to, during and upon completion of the construction of the extensions of water and sewer lines, Utility shall have the right to inspect and approve all construction plans and specifications, piping, connections, equipment, materials and construction work being provided or performed, or previously provided or performed, by or on behalf of the Developer. Such approval shall not be unreasonably withheld or delayed by Utility, and any costs of such inspections shall be borne by Utility. It shall be the Developer's responsibility to insure that all construction fully meets the plans and specifications approved by the Utility. The cost of inspections resulting from required corrective action shall be borne by the Developer. As conditions precedent to receiving water and sewer service, Developer shall:

- A. Provide Utility with three (3) copies of the approved subdivision plat.

B. Provide Utility with three (3) copies of the approved paving and drainage plans of the development.

C. Furnish Utility with three (3) copies of the plans, specifications and engineering cost estimate for the water distribution system, sewage collection system, lift station(s) and other facilities necessary to serve the property described in **Exhibit "A"**. Developer must receive approval from Utility of said plans, specifications and engineering cost estimate prior to proceeding with any construction of the facilities.

D. Obtain approval of the plans and specifications from all necessary governmental agencies, including, but not limited to, the Florida Department of Environmental Protection and the City of Apopka. No construction shall commence until Utility and appropriate regulatory agencies have approved such plans and specifications in writing. When permits and approved plans are returned by appropriate regulatory agencies to Developer, Developer shall submit to Utility one (1) copy of water and/or sewer construction permit and approved plans.

E. After the approval of plans and specifications by Utility and appropriate regulatory agencies, Developer, or the engineer of record shall set up a preconstruction conference with engineer of record, utility contractor, appropriate building official(s), all other utility companies involved in the development of the Property, and Utility, as may be appropriate.

Developer shall provide to Utility's representative forty-eight (48) hours written notice prior to commencement of construction and forty-eight (48) hours written notice prior to any inspections or tests being performed as described herein. "Notice" shall be complete when Utility actually received same.

During the construction of the water distribution and sewage collection systems by Developer, the Utility shall have the right to inspect such installations to determine compliance with the approved plans and specifications. The engineer of record shall also inspect construction to assure compliance with the approved plans and specifications. The engineer of record and utility contractor shall be present at all standard tests and inspections for pressure, exfiltration, line and grade, and all other normal engineering tests and inspections to determine that the systems have been installed in accordance with the approved plans and specifications, and good engineering practices.

F. Upon completion of construction, Developer's engineer of record shall submit to Utility a copy of the sign certifications of completion submitted to the appropriate regulatory agencies. If certification is for the water distribution system, a copy of the bacteriological results and a sketch showing locations of all sample points shall be included.

Developer's engineer shall deliver one (1) set of paper copies of "As-built" engineering plans, prepared signed and sealed by the professional engineer of record, showing the location of all water and sewer systems and services installed, and certification by the professional engineer of record to the Utility that such systems and services, as built, comply with the plans and specifications approved by the Utility.

Furnish proof satisfactory to the Utility that the installation of the facilities and all contractors, subcontractors, materialmen and laborers have been paid in full, and provide an engineer's certificate of total cost of improvements, i.e., by Release of Lien or other appropriate means.

G. As per this Agreement, Developer shall install, at its sole expense, all of the aforesaid facilities off-site, in accordance with the plans and specifications approved by the Utility. The Utility agrees it will complete its review of the plans and specifications within thirty (30) days of receipt from the Developer.

H. Developer hereby agrees to transfer to Utility title to all water distributions and sewage collection systems installed by Developer or Developer's contractor, pursuant to the provisions of this Agreement. Such conveyance shall take effect at the time Utility issues its final letter of acceptance. As further evidence of said transfer to title, upon completion of the installation, but prior to the issuance of the final letter of acceptance and the rendering of service by Utility, Developer shall:

I. Provide Utility with copies of Release of Lien for said Property.

J. Developer shall assign any and all warranties and/or maintenance bonds and the rights to enforce same to the Utility which Developer obtains from any contractor constructing the utility systems. Developer shall remain secondarily liable on such warranties. If Developer does not obtain such written warranty and/or maintenance bond from its contractor and deliver same to Utility, which warranty and/or maintenance bond shall be for a minimum period of two years, then in such event, Developer by the terms of this instrument, agrees to indemnify and save harmless the Utility for an loss, damages, costs, claims, suits, debts, or demands by reason of latent defects in the systems which could not have been reasonably discovered upon normal engineering inspection, for a period of two years from the date of acceptance by the Utility of said utility systems.

K. The Developer shall provide Utility with all appropriate

operations/maintenance and parts manuals.

L. The Developer shall further cause to be conveyed to Utility all easements and/or rights-of-way covering areas in which water and sewer systems are installed, by recordable document in form satisfactory to the Utility and shall convey title to the Utility, by recordable document in form satisfactory to Utility, and lift stations constructed on Developer's Property along with recordable ingress/egress easement documents.

M. Utility agrees that the issuance of the final letter of acceptance for the water distribution and sewage collection systems installed by Developer shall constitute the assumption of responsibility by Utility for the continuous operation and maintenance of such systems from that date forward.

Section 5. Easement.

Developer hereby grants and gives to Utility, its successors and assigns, but subject to the terms of this Agreement, the exclusive right or privilege to construct, own, maintain or operate the water and sewer facilities to serve the Property; and the exclusive right or privilege to construct, own, maintain or operate the said facilities in, under, upon, over and across the present and future streets, roads, alleys and easements, reserved utility strips and utility sites, and any public place as provided and dedicated to public use in the record plats, or as provided for in agreements, dedications or grants made otherwise and is independent of said record plats. Mortgagees, if any, holding prior liens on the Property shall be required to either release such lien, subordinate their positions or join in the grant or dedication of the easements or rights-of-way, or give to Utility assurance by way of a "non-disturbance agreement," that in the event of foreclosure, mortgagee would continue to recognize the easement rights of Utility, as long as Utility

complies with the terms of this Agreement. All water distribution and sewage collection facilities, save and except consumer installations, shall be covered by easements or rights-of-way if not located within platted or dedicated road or rights-of-ways for utility purposes.

Developer hereby further agrees that the foregoing grants include the necessary right of ingress and egress to any part of the Developer's property upon which Utility is constructing or operating utility facilities. The foregoing grants shall be for such period of time as Utility or its successors or assigns require such rights, privileges or easements in the construction, ownership, maintenance, operation or expansion of the water and sewer facilities. The parties agree that in the event Developer and Utility agree to install any of the water or sewer facilities in lands within the Property lying outside the streets and easement areas described above, then Developer or the owner shall grant to Utility, the necessary easement or easements for such "private property" installation; provided, all such "private property" installations by Utility shall be made in such a manner as not to interfere with the then primary use of such "private property". The use of easements granted by Developer to Utility shall not preclude the use by other utilities of these easements, such as for cable television, telephone, electric, or gas utilities, or as otherwise agreed to by Utility, provided each does not interfere with Utility's use thereof.

The Utility hereby agrees that all easement grants will be utilized in accordance with the established and generally accepted practices of the water and sewer industry with respect to the installation of all its facilities in any of the easement areas.

Section 6. Utility's Exclusive Right to Utility Facilities.

Developer agrees with Utility that all water and sewer facilities accepted by Utility in

connection with providing water and sewer services to the Property shall at all times remain in the sole, complete and exclusive ownership of Utility, its successors and assigns, and any person or entity owning any part of the Property or any residence, building, or unit constructed or located thereon, shall not have any right, title, claim or interest in and to such facilities or any part of them, for any purpose, including the furnishing of water and sewer services to other persons or entities located within or beyond the limits of the Property.

Section 7. Exclusive Right to Provide Service.

As a further and essential consideration of this Agreement, Developer, or the successors and assigns of Developer, shall not (the words "shall not" being used in a mandatory definition) engage in business or businesses of providing potable water or sewer services to the Property during the period of time Utility, its successors and assigns, provide water or sewer services to the Property, it being the intention of the parties hereto that under the foregoing provision and also other provisions of this Agreement, Utility shall have the sole and exclusive right and privilege to provide water and sewer services to the Property and to the occupants of each residence, building or unit constructed thereon, except for providing by Developer, from its own sources and lines for irrigation uses.

Section 8. Rates.

The Utility agrees that the rates to be charged to Developer and individual consumers of water and sewer services shall be those set forth by the City Council. However, notwithstanding any provision in this Agreement, the Utility, its successors and assigns, may establish, amend or revise, from time to time in the future, and enforce rates

or rate schedules so established and enforced and shall at all times be reasonable and subject to approval by the City Council.

Notwithstanding any provision in this Agreement, the Utility may establish, amend or revise, from time to time, in the future, and enforce rules and regulations covering water and sewer services to the Property, including the costs thereof.

Any such initial or future lower or increased rate schedules, and rules and regulations established, amended or revised and enforced by Utility from time to time in the future shall be binding upon Developer; upon any person or other entity holding by, through or under developer; and upon any user or consumer of the water and sewer provided to the Property by Utility.

Section 9. Capital Facility Fees.

In addition to the contribution of any water distribution and sewage collection systems, where applicable, and further to induce the Utility to provide water and sewage service, Developer hereby agrees to pay to Utility the following Capital Facility Fees:

A. Water Capital Facility Fee. A capital facility fee which represents the capital cost of the Primary System capacity expansion will be charged and paid in the manner described herein. The City reserves the right to also require additional contributions or in kind contributions, including but not limited to constructed donated facilities, as may be necessary to extend services or to further expand the Primary System to facilitate the providing of services to the Owner's property and, if any oversizing is required the Owner shall be reimbursed in accordance with Section 26-80 of the Apopka Municipal Code. The City reserves the right to prospectively adjust unpaid fees and charges assessed herein. The Owner will be required to build or to provide the cost of construction of the

Secondary or Local Distribution System and all water facilities on site regardless of size necessary to provide service to the land development activity.

The water Capital Facility Fee charged shall be calculated as follows:

Total Water

Capacity Committed in Gallons	No. Of ERU's Committed	Water Capital Facility Fee Per ERU	Facility Fee Due from Owner
40,800	102	\$2,021	\$206,142.00

B. Sewer Capital Facility Fee. A capital facility fee shall be assessed by the city which represents the capital cost of the Primary System Capacity expansion. The City reserves the right to also require additional contributions or in kind contributions, including but not limited to constructed donated facilities, as may be necessary to extend services or to further expand the Primary System to facilitate the providing of services to the Owner's property and, if any oversizing is required, the Owner shall be reimbursed in accordance with Section 26-80 of the Apopka Municipal Code. The City additionally reserves the right to prospectively adjust unpaid fees and charges assessed herein. Owner will be required to build or to provide the cost of construction of the Secondary or Local Distribution System and all water facilities on site regardless of size necessary to provide service to the land development activity.

The Sewer Capital Facility Fee charged shall be calculated as follows:

Total Sewer

Capacity Committed in Gallons	No. Of ERU's Committed	Sewer Capital Facility Fee Per ERU	Facility Fee Due from Owner
35,700	102	\$4,235.00	\$431,970.00

Section 10. Payment of Capital Fees.

The capital facility fees described herein shall be due and payable as follows:

A. 10% of all capital facilities fees for all units at the time of applying to DEP for a permit.

B. 20% of all capital facilities fees at the time of receiving DEP approval/permit or 120 days from the date of application whichever occurs first.

C. 10% of all capital facilities fees at the time of issuance of Certificate of Acceptance by City or 120 days from the date of issuance of DEP permit whichever occurs first.

D. 20% of all capital facilities fees 12 months after the date of issuance of the DEP permit as set forth in (b).

E. 20% of all capital facilities fees not later than 24 months after the date of issuance of the DEP permit as set forth in (b).

F. All capital facilities fees are due not later than 36 months after the date of the issuance of the DEP permit as set forth in (b).

The capital facilities fees shall be based on the fee schedule in effect at the time payment is actually made to the City. The fees set forth therein are the minimum due and payable. Capital Facilities Fees shall be due and payable by the Owner on or before application for building permits for each individual lot or land development activity. During the time period following the issuance of the DEP permit until all capital facilities fees are paid, the amount due and payable shall always be the greater of the scheduled fees or the fees due upon applying for building permits during this period. If the Capital Facilities fees are paid in conjunction with the application for building permits are less

than the fees currently due pursuant to subparagraphs (d), (e), and (f) of this Section, the Owner must remit the difference as same comes due pursuant to the schedule. If the amount due in conjunction with the application for building permits exceeds the amount due pursuant to schedule, the amount due in conjunction with the application for building permits shall be the amount due and payable irregardless of the amount of the scheduled payment.

The 40% first paid in accordance with subparagraphs (a), (b), and (c) of this Section will apply to the last 40% of the building permits applied for by the Developer. A failure of the Developer to pay all sums due in accordance with this Section, shall be considered a default and all of the Capital Facilities Fees shall become immediately due and payable and all other rights and remedies associated with a default shall be available to the City.

It is also agreed by the parties that:

(a) No lots, units or interests in the property, development or units may be sold until 100% of all the capital facilities fees on those lots or units to be sold have been paid.

(b) No capacity may be transferred, sold or bartered to any other land development activity.

(c) If the Developer should default on any of the aforementioned, the City shall have the right to record a lien on all remaining lots owned by the Developer for unpaid fees and shall have the right to demand the return of unused capacity. This right is in addition to all other rights available to the City under Florida law.

Section 11. Refund of Fee Paid.

The parties agree that if a DEP permit expires and DEP has released all permitted capacity back to the City and no construction has been commenced, then the Developer shall be entitled to a refund of the capital facility fees paid as a condition for its issuance except that the City shall retain three percent (3%) of the refunded funds as a fee to offset the costs of collection and refund.

Section 12. Recapture of Capacity.

The parties agree that if the development has not been substantially completed by the end of the calendar quarter immediately following two (2) years from the date on which the water and sewer capital facility fee was paid in full, or if the developer is in default under this agreement or if the DEP permit issued to the developer has expired or the Developer has not proceeded to develop the property described in **Exhibit "A"** within two years from the date of execution of this Agreement, the City may petition, if necessary, the DEP to recapture the capacity committed pursuant to this Agreement. If said capacity is all released back to the City, the City may refund the capital facility fees as set forth in paragraph 11 above.

Section 13. Maintenance Fees.

The parties agree that the City may subject encumbered or committed water and sewer capacity to a maintenance fee to be assessed by the City. The amount of such fee will be determined by the City Council and shall be based upon the costs of maintaining the committed capacity for the Developer. Such fees shall not be a Capital Facility Fee as described herein and shall be due and payable as directed by the City.

Section 14. Water System Tap Fee.

The parties agree that a Water Tap Fee shall be charged at the time of approval by

the City of a service connection. Such fee will include the labor cost and the cost of connection piping from the main to the meter not to exceed fifty (50) feet in length and shall be charged as follows:

Single Service Meter

3/4"	\$238.00
1"	\$280.00
1 1/2"	\$429.00
2"	\$515.00

Dual Service Meter

3/4"	\$186.00
1"	\$213.00

Short Service Tap

3/4" & 1"	\$245.00
1 1/2" & 2"	\$318.00

Long Service Tap

3/4" & 1"	\$745.00
1 1/2" & 2"	\$818.00

For a meter or tap over two (2) inches in size, the work will be performed by the contractor, however, in circumstances where the city elects to perform the work, the fee charged shall be actual cost.

Short service is defined as service located on the same side of a road or driveway of an existing water line where the connection is to be made. Long service is defined as service located on the opposite side of a road or driveway of an existing water line where the connection is to be made. There will be an additional charge of \$10.00 for every linear foot for service over 50 linear feet. An additional charge will be added equal to the county right-of-way permit fee when it is required. All Tap Fees are due and payable at the time that a service connection is approved by the Utility.

Section 15. Sewer Tap Fee and Other Charges.

The parties agree that a sewer tap fee shall be charged at the time of approval by the City of a service connection. The cost of extending or installing 6" sewer lateral shall be \$700.00 up to 25 feet and including cleanout, and shall be payable by the Developer upon billing. For additional footage beyond 25 feet, the charge shall be \$12.00 per linear foot. The costs of any applicable county or state permits will be also an additional charge payable by the Developer. Any sewer lateral within the public right-of-way easement will remain the property of the City. All Tap Fees are due and payable at the time that a service connection is approved by the Utility. The other charges described herein are due and payable within 10 days of the date of the billing.

Section 16. Miscellaneous Provisions Regarding Payments.

The parties agree to the following with reference to fees described herein:

A. No building permit for any developmental activity requiring the payment of a capital facility fee shall be issued unless and until the water and sewer capital facility fees have been paid.

B. The City may require that all payments be made with certified funds or cashier's check if payments have been late or if the Developer has previously provided bad funds or if the Developer has an impaired credit reputation.

C. In the event that the City should have to take any actions other than initial presentment of a check to a local bank in order to collect the payments due and payable pursuant to this Agreement, the Owner shall be responsible for any costs, including reasonable attorney's fee, incurred in taking such actions.

D. Acceptance of payment of any of the Fees described herein in part or in full shall not constitute a waiver of the Utility's rates or regulations.

E. Neither Developer nor any person or other entity holding any of the Property by, through or under Developer, or otherwise, shall have any present or future right, title, claim or interest in and to the Capital Facility Fee charges paid or to any of the water or sewer facilities and properties of Utility, and all prohibitions applicable to Developer with respect to refund of such fees, are applicable to all persons or entities owning such property or an interest in such property.

Section 17. Agreement to Serve.

Upon the completion of construction of the water and sewer facilities by Developer, its inspection, the issuance of the final letter of acceptance by the Utility, the Utility covenants and agrees that it will allow the connection of the water distribution and sewage collection facilities installed by Developer to the central facilities of the Utility and shall provide utility service in accordance with the terms and intent of this Agreement. Such connections shall at all times be in accordance with rules, regulations and orders of the applicable governmental authorities including the City. The Utility agrees that once it provides water and sewer service to the Property and Developer or others have connected consumer installations to its system, that thereafter the Utility will continuously provide, in accordance with the other provisions of this Agreement, including rules and regulations and rate schedules, water and sewer service to the Property in a manner to conform with all requirements of the applicable governmental authority.

The parties agree that the capacity needed to provide service to the Property is 40,800 gallons per day for potable water supply and 35,700 gallons per day for wastewater removal. Developer agrees that the number of units of development for which capacity is reserved hereby shall not exceed the number of units of development

for which capacity is reserved hereby pursuant to **Exhibit "B"**. Developer agrees that sewage to be treated by the Utility from Developer's property will consist of domestic wastewater and further agrees that it will not allow any abnormal strength sewage to flow from developers property to the Utility Sewage treatment facility that will cause harm to the treatment process. In addition, Developer further agrees that no wastewater, fluids or other substances and materials shall be discharged to the Utility's sanitary sewer collection/transmission system, which contain any hazardous, inflammable, toxic and/or industrial constituents, in whole or in part, regardless of the concentrations (i.e., strengths) of said constituents. Developer grants to Utility the right to sample the Developer's sewage, as referred to hereinabove, to verify Developer's compliance with this paragraph.

Section 18. Application for Service: Consumer Installations.

Developer, or any owner of any parcel of the Property, or any occupant of any residence, building or unit located thereon shall not have the right to and shall not connect any consumer installation to the facilities of Utility until formal written application has been made to Utility by the prospective user of service, or either of them, in accordance with the then effective rules and regulations of the Utility and approval for such connection has been granted.

Although the responsibility for connecting the consumer installation to the meter and/or lines of the Utility at the point of delivery is that of the Developer or entity other than the Utility, with reference to such connections, the parties agree as follows:

- A. Application for the installation of water meters and backflow preventors shall be

made twenty-four (24) hours in advance, not including Saturdays, Sundays and holidays.

B. All consumer installation connections may at its sole option be inspected by the Utility before backfilling and covering of any pipes.

C. Written notice to the Utility requesting an inspection of a consumer installation connection may be given by the Developer or his contractor, and the inspection will be made within twenty-four (24) hours, not including Saturdays, Sundays and holidays, provided the meter and backflow preventor, if applicable, have been previously installed.

D. The cost of constructing, operating, repairing or maintaining consumer installations shall be that of Developer or a party other than the Utility.

E. If a kitchen, cafeteria, restaurant or other food preparation or dining facility is constructed within the Property, the Utility shall have the right to require that a grease trap and/or pretreatment unit be constructed, installed and connected so that all waste waters from any grease producing equipment within such facility, including floor drains in food preparation areas, shall first enter the grease trap for pretreatment before the wastewater is delivered to the lines of the Utility. The size, materials and construction of said grease traps are to be approved by the Utility. Developer hereby grants to the Utility the right to periodically inspect the pretreatment facilities herein described. The provisions of this paragraph shall not apply to individual residential kitchens.

No substance other than domestic wastewater will be placed into the sewage system and delivered to the lines of the Utility. Should any non-domestic wastes, grease or oils, including, but not limited to, floor wax or paint, be delivered to the lines, the Owner will be responsible for payment of the cost and expense required in correcting or repairing any resulting damage or impairment of the treatment process and/or facilities.

Section 19. Assurance of Title.

Within fifteen (15) days of DEP approval or prior to Developer issuing the Notice to Proceed to the Utility, at the expense of Developer, Developer agrees to deliver to the Utility a Certificate of Title, a Title Insurance Policy or an opinion of title from a qualified attorney-at-law, with respect to the Property. The provisions of this paragraph are for the purpose of evidencing Developer's legal right to grant the exclusive rights of service contained in the Agreement.

Section 20. Binding Effect of Agreement.

The Agreement shall be binding upon and shall inure to the benefit of Developer, the Utility and their respective assigns and successors by merger, consolidation, conveyance or otherwise, subject to the terms of this Agreement, as contained herein. This Agreement is freely assignable by either party.

Section 21. Notice.

Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, by mail or by telegram, and if to Developer, shall be mailed or delivered to Developer at:

D.R. Horton, Inc.
Attn: Broc Althafer
5850 T.G. Lee Blvd., Suite 600
Orlando, FL 32822

With a copy to: Akerman Senterfitt
Attn: Heather M. Himes, Esq.
420 S. Orange Avenue, 12th Floor
Orlando, FL 32801

and if the Utility, at: City of Apopka
Utilities Department
Attn: Cindy Haynes

120 East Main Street
Apopka, FL 32704

Section 22. Laws of Florida.

This Agreement shall be governed by the laws of the State of Florida and it shall be and become effective immediately upon execution by both parties hereto.

Section 23. Cost and Attorney's Fees.

In the event the Utility or Developer is required to enforce this Agreement by Court proceedings or otherwise, by instituting suit or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorney's fees.

Section 24. Force Majeure.

In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including but not limited to Act of God or of the public enemy, war, national emergency, allocation or of other governmental restrictions upon the use of availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping transmission or other facilities, and all governmental rules or acts or action of any government or public or governmental authority or commission of board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling or order, order of decree or judgment or restraining order or injunction of any court, said

party shall not be liable for such non-performance.

Section 25.

The rights, privileges, obligations and covenants of Developer and the Utility shall survive the completion of the work of Developer with respect to completing the facilities and services to any development phase and to the Property as a whole.

Section 26.

This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between Developer and Utility, made with respect to the matters herein contained, and when duly executed, fully constitutes the Agreement between Developer and the Utility. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed.

Section 27. Construction.

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others.

In case of any differences of meaning or implication between the text of this Agreement and any caption, illustration, summary table, or illustrative table, the text shall control.

The phrase "used for" includes "arranged for", "designed for", "maintained for", or "occupied for".

The work "includes" shall not limit a term to the specific example but is intended to

extend its meaning to all other instances or circumstances of like kind or character.

Section 28.

Both parties warrant that they have the legal authority to execute this Agreement.

Section 29.

Notwithstanding the gallonage calculations that could be made hereunder relative to ERU's, by and execution hereof, Developer agrees that the intention of this contract is to reserve a given number of units of capacity for the property described in **Exhibit "A"** and not for purposes of any other calculations.

Section 30.

It is agreed by and between the parties hereto that all words, terms and conditions contained herein are to be read in concert, each with the other, and that provision contained under one heading may be considered to be equally applicable under another in the interpretation of this contract.

Section 31.

By the execution hereof, Developer agrees that the Utility Company has certain obligations as a municipal utility to protect the health, safety and welfare of the public and not to burden Utility's customers with extraordinary expenses attributed or attributable to Developer, his successors or assigns, and that the Utility may, at its sole option, require pretreatment or special features such as grease traps. It is the intention of the parties that all sewage shall conform to the requirements of the Utility prior to introduction into Utility's collection system. Developer shall be responsible for all costs associated herewith.

Section 32.

The Utility shall, at all reasonable times and hours, have the right of inspection of Developer's internal lines and facilities. This provision shall be binding on the successors and assigns of the Developer.

Section 33. Water Conservation Measures.

Water conservation measures shall be employed by the Developer. Said measures shall include but not be limited to:

- A. Low flush toilets which utilize 3.5 gallons or less of water per flushing cycle.
- B. Shower heads which have flow restrictors, pulsating features, flow control devices or other features which result in water conservation; and do not allow a flow exceeding 3.0 gallons per minute at 60 psi.
- C. No swimming pool filter backwash water, or any other swimming pool wastewater shall be discharged to the sanitary sewer system.
- D. Spring-loaded/automatic shut-off water fixtures shall be utilized in all public restrooms. This shall include lavatory fixtures.
- E. Consideration and use (where possible) of dishwashers and washing machines which have water conservation features and/or utilize less water per cycle.

The Utility, at its discretion, shall review and approve all water conservation measures proposed by Developer.

Section 34.

Failure to insist upon strict compliance of any of the term, covenants, or conditions hereof shall not be deemed a waiver of such terms, covenants, or conditions, or shall any waiver or relinquishment of any right or power hereunder at any one time, or times, be deemed a waiver or relinquishment of such right or power at any other time or times.

Section 35.

In the event that relocation of existing water and sewer utilities are necessary for the Developer, Developer will reimburse utility in full for such relocations.

[Remainder of page intentionally left blank. Signatures on the following pages.]

WITNESSES:

THE CITY OF APOPKA,
A Florida municipal corporation

Print Name

Joe Kilsheimer
Mayor

Print Name

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Joe Kilsheimer, Mayor of the City of Apopka, a Florida municipal corporation, he is personally known to me or has produced _____ as identification and did (did not) take an oath.

(NOTARY'S SEAL)

Notary Public

Print Name
Commission No. _____

WITNESSES AS TO OWNER

OWNER:

By: _____
Name

Title

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 20___ by _____
(Name of officer or agent) of _____
(Name of corporation acknowledging), a _____
(state or place of corporation) Corporation, on behalf of the corporation. He/She/They
Is/are personally known to me or has produced _____
(type of identification) as identification and did (did not) take an oath.

S E A L

NOTARY PUBLIC

EXHIBIT "A"

Legal Description



**CITY OF APOPKA
CITY COUNCIL**

PUBLIC HEARING
 ANNEXATION
 PLAT APPROVAL
 OTHER: Ordinance

MEETING OF: January 21, 2015
FROM: Community Development
EXHIBITS: Vicinity Map
Legal Description
Utility Release Letters
Ordinance No. 2404

SUBJECT: ORDINANCE NO. 2404 – LETHA ELLEN MOORE- VACATING A PORTION OF A DRAINAGE AND UTILITY EASEMENT AT 2549 WOODSIDE RIDGE DRIVE

Request: ACCEPT THE FIRST READING OF ORDINANCE NO. 2404 – LETHA ELLEN MOORE - VACATING A PORTION OF A DRAINAGE AND UTILITY EASEMENT; AND HOLD IT OVER FOR SECOND READING AND ADOPTION.

SUMMARY:

OWNER/APPLICANT: Letha Ellen Moore
LOCATION: 2549 Woodside Ridge Drive
LAND USE: Residential Low Suburban (0-3.5 du/ac)
ZONING: R-1AA
EXISTING USE: Single-Family Residence
AREA TO BE VACATED: 309 +/- Sq. Ft.

RELATIONSHIP TO ADJACENT PROPERTIES:

Direction	Land Use	Zoning	Present Use
North - City	Residential Low Suburban (0-3.5 du/ac)	R-1AA	Vacant Land
East - City	Residential Low Suburban (0-3.5 du/ac)	R-1AA	Retention Pond
South - City	Residential Low Suburban (0-3.5 du/ac)	R-1AA	Single Family Residence
West - City	Residential Low Suburban (0-3.5 du/ac)	R-1AA	Single Family Residence

DISTRIBUTION:

Mayor Kilsheimer	Finance Director	Public Ser. Director
Commissioners (4)	HR Director	City Clerk
City Administrator Irby	IT Director	Fire Chief
Community Dev. Director	Police Chief	

G:\Shared\4020\Planning_Zoning\Vacate\2549 Woodside Ridge Drive – CC 01-21-15 1st Rd

CITY COUNCIL – JANUARY 21, 2015
LETHA ELLEN MOORE - VACATE
PAGE 2

ADDITIONAL COMMENTS:

The applicants are seeking to vacate the interior 2.5-foot wide portion of an existing 7.5-foot wide utility easement located along the rear property line. The portion of the easement that will be vacated is described in the Legal Description. Vacate of this portion of the easement is necessary to accommodate a proposed swimming pool on the property. A landscape tract owned by the property owners association abuts the rear property line. Vacating a portion of the utility easement will not affect any abutting property owners.

Our Public Services department has evaluated the site and has agreed to the requested vacate. Additionally, all local utility providers have been contacted by the applicant, and letters received from each utility provider indicates no objection to this request.

PUBLIC HEARING SCHEDULE:

January 21, 2015 - City Council - 1st Reading (8:00 p.m.)

February 4, 2015 - City Council - 2nd Reading (1:30 p.m.)

DULY ADVERTISED:

January 2, 2015 - Public Hearing Notice

January 23, 2015 - Ordinance Heading Ad

RECOMMENDED ACTION:



The **Development Review Committee** recommends approval of the request to vacate a portion of the existing drainage and utility easement as described in the legal description.

Accept the First Reading of Ordinance No. 2404, and Hold it Over for Second Reading and Adoption on February 4, 2015.

Letha Ellen Moore
Proposed Vacate of Existing Drainage and Utility Easement
2549 Woodside Ridge Drive
Parcel ID: 30-30-28-9144-02-300

VICINITY MAP



-  Vacate Area
-  Property



Moore, Letha

From: Conrad, Paula D <Paula.Conrad@centurylink.com>
Sent: Tuesday, December 02, 2014 8:12 AM
To: Moore, Letha; 'King, PJ'; Byrnes, David R; 'Usry, Marvin'; 'rgullett@langd.org'; 'albert.marsden@duke-energy.com'
Cc: 'sam.letha@hotmail.com'; Byrnes, David R
Subject: RE: (Rear of the house) Retention Easement Vacate Request (Woodside)

Centurylink has no objection to this request.

Paula Conrad
Engineer
407-814-5373

From: Moore, Letha [mailto:Letha.Moore@flhosp.org]
Sent: Monday, December 01, 2014 4:02 PM
To: King, PJ; Byrnes, David R; Usry, Marvin; rgullett@langd.org; albert.marsden@duke-energy.com; Conrad, Paula D
Cc: sam.letha@hotmail.com
Subject: RE: (Rear of the house) Retention Easement Vacate Request (Woodside)

Please see the attached survey.
Thank you!

Letha Moore, PHR
Benefits and Employee Services Manager
Florida Hospital Human Resources
office-407-303-9441
cell-407-580-7821
fax-407-303-9350

From: King, PJ [mailto:Pj.King@mybriighthouse.com]
Sent: Monday, December 01, 2014 4:00 PM
To: Moore, Letha; david.r.byrnes@centurylink.com; Usry, Marvin; rgullett@langd.org; albert.marsden@duke-energy.com
Cc: sam.letha@hotmail.com; King, PJ
Subject: RE: (Rear of the house) Retention Easement Vacate Request (Woodside)

Please provide me with a survey print that denotes the area you are requesting to vacate. Thank you.

From: Moore, Letha [mailto:Letha.Moore@FLHOSP.ORG]
Sent: Monday, December 01, 2014 3:55 PM
To: david.r.byrnes@centurylink.com; Usry, Marvin; King, PJ; rgullett@langd.org; albert.marsden@duke-energy.com
Cc: sam.letha@hotmail.com
Subject: (Rear of the house) Retention Easement Vacate Request

Good afternoon,

I was told I needed to have an email from each of you to proceed with my request for a vacate. I live at 2549 Woodside Ridge Dr., Apopka, FL 32712, Lot 230 and Parcel ID # 30-20-28-9144-02-300, in Orange County. I am putting in a pool and would like to use 2.5 feet of the 7 feet (part of my property) retention easement to make the pool a little wider. I need a written response (email) from each business copied for the city of Apopka to consider my request.
Thank you for your time and consideration.

Sincerely,

Letha Moore, PHR

Benefits and Employee Services Manager
Florida Hospital Human Resources
office-407-303-9441
cell-407-580-7821
fax-407-303-9350

This message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is non-public, proprietary, privileged, confidential, and exempt from disclosure under applicable law or may constitute as attorney work product. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, notify us immediately by telephone and (i) destroy this message if a facsimile or (ii) delete this message immediately if this is an electronic communication. Thank you.

CONFIDENTIALITY NOTICE: This e-mail may contain information that is privileged, confidential or otherwise protected from disclosure. **If you are not the intended recipient of this e-mail, please notify the sender immediately by return e-mail, purge it and do not disseminate or copy it.

This message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is non-public, proprietary, privileged, confidential, and exempt from disclosure under applicable law or may constitute as attorney work product. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, notify us immediately by telephone and (i) destroy this message if a facsimile or (ii) delete this message immediately if this is an electronic communication. Thank you.

This communication is the property of CenturyLink and may contain confidential or privileged information. Unauthorized use of this communication is strictly prohibited and may be unlawful. If you have received this communication in error, please immediately notify the sender by reply e-mail and destroy all copies of the communication and any attachments.

GAS

Moore, Letha

From: Rick Gullett <rgullett@langd.org>
Sent: Thursday, December 04, 2014 3:29 PM
To: Moore, Letha
Subject: RE: (Rear of the house) Retention Easement Vacate Request (Woodside)

Please be advised that the **Lake Apopka Natural Gas District** has no gas facilities within your subdivision, and therefore **no objection to vacating the easement at 2549 Woodside Ridge Drive.**

Thanks for the inquiry, and good luck with your pool project.

Rick Gullett
Manager of Engineering
407-656-2734 x108

From: Moore, Letha [<mailto:Letha.Moore@FLHOSP.ORG>]
Sent: Thursday, December 04, 2014 12:53 PM
To: King, PJ; Usry, Marvin; Rick Gullett; todd.boyer@duke-energy.com; nicholas.brana@duke-energy.com
Cc: sam.letha@hotmail.com
Subject: (Rear of the house) Retention Easement Vacate Request (Woodside)
Importance: High

Good afternoon,

I was told I needed to have an email from each of you to proceed with my request for a vacate. I live at 2549 Woodside Ridge Dr., Apopka, FL 32712, Lot 230 and Parcel ID # 30-20-28-9144-02-300, in Orange County. I am putting in a pool and would like to use 2.5 feet of the 7 feet (part of my property) retention easement to make the pool a little wider. I need a written response (email) from each business copied for the city of Apopka to consider my request.

Thank you for your time and consideration.

Sincerely,

Letha Moore, PHR
Benefits and Employee Services Manager
Florida Hospital Human Resources
office-407-303-9441
cell-407-580-7821
fax-407-303-9350

This message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is non-public, proprietary, privileged, confidential, and exempt from disclosure under applicable law or may constitute as attorney work product. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, notify us immediately by telephone and (i) destroy this message if a facsimile or (ii) delete this message immediately if this is an electronic communication. Thank you.



3300 Exchange Place
Lake Mary, FL 32746

benita.rostel@duke-energy.com

o. 407-942-9657

December 2, 2014

Ms. Letha Moore
2459 Woodside Ridge Drive
Apopka, FL

RE: *Vacate Request of 2.5 foot strip of land located at rear of 2459 Woodside Ridge Drive, Apopka, FL*

Dear Ms. Moore:

Please be advised that to DUKE ENERGY FLORIDA, INC., d/b/a DUKE ENERGY has reviewed the petition to Vacate a 2.5 foot strip of land located at the rear of property located at 2459 Woodside Ridge Drive, Apopka, Florida (Parcel ID # 30-20-28-9144-02-300). Duke Energy Distribution and Transmission have no facilities within this area. So Duke Energy Distribution and Transmission have "No Objections" to the vacation of this area.

This "No Objection" letter should be considered as approval from both Duke Energy Transmission and Duke Energy Distribution Departments.

Sincerely,

Benita Rostel
Associate Land Representative
Distribution Right of Way - Florida

Construction Department
3767 All American Blvd
Orlando FL 32810



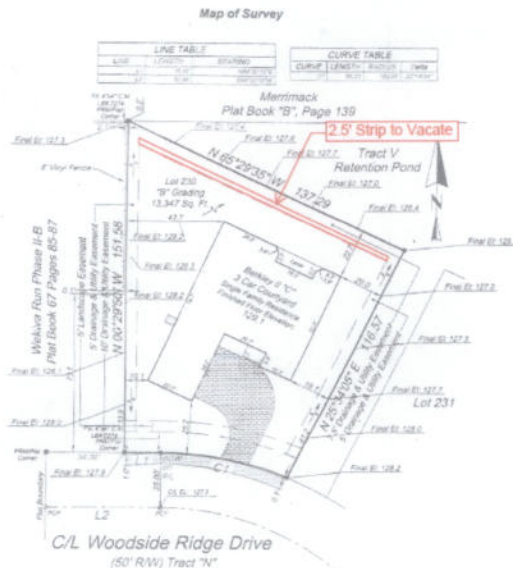
December 5, 2014

Letha Moore, PHR
2549 Woodside Ridge Dr.
Apopka, FL 32712

Re: Request for Vacation of Easement
2549 Woodside Ridge Dr. Lot 230
Parcel ID# 30-20-28-9144-02-300

Dear Ms. Moore:

Bright House Networks has reviewed your request and has **no objections** to the vacation of the rear easement located on Lot 230 as shown below.



City of Apopka
LEGAL DESCRIPTION
Lot 230, "Wekiva Run Phase III-A",
according to the plat thereof as recorded in plat book 75 at pages 57 - 58
of the public records of Orange County, Florida.

Address: 2549 Woodside Ridge Drive

If you need and additional information, please contact me at my office 407-532-8511.

Sincerely,

Tracey Domostoy
Construction Supervisor
Bright House Network

ORDINANCE NO. 2404

AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, TO VACATE A PORTION OF A DRAINAGE AND UTILITY EASEMENT LOCATED AT 2549 WOODSIDE RIDGE DRIVE; PROVIDING DIRECTIONS TO THE CITY CLERK, FOR SEVERABILITY, FOR CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, pursuant to provisions of Florida Statutes, Section 336.10, a Petition has been filed by Letha Ellen Moore to vacate, abandon, discontinue, renounce and disclaim a portion (2.5 ft. width) of an existing drainage and utility easement (7.5 ft. width) located at the rear yard of 2549 Woodside Ridge Drive, as shown in Exhibit "A"; and

WHEREAS, CenturyLink (f/k/a Embarq), Bright House Network (f/k/a Time Warner Cable), Duke Energy (f/k/a Progress Energy), and Lake Apopka Natural Gas District have no objection to the abandonment of a portion of the existing drainage and utility easement; and

WHEREAS, the City Council has determined that under the proposed circumstances there exists no public need for this existing easement; and

WHEREAS, after public notice in accordance with Florida Statute 336.10, the City Council has determined that it is not contrary to public interest to vacate and abandon said existing easement.

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of Apopka, Florida, as follows:

Section 1. That the following lands, and graphically depicted by the attached Exhibit "A," shall be officially closed, discontinued, and vacated:

Legal Description:

COMMENCE AT THE NORTHWEST CORNER OF LOT 230, WEKIVA RUN PHASE 111-A, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 75, PAGES 57 AND 58, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA. THENCE RUN S 00 DEGREES 29' 50" E ALONG THE WEST LINE OF SAID LOT 230 A DISTANCE OF 10.61 FEET; THENCE N 89 DEGREES 30' 10" E A DISTANCE 5.00 FEET TO A COMMON CORNER OF 5.00 FOOT AND 7.50 FOOT DRAINAGE AND UTILITY EASEMENT, ALSO BEING THE POINT OF BEGINNING; THENCE N 00 DEGREES 29' 50" W A DISTANCE OF 2.76 FEET; THENCE S 65 DEGREES 29 FEET 35" E A DISTANCE OF 124.35 FEET; THENCE S 25 DEGREES 34' 05"W A DISTANCE OF 2.50 FEET TO A COMMON CORNER OF A 5.00 FOOT AND 7.50 FOOT DRAINAGE AND UTILITY EASEMENT; THENCE N 65 DEGREES 29' 35" W ALONG THE SOUTH LINE OF A 7.50 FOOT DRAINAGE AND UTILITY EASEMENT A DISTANCE OF 123.14 FEET TO THE POINT OF BEGINNING.

CONTAINING: 309 SQUARE FEET, MORE OR LESS.

ORDINANCE NO.: 2404
PAGE 2

Section II. NOTICE. That the Ordinance be filed with the Clerk of the Circuit Court of Orange County, Florida, and duly recorded among the Public Records of Orange County, Florida.

Section III. SEVERABILITY. That if any section or portion of a section or subsection of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force or effect of any other section or portion of section or subsection or part of this Ordinance.

Section IV. CONFLICT. That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section V. EFFECTIVE DATE. That this Ordinance shall take effect upon the date of adoption.

READ FIRST TIME: January 21, 2015

READ SECOND TIME
AND ADOPTED: February 4, 2015

Joseph E. Kilsheimer, Mayor

ATTEST:

Linda Goff, City Clerk

DULY ADVERTISED FOR PUBLIC HEARING: January 2, 2015
January 23, 2015

ORDINANCE NO. 2404
EXHIBIT "A"

SKETCH OF DESCRIPTION
(PAGE 1 OF 2)

LEGAL DESCRIPTION:

COMMENCE AT THE NORTHWEST CORNER OF LOT 230, WEKIVA RUN PHASE III-A, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 75, PAGES 57 AND 58, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA. THENCE RUN S00°29'50"E ALONG THE WEST LINE OF SAID LOT 230 A DISTANCE OF 10.61 FEET; THENCE N89°30'10"E A DISTANCE OF 5.00 FEET TO A COMMON CORNER OF A 5.00 FOOT AND 7.50 FOOT DRAINAGE AND UTILITY EASEMENT, ALSO BEING THE POINT OF BEGINNING; THENCE N00°29'50"W A DISTANCE OF 2.76 FEET; THENCE S65°29'35"E A DISTANCE OF 124.35 FEET; THENCE S25°34'05"W A DISTANCE OF 2.50 FEET TO A COMMON CORNER OF A 5.00 FOOT AND 7.50 FOOT DRAINAGE AND UTILITY EASEMENT; THENCE N65°29'35"W ALONG THE SOUTH LINE OF A 7.50 FOOT DRAINAGE AND UTILITY EASEMENT A DISTANCE OF 123.14 FEET TO THE POINT OF BEGINNING.

CONTAINS 309 SQUARE FEET MORE OR LESS

JOB #901029
CF# OC75-57-LOT230-SOD
DATE: 12-03-14
SCALE: 1" = 30'
DRAWN BY: PJT

PREPARED FOR:

LETHA ELLEN MOORE

LEGEND

- CL - CENTERLINE
- CM - CONCRETE MONUMENT
- CONC - CONCRETE
- COVD - COVERED
- CP - CONCRETE PAD
- CW - CONCRETE WALKWAY
- Δ - CENTRAL ANGLE
- D&M - DESCRIBED & MEASURED
- DUE - DRAINAGE & UTILITY EASEMENT
- DESC - DESCRIPTION
- E/P - EDGE OF PAVEMENT
- ESMT - EASEMENT
- FH - FIRE HYDRANT
- FND - FOUND
- IP - IRON PIPE
- IR - IRON ROD
- LE - LANDSCAPE EASEMENT
- MEAS - MEASURED
- MS - METAL SHED
- N&D - NAIL & DISK
- OW - OVERHEAD WIRE
- ORB - OFFICIAL RECORDS BOOK
- PL&M - PLAT & MEASURED
- PB - PLAT BOOK
- PG - PAGE
- POB - POINT OF BEGINNING
- POC - POINT OF COMMENCEMENT
- R - RADIUS
- R/W - RIGHT OF WAY
- TR - TELEPHONE RISER
- TYP - TYPICAL
- UE - UTILITY EASEMENT
- UP - UTILITY POLE
- # - NUMBER

REVISIONS

GENERAL NOTES:

1. Bearing structure based on the West line of Lot 230; being N00°29'50"W
2. This surveyor has not made a search of the public records for any dedications, limitations, restrictions or easements other than shown hereon.
3. This Sketch of Description has been made for the exclusive use of the entities prepared for, hereon and does not extend to any unnamed parties.
4. This Sketch of Description is not a Survey.

Altamax Surveying

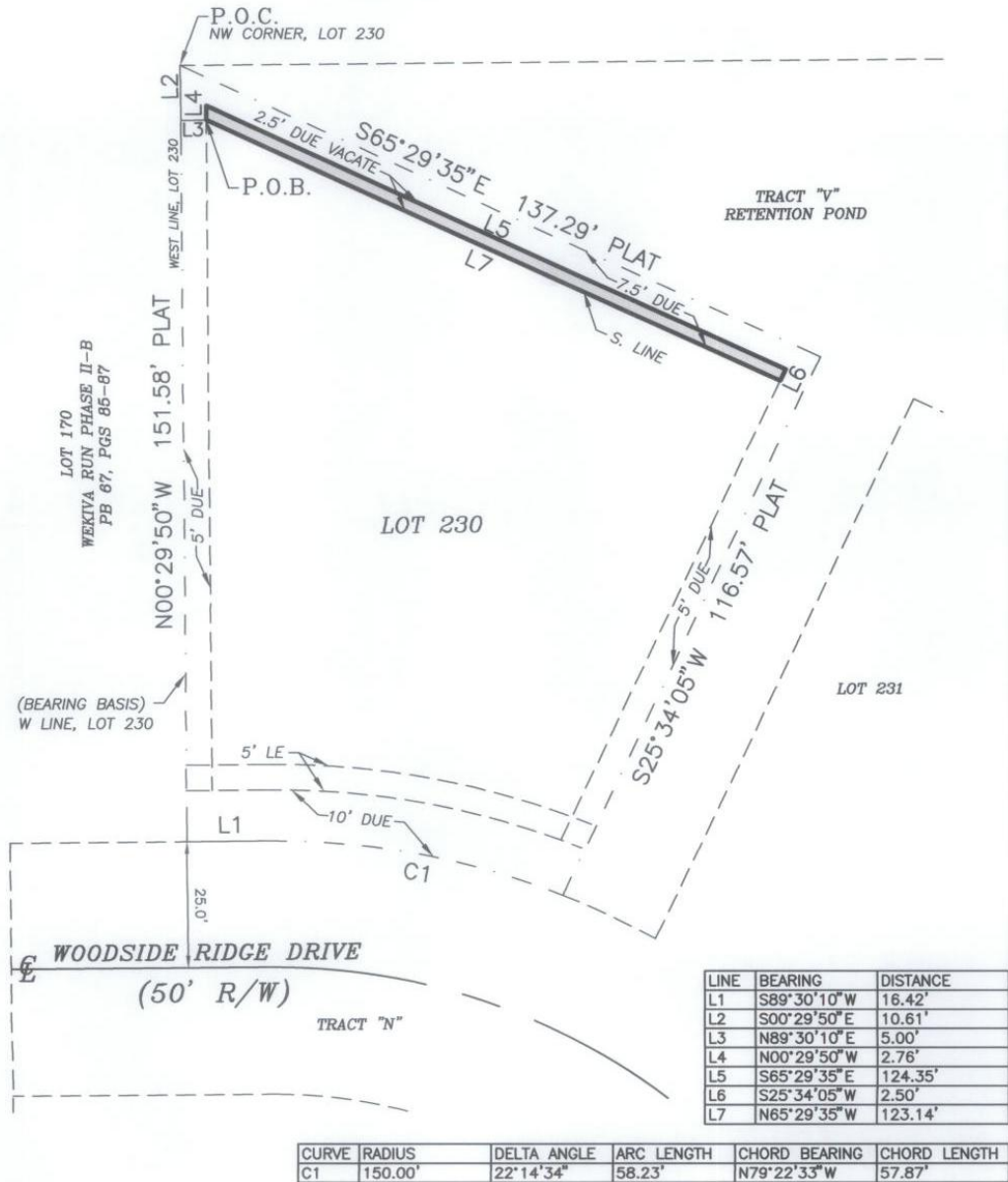
910 Belle Avenue, Suite 1140
Casselberry, FL 32708
Phone: 407-227-7677
Licensed Business No. 7833
www.altamaxsurveying.com

Robert C. Johnson
Robert C. Johnson PSM 5551

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF THIS FLORIDA LICENSED SURVEYOR AND MAPPER.

SKETCH OF DESCRIPTION

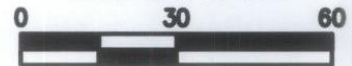
(PAGE 2 OF 2)



Altamax Surveying

910 Belle Avenue, Suite 1140
 Casselberry, FL 32708
 Phone: 407-677-0200
 Licensed Business No. 7833
 www.altamaxsurveying.com

GRAPHIC SCALE



1 INCH = 30 FT.



CITY OF APOPKA CITY COUNCIL

<input checked="" type="checkbox"/> PUBLIC HEARING	DATE:	January 21, 2015
<input type="checkbox"/> ANNEXATION	FROM:	Community Development
<input type="checkbox"/> PLAT APPROVAL	EXHIBITS:	Vicinity Map
<input type="checkbox"/> OTHER:		Exhibit A – Approved Brick Wall
		Exhibit B – Proposed Pre-cast Wall

SUBJECT: **APOPKA WOODS SUBDIVISION - MINOR MODIFICATION TO FINAL DEVELOPMENT PLAN**

Request: **APPROVAL OF THE MINOR MODIFICATION TO THE APOPKA WOODS SUBDIVISION FINAL DEVELOPMENT PLAN TO CONSTRUCT A PRE-CAST DECORATIVE WALL IN LIEU OF THE PREVIOUSLY APPROVED BRICK WALL.**

SUMMARY

OWNER/APPLICANT: Apopka Woods LLC

LOCATION: North of West McCormick Road and east of Irmalee Lane

FUTURE LAND USE: Residential Low Density (0 – 5 du/ac)

ZONING: R-2 Residential

PROPOSED DEVELOPMENT: 76 Single Family Residential Lots

TRACT SIZE: 24.82 +/- acres

PROPOSED MODIFICATION: Installation of decorative pre-cast exterior buffer wall in lieu a brick wall along McCormick Road

DISTRIBUTION

Mayor Kilsheimer	Finance Dir.	Public Ser. Dir.
Commissioners (4)	HR Director	City Clerk
City Administrator Irby	IT Director	Fire Chief
Community Dev. Dir.	Police Chief	

RELATIONSHIP TO ADJACENT PROPERTIES:

<i>Direction</i>	<i>Future Land Use</i>	<i>Zoning</i>	<i>Present Use</i>
North (County)	Institutional	A-1	County Northwest Water Reclamation Facility
East (County)	Institutional	A-1	County Northwest Water Reclamation Facility
South (Ocoee)	Low Density Residential	R-1A	McCormick Woods Res. Subdivision
West (City)	Commercial; Residential Low Density	C-1/PUD	Vacant undeveloped

ADDITIONAL COMMENTS:

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 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 ninety-five dollars per lineal foot while a pre-cast wall with the same height costs approximately seventy-five dollars per lineal foot.

PUBLIC HEARING SCHEDULE:

January 13, 2015 - Planning Commission (5:01 pm)

January 17, 2015 – City Council (8:00 pm)

RECOMMENDED ACTION:

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. If the Planning Commission recommends acceptance of the pre-cast decorative wall, the following motion is recommended:

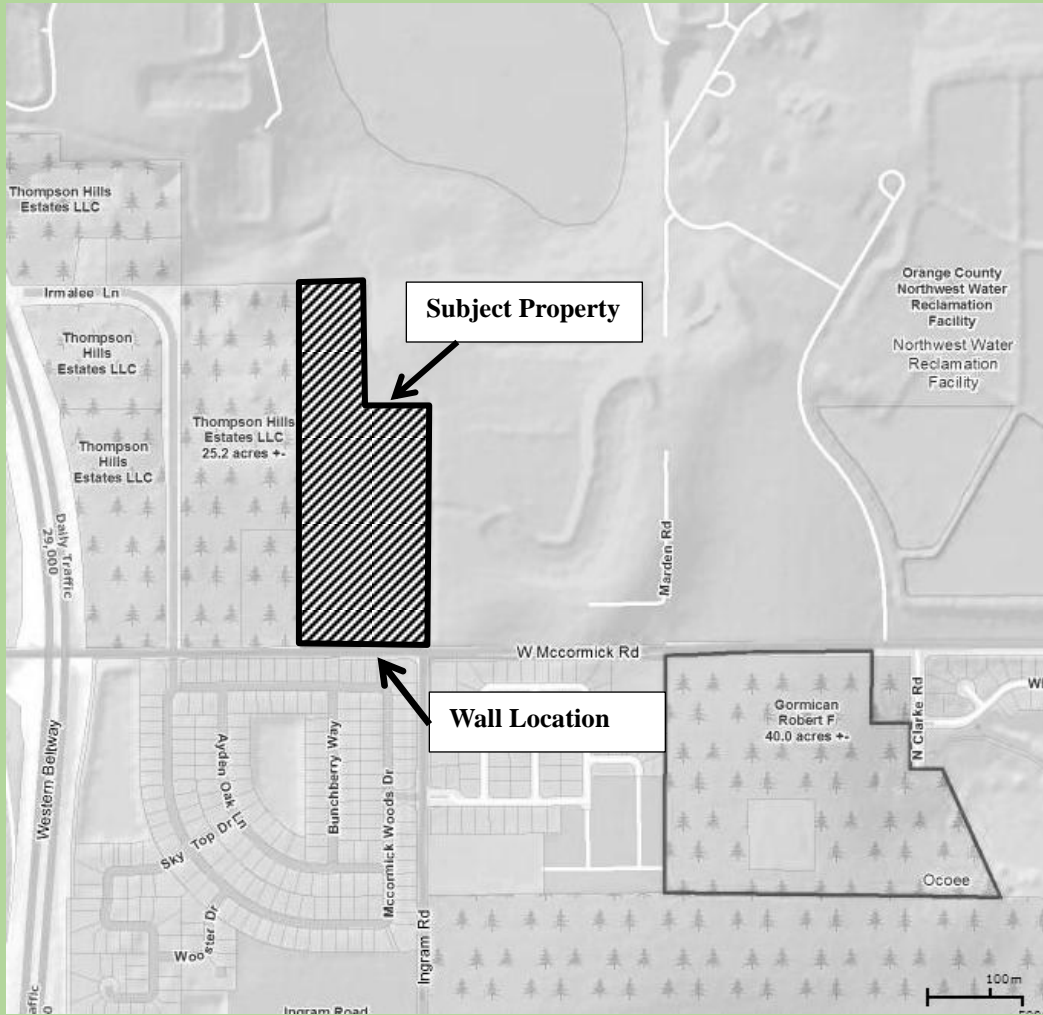
The **Planning Commission**, at its meeting on January 13, 2015, recommended approval (6-0) of a pre-cast decorative wall, with simulated brick or stone, as meeting the intent of a “decorative block finished wall;” and to recommend a modification of the Apopka Woods Final Development Plan as proposed by the applicant.

Approve the pre-cast decorative wall, with simulated brick or stone, as meeting the intent of a “decorative block finished wall;” and recommend the modification of the Apopka Woods Final Development Plan as proposed by the applicant.

Note: 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.

Apopka Woods Subdivision
24.82 +/- Acres
Proposed: 76 units
Parcel ID #: 32-21-28-0000-00-002

VICINITY MAP





Landscape Architect & Site Planner

4401 Galvanna Lane
Water Park, FL 32702
FL (407) 484-2434
FL (407) 471-0884

PROJECT AND OWNER

APOPKA WOODS SUBDIVISION
City of Apopka
Florida

Apopka Woods, LLC
36W 558 National Court
St. Charles, IL 60175
PH: (407) 393-8746
FX:

CONSULTANTS

LANDSCAPE ARCHITECT
DAN J. KELLY, P.E., FLS

REG. NO. 000118A

PROJECT NO. 1801.01
DESIGNED BY CA
DRAWN BY CA
CHECKED BY CA
DATE 07/01/14

ISSUED FOR:
04/16/14, City Comments
04/23/14, County Comments
05/08/14, City Comments
07/01/14, SIGN CHECK

DRAWING SCALE

SCALE: AS SHOWN

DRAWING TITLE

HARDSCAPE DETAILS

DWG. NUMBER

HD-01

SHEET 03 OF 04

STRUCTURAL DESIGN CRITERIA:

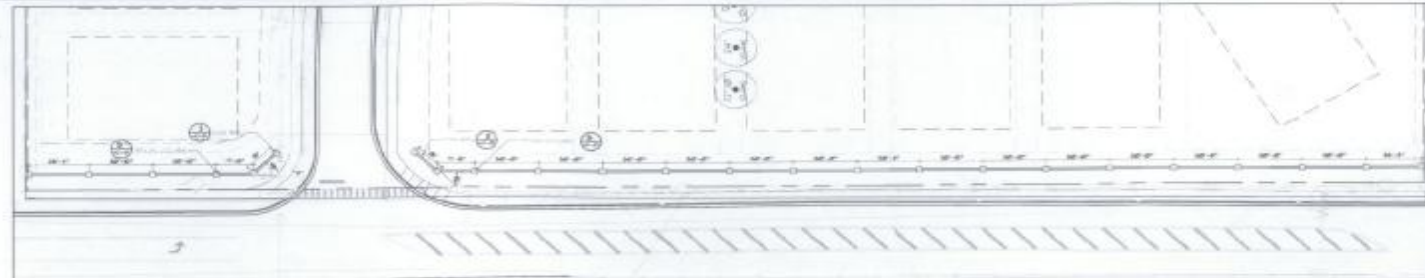
- A. STRUCTURAL DESIGN IS IN ACCORDANCE WITH THE GOVERNING PROVISIONS OF THE FOLLOWING CODES, STANDARDS AND SPECIFICATIONS:
 1. FLORIDA BUILDING CODE - 2010 EDITION
 2. ASCE 7-02 MIN. DESIGN LOADS FOR BUILDINGS AND OTHER STRUCTURES
 3. ACI 318-02 BUILDING CODE REQUIREMENTS FOR REINFORCED CONCRETE
 4. ACI 318-02 BUILDING CODE REQUIREMENTS FOR MASONRY STRUCTURES
 5. AISC SPECIFICATION FOR STRUCTURAL STEEL BUILDINGS, ASD, NINTH EDITION
 6. AISI S10 STRUCTURAL STEEL CODE - STEEL
 7. SPECIFICATIONS FOR ALUMINUM STRUCTURES
 8. AISI S10 STRUCTURAL STEEL CODE - ALUMINUM
- B. SUPERIMPOSED DESIGN LOADS:
 - LIVE LOADS (MIN.) DEAD LOADS
 - GENERAL: 20 PSF DEAD WEIGHT
 - WIND LOADS: DESIGN WIND SPEED: 60 MPH
 - MEAN ROOF HEIGHT: +9 FEET
 - EXPOSURE: B
 - STRUCTURE: BOLD CT-2, 3, 4-B
 - DESIGN WIND PRESSURE: 22 PSF
- C. FOUNDATIONS:
 1. ASSUMED SAFE BEARING CAPACITY: 3,000 PSF
 2. ALL UNSUITABLE SOILS SHALL BE REMOVED AND REPLACED WITH CLEAN STRUCTURAL FILL PLACED IN LOOSE LAYERS NOT EXCEEDING EIGHT (8) INCHES AND COMPACTED TO 98% FAST COMP. - STANDARD PROVISIONS OF MAX. DRY DENSITY.
 3. CONTRACTOR SHALL PREPARE THE SUBSURFACE SOILS PER THE GEOTECHNICAL REQUIREMENTS STIPULATED IN GEOTECHNICAL REPORT.

GENERAL:

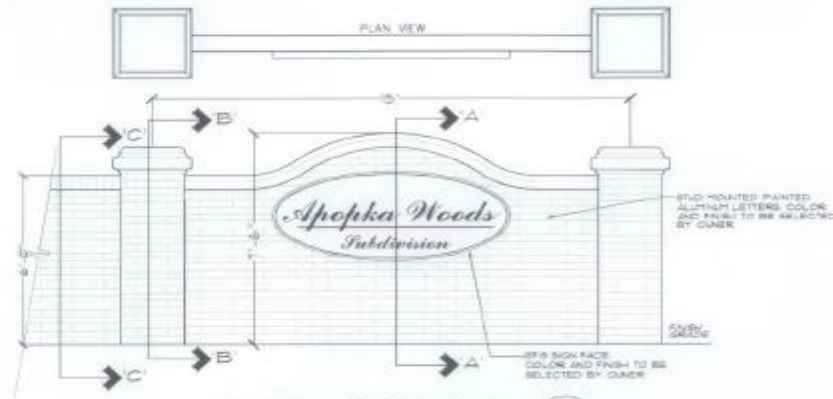
1. ALL DIMENSIONS AND PLACEMENTS SPECIFIED WITHIN THIS DRAWING ARE TO BE VERIFIED BY OWNER PRIOR TO INSTALLATION.
2. ALL ELEVATIONS ARE REFERENCED TO FINISHED GRADE UNLESS NOTED OTHERWISE.
3. ALL ELEVATIONS SHOWN ON PLANS ARE REFERENCED TO THE DATUM UNLESS NOTED OTHERWISE.
4. THE GENERAL CONTRACTOR SHALL FIELD MEASURE ALL DIMENSIONS MARKED (V/U) FOR FABRICATION OR START OF CONSTRUCTION.
5. NO STRUCTURAL MEMBER SHALL BE CUT, NOTCHED OR OTHERWISE REDUCED IN STRENGTH WITHOUT THE PRIOR NOTIFICATION OF THE STRUCTURAL ENGINEER.
6. THE GENERAL CONTRACTOR SHALL COORDINATE ALL OTHER DISCIPLINES FOR ANY ITEMS WHICH AFFECT THE STRUCTURAL DRAWINGS.
7. TEMPORARY BRACING, CUT WAYS, ETC. SHALL BE USED WHERE NECESSARY TO ADEQUATELY RESIST ALL CONSTRUCTION LOADS.
8. INSURE POSITIVE DRAINAGE IN ALL AREAS.
9. CONTRACTOR TO VERIFY ALL UTILITIES PRIOR TO CONSTRUCTION NOTIFY OWNER OF ANY CONFLICTS BETWEEN PROPOSED WALLS/COLUMNS AND EXISTING UTILITIES.

CONCRETE MASONRY:

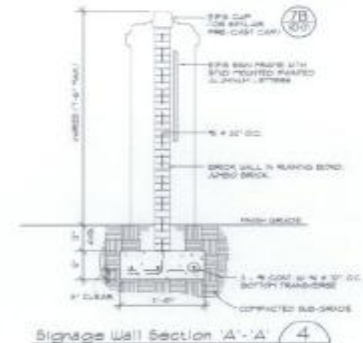
- A. DESIGN CRITERIA: ACI 530-09/ASCE 5-09 ACI 530I-09/ASCE 5-09
- B. HOLD-UP UNITS: 7 1/2" x 4 1/8" x 13 1/8" PSI # 28 DATA 2.8" FULL BEDDING REMOVE HORIZONTAL PROTRUDING INTO CELL CAVITIES TO BE REINFORCED AND GROUTED.
- C. GROUT: ASTM C 476, MIN. 3,000 PSI # 28 DATA 3.0" AGGREGATE MAX. # 20 SLUMP.
- D. REINFORCEMENT:
 1. HORIZONTAL JOINTS: STD. CUR-G-WALL # 4" O.C. USE PREFABRICATED CORNERS AND TEES # WALL INTERSECTIONS OVERLAP DISCONTINUED ENDS AND EXTEND INTO COLUMNS 2' MIN.
 2. VERTICAL AND HORIZONTAL REINFORCEMENT: ASTM # 5 GRADE 60, TYP. # WALL INTERSECTIONS EACH SIDE OF OPENINGS AND # WALL ENDS HOOK TOP OF ALL DISCONTINUED BARS, LAP CONT. REIN. 48 BAR DIA. UNLS.
 3. USE BAR SPACERS IN EVERY 4TH COURSE WHERE CELLS ARE TO BE GROUTED.
- E. PROVIDE CLEANOUT OPENINGS FOR EACH GROUTED CELL.
- F. HIGH LIFT GROUTING SHALL BE USED WITH A PROXIMATE RISE OF 3'-6" IN 4' MAX. LIFTS WITH ONE HOUR BETWEEN LIFTS. VERTICATE EACH LIFT AND RECONSOLIDATE PREVIOUS LIFT AFTER PLACING NEXT LIFT. VERTICAL GORES TO BE FILLED WITH GROUT SHALL HAVE A MINIMUM CLEAR DIMENSION OF 3/4".
- G. WHERE EXPANSION AND/OR SOILS ARE SET IN MASONRY WALLS FILL BLOCK CELLS WITH GROUT FOR BOLTED COURSE AND TWO COURSES BELOW ANCHOR ELEVATION.



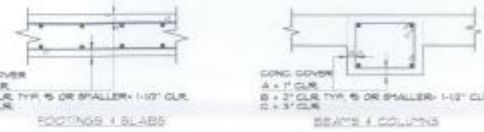
ENTRANCE PLANTING DETAIL
SCALE: 1/4" = 1'-0"



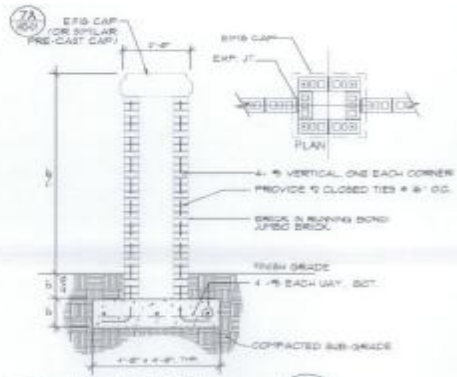
Entry Signage/ Buffer Wall Elevation
SCALE: 1/4" = 1'-0"



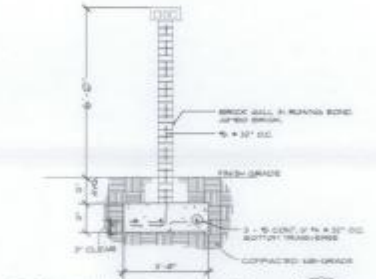
Signage Wall Section A-A
SCALE: 1/4" = 1'-0"



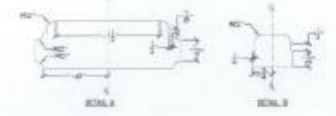
Concrete Cover For Reinforcing Steel
SCALE: 1/4" = 1'-0"



Column Section B-B
SCALE: 1/4" = 1'-0"



Buffer Wall Section C-C
SCALE: 1/4" = 1'-0"



Cap Details
SCALE: 1/4" = 1'-0"

LANDSCAPE AND IRRIGATION DESIGN
I CERTIFY THAT THE LANDSCAPE AND IRRIGATION DESIGN FOR THIS PROJECT IS IN ACCORDANCE WITH THE CITY OF APOPKA'S ORDINANCE 2008 ADOPTED MAY 21, 2008 WHICH ESTABLISHES WATERWISE, LANDSCAPE AND IRRIGATION STANDARDS.
SIGNATURE: [Signature] REG. NO. LA0001764 DATE: 07/01/14

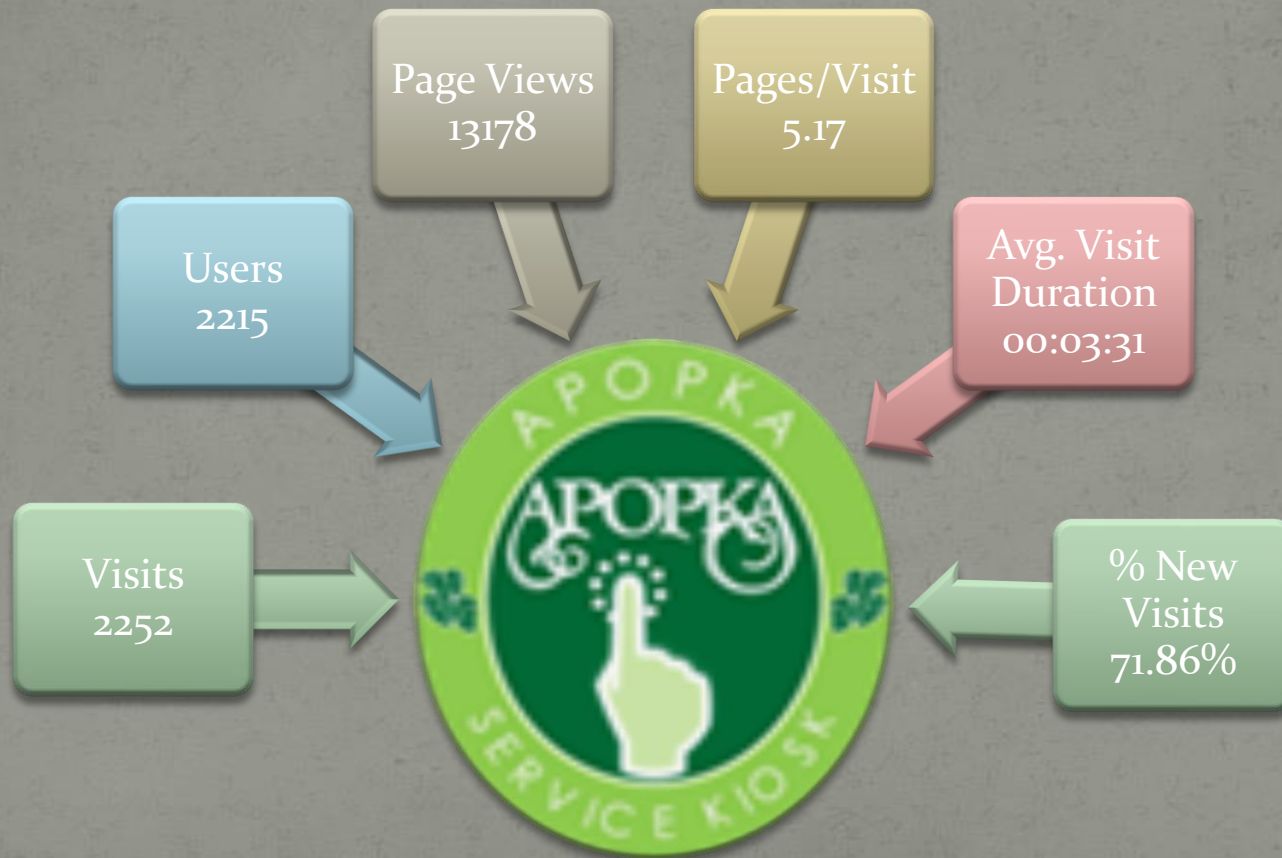


Administrative Report



Presented To: Mayor and City Council
Presented By: Glenn Irby, City Administrator
January 21, 2015

A.S.K. Apopka Service Kiosk November 2013 –December 2014



Information Technology

January - December

Homepage Visits



Building Webpage Visits



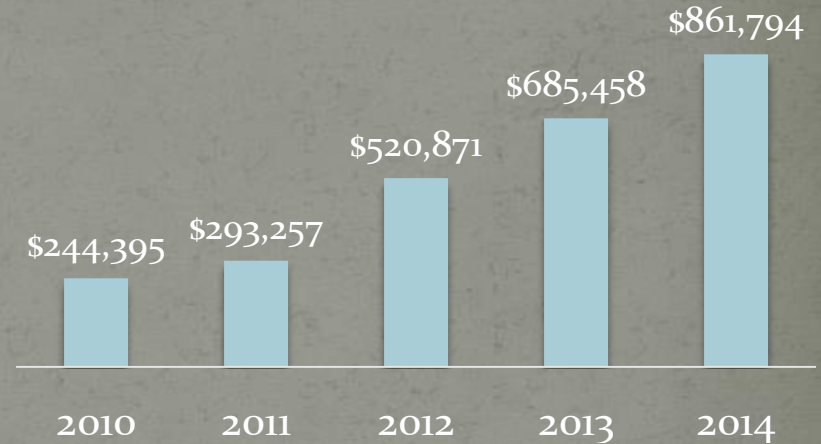
Finance

January - December

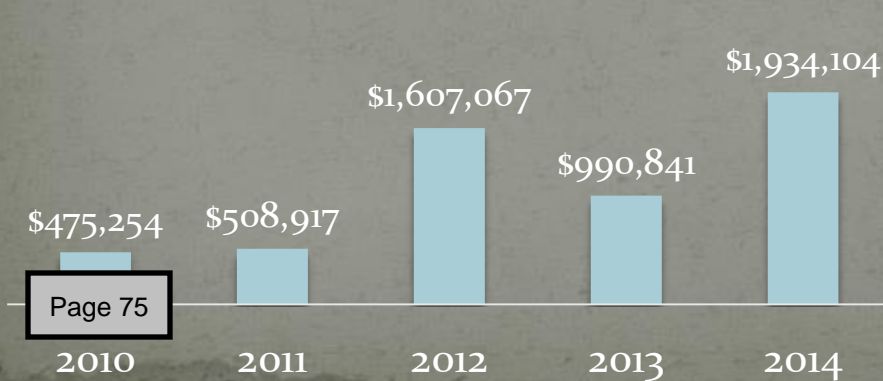
Sewer Impact



Water Impact



Transportation Impact



School Impact



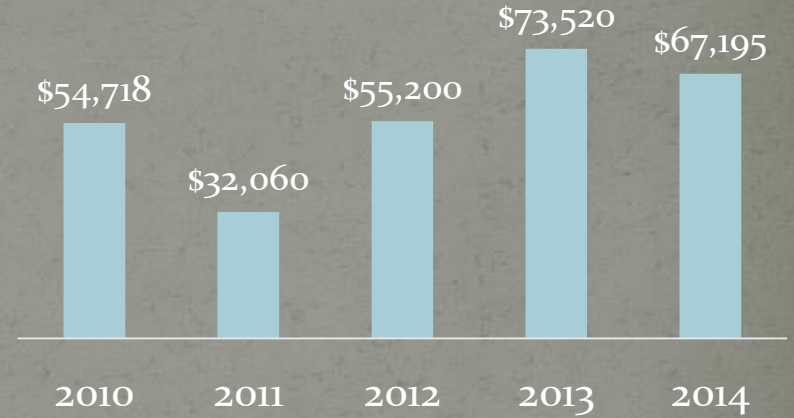
Finance

January - December

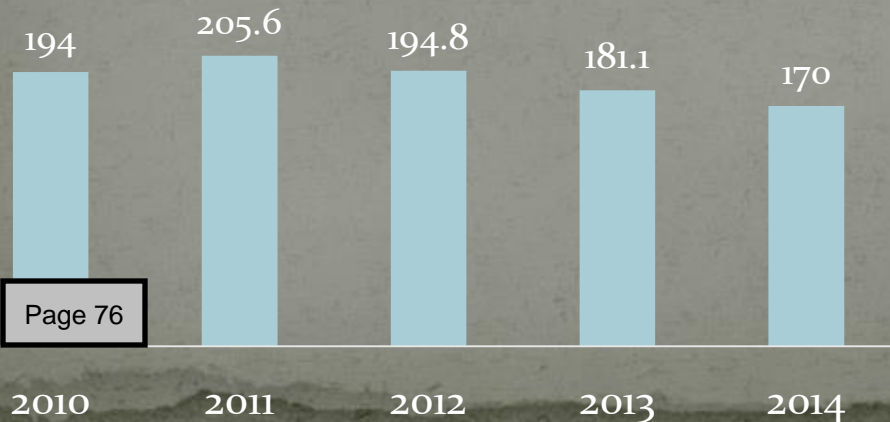
Reuse Impact



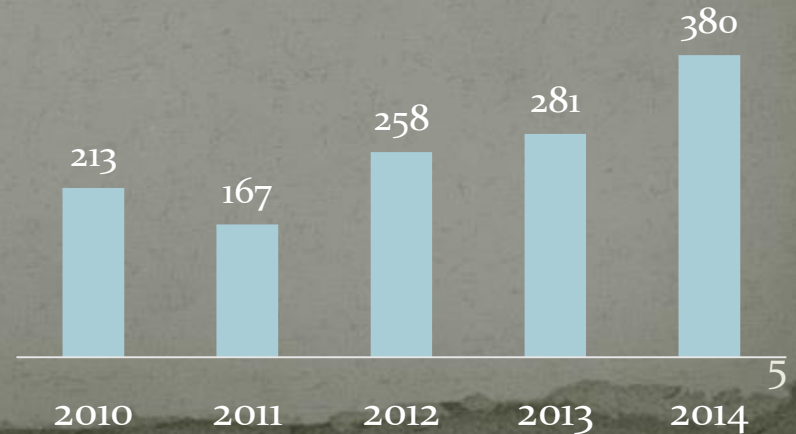
Recreation Impact



Average Potable Water Billed



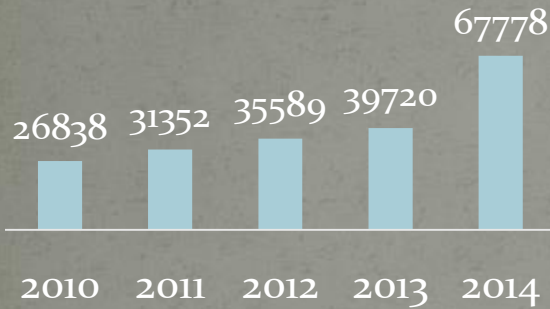
New Potable Meters Set



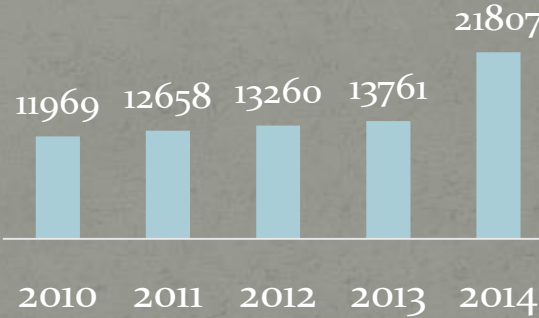
Finance - Utility Billing

January - December

Web



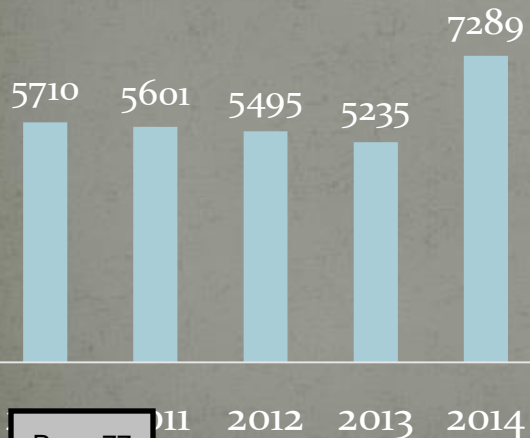
Office Window



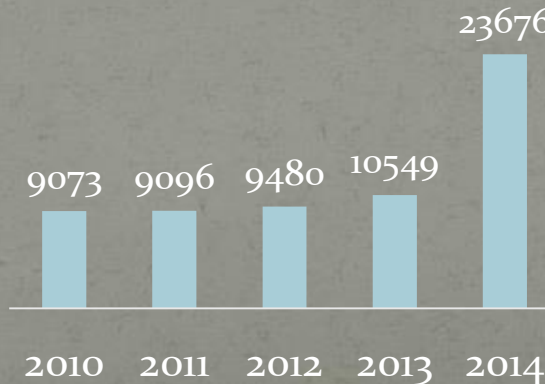
Mailed



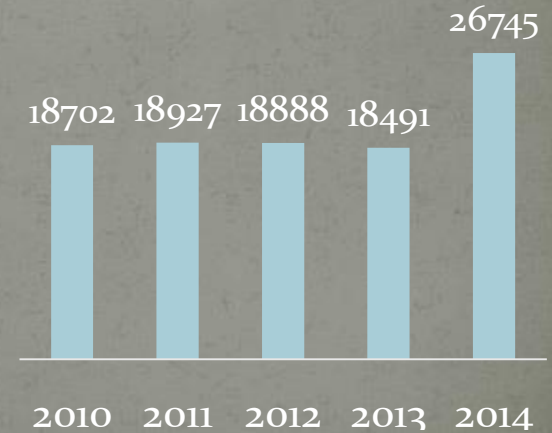
Drop Box



ACH



Drive-Up



Community Development

January – December

Arbor Permits



Arbor Revenues



Tree Bank Revenues



Community Development - Building

January - December

Automated Phone System Requests



Internet Inspection Requests



Office Inspection Requests



Community Development - Building

January - December

Permits Issued



Value of Construction



Certificates of Occupancy Issued



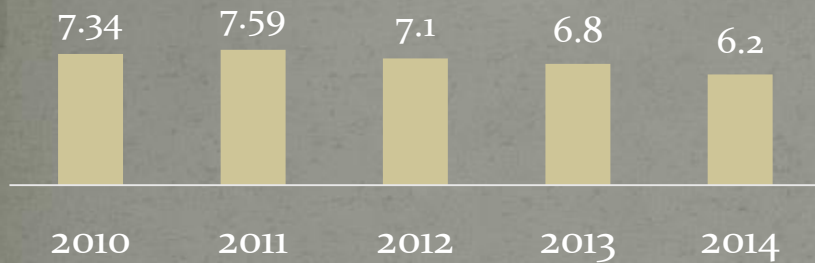
Inspections Performed



Public Services – Water Plants

January - December

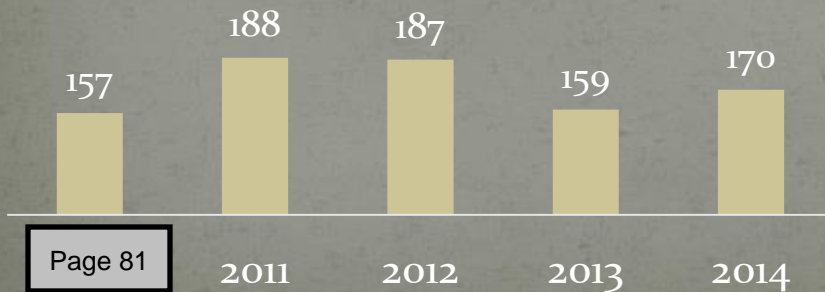
Water Plant – Average Daily Flow



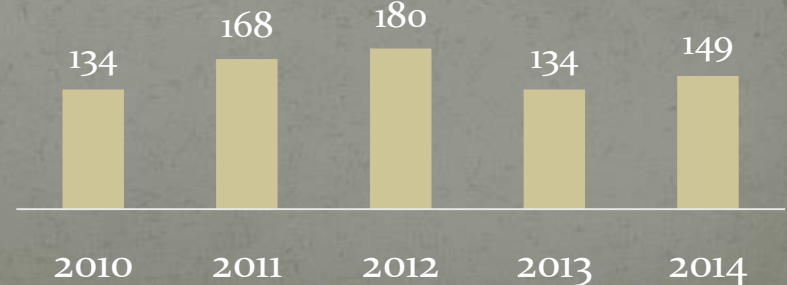
Wastewater Plant Average Daily Flow



Reclaimed Gallons Produced



Reclaimed Gallons Used



Public Services - Sanitation

January - December

Residential Customers

Commercial Customers



Recycling Customers



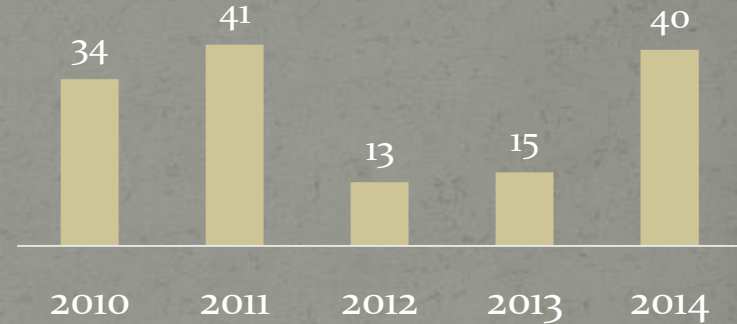
Public Services - Water Conservation

January - December

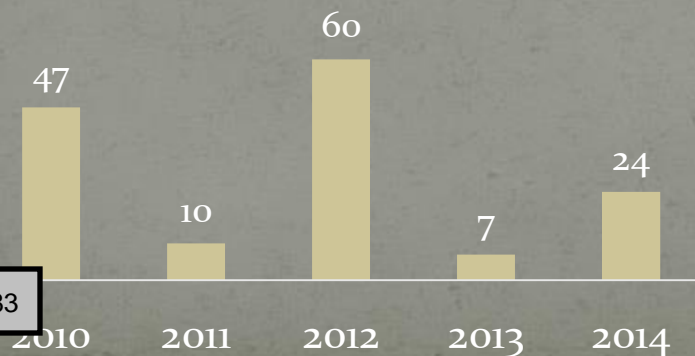
System Evaluations



Rain Sensors Issued



Program Rebates



Rebate Value



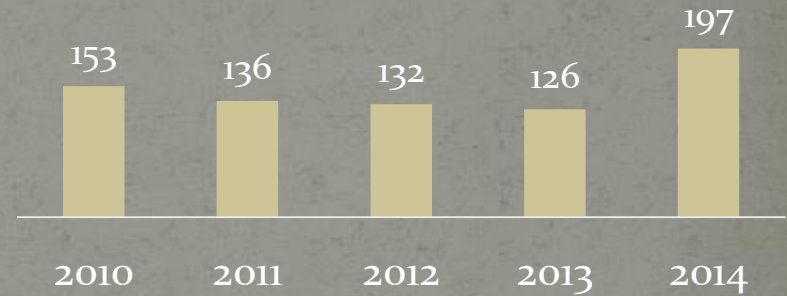
Public Services - Recreation

January - December

League Events



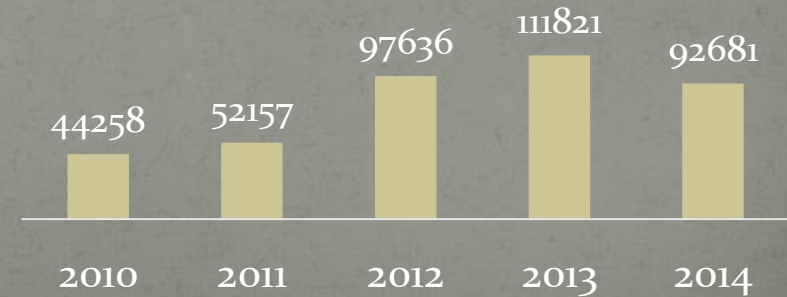
Senior Events



Facility Events



Special Events Attendees



Fire

January - December

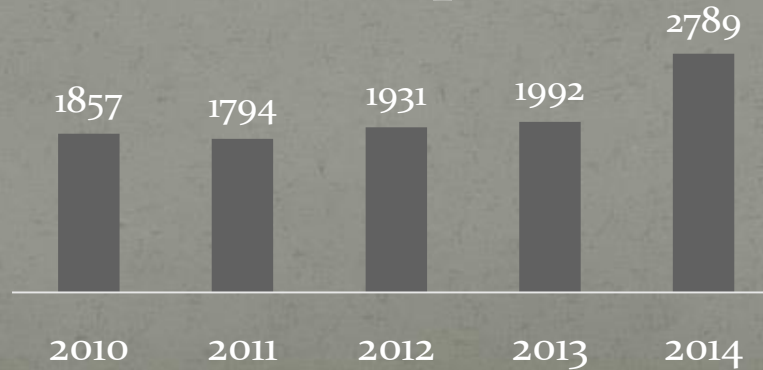
NFIRS Calls For Service



EMS Calls For Service



Annual Inspections



Police

January - December

Uniform Traffic Citations



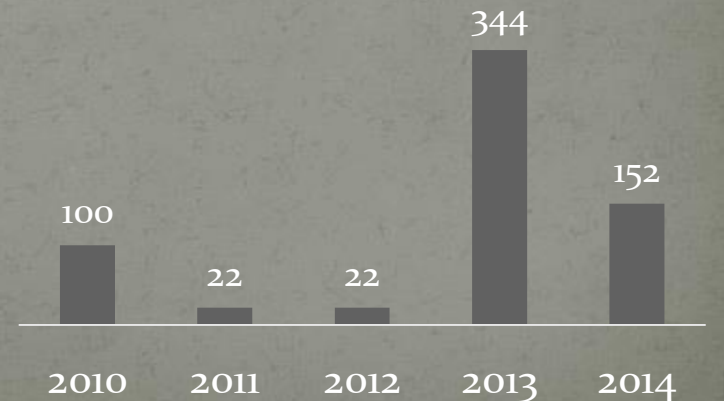
DUI Arrests



Warning Citations



Parking Citations



Police - Code Enforcement

January - December

Unkempt Cases



Disabled Vehicle Cases



Total Code Enforcement Cases



Administrative Services

January - December

New Business Tax



Business Tax Renewals





Pamela N. Barclay, CPA

Education Bachelor of Business Administration, May 1983 – Major: Accounting/CPA
The College of William and Mary

Experience

Director of Financial Services May 2012 – Present City of Longwood

- Plan and evaluate all financial policies, operations and processes for the City.
- Responsible for preparation of City Financial Statements, Annual Budget, and Capital Expenditure projections and serve as Financial Advisor to City Commission.
- Oversee accounting functions for the city including General Ledger, Accounts Payable, Accounts Receivable, Budget and Purchasing.
- Responsible for the Utility Billing for approximately 6,000 customers, as well as the receipting of payments and customer service associated with these customers.

Asst Finance Director Apr 2010 – May 2012 City of DeLand

- Responsible for accounting functions for the city including Payroll, Accounts Payable, Accounts Receivable, General Ledger, Budget and Purchasing.
- Prepare financial statements, Management Discussion & Analysis, Statisticals and footnotes for the CAFR. Also prepare the quarterly financial summaries for City Commission.
- Oversees budget preparation and amendments.
- Responsible for the Meter Reading and Utility Billing for approximately 20,000 customers, as well as the receipting of payments and customer service associated with these customers.
- Direct supervision over 6 professional employees and overall responsibility over 18 employees.

Grants Accountant Aug 2009 – Apr 2010 Volusia County

- Responsible for tracking, reconciling and reporting of county grants (approx 200).
- Prepared financial statements and assisted external auditors with their review.
- Performed budget analysis and prepared budget transfers and related agenda documents for council approval.

Comptroller Oct 2006 – Aug 2009 City of Newport News

- Responsible for the department's financial management, financial planning and financial reporting
- Overall supervision of the Accounting, Auditing, Meter Reading and Processing Operations branches. Responsible for approximately 25 employees with direct supervision of 13 employees.
- Develop cash analysis, financial statistics and projections. Oversee bond funds and cash flow projections for future bond issuances.
- Review and approve purchase requisitions to ensure funds are available prior to purchase.
- Oversee the preparation and maintenance of departmental financial records, statements and cash collections.

- Plan, organize and prepare the annual revenue, expenditure and capital improvement budgets. Meet with all divisions to get divisional needs and coordinate and respond to questions relating to budgets with the Office of Budget and Evaluation.

Accountant II

Oct 2004 – Oct 2006

City of Newport News

- Responsible for capturing, tracking and reporting the City's Machinery and Equipment to ensure the assets are safe kept and properly reported.
- Assist in the preparation of the City's Annual Financial Statements (CAFR). Specifically responsible for Capital Assets including depreciation, Inventory, Accounts Receivable, and Accounts Payable.
- Review accounting transactions (journal vouchers) for propriety and close. Set up accounts as directed.
- Schedule and coordinate the City's annual Cost Allocation Plan and review for accuracy.
- Interact with various city departments to provide guidance and resolve accounting discrepancies.
- Allocate the departmental costs associated with Accident Repairs, City Physicals and Motor Pool Usage.

Senior Internal Auditor

Feb 1998 – Oct 2004

City of Newport News

- Plan and conduct financial audits and performance reviews of various city departments.
- Perform various audit tests including reconciliation of general ledgers to subsidiary ledgers, variance analysis of budget to actual, examination of 5-year forecasting models and detail reviews of ledger transactions.
- Conducted single audit testwork to assist external auditors with their yearend audit.
- Evaluate the adequacy and effectiveness of departmental procedures and controls including an assessment of inherent risk.
- Prepare comprehensive audit reports to communicate findings and make recommendations for improvements.
- Monitor the implementation of the recommended corrective actions.

Internal Auditor

Aug. 1994 – Feb. 1998

Christopher Newport Univ

- Performed detail review of transactions and operations. Areas audited include Cash, Inventory, Accounts Payable, Food Services, and Personnel.
- Interpreted State and University regulations and tested for compliance.
- Consulted and assisted management with creating and implementing new procedures to enhance productivity.

Other

Certified Public Accountant (VA) since November 1986 (FL – 2010)
 Member of Governmental Financial Officers Association
 Certified as a Virginia Governmental Financial Officer
 Proficient in Microsoft WORD, EXCEL and PowerPoint
 Programming experience in Fortran, Pascal, COBOL and Easytrieve



CITY OF APOPKA CITY COUNCIL

PUBLIC HEARING
 ANNEXATION
 PLAT APPROVAL
 OTHER: Old Business

DATE: January 21, 2015
FROM: Community Development
EXHIBITS: "A" Ord. 2386 and support documents
"B" City Council Minutes
w/handouts presented to the
City Clerk
"C" Planning Commission Minutes

SUBJECT: FLORIDA LAND TRUST #111 – ZDA AT SANDPIPER, LLC – CHANGE OF ZONING - FROM "COUNTY" PD TO "CITY" PLANNED UNIT DEVELOPMENT (PUD/R-1A); AND MASTER PLAN/PRELIMINARY DEVELOPMENT PLAN

Request: RECONSIDERATION OF ORDINANCE NO. 2386, THE FLORIDA LAND TRUST #111 – ZDA AT SANDPIPER, LLC – CHANGE OF ZONING - FROM "COUNTY" PD TO "CITY" PLANNED UNIT DEVELOPMENT (PUD/R-1A); AND MASTER PLAN/PRELIMINARY DEVELOPMENT PLAN

SUMMARY

The City Council, at its meeting on January 7, 2015, unanimously agreed to continue discussion regarding reconsider of Ordinance No. 2386, the Florida Land Trust #111 – ZDA at Sandpiper, LLC (hereafter Sandpiper PUD) – Change Of Zoning - From "County" PD To "City" Planned Unit Development (PUD/R-1A); and Master Plan/Preliminary Development Plan.

Should City Council chose to rehear the Sandpiper PUD zoning application and the Master Plan/Preliminary Development Plan, planning staff recommends that Council schedule the hearing for no earlier than its February 18 to allow sufficient time to provide public notification.

DISTRIBUTION

Mayor Kilsheimer
Commissioners (4)
City Administrator Irby
Community Dev. Dir.

Finance Dir.
HR Director
IT Director
Police Chief

Public Ser. Dir.
City Clerk
Fire Chief

EXHIBIT "A"

ORDINANCE NO. 2386
W/MASTER PLAN

AND

SUPPORTING DOCUMENTATION

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.

WHEREAS, to manage the growth, the City of Apopka, Florida, finds it in the best interest of the public health, safety and welfare of its citizens to establish zoning classifications within the City; and

WHEREAS, the City of Apopka has requested a change in zoning on said property as identified in Section I of this ordinance; and

WHEREAS, the proposed Planned Unit Development (PUD/R-1A) zoning has been found to be consistent with the City of Apopka Comprehensive Plan, and the City of Apopka Land Development Code.

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of Apopka, Florida, as follows:

Section I. That the zoning classification of the following described property be designated as Planned Unit Development (PUD/R-1A), as defined in the Apopka Land Development Code, and with the following Master Plan provisions subject to the following zoning provisions:

- A. The uses permitted within the PUD district shall be: single family homes and associated accessory uses or structures consistent with land use and development standards established for the R-1A zoning category except where otherwise addressed in this ordinance.
- B. Development of the property shall occur consistent with the Master Site Plan set forth in Exhibit “A”. Development standards applicable to the Sandpiper Master Site Plan are set forth within Exhibit “B”. If a development standard or zoning regulation is not addressed within Exhibit “B”, development shall comply with the R-1A zoning standards set forth in the Land Development Code. Where any development standard conflicts between the Sandpiper Master Site Plan and the Land Development Code, the Master Site Plan shall preside. Any proposed revision to the Master Site Plan shall be evaluated and processed pursuant to Section 2.02.18.N. (Master plan revision), LDC.
- C. If a Final Development Plan associated with the PUD district has not been approved by the City within two years after approval of these Master Plan provisions, the approval of the Master Site Plan\ PDP provisions will expire. At such time, the City Council may:
 - 1. Permit a single six-month extension for submittal of the required Final Development Plan;

2. Allow the PUD zoning designation to remain on the property pending resubmittal of new Master Site Plan provisions and any conditions of approval; or
3. Rezone the property to a more appropriate zoning classification.

Section II. That the zoning classification of the following described property, being situated in the City of Apopka, Florida, is hereby Planned Unit Development (PUD/R-1A) as defined in the Apopka Land Development Code.

Legal Description:

The Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 3, Township 21 South, Range 28 East, Orange County, Florida.

The West 275.0 feet of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 2, Township 21 South, Range 28 East, Orange County, Florida, less the North 30 feet thereof.

The West $\frac{1}{2}$ of the North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 3, Township 21 South, Range 28 East, Orange County, Florida, LESS, the North 330 feet of the East 200 feet of the West 220 feet thereof, AND LESS the North 30 feet thereof.

That part of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 2, Township 21 South, Range 28 East, Orange County, Florida, beginning at a point South 00 degrees 02 minutes 00 seconds West, 30.0 feet and North 89 degrees 35 minutes 59 seconds East, 550.0 feet from the Northwest corner of said Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, run North 89 degrees 35 minutes 59 seconds East, 108.90 feet along the South line of Sandpiper Road; thence run South 00 degrees 01 minutes 08 seconds West, 312.00 feet; thence run North 89 degrees 35 minutes 59 seconds East, 193.00 feet; thence run South 00 degrees 03 minutes 49 seconds West, 320.19 feet; thence run South 89 degrees 35 minutes 00 seconds West, 301.81 feet; thence run North 00 degrees 02 minutes 00 seconds East, 632.27 feet to the POINT OF BEGINNING.

ALSO: The East 275.0 feet of the West 550.00 feet of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 2, Township 21 South, Range 28 East, Orange County, Florida, less the North 30 feet thereof for Sandpiper Road.

The Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 3, Township 21 South, Range 28 East, Orange County, Florida; less the North 30 feet thereof.

The North 330.00 feet of the West 220.00 feet of the West $\frac{1}{2}$ of the North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 3, Township 21 South, Range 28 East, Orange County, Florida, LESS the North 30.00 feet thereof, AND LESS the West 20.00 feet thereof.

The West 145 feet of North 643 Feet of the West $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 3-21-28 (Less R/W on North & West)

ORDINANCE NO. 2386

PAGE 3

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

Combined Acreage 57.7 +/- Acres

Section III. That the zoning classification is consistent with the Comprehensive Plan of the City of Apopka, Florida.

Section IV. That the Community Development Director, or the Director’s designee, is hereby authorized to amend, alter, and implement the official zoning maps of the City of Apopka, Florida, to include said designation.

Section V. That if any section or portion of a section or subsection of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force or effect of any other section or portion of section or subsection or part of this ordinance.

Section VI. That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section VII. That this Ordinance shall take effect upon the date of adoption.

READ FIRST TIME:	<u>November 5, 2014</u>
READ SECOND TIME AND ADOPTED:	<u>November 19, 2014</u>

Joseph E. Kilsheimer, Mayor

ATTEST:

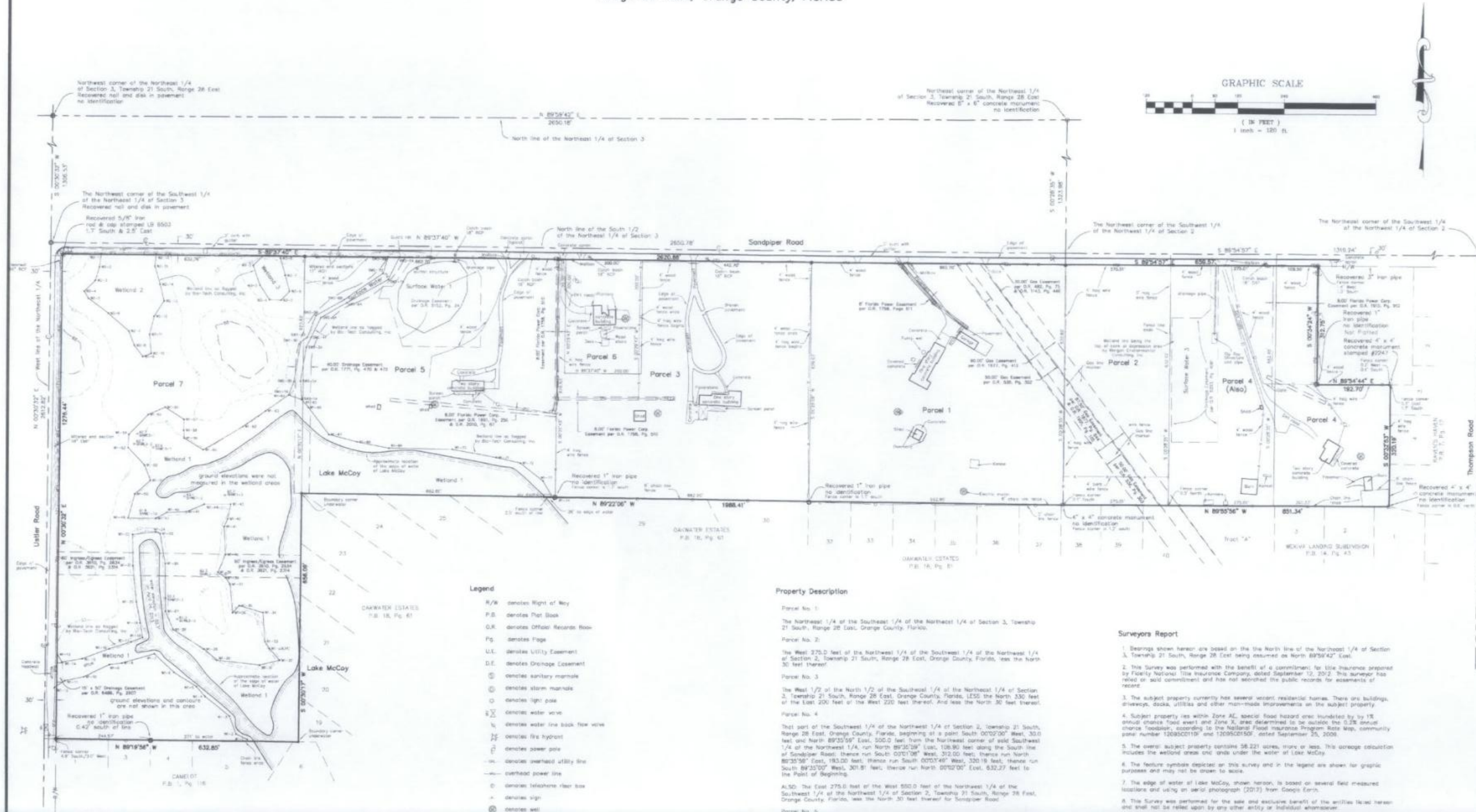
Linda Goff, City Clerk

APPROVED AS TO FORM:

Clifford B. Shepard, City Attorney

DULY ADVERTISED: August 22, 2014
 September 19, 2014
 October 3, 2014
 November 7, 2014

Boundary Survey of a portion of Sections 2 and 3, Township 21 South, Range 28 East, Orange County, Florida



Wetland Area Acreage
 Wetland 1 contains 3.714 acres
 Wetland 2 contains 0.739 acres
 Wetland 3 contains 0.174 acres
 Surface Water 1 contains 0.591 acres
 Surface Water 2 contains 0.178 acres
 Surface Water 3 contains 0.443 acres

- Legend**
- R/W denotes Right of Way
 - P.B. denotes Plat Book
 - O.K. denotes Official Record Book
 - P.S. denotes Page
 - U.L. denotes Utility Easement
 - D.E. denotes Drainage Easement
 - ☉ denotes sanitary manhole
 - ☪ denotes storm manhole
 - ☪ denotes light pole
 - ☪ denotes water valve
 - ☪ denotes water line back flow valve
 - ☪ denotes fire hydrant
 - ☪ denotes power pole
 - ☪ denotes overhead utility line
 - ☪ denotes power line
 - ☪ denotes telephone fiber line
 - ☪ denotes sign
 - ☪ denotes well
 - ☪ denotes guy wire anchor
 - ☪ denotes set 5/8" iron rod & cap stamped "PS" 5205" unless otherwise noted
 - ☪ denotes recovered 1/2" iron rod with no identification
 - ☪☪ denotes wetland tag and number, as marked by others
 - DWP denotes corrugated metal drainage pipe
 - RCF denotes reinforced concrete drainage pipe
 - SHW denotes seawall high water elevation
 - ☪☪☪ denotes contour line and elevation

Property Description

Parcel No. 1:
 The Northeast 1/4 of the Southwest 1/4 of the Northeast 1/4 of Section 3, Township 21 South, Range 28 East, Orange County, Florida.

Parcel No. 2:
 The West 275.0 feet of the Northeast 1/4 of the Southwest 1/4 of the Northeast 1/4 of Section 2, Township 21 South, Range 28 East, Orange County, Florida, less the North 30 feet thereof.

Parcel No. 3:
 The West 1/2 of the North 1/2 of the Southwest 1/4 of the Northeast 1/4 of Section 3, Township 21 South, Range 28 East, Orange County, Florida, less the North 30 feet of the East 200 feet of the West 220 feet thereof. And less the North 30 feet thereof.

Parcel No. 4:
 That part of the Southwest 1/4 of the Northwest 1/4 of Section 2, Township 21 South, Range 28 East, Orange County, Florida, beginning at a point South 00°02'00" West, 30.0 feet and North 89°35'59" East, 500.0 feet from the Northwest corner of said Southwest 1/4 of the Northwest 1/4 of Section 2, Township 21 South, Range 28 East, Orange County, Florida; thence run North 02°02'00" West, 312.00 feet; thence run North 80°35'58" East, 183.00 feet; thence run South 00°02'00" West, 330.18 feet; thence run South 89°35'00" West, 301.81 feet; thence run North 00°02'00" East, 632.27 feet to the Point of Beginning.

Also, The East 275.0 feet of the West 500.0 feet of the Northeast 1/4 of the Southwest 1/4 of the Northeast 1/4 of Section 2, Township 21 South, Range 28 East, Orange County, Florida, less the North 30 feet thereof for Sandpiper Road.

Parcel No. 5:
 The Northwest 1/4 of the Southwest 1/4 of the Northeast 1/4 of Section 3, Township 21 South, Range 28 East, Orange County, Florida, less the North 30 feet thereof.

Parcel No. 6:
 The North 330.00 feet of the West 220.00 feet of the West 1/2 of the North 1/2 of the Southwest 1/4 of the Northeast 1/4 of Section 3, Township 21 South, Range 28 East, Orange County, Florida, less the North 30.00 feet thereof, AND 1/350 the West 20.00 feet thereof.

Parcel 7:
 The West 1/2 of the Southwest 1/4 of the Northeast 1/4 of Section 3, Township 21 South, Range 28 East, Orange County, Florida, less the North 30 feet thereof, and 1/350 the West 30 feet thereof.

Surveyors Report

- Bearings shown herein are based on the North line of the Northeast 1/4 of Section 3, Township 21 South, Range 28 East being assumed as North 89°56'42" East.
- This Survey was performed with the benefit of a commitment for title insurance prepared by Fidelity National Title Insurance Company, dated September 12, 2012. This surveyor has relied on said commitment and has not searched the public records for assessments of record.
- The subject property currently has several vacant residential homes. There are buildings, driveways, docks, utilities and other man-made improvements on the subject property.
- Subject property lies within Zone AE, special flood hazard area bounded by 1% annual chance flood event and Zone X, area determined to be outside the 0.2% annual chance floodplain, according to the National Flood Insurance Program Rate Map, community panel number 1206020110 and 1206020150, dated September 25, 2006.
- The overall subject property contains 28.221 acres, more or less. This acreage calculation includes the wetland areas and areas under the water of Lake McCoy.
- The feature symbols depicted on this survey and in the legend are shown for graphic purposes and may not be drawn to scale.
- The edge of water of Lake McCoy, shown herein, is based on several field measured locations and using an aerial photograph (2013) from Google Earth.
- This Survey was performed for the sole and exclusive benefit of the entities listed herein and shall not be relied upon by any other entity or individual whatsoever.
- This Survey was performed for the sole and exclusive benefit of the entities listed herein and shall not be relied upon by any other entity or individual whatsoever.
- This survey meets the Minimum Technical Standards set forth in Florida Administrative Code Rule 32-17, pursuant to Florida Statute Chapter 472.
- This Survey is not valid without the signature and original sealed seal of a Florida Licensed Surveyor and Mapper.
- Elevations, shown herein, are based on Orange County Vertical Datum relative to the National Geospatial Vertical Datum of 1929. The vertical control points used for this survey are county designation numbers R-298-002 and S-909-008. See topographic survey prepared by this firm for additional topographic information.
- The seasonal high water elevations (SHWE), shown herein, are elevation of posts set in trees by a representative of Bio-Tech Consulting, Inc.

Benchmark Surveying & Mapping, LLC
 Certificate of Authorization Number - LB-1814
 Post Office Box 771065, Winter Garden, Florida 34777-1065
 3110 Red Fire Run, Kissimmee, Florida 34746
 (407) 854-8183 - www.benchmarksurveyingandmapping.com

Prepared For: Florida Land Trust #111
 70A of Sandpiper Road, Trusse
 Haggard, Inc.
 11000 US Highway 1
 Indianton, Surveyor and Mapper
 Florida Licensed # 3505

Boundary Survey of a portion of Sections 2 and 3, Township 21 South, Range 28 East, Orange County, Florida

4/24/13	318.03 update
1/18/13	Project Number
10/27/09	1" = 120'
10/27/09	Scale
10/27/09	Score

August 2, 2008
 Original Field Date
 49/25
 Field Book/Price

Sheet 1 of 1



MADDEN
CIVIL ENGINEERS
431 E. Hordley Avenue
Suite 280
Maitland, Florida 32751
(407) 829-8330

PRELIMINARY DEVELOPMENT PLAN
FOR
SANDPIPER ROAD
APOPKA, FLORIDA

CLIENT
FLORIDA LAND TRUST #111
100 S. VIRGINIA AVE., UNIT 201
WINTER PARK, FL 32789
407-947-4176

ENGINEER IN CHARGE
DAVID A. STOKES, P.E. #66327
REGISTERED PROFESSIONAL ENGINEER
STATE OF FLORIDA

DATE: 07/30/14
JOB #: 2059
SCALE: 1" = 120'
DESIGNED BY: C-M
DRAWN BY: R-M
APPROVED BY: C-M

PDP

NOTE: AN EXTENDED PERMITS IS TO BE PROVIDED AS PER SECTION 5.1.7 BY THE CITY OF APOPKA. SEE SHEET 02 FOR DETAILS.

GRAPHIC SCALE
1 inch = 100 feet

SOILS LEGEND

5 BASINGER FINE SAND	45 SEFFNER FINE SAND
6 CANDLER FINE SAND	46 TAKARES FINE SAND
7 CANDLER-APOPKA FINE SAND	47 TAKARES-MILLHOPPER FINE SANDS
8 ST. JOHNS FINE SAND	48 WATER

OPEN SPACE TABLE

TRACT A	50% Retention Pond = 0.82 AC
	50% Wetlands = 4.7 AC
	Unpaved Area = 31.15 AC
TRACT B	50% Retention Pond = 1.27 AC
	Unpaved Area = 1.27 AC
TRACT C	50% Retention Pond = 1.49 AC
	Unpaved Area = 2.90 AC
	TOTAL = 28.7 AC

TRACT TABLE

TRACT	LAND USE	OWNERSHIP/MAINTENANCE	LOT SIZE
A	OPEN SPACE/RETENTION	HOA	20.78 AC (54,876)
B	OPEN SPACE/RETENTION	HOA	1.88 AC (5,046)
C	OPEN SPACE/RETENTION	HOA	5.04 AC (13,890)
D	LEFT TO/IN SITE	CITY OF APOPKA	0.81 AC (2,207)
E	OPEN SPACE	HOA	6.02 AC (16,698)
F	ROAD R.O.W.	HOA	3.89 AC (10,800)
G	OPEN SPACE/LANDSCAPE	HOA	0.31 AC (858)
			27.42 AC (75,886)
			92.22 AC (256,800)

WETLAND/SURFACE WATER TABLE

WETLAND NUMBER	AREA	SURFACE WATER IMPACT
W-1 (W-1W LAKE MOODY)	1.71 ACRES	SURFACE WATER AREA TOTAL IMPACT
W-2	0.73 ACRES	0.01 AC
W-3	0.78 ACRES	0.01 AC
W-4	0.28 ACRES	0.01 AC
W-5	0.18 ACRES	0.01 AC
W-6	0.41 ACRES	0.01 AC

IMPERVIOUS AREA TABLE

IMPERVIOUS FEATURE	AREA
ROADS	2.85 ACRES
DRIVEWAYS	0.79 ACRES
DRIVEWAYS/PAVING	0.40 ACRES
DRIVEWAYS/PAVING	2.80 ACRES
TOTAL IMPERVIOUS	7.84 ACRES (14.88 NET LAND AREA)
TOTAL IMPERVIOUS	7.86 ACRES (14.88 GROSS LAND AREA)

LOT AREA TABLE (BASED ON DEVELOPABLE AREA)

LOT	AREA(SF)	AREA(AC)	LOT	AREA(SF)	AREA(AC)	LOT	AREA(SF)	AREA(AC)
1	15052	0.35	38	13644	0.31	39	18132	0.42
2	13500	0.31	39	15282	0.35	36	17224	0.40
3	20319	0.46	20	15246	0.35	37	15002	0.34
4	26892	0.62	21	29618	0.68	38	17617	0.40
5	25634	0.59	22	27275	0.63	38	24273	0.57
6	22299	0.51	23	20664	0.47	40	12801	0.29
7	15292	0.35	24	18755	0.43	41	12823	0.29
8	15400	0.35	25	18709	0.43	42	12826	0.29
9	15400	0.35	26	18709	0.43	43	12823	0.29
10	15400	0.35	27	18709	0.43	44	12753	0.29
11	15400	0.35	28	18709	0.43	45	14779	0.34
12	18193	0.42	29	18706	0.43	46	14779	0.34
13	19089	0.44	30	19252	0.44	47	13500	0.31
14	16300	0.37	31	24803	0.56	48	13500	0.31
15	22953	0.53	32	21094	0.49	49	14665	0.34
16	22420	0.51	33	18305	0.42			
17	13285	0.30	34	17733	0.41			

EASEMENT DATA

- FLORIDA POWER CORP EASEMENT TO BE VACATED D.R. 1973, PG 9/7
- FLORIDA POWER CORP EASEMENT TO BE VACATED D.R. 5203, PG 4051
- FLORIDA POWER CORP EASEMENT TO REMAIN D.R. 1877, PG 412 & 877
- FLORIDA POWER CORP EASEMENT TO BE VACATED D.R. 1728, PG 511
- FLORIDA POWER CORP EASEMENT TO BE VACATED D.R. 1756, PG 510; D.R. 1391, PG 256; & C.R. 2013, PG 37
- DRAINAGE EASEMENT TO BE REVISED D.R. 5152, PG 21
- DRAINAGE EASEMENT TO REMAIN D.R. 1771, PG 470 & 472
- 90' GAS EASEMENT TO REMAIN
- 90' INGRESS/EGRESS EASEMENT TO BE VACATED D.R. 3010, PG 293A; & D.R. 3621, PG 2314
- 15' x 50' DRAINAGE EASEMENT TO BE REVISED D.R. 6496, PG 2907

WETLAND/SURFACE WATER TABLE

NOTE: THERE ARE TO BE SPREAD BUFFERS AROUND THE W-1 WETLAND WITH A MINIMUM WIDTH OF 10 FT. REQUIRED FOR ALL SURFACE WATER WETLANDS OR CONSERVATION AREAS.

TOTAL WETLAND/SURFACE WATER AREA = 9.83 AC.
TOTAL SURFACE WATER AREA IMPACTED = 0.44 AC.

IMPERVIOUS AREA TABLE

TOTAL SITE AREA = 58.23 AC (100%)

MIN 75' x 130' LOT

SITE DATA

- SECTIONS 2 & 3, TOWNSHIP 21 SOUTH, RANGE 28 EAST
- TOTAL GROSS SITE AREA = 58.23 ACRES (2,536,303 SQ.FT.)
NET DEVELOPABLE AREA = 48.43 ACRES (58.23 AC - 9.83 AC WETLANDS) = 48.40 AC
- EXISTING ZONING: PD
EXISTING LAND USE: LD (5 DU/AC)
FUTURE LAND USE MAP DESCRIPTION: RL
PROPOSED LAND USE: SINGLE FAMILY RESIDENTIAL
- PROPOSED ZONING: PUD
MAX ALLOWED DENSITY = 5 DU/ACRE
PROPOSED RESIDENTIAL DENSITY:
-GROSS DENSITY = 48 DU/58.23 AC = 0.84 DU/AC
-NET DENSITY = 48 DU/48.40 AC = 1.01 DU/AC
- WATER SERVICE SHALL BE PROVIDED BY THE CITY OF APOPKA. THE WATER SYSTEM SHALL BE DESIGNED TO CITY STANDARDS.
- STORM WATER MANAGEMENT SYSTEM SHALL BE DESIGNED TO COMPLY WITH THE REQUIREMENTS OF THE CITY OF APOPKA AND ST. JOHNS RIVER WATER MANAGEMENT DISTRICT.
- SANITARY SERVICE SHALL BE PROVIDED BY THE CITY OF APOPKA. THE SANITARY SYSTEM SHALL BE DESIGNED TO CITY STANDARDS.
- PROJECTED SCHOOL AGE POPULATION:
49 LOTS x 0.404 = 20 STUDENTS
- RECREATION FACILITIES SHALL BE PROVIDED ON SITE. RECREATION AREA IS 2.5 ACRES PER 1,000 RESIDENTS.
REQUIRED RECREATION = 0.43 ACRES
- LOT SETBACKS:
FRONT ENTRY GARAGE = 30'
SIDE ENTRY GARAGE = 25'
REAR = 25' (CORNER YARD)
50' (LOTS 1-22, 30-48)
50' (LOTS 23-31)
- LAKE MOODY WIDE = 50'
- MAXIMUM BUILDING HEIGHT IS 30' AND TWO STORES.
- MINIMUM LOT SIZE = 75'x130'
- MINIMUM LOT AREA IS 9,750 SQ. FT.
- MINIMUM LIVING AREA IS 2,000 SQ. FT. UNDER HEAT AND AIR.
- EACH HOUSE TO HAVE A TWO CAR GARAGE (MINIMUM).
- UTILITY EASEMENTS TO BE DEDICATED TO THE CITY OF APOPKA.
- ON-SITE STREETS ARE TO BE CONSTRUCTED PER CITY OF APOPKA STANDARDS.
- DRAINAGE EASEMENTS TO BE DEDICATED TO THE HOME OWNERS ASSOCIATION.
- HOME OWNERS ASSOCIATION WILL MAINTAIN ALL COMMON AREAS, ROADS, AND WALLS.
- 5' WIDE SIDEWALKS TO BE CONSTRUCTED THROUGHOUT THE ENTIRE PROJECT IN COMPLIANCE WITH THE CITY OF APOPKA LDC. SIDEWALK DESIGN MAY BE ADJUSTED AT FINAL DEVELOPMENT PLAN TO PRESERVE EXISTING TREES.
- THE MINIMUM LOT WIDTH FOR ALL LOTS EXCLUDING LOTS 6 THROUGH 12 AND 32 THROUGH 38, WILL BE 110 FEET AT THE BUILDING SETBACK LINE. THE MINIMUM LOT WIDTH FOR ALL OTHER LOTS WILL BE 75 FEET. THE MINIMUM LOT DEPTH WILL BE 140 FEET.
- ONLY THE 8 LOT OWNERS WHO WILL HAVE LOTS BACKING UP TO LAKE MOODY WILL HAVE ACCESS TO THE LAKE AND BE ABLE TO BUILD PRIVATE DOCKS TO ACCESS SAO LAKE. ALL 8 LOT OWNERS WILL BE REQUIRED TO JOIN THE LAKE MOODY TAKING DISTRICT. NO OTHER DOCKS OR RECREATION WILL BE ALLOWED FROM THIS DEVELOPMENT. DOCK DETAILS WILL BE EVALUATED WITH THE FINAL DEVELOPMENT PLAN AND IS TO INCLUDE LANGUAGE ALLOWING A 15-FOOT WIDE ACCESS TO THE LAKE FOR EACH LOT.
- EXISTING STRUCTURES WILL BE REMOVED PRIOR TO PLATTING OF THE RESPECTIVE PHASE.
- ALL ACHIEVABLE DEVELOPABLE AND CONSERVATION AREAS (WETLANDS AND BUFFERS) ARE CONSIDERED APPROPRIATE UNTIL FINALIZED DURING A REVIEW BY THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT AND THE CITY OF APOPKA. THE SHADOWN CONCRECY WILL BE PROVIDED AT FINAL PLAN REVIEW.
- PUBLIC SAFETY (FIRE AND POLICE PROTECTION) PROVIDED BY THE CITY OF APOPKA.
- THE JURISDICTIONAL WETLAND AREAS ARE TO BE PLACED IN A CONSERVATION EASEMENT.
- FLOOD HAZARD FOR THE SITE IS ZONE "AL" PER THE FLOOD INSURANCE RATE MAP FOR ORANGE COUNTY, FL, PANEL NUMBERS 1201800110F AND 1201800150F, DATED SEPTEMBER 25, 2008. 20% OF ALL AREAS ARE BASE FLOOD ELEVATIONS DETERMINED. THE FLOOD ELEVATION IS 65.5' BASED ON AN ORANGE COUNTY'S FLOOD STUDY.
- ANY DEVELOPMENT IN A SPECIAL FLOOD HAZARD AREA WILL REQUIRE THE FINISH FLOOR ELEVATION TO BE 20-INCHES ABOVE THE 100 YEAR FLOOD ELEVATION, MINIMUM.
- ALL ANY OVERHEAD UTILITY LINES MUST BE PLACED UNDERGROUND. COORDINATION WITH PUBLIC SERVICE DEPT. IS REQUIRED.

- AN EROSION PROTECTION PLAN WILL BE SUBMITTED WITH FINAL DEVELOPMENT PLANS.
- A FINAL DRAINAGE REPORT AND SOILS REPORT WILL BE SUBMITTED WITH FINAL DEVELOPMENT PLANS.
- POOLS, SPAS, BUILDINGS, GAZEBOS, FENCES AND OTHER ACCESSORY STRUCTURES ARE PROHIBITED IN THE SIDE YARD SETBACKS AND WITHIN THE 30 FT CONSERVATION EASEMENT AT THE REAR OF LOTS 23 TO 31.
- AVERAGE DAILY TRIPS (40 x 9.57 TRIPS DAILY = 488)
- SOLID WASTE COLLECTION BY THE CITY OF APOPKA.
- COMMUNITY IS TO BE GATED AND WILL CONFORM TO CITY CODES.
- ENTRANCE GATE TO BE EQUIPPED WITH EMERGENCY ACCESS SYSTEM THROUGH AN OPT-COM TYPE VISUAL GATE ACTIVATION AND YIELD SIGN. THERE MUST ALSO BE A KEYPAD WITH AN EMERGENCY ACCESS CODE.
- PROJECT OPEN SPACE:
REQUIRED = 208
PROVIDED = 45.85 (36 TO AC)
- TREE REMOVAL, TREE REPLACEMENT, AND LANDSCAPING SHALL BE IN CONFORMANCE WITH ARTICLE V OF THE CITY OF APOPKA LAND DEVELOPMENT CODE.
- THE FINAL DEVELOPMENT PLAN SHALL INCLUDE THE PLAT DOCUMENT. THE PLAT SHALL BE IN FINAL FORM.
- A 30 FT. CONSERVATION EASEMENT WILL BE PROVIDED ON THE BACK OF LOTS ALONG THE SOUTHERN PROPERTY LINE, EXCEPT AGAINST LAKE, WETLAND, RETENTION, OR GAS EASEMENT. EASEMENT SHALL BE DEDICATED TO THE HOA.
- A 10 FT. BUFFER EASEMENT FOR LANDSCAPING WILL BE PROVIDED ON THE NORTHERN PROPERTY LINE, EXCEPT AGAINST LAKE, WETLAND, RETENTION, OR GAS EASEMENT. THIS EASEMENT WILL BE DEDICATED TO HOA.
- INDIVIDUAL LOT ARBOR/CLEARING PERMIT IS REQUIRED PRIOR TO ISSUANCE OF BUILDING PERMIT.
- IN ORDER TO SAVE EXISTING TREES STEM WALLS/RETAINING WALLS WILL BE UTILIZED ON INDIVIDUAL LOTS.
- AT THIS TIME THE PROPOSED STREET ROW IS TO BE PRIVATE, HOWEVER THE APPLICANT MAY, AT THEIR DISCRETION AND WITH ACCEPTANCE BY THE CITY, CHANGE THE ROW TO CITY OF APOPKA PRIOR TO FINAL DEVELOPMENT PLAN AND FINAL PLAT APPROVAL.
- AN OVERSIEE AGREEMENT IS NECESSARY TO INSTALL 12" DIAMETER FORCE MAIN ALONG SANDPIPER ROAD.
- A SIGNAGE PLAN WILL BE PROVIDED WITH THE FINAL DEVELOPMENT PLAN SUBMITTAL.
- STABILIZED ACCESS ROADWAYS AND FIRE HYDRANTS MUST BE IN PLACE BEFORE BUILDING CONSTRUCTION MAY BEGIN.
- ALL STORMWATER AND UTILITY PIPES MAY BE MOVED TO SAVE EXISTING TREES IN THE ROW. ANY CHANGE IN THE LOCATION OF THESE PIPES WILL BE SHOWN ON THE FINAL ENGINEERING PLANS.
- STREET NAMES WILL BE PROVIDED ON FINAL DEVELOPMENT PLANS.
- ENTRANCE FEATURE AND COMMUNITY SIGN WILL BE PROVIDED WITH FINAL DEVELOPMENT PLANS.
- NO BUILDING, FENCE, GAZEBO, SWIMMING POOL, OR ACCESSORY STRUCTURE SHALL BE PLACED WITHIN THE THIRTY-FOOT LAND-USED BUFFER. THE BUFFER SHALL REMAIN AS NATURAL VEGETATED BUFFER. TREES THAT DIE, FALL, OR ARE REMOVED SHALL BE REPLACED.
- THE 25' WETLAND BUFFER/CONSERVATION EASEMENT IS TO BE DEDICATED TO THE SHADOWN RESIDENTS MAY NOT CLEAR ANY VEGETATION WITHIN THE CONSERVATION EASEMENT.
- PARK PLAN AND RECREATIONAL AMENITIES WILL BE IDENTIFIED WITH FINAL DEVELOPMENT PLANS.
- IF STREETS REMAIN PRIVATE, A BLANKET INGRESS/EGRESS EASEMENT WILL BE GRANTED FOR ACCESS TO THE CITY OVER TRACT F.
- THE HABITAT INVENTORY AND MANAGEMENT REPORT SHALL BE PROVIDED TO THE CITY AT THE FINAL DEVELOPMENT PLAN STAGE.
- ANY MODIFICATION TO THE MASTER SITE PLAN SHALL BE REVIEWED ACCORDING TO SECTION 2.02 (B), LAND DEVELOPMENT CODE.
- IN LIEU OF INSTALLATION OF SIDEWALK ALONG USTLER ROAD, THE OWNER MAY PAY INTO THE CITY SIDEWALK FUND AT THE RATE OF \$3.50/SF FOR 4" THICK SIDEWALK AND \$4.25 FOR 6" SIDEWALK.
- LOTS 5, 6, 21, AND 22 HAVE ACCESS TO THE GAS EASEMENT. EASEMENT DETAILS WILL BE PROVIDED WITH THE FINAL DEVELOPMENT PLAN.
- EASEMENT BOUNDARY MARKERS WILL BE PLACED AT THE INTERIOR OF THE EASEMENT LINE FOR ALL LOTS ADJUTING THE 30-FOOT CONSERVATION EASEMENT.



MADDEN
 ENGINEERING & SURVEY, INC.
 CIVIL ENGINEERS
 431 E. Spring St. Avenue
 Suite 200
 Maitland, Florida 32751
 (407) 829-8330

PRELIMINARY DRAINAGE AND UTILITY PLAN
 SANDPIPER ROAD
 APOPKA, FLORIDA

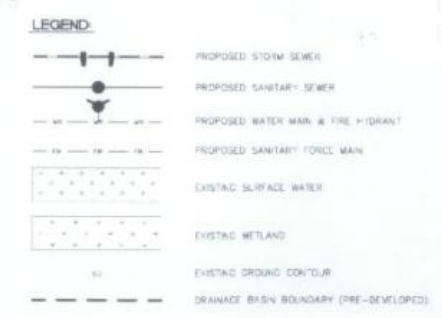
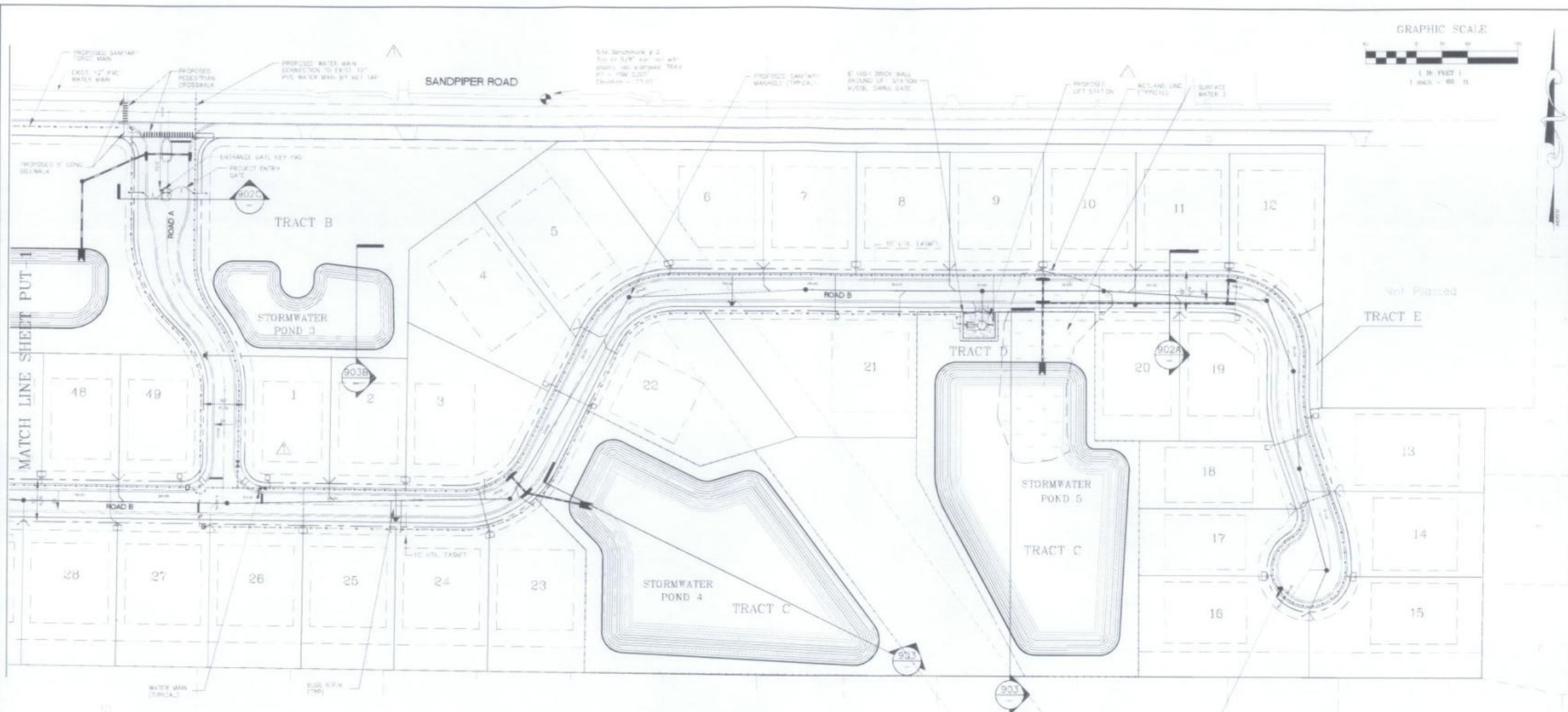
FLORIDA LAND SURVEYOR #111
 801 S. US HIGHWAY 90, SUITE 201
 WINTER PARK, FL 32789
 A.T. 947-4776

ENGINEER IN CHARGE
 DRAFTING: A. STEVENS, P.E. #88027
 LICENSED PROFESSIONAL ENGINEER
 STATE OF FLORIDA OR NO. 18-000-020

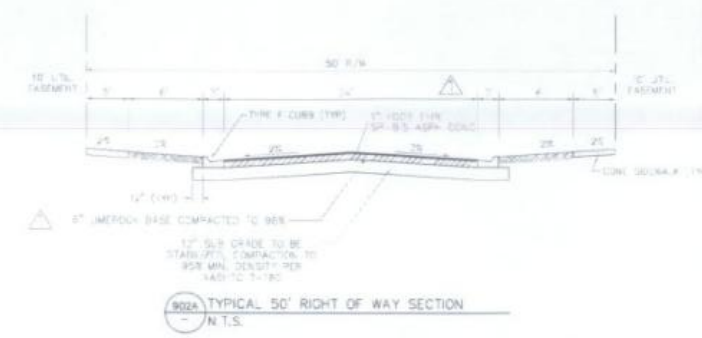
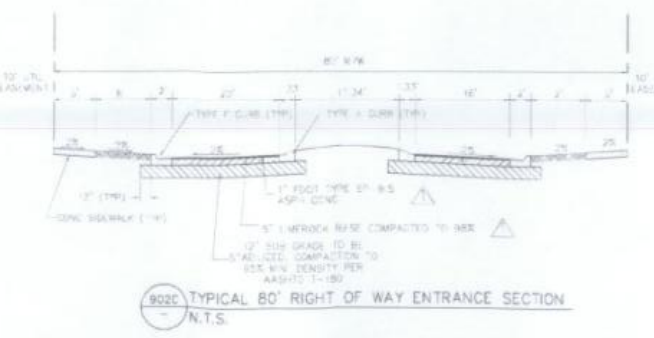
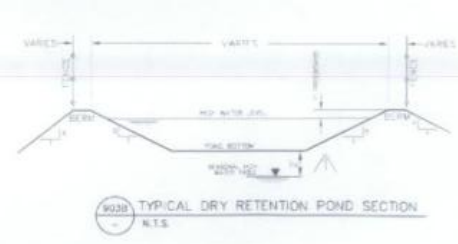
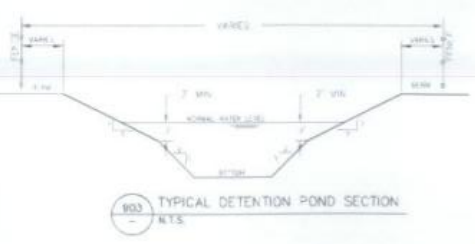
DATE: 05/20/2019
SCALE: 1" = 60'
SECTION: 11
DRAWN BY: C.M.
APPROVED BY: C.M.

JOB # 2059
 DATE: 07/30/14
 SCALE: 1" = 60'
 SECTION: 11
 DRAWN BY: C.M.
 APPROVED BY: C.M.

PUT-1



- NOTES**
1. ALL UTILITY DESIGN (WATER & WASTEWATER) WILL BE IN ACCORDANCE WITH THE CITY OF APOPKA L.D.C., UTILITY DETAILS, & SPECIFICATIONS.
 2. ALL STORMWATER FACILITIES WILL BE DESIGNED IN ACCORDANCE WITH ALL CITY OF APOPKA AND SWMM CRITERIA.
 3. THERE IS A 10' UTILITY EASEMENT RESERVED ACROSS THE FRONT OF ALL LOTS AND ALONG BOTH SIDES OF THE ENTRANCE ROAD THAT IS TO BE DEDICATED TO THE CITY OF APOPKA.
 4. THE MAXIMUM ALLOWABLE MANHOLE DEPTH IS 17 FT.
 5. ALL HOMES MUST BE WITHIN 500 FEET OF A FIRE HYDRANT.
 6. EACH LOT CONTAINS A 5 FOOT LANDSCAPE EASEMENT THAT ABUTS THE 10 FOOT FRONT YARD UTILITY EASEMENT.



NOTE: SEE PLAN VIEW FOR FENCE LOCATION.



PRELIMINARY DRAINAGE AND UTILITY PLAN
SANDPIPER ROAD
 FDOT
 APPROVA

CLIENT
 FLORIDA LAND TRUST #111
 780 E. WINDY AVE., SUITE 300
 WINTER PARK, FL 32789
 407.947.4215

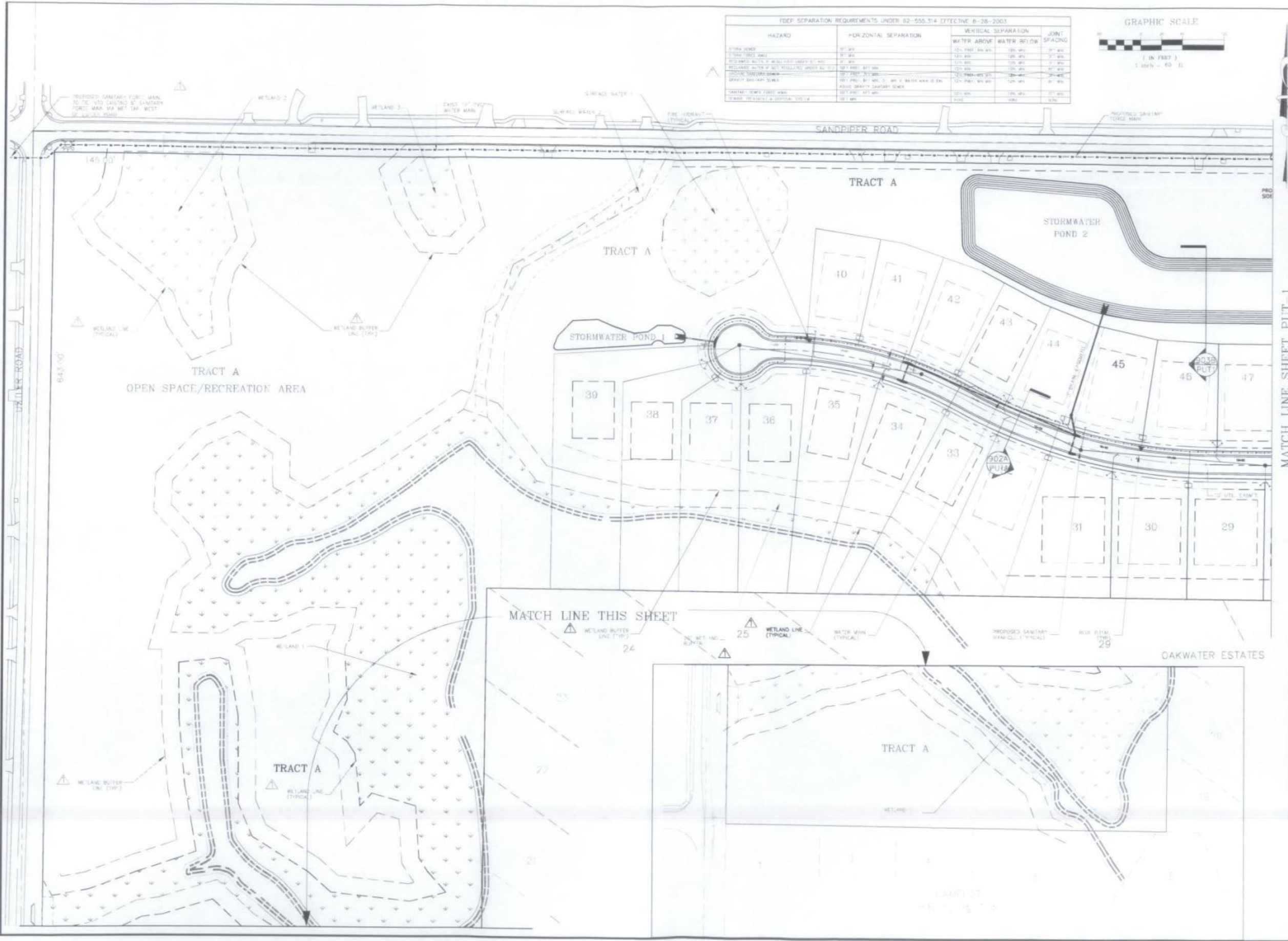
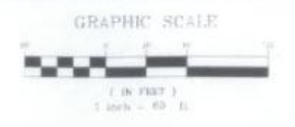
ENGINEER IN CHARGE
 DAVID A. STONIS, P.E., #000327
 BOARD OF SURVEYORS OR. NO. 18-000-003

DATE	REVISIONS

JOB # 2009
 DATE 07/30/14
 SCALE 1" = 50'
 DESIGNED BY C-M
 DRAWN BY B-M
 APPROVED BY C-M

PUT-2

HAZARD	HORIZONTAL SEPARATION	VERTICAL SEPARATION		JOINT SPACING
		WATER ABOVE	WATER BELOW	
STORM SEWER	5' MIN.	12" MIN.	12" MIN.	3" MIN.
STORM SEWER	5' MIN.	12" MIN.	12" MIN.	3" MIN.
PROPOSED WATER MAIN (12" DIA. OR LESS)	5' MIN.	12" MIN.	12" MIN.	3" MIN.
EXISTING WATER MAIN (12" DIA. OR LESS)	5' MIN.	12" MIN.	12" MIN.	3" MIN.
PROPOSED SANITARY SEWER	5' MIN.	12" MIN.	12" MIN.	3" MIN.
EXISTING SANITARY SEWER	5' MIN.	12" MIN.	12" MIN.	3" MIN.
PROPOSED WATER MAIN (18" DIA. OR GREATER)	5' MIN.	12" MIN.	12" MIN.	3" MIN.
EXISTING WATER MAIN (18" DIA. OR GREATER)	5' MIN.	12" MIN.	12" MIN.	3" MIN.
PROPOSED SANITARY SEWER	5' MIN.	12" MIN.	12" MIN.	3" MIN.
EXISTING SANITARY SEWER	5' MIN.	12" MIN.	12" MIN.	3" MIN.
PROPOSED WATER MAIN (24" DIA. OR GREATER)	5' MIN.	12" MIN.	12" MIN.	3" MIN.
EXISTING WATER MAIN (24" DIA. OR GREATER)	5' MIN.	12" MIN.	12" MIN.	3" MIN.
PROPOSED SANITARY SEWER	5' MIN.	12" MIN.	12" MIN.	3" MIN.
EXISTING SANITARY SEWER	5' MIN.	12" MIN.	12" MIN.	3" MIN.





CONCEPTUAL LANDSCAPE PLAN
 FOR
SANDPIPER ROAD
 APPLICABLE

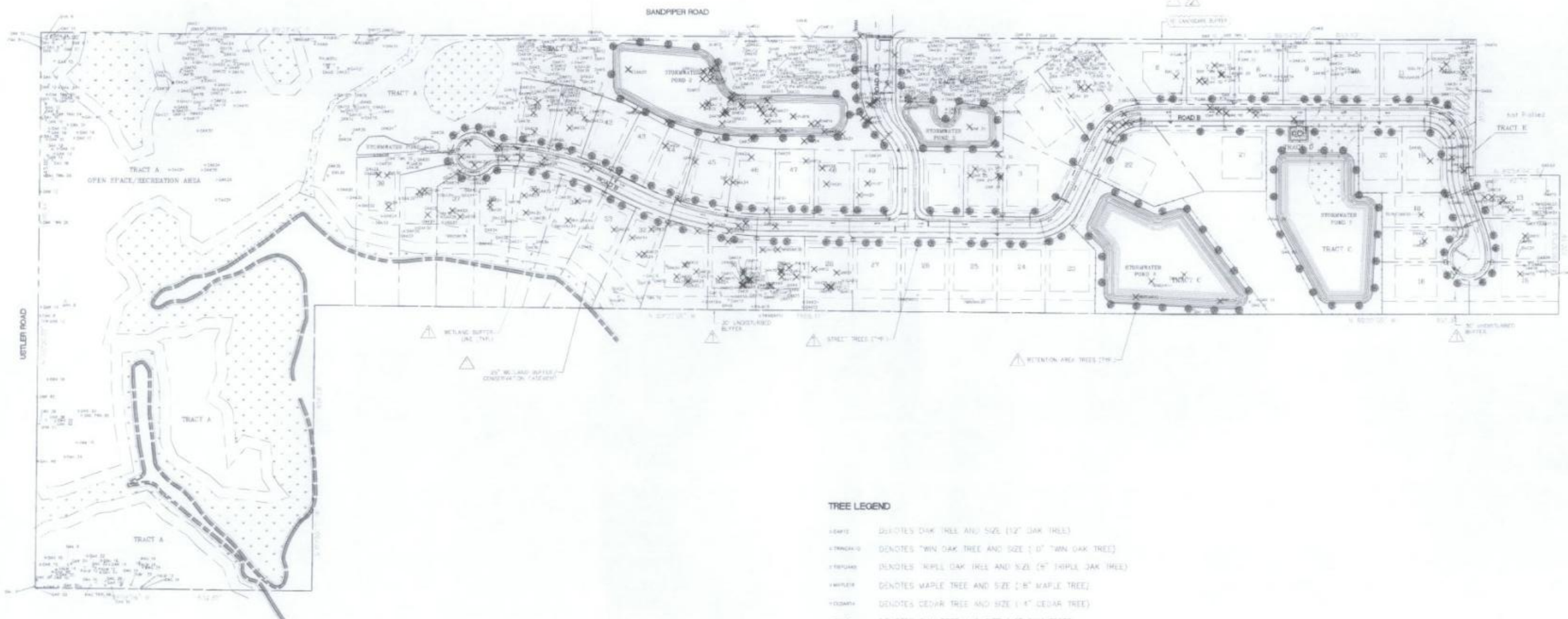
CLIENT:
 FLORIDA LAND TRUST #111
 1001 S. VIRGINIA AVE., SUITE 200
 WEST PALM BEACH, FL 33411
 407.847.8776

ENGINEER IN CHARGE:
 DAVID A. STONIS, P.E., #68057
 2510 S.W. 10TH AVE., SUITE 100, WEST PALM BEACH, FL 33411

DATE: 05/05/2009
SCALE: 1"=120'
DESIGNED BY: C/M
DRAWN BY: R/M
APPROVED BY: C/M

JOB # 2009
 DATE: 07/30/09
 SCALE: 1"=120'
 DESIGNED BY: C/M
 DRAWN BY: R/M
 APPROVED BY: C/M

CLP-1



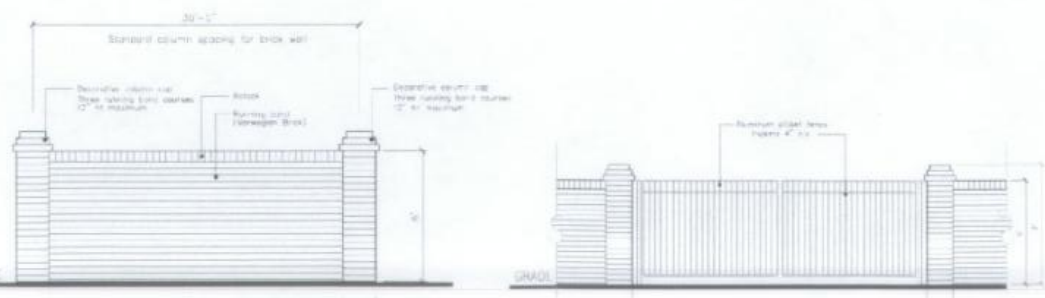
TREE LEGEND

- DAK12 DENOTES OAK TREE AND SIZE (12" OAK TREE)
- DAK10 DENOTES 10" OAK TREE AND SIZE (10" OAK TREE)
- DAK8 DENOTES 8" OAK TREE AND SIZE (8" OAK TREE)
- MAPLE DENOTES MAPLE TREE AND SIZE (18" MAPLE TREE)
- CEDAR DENOTES CEDAR TREE AND SIZE (18" CEDAR TREE)
- GUM DENOTES GUM TREE AND SIZE (18" GUM TREE)
- SGT DENOTES SWEET GUM TREE AND SIZE (18" SWEET GUM TREE)
- PECAN DENOTES PECAN TREE AND SIZE (18" PECAN TREE)
- PALM DENOTES PALM TREE AND SIZE (10" PALM TREE)

NOTES

1. THIS PLAN IS CONCEPTUAL AND IS SUBJECT TO CHANGE WITH FINAL ENGINEERING.
2. THIS PLAN SHOWS STREET TREES AT 30 FT. CENTERS.
3. PROPOSED SIDEWALKS CAN BE SHIFTED TO SAVE EXISTING TREES WHERE POSSIBLE. ANY CHANGES IN LOCATION WILL BE SHOWN ON FINAL DEVELOPMENT PLANS.
4. PROPOSED STREET TREES TO BE LOCATED IN 5' LANDSCAPE EASEMENT BEHIND THE 10' UTILITY EASEMENT.
5. RETENTION POND TREES ARE SHOWN AT 25 FT. CENTERS.
6. EXISTING TREE LOCATIONS FROM SURVEY BY BENCHMARK SURVEYING & MAPPING CONSULTANTS, INC.
7. PROPOSED REPLACEMENT TREE DIAMETER SHALL BE 3" MINIMUM.
8. IRRIGATION AND LANDSCAPING WITHIN THE COMMON AREAS AND INDIVIDUAL LOTS, SHALL BE IN ACCORDANCE WITH THE CITY'S WATER-WISE ORDINANCE.
9. DETAILED LANDSCAPE AND IRRIGATION PLANS WILL BE PROVIDED WITH FINAL DEVELOPMENT PLANS.
10. AN ADDITIONAL 2 TREES PER LOT WILL BE PLANTED ALONG WITH STREET TREES AND RETENTION AREA TREES. FOR LOTS WHERE NO EXISTING TREES CAN BE PRESERVED, THREE ADDITIONAL TREES WILL BE PLANTED AT TIME OF LOT DEVELOPMENT, WHERE THEY CAN BE PRACTICALLY ACCOMMODATED.

- = PROPOSED STREET TREE (LIVE OAK) IN ACCORDANCE WITH CITY CODE
- X = TREES TO BE REMOVED



WALL DETAIL

DOUBLE SWING GATE DETAIL (1/2" STATION)

LIFT STATION WALL DETAIL



CITY OF APOPKA CITY COUNCIL

PUBLIC HEARING
 ANNEXATION
 PLAT APPROVAL
 OTHER: Ordinance

DATE: November 19, 2014
FROM: Community Development
EXHIBITS: Zoning Report
Vicinity Map
Adjacent Zoning Map
Adjacent Uses Map
Ordinance No. 2386
"A" PUD Master Plan\ PDP
"B" Development Standards
"B-1" Northern Landscape Buffer

SUBJECT: FLORIDA LAND TRUST #111 – ZDA AT SANDPIPER, LLC – CHANGE OF ZONING - FROM "COUNTY" PD TO "CITY" PLANNED UNIT DEVELOPMENT (PUD/R-1A); AND MASTER PLAN/PRELIMINARY DEVELOPMENT PLAN

Request: SECOND READING & ADOPTION OF ORDINANCE NO. 2386 – CHANGE IN ZONING FOR FLORIDA LAND TRUST #111 – ZDA AT SANDPIPER, LLC FROM "COUNTY" PD (ZIP) (RESIDENTIAL) TO "CITY" PLANNED UNIT DEVELOPMENT (PUD/R-1A) (RESIDENTIAL) AND APPROVAL OF THE PLANNED UNIT DEVELOPMENT MASTER SITE PLAN. (PARCEL ID NUMBERS: 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)

SUMMARY

OWNER/APPLICANT: Florida Land Trust #111, c/o ZDA at Sandpiper, LLC, Trustee
LOCATION: South of Sandpiper Street, west of North Thompson Road, east of Ustler Road
EXISTING USE: Abandoned Single Family Homes
CURRENT ZONING: "County" PD ("City" ZIP)
PROPOSED DEVELOPMENT: Residential Subdivision (49 Single Family Lots)
FUTURE LAND USE DESIGNATION: "City" Residential Very Low Suburban (0- 2.0 du/ac)
TRACT SIZE: Combined total Acreage: 58.23 +/- Total Acres (48.4 developable acres)
MAXIMUM ALLOWABLE DEVELOPMENT: EXISTING: 49 Dwelling Units (as originally approved by the Orange County BCC; plans expired)
PROPOSED: 49 Dwelling Units

DISTRIBUTION

Mayor Kilsheimer
Commissioners (4)
Interim CA
Community Dev. Dir.
Finance Dir.
HR Director
IT Director
Police Chief
Public Ser. Dir.
City Clerk
Fire Chief

ADDITIONAL COMMENTS:

The subject property is located on the south side of Sandpiper Street, west of North Thompson Road, and east of Ustler Road. Development Standards for the Master Site Plan\ Preliminary Development Plan are provided within the PUD ordinance. A general description of the proposed residential community is provided below:

- Lots: 49 single family lots.
- Min. Lot Area: PUD Master Plan sets lots ranging from 11,691 to 29,618 sq. ft.
Minimum developable lot area is 11,500 sq. ft.; 10,000 sq. ft. for lots containing wetlands
- Min. Lot Width: 75 ft.
- Min. Living Area: 2,200 sq. ft. (the applicant proposed this minimum at the Planning Commission hearing)
- Density: 1.01 dwelling units (du) per acre (49 du\48.4 developable acres)
- Access: All lots access an internal road. A single entrance road connects to Sandpiper Road. No lots or new roads will connect to Ustler Road.
- Park: A minimum area of 15,000 sq. ft. will be provided for active recreation. The park site plan will be submitted with the final development plan. Park to be located in Tract “A”.
- Buffers:
1. Sandpiper Road. A ten foot wide landscape tract, owned by the HOA, follows the south side of Sandpiper Road from the northeast corner of the project site westward behind to the project Lots 6 through 12. The design of the buffer will follow that which appears in Exhibit “B”, Northern Landscape Buffer, and will contain a six-foot high shrub (within two years of planting, a tri-rail country style fence with stone or brick posts, and canopy trees or understory trees where suitable (taking into consideration the overhead power lines). West of the project entrance, a tri-rail fence will extend westward to the open space area.
 2. Eastern project line. No buffer tract or easement. The residential lots in this development project abut residential lots typically 1.3 to 1.7 acres in size. No buffer is required by code.
 3. Southern project line. A thirty foot wide conservation easement follows the rear of Lots 23 through 31 and the side yard of Lots 15 and 16. This conservation easement is to be left in its natural vegetation and is assigned to the HOA. No pools, fences, or other accessory structures can be placed within the 30-foot wide conservation easement.
 4. Western project line. Approximately 15 acres are preserved as open space\recreation from Ustler Road eastward for a distance of approximately 640 feet.
- Lake Access: Only owners of Lots 32 through 39 – eight lots -- are allowed access to Lake McCoy. Boat docks are allowed only for these eight lots. A maximum 15 foot wide path can be cleared across wetlands to reach the lake, subject to Water Management District approval.
- Sidewalks: Sidewalks are provided on both sides of internal streets and along Sandpiper Street. In lieu of constructing sidewalks along Ustler Road, developer shall pay to the City an amount to cover the sidewalk cost, per the rates established by the Public Services Department.

The PUD Development Standards, as appearing in the PDP Master Site Plan, are provided in Exhibit “A”.

Modifications to the Master Site Plan: Any zoning or development standard not addressed within the PDP Master Site Plan shall follow the requirements of the R-1A zoning category. Where any development standard conflicts between the PDP Master Site Plan and the Land Development Code, the PDP Master Site Plan shall preside. Any proposed revision to the Master Site Plan shall be evaluated and processed pursuant to Section 2.02.18.N. (Master plan revision), LDC.

In conjunction with state requirements, staff has analyzed the proposed amendment and determined that adequate public facilities exist to support this change of zoning (see attached Zoning Report).

PUD RECOMMENDATIONS:

The recommendations are that the zoning classification of the aforementioned properties be designated as Planned Unit Development (PUD), as defined in the Apopka Land Development Code, and with the following Master Plan provisions are subject to the following provisions:

- A. The uses permitted within the PUD district shall be: single family homes and associated accessory uses or structures consistent with land use and development standards established for the R-1A zoning category except where otherwise addressed in this ordinance.
- B. Master Plan requirements, as enumerated in Section 2.02.18 K. of the Apopka Land Development Code, not addressed herein are hereby deferred until the submittal and review of the Final Development Plan submitted in association with the PUD district.
- C. If a Final Development Plan associated with the PUD district has not been approved by the City within two years after approval of these Master Plan provisions, the approval of the Master Site Plan\ PDP provisions will expire. At such time, the City Council may:
 - 1. Permit a single six-month extension for submittal of the required Final Development Plan;
 - 2. Allow the PUD zoning designation to remain on the property pending resubmittal of new Master Site Plan provisions and any conditions of approval; or
 - 3. Rezone the property to a more appropriate zoning classification.
- D. The following PUD development standards shall apply to the development of the subject property:
 - 1. Development standards are established within the PUD/PDP Master Site Plan.
 - 2. Unless otherwise addressed within the PUD development standards, the R-1A zoning standards will apply to the subject property.

COMPREHENSIVE PLAN COMPLIANCE: The proposed Change of Zoning designation is consistent with the City’s proposed Future Land Use designation. Site development cannot exceed the intensity allowed by the Future Land Use policies.

SCHOOL CAPACITY REPORT: Staff has notified Orange County Public Schools (OCPS) of the proposed Zoning Map Amendment. Prior to submittal of a final development plan application, the applicant must obtain a school capacity enhancement or mitigation agreement from OCPS. Affected Schools: Dream Lake ES, Apopka MS, Apopka HS.

ORANGE COUNTY NOTIFICATION: The JPA requires the City to notify the County before any public hearing or advisory board. The City properly notified Orange County on August 15, 2014.

PUBLIC HEARING SCHEDULE:

September 9, 2014 – Planning Commission (5:01 pm)

September 17, 2014 – City Council (8:00 pm) – Remanded back to Planning Commission

October 21, 2014 – Planning Commission (5:01 pm)

November 5, 2014 – City Council (1:30 pm) – 1st Reading

November 19 2014 – City Council (8:00 pm) - 2nd Reading

DULY ADVERTISED:

August 22, 2014 – Public Notice and Notification

August 29, 2014 – Public Notice

October 3, 2014 – Public Notice

November 7, 2014 – Ordinance Heading Ad

RECOMMENDED ACTION:

The **Development Review Committee** recommends approval of the Change in Zoning from “County” PD (ZIP) (Residential) to “City” Planned Unit Development (PUD/R-1A) (Residential) for the property owned by Florida Land Trust #111, c/o ZDA at Sandpiper, LLC, Trustee, and the Master Site Plan\Preliminary Development Plan subject to the Staff Recommendations and the applicant obtaining a School Capacity Enhancement Agreement from OCPS.

The **Planning Commission**, at its meeting on September 9, 2014, elected to not approve (6-0) the Change in Zoning from “County” PD (ZIP) (Residential) to “City” Planned Unit Development (PUD/R-1A) (Residential) for the property owned by Florida Land Trust #111, c/o ZDA at Sandpiper, LLC, Trustee, and the Master Site Plan\Preliminary Development Plan.

The **City Council**, at its meeting on September 17, 2014, directed staff to return the item to the Planning Commission for a “Findings of Fact” of their decision to not approve the Change in Zoning from “County” PD (ZIP) (Residential) to “City” Planned Unit Development (PUD/R-1A) (Residential) for the property owned by Florida Land Trust #111, c/o ZDA at Sandpiper, LLC, Trustee, and the Master Site Plan\Preliminary Development Plan subject to the Staff Recommendations and the applicant obtaining a School Capacity Enhancement Agreement from OCPS.

The **Planning Commission**, at its meeting on October 21, 2014, recommended: [**The City Attorney, at the November 5, 2014, City Council meeting, advised the City Council that, due to conflicts with procedural requirements, the Council was to disregard the Planning Commission recommendations.**]

1. To deny (6-1) the Change in Zoning from “County” PD (ZIP) (Residential) to “City” Planned Unit Development (PUD/R-1A) (Residential) for the property owned by Florida Land Trust #111, c/o ZDA at Sandpiper, LLC, Trustee based on the following Findings of Fact:
 - a. Project is not compatible with the surrounding neighborhood because:
 - i. The average lot size across the street from this project and along Ustler and Tangelwilde is 1.93 acres.
 - ii. The average lot size on Sir Arthur Court, Camelot Subdivision, is 1.21 acres.
 - iii. The average lot size in Wekiva Landing, a spur off of Oak Pointe Estates, is 1.63 acres.
 - iv. The average lot size in Oak Pointe Estates is 1.24 acres.
2. To approve (7-0) the Change in Zoning from “County” PD (ZIP) (Residential) to “City” Planned Unit Development (PUD/R-1A) (Residential) for the property owned by Florida Land Trust #111, c/o ZDA at Sandpiper, LLC, Trustee, subject to a minimum Lot Size of 22,000 square feet; staff’s PUD recommendations and the sidewalk along Sandpiper Street; and the developer’s proposed conditions, with the exception of the minimum lot size of a tri-rail fence with dense landscaping buffer to reach six feet in height within two years; 2,200 square foot minimum living areas; to be a gated community and all language in the conditions of approval to be consistent with gating; at least 500 square feet of driveway pavers per house or side-loaded/courtyard entry for each house, to be decided on a house-by-house basis by the builder; and installation of stop signs at the corner of Ustler and Sandpiper.

The **City Council**, at its meeting on November 5, 2014, accepted the First Reading of Ordinance No. 2386 and held it over for Second Reading and Adoption on November 19, 2014.

Adopt Ordinance No. 2386 and the PUD Master Plan.

Note: 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. Role of the Planning Commission in this case is advisory to the City Council.

ZONING REPORT

RELATIONSHIP TO ADJACENT PROPERTIES:

<i>Direction</i>	<i>Future Land Use</i>	<i>Zoning</i>	<i>Present Use</i>
North (County)	Res. Low Density (4 du/ac)	A-1, A-2	SF Homes
East (County)	Res. Low Density (4 du/ac)	A-1, RCE	SF Homes
South (County)	Res. Low Density (4 du/ac)	A-2, RCE, R-1AAAA	SF Homes
South (City)	Res. Very Low Suburban (0-2 du/ac)	R-1AAA	SF Homes
West (City)	Res. Very Low Suburban (0-2 du/ac)	RCE-1, R-1AAAA	SF Homes
West (County)	Res. Low Density (4 du/ac)	A-2	SF Homes

LAND USE &

TRAFFIC COMPATIBILITY: The properties are located south of West Lester Road and east of Vick Road.

R-1A DISTRICT

REQUIREMENTS*:

Minimum Site Area: 10,000 sq. ft. (Sandpiper PUD- 12,800 sq. ft.)
 Minimum Lot Width: 85 ft. (Sandpiper PUD- 75 ft.)
 Front Setback: 25 ft.
 Side Setback: 10 ft.
 Rear Setback: 20 ft.
 Corner Setback: 25 ft.
 Minimum Living Area: 1,600 sq. ft. (Sandpiper PUD- 2,200 sq. ft.)

* PUD development standards set forth in Exhibit “F” may differ from these typical R-1A standards. Where such standards differ, the PUD standards shall preside. Where the PUD does not specifically address a development or zoning standard, the R-1A zoning standards and Land Development Code shall preside.

BUFFERYARD

REQUIREMENTS:

Sandpiper Proposed PUD requirements:

- a. 30-foot wide buffer easement along the south property line as set forth in the Master Plan. Easement dedicated to the HOA.
- b. 10-foot wide buffer tract with six-foot high hedge (within 2 years from planting) that creates a near-opaque screen, canopy trees, and a tri-rail fence with masonry or brick posts.

ALLOWABLE USES:

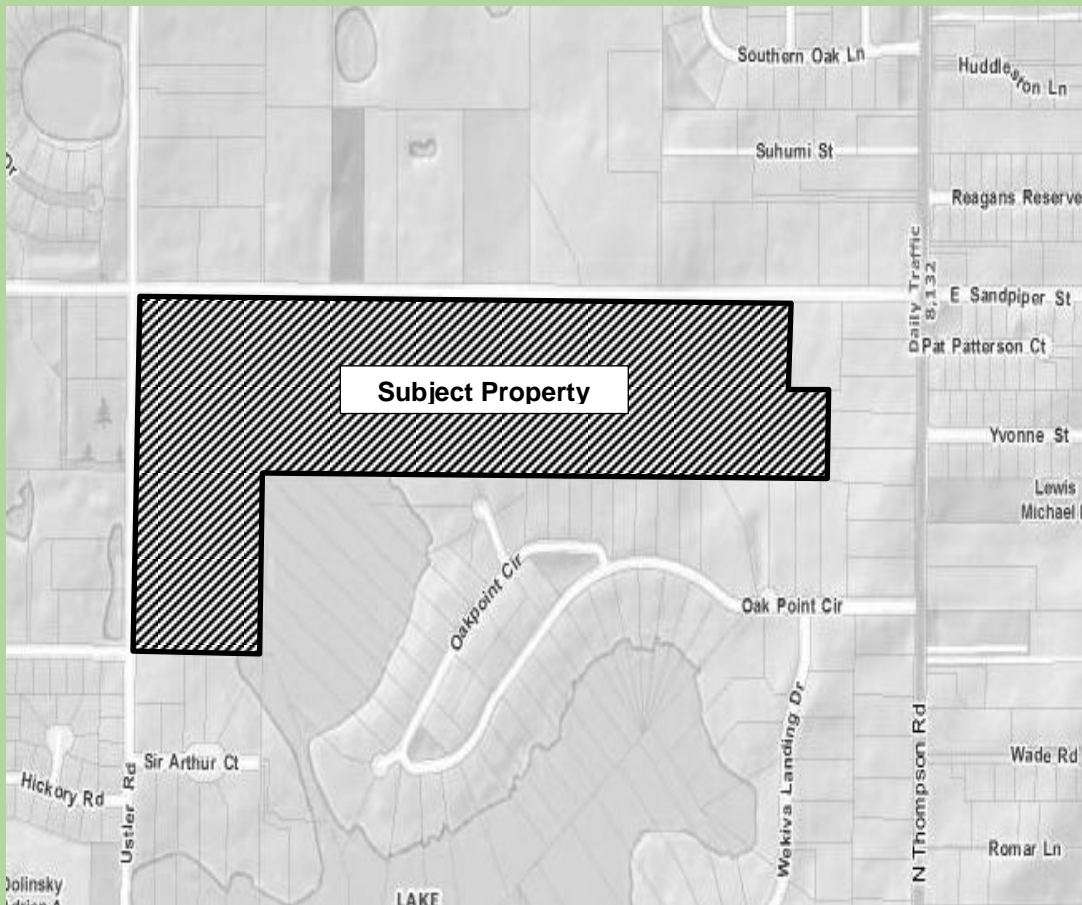
Single-family dwellings and their customary accessory structures and uses in accordance with article VII of this code. Supporting infrastructure and public facilities of less than five acres as defined in this code and in accordance with section 2.02.01, LDC.

Florida Land Trust #111, c/o ZDA at Sandpiper, LLC, Trustee
58.23 +/- Total Acres; 48.4 Developable Acres
Existing Zoning Maximum Allowable Development: 49 Dwelling Units
Proposed Zoning Maximum Allowable Development: up to 49 Dwelling Units
Proposed Zoning Change
From: "County" PD (ZIP)
To: "City" Planned Unit Development (PUD/R-1A)

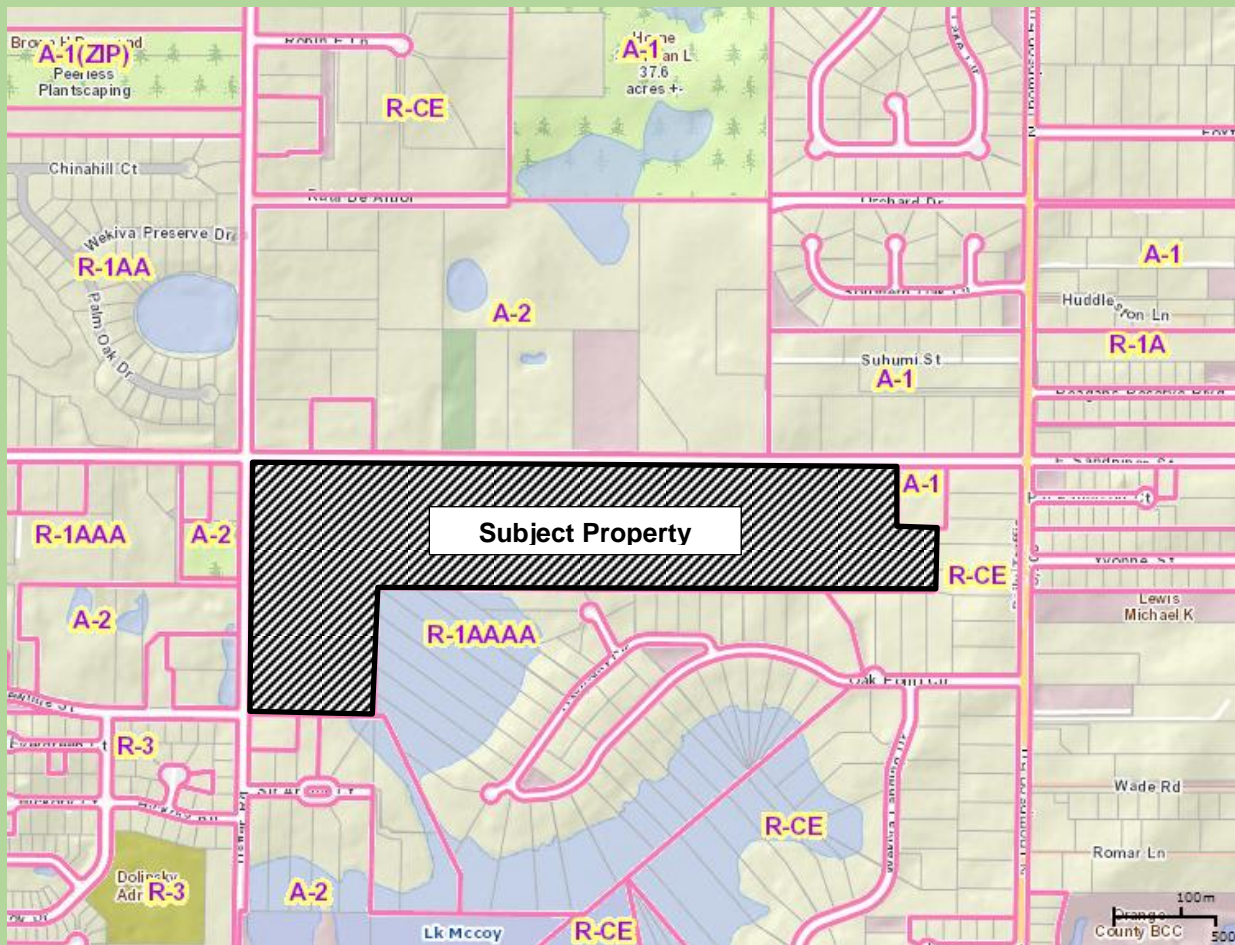
Parcel ID #s:	02-21-28-0000-00-106	02-21-28-0000-00-131
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	03-21-28-0000-00-023	03-21-28-0000-00-046
	03-21-28-0000-00-047	03-21-28-0000-00-072
	03-21-28-0000-00-073	03-21-28-0000-00-119



VICINITY MAP



ADJACENT ZONING



ADJACENT USES

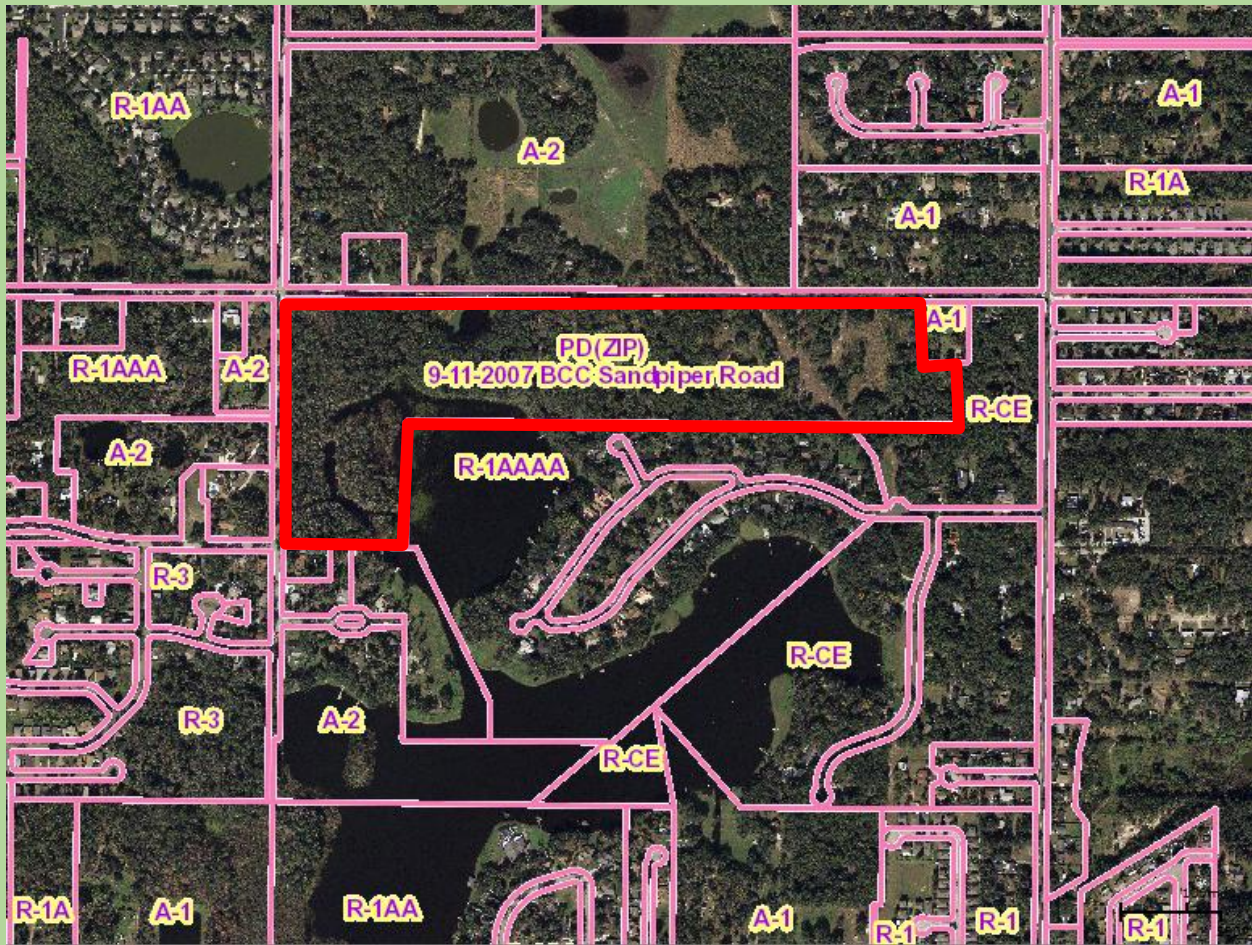


EXHIBIT “B”

SANDPIPER MASTER SITE PLAN DEVELOPMENT STANDARDS

A. Design Standards

- 1. LOT SETBACKS:
 - Front- 25'
 - Side - 7.5'
 - Lots 15, 16- 37.5'
 - Lots 5, 6, 21, 22 - 0' adjacent to the gas line easement
 - Corner Lot - 25'
 - Rear - 20' (lots 1-22, 32-49)
50' (lots 23-31)
 - Lk. McCoy NHWE- 50'
- Garage Setbacks
 - Front entry: 30'
 - Side entry: 25'
- 2. The minimum lot width for lots 6 through 12 and 23 through 31 will be 110 feet at the building setback line. The minimum lot width for all other lots will be 75 feet. The minimum lot depth will be 140 feet.
- 3. Maximum Building Height: 35'
- 4. Maximum number of Stories: Two
- 5. Minimum Lot Area: 11,500 sq. ft; 10,000 sq. ft. for lots 31 to 39 (area outside SJRWMD wetland line and its designated upland buffer.)
- 6. Minimum Living Area; 2,200 sq. ft. under heat and air.
- 7. Each house to have a two car garage (minimum).
- 8. Any modification to the PUD Master Plan shall be reviewed according to Section 2.02.18.N, Land Development Code.

B. Buildings and Accessory Structures

- 1. Home design shall meet the intent of the City’s Development Design Guidelines.
- 2. Pools, sheds, buildings, gazebos, fences and other accessory structures are prohibited in the side yard setbacks and within the 30 foot conservation easement at the rear of lots 23 to 31.
- 3. Existing structures will be removed prior to platting..

C. Utilities and Infrastructure

- 1. Water service shall be provided by the City of Apopka. The water system shall be designed to city standards.
- 2. An oversize agreement is necessary to install 12" diameter force main along sandpiper road.
- 3. Storm water management system shall be designed to comply with the requirements of the City of Apopka and St. Johns River Water Management District.
- 4. A final drainage report and soils report will be submitted with final development plans
- 5. Sanitary service shall be provided by the City of Apopka. The sanitary system shall be designed to city standards.
- 5. Utility easements to be dedicated to the City of Apopka.

6. Drainage easements to be dedicated to the home owners association unless otherwise accepted by the City of Apopka.
7. All stormwater and utility pipes may be moved to save existing trees in the right-of-way. Any change in the location of these pipes will be shown on the final engineering plans.
8. On-site streets are to be constructed per City of Apopka standards.
9. A signage plan will be provided with the final development plan submittal.
10. Entrance gate shall conform to city codes. Entrance gate to be equipped with emergency access system through an opti-com type visual gate activation and yelp siren. There must also be a keypad with an emergency access code.
11. A blanket ingress/egress easement will be granted for access to the city over Tract F.
12. Stabilized access roadways and fire hydrants must be in place before building construction may begin
13. Street names will be provided with the final development plans
14. Solid waste collection and public safety (police and fire) provided by the City of Apopka.
15. All/any overhead utility lines must be placed underground, coordination with City's Public Service Dept.
16. At this time the proposed street right-of-way is to be private with an entrance gate;
17. A five (5) foot wide sidewalks to be constructed adjacent to internal roads throughout the entire project in compliance with the City of Apopka Land Development Code. Sidewalk alignment may be adjusted at final development plan to preserve existing trees.
18. In lieu of installation of sidewalk along Ustler Road, the owner may pay into the city sidewalk fund at the rate of \$3.50/sf for 4" thick sidewalk and \$4.25 for 6" sidewalk.
19. A five-foot wide sidewalk shall be constructed along Sandpiper Road from Ustler Road to the northeast corner of the project boundary.

D. Recreation, Open Space, Lake Access

1. The active park area shall be a minimum of 15,000 sq.ft. within Tract "A". A park site plan and recreation equipment shall be provided with the Final Development Plan. Design of the park shall comply with the Land Development Code.
2. Only the eight lot owners who will have lots backing up to Lake McCoy will have access to the lake and be able to build private docks to access said lake. All eight lot owners will be required to join the Lake McCoy taxing district. No other docks or recreation will be allowed from this development. Dock details will be evaluated with the final development plan and is to include language allowing a 15-foot wide access to the lake for each lot.
3. A Park site plan and recreational amenities will be provided with final development plans.
4. Project open space:
 Required = 20% min. per LDC
 Provided = 45.85% (26.70 acs.).

E. Buffers and Landscaping

1. A 30 foot wide conservation easement will be provided on the back of Lots along the southern property line, except against lake, wetland, retention, or gas easement. Easement shall be dedicated to the HOA. (The 30-foot conservation easement is not a required SJRWMD easement.) No building, fence, gazebo, swimming pool, or accessory structure shall be placed within the thirty-foot conservation easement. The buffer shall remain as natural vegetated buffer. Trees that are removed shall be replaced. Any removal of trees or vegetation within the bufferyard must be approved by the HOA and the City of Apopka. Easement boundary markers will be placed at

the interior of the easement line along the side lot line for all lots (Lots 23 to 31, and 15, 16) abutting the 30-foot conservation easement.

3. A ten (10) foot wide buffer tract for landscaping will be provided on the northern property line, except against lake, wetland, retention, or gas easement. This tract shall be dedicated to and maintained by the HOA. The design of this buffer shall generally follow the landscape design appearing in Exhibit "B.1". A tri-trail fence that is supported by a brick or stone post shall extend from the northeast project boundary westward to the beginning of the designated open space area.
4. Entrance feature and community sign will be provided with final development plans.
5. Final landscape plans for the buffer area along Sandpiper Street will be provided with the final development plans.

F. Maintenance and Plat

1. Home owners association will maintain all common areas, roads, and walls.
2. The final development plan shall include the plat document, and the plat shall be in final form.
3. Lots 5, 6, 21, and 22 have access to the gas easement surface area as allowed by the recorded easement. Easement details will be provided with the final development plan.

G. Wetlands and Environmental

1. All acreage regarding developable and conservation areas (wetlands and buffers) are considered approximate until finalized during a review by the St. Johns River Water Management District and the City of Apopka. The SJRWMD concurrency will be provided at final plan review.
2. The jurisdictional wetland areas are to be placed in a conservation easement.
3. Any development in a special flood hazard area will require the finish floor elevation to be 20-inches above the 100 yr. Flood elevation, minimum.
4. An erosion protection plan will be submitted with final development plans.
5. The habitat inventory and management report shall be provided to the city at the final development plan stage.
6. Tree removal, tree replacement, and landscaping shall be in conformance with Article V of the City of Apopka Land Development Code.
7. Individual lot arbor/clearing permit is required prior to clearing or grading of any lot or issuance of building permit. Placement of the house shall preserve existing trees to the greatest extent practical. Plot plan for each lot shall illustrate tree locations as presented within the PUD Master Plan\ Preliminary Development Plan.
8. In order to save existing trees stem walls/retaining walls may be utilized on individual lots.
9. The 25 foot wide (average)/15 foot wide minimum wetland buffer/conservation easement within Lots 32 to 39 and Tract A is to be dedicated to the SJRWMD. Lot owners may not clear any vegetation within the conservation easement on their lot except to accommodate a maximum 15 foot wide path to reach the water's edge.

H. Development Condition Continuity. The PUD Development Standards shall be printed within the PUD Master Plan and the Final Development Plan.

EXHIBIT "B"

CITY COUNCIL MINUTES

NOVEMBER 5, 2014

W/HANDOUTS PROVIDE TO THE CITY CLERK

AND

NOVEMBER 21, 2014

CITY OF APOPKA

Minutes of the regular City Council meeting held on November 5, 2014, at 1:30 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
John Peery – The Apopka Chief
Steve Hudak - The Orlando Sentinel

INVOCATION – Commissioner Dean introduced Pastor Alice Hicks, Center of Faith Church, who gave the Invocation.

PLEDGE OF ALLEGIANCE: Mayor Kilsheimer said on the eleventh hour of the eleventh day of the eleventh month in 1918, fighting ceased between Germany and the Allied Nations when armistice went into effect. This armistice heralded the end of World War I. In the years following, November 11th was commemorated as Armistice Day, a day filled with solemn pride and the heroism of those who died in the country's service during World War I. The day was to be dedicated to the cause of world peace. In 1954, Congress changed the name of the holiday to Veteran's Day to honor American veterans of all wars. He asked everyone to remember our veterans for their patriotism, love of country, willingness to serve, and sacrifice for the common good as he led in the Pledge of Allegiance.

EMPLOYEE RECOGNITION

- 1. Clark M. Mason – Fire/Suppression – Five Year Service Award** – Mayor Kilsheimer said Clark began working for the City on October 16, 2009, as a Fire Fighter First Class, which is his current position. The City Council joined Mayor Kilsheimer in congratulating Clark on his years of service to the City.
- 2. Joel S. Brown – Police/Field Services – Ten Year Service Award** – Mayor Kilsheimer said Joel began working for the City on October 4, 2004, as a Police Officer. On May 18, 2014, he was assigned to Lead Police Officer, which is his current position. The City Council joined Mayor Kilsheimer in congratulating Joel on his years of service to the City.
- 3. MacIntosh Fequiere – Police/Field Services – Ten Year Service Award** – Mayor Kilsheimer said MacIntosh began working for the City on October 26, 2004, as a Police Officer, which is his current position. The City Council joined Mayor Kilsheimer in congratulating MacIntosh on his years of service to the City.

4. **Jason M. Woertman – Police/Field Services – Ten Year Service Award** - Jason started working for the City on October 26, 2004, as a Police Officer. He was promoted to Police Sergeant on April 18, 2011, which is his current position. The City Council joined Mayor Kilsheimer in congratulating Jason on his years of service to the City.
5. **Renee C. Beasley – Fire/EMS – Ten Year Service Award** - Renee began working for the City on October 29, 2004, as a Fire Fighter First Class. She was promoted to Fire Engineer on December 11, 2009, which is her current position. Mayor Kilsheimer said Renee was unable to attend and will be presented her award at a later time.
6. **Jeremy L. Holderfield – Fire/EMS – Ten Year Service Award** - Jeremy started working for the City on October 30, 2004, as a Fire Fighter First Class. On February 24, 2014, Jeremy was promoted to Fire Engineer, which is his current position. The City Council joined Mayor Kilsheimer in congratulating Jeremy on his years of service to the City.
7. **Richard “Ricky” L. Hayden – Fire/EMS – Fifteen Year Service Award** - Ricky began working for the City on October 2, 1999, as a Firefighter First Class. On October 6, 2003, he was promoted to Fire Engineer. And on December 11, 2009, Ricky was promoted to Fire Lieutenant, which is his current position. The City Council joined Mayor Kilsheimer in congratulating Ricky on his years of service to the City.
8. **Patrick “Pat” Griggs – Public Services/Water Distribution Maintenance – Twenty-Five Year Service Award** - Pat started working for the City on October 1, 1989, as a Laborer I. On May 12, 1993, Pat was reclassified to a Laborer II. His title changed on September 1, 1994, to Utility Service Worker II. On May 1, 2000, Pat’s title changed to Meter Service Worker. He was reclassified to Meter Service Worker I on September 1, 2003. Pat was reclassified to a Utility Service Worker II for Water Distribution Maintenance on May 22, 2006, which is his current position. Mayor Kilsheimer said Pat was unable to attend and will be presented his award at a later time.
9. **Randall “Randy” E. Tindall – Public Services/Utility Construction – Twenty-Five Year Service Award** - Randy began working for the City on October 1, 1989, as a Laborer I. He was promoted on February 1, 1990, to Laborer II. Randy’s title changed on February 1, 1994, to Utility Service Worker II and on December 8, 1994, was promoted to Utility Foreman, which is his current position. The City Council joined Mayor Kilsheimer in congratulating Randy on his years of service to the City.
10. **Theresa A. Brown – Finance/Utility Billing – Twenty-Five Year Service Award** - Theresa started working for the City on October 11, 1989, as a Cashier/Finance Clerk. She was promoted to Utility Billing Clerk on August 10, 1994. Theresa had a title change on May 1, 2000, to Utility Billing Specialist. On August 24, 2012, her title changed to Customer Service Specialist, which is her current position. The City Council joined Mayor Kilsheimer in congratulating Theresa on her years of service to the City.
11. **Robert “Robbie” M. Manley III – Police/Chief’s Office – Twenty-Five Year Service Award** - Robbie began working for the City on October 11, 1989, as a Police Officer. He was promoted to Police Sergeant on August 4, 1997. Robbie was promoted to Police Commander on

October 1, 1998. He was promoted to Deputy Police Chief on January 7, 2005. On December 29, 2010, Robbie was promoted to Police Chief, which is his current position. The City Council joined Mayor Kilsheimer in congratulating Chief Manley on his years of service to the City.

PRESENTATIONS

1. Week of Family Proclamation – Mayor Kilsheimer read the proclamation and then presented it to Lynn Whitcomb.
2. Florida League of Cities John Land Years of Service Award - Kathy Till, Florida League of Cities, read a resolution honoring Commissioner Dean for his years of service, and then presented it to him.
3. Debbie Turner Cancer Care and Resource Center - Chief Manley presented a check in the amount of \$2,825.14, funds raised by employees and matched by the city during Breast Cancer Awareness month.
4. Boy Scouts of America - Randy Stiel thanked the City for their support to the Boy Scouts. He was then presented with a check for \$5,000.

CONSENT AGENDA

1. Approve the minutes from the regular City Council meeting of October 1, 2014, at 1:30 p.m.
2. Approve the minutes of Administrative Bid Opening No. 2014-12 for New Ground Storage Tank Number 4 for the Apopka Water Reclamation Facility, held on October 15, 2014, at 10:15 a.m.
3. Approve December 24, 2015, as the calendar year 2015 Floating Holiday.
4. Approve the request from the Foliage Sertoma Club of Apopka, Inc., to hold its annual Apopka Christmas Parade on Saturday, December 13, 2014; and authorize waiver of the Special Event fees.
5. Award the contract, in the amount of \$920,000.00, to The Crom Corporation for the design and construction of the New Ground Storage Tank Number 4, for the Apopka Water Reclamation Facility. *(Item pulled)*
6. Authorize the use of the Orange County Public School Contract 1309220 ITB, in the amount of \$103,185.00, for pesticide/fertilization applications at the Northwest Recreation Complex Athletic Fields.
7. Award the consulting services contract for Professional Engineering Services, to CH2M Hill, Inc. and Reiss Engineering for one year, with the option to extend the contract for two additional one-year extensions.
8. Authorize the Mayor or his designee to sign contract #WS950, in the amount of \$57,497.00, with the Department of Corrections for an inmate work squad.
9. Authorize the execution of a contract, in the amount of \$47,530.00, with Layne Inliner, LLC to install 1,301 linear feet of 10-inch CIPP inliner for an existing sanitary gravity sewer line.

10. Authorize an expenditure from the Law Enforcement Trust Fund, at a cost of no more than \$44,000.00, to refurbish an armored vehicle used by the Police Department.
11. Authorize staff to issue a Request for Proposal (RFP) for professional services to conduct a Visioning Program.
12. Authorize issuance of a Vehicle For Hire permit to Lil Bit's Academy, owned by Antoinette Wright.
13. Approve the Disbursement Report for the month of October 2014.

Mayor Kilsheimer affirmed that Item 5 was being pulled from the Consent Agenda.

MOTION was made by Commissioner Arrowsmith, and seconded by Commissioner Dean, to approve Items 1-4, and 6-13 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 – FIRST READING - 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)

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.

Mayor Kilsheimer disclosed he has had some discussions with neighbors that surround this property. He affirmed those discussions will not have any bearing on the decision made today.

Commissioner Velazquez disclosed she has received via e-mail petitions, to which Mayor Kilsheimer advised there was a petition filed with the website change.org and as of earlier today 100 people have signed the petition.

City Attorney Shepard advised for anybody who has had ex parte communication, which would include meetings, discussions, notes, e-mails, texts, etc., not only do they need to be disclosed, but if there are records involved, such as e-mails, they need to be provided to the clerk so to be made a part of the record. In response to Commissioner Arrowsmith, he advised you do not have to meet with anyone on a quasi-judicial matter, but if you do meet with anyone, it must be disclosed.

Mayor Kilsheimer said as part of this quasi-judicial hearing, they are required to make some findings of fact and he asked the City Attorney to review this with Council.

City Attorney Shepard said the last time this was before the Council it was referred back to the Planning Commission for fact finding. He affirmed that under current policy an attorney does not attend those meetings. Subsequent to that meeting, findings of fact were made as well as a motion to not recommend this, as well as a motion, if proceeding with it, to place certain restrictions. He advised he was provided a transcript of the hearing, as well as case law by the developer's counsel. The transcript shows that the Chair made a motion based upon his own testimony which was contrary to the testimony given by city staff. He affirmed that the committee or chair is not allowed to bring in their own evidence. He strongly recommended the Council should ignore the recommendation from the Planning Commission and make whatever findings they make based on what the record is they find at this meeting.

David Moon, Planning Manager, stated he would presume that since the first hearing was heard before City Council on September 17, 2014, and continued at this meeting, that any information and testimony at that hearing can also be considered by Council today.

City Attorney Shepard responded in the affirmative.

Mr. Moon continued to provide an overview of the project, stating he would not repeat what was presented on September 17th, but he would review additional information based upon comments and questions by City Council, as well as some clarifications. He pointed out that staff did re-advertise this hearing, as well as the hearing scheduled for November 19, 2014. He reviewed the history of this project. The property was annexed into the City in 2008, in August 2008, the Planning Commission recommended approval of the PUD by a 5/1 vote, the preliminary development plan was approved by City Council unanimously with the understanding the concerns of the surrounding citizens be addressed prior to the final plat, which were concerning flooding, drainage, and tree protection. He advised the new plan is similar to what was presented to and approved by City Council in 2008 and he reviewed the key differences. He affirmed that based on the applicants meetings with adjacent property owners, he agreed to establish a 30 foot undisturbed conservation buffer between the homes on the southern boundary. He reviewed the lot sizes and additional conditions the applicant has agreed to. Staff's report will be filed with the minutes.

In response to questions from Commissioner Velazquez with regards to sidewalks and pedestrian safety, Mr. Davoll advised the developer will be putting in sidewalks all around the development.

He advised when crossing at Ustler Road, sidewalks are in place at Ustler and Tanglewilde. He further stated Ustler and Sandpiper is a 2-way stop at this time.

Commissioner Arrowsmith said he was looking for items that have changed from when it was approved in 2008 and if they are minor changes, to be reassured of that, to which Mr. Moon reviewed those changes. He further advised that once the City assigned land-use designation, any future review of a development plan was subject to the City's Comprehensive Plan and Land Development Code. He affirmed the preliminary development plan expired in 2009 and in 2010 the City assigned the future land-use designation.

Miranda F. Fitzgerald, Attorney with Lowndes, Drosdick, Doster, Kantor & Reed, P.A., was representing the applicant. She reiterated that the Council's decision was to be based on competent, substantial evidence. She provided her resume and reviewed her qualifications stating she has been practicing in this area of law for 35 years and has expertise in this field. She addressed several of the questions that were previously raised and advised the restricted lots previously discussed were not restricted from having pools, but only restricted from having pools within that 30-foot easement area. She stated things have changed since 2008, not only has the county lost jurisdiction over this property and now falls under the city's regulations. She advised that because this is a PUD, they have the ability to negotiate with staff and come up with a compromise. She affirmed that after listening to the residents' concerns, they agreed to do a minimum 2200 square foot house size. She affirmed the biggest issues seem to be general compatibility and lot size. She went on to review the project and gave the definition of compatibility. She stated staff has worked with them through this process and pointed out that the 30-foot buffer was not in place in 2008. She further stated the 15 acres is not intended to be a preserve, but open space and recreation. She stated the plan has changed since it was with the county and has changed for the better and requested the Council's approval.

The meeting recessed at 3:21 p.m. and reconvened at 3:26 p.m.

Mayor Kilsheimer opened the public hearing.

The following people spoke in opposition to the Sandpiper project. Ellen O'Connor, representing Oakwater Estates read a letter into the record expressing their opposition to the project and requested denial. A copy of the letter is on file in the Clerk's office. Concerns expressed were with regards to lot size, protection of the large trees, how it will affect Lake McCoy, safety of school children walking along Sandpiper Street, the fact that the findings of the Planning Commission are not being allowed, higher density, the effect this will have on the Wekiva Basin, traffic and safety. Documentation turned in regarding traffic studies, photos of posting on property, lot sizes, and petitions from change.org are on file in the Clerk's office.

Ellen O'Connor
Jill Cooper
Chris Rucker
Jack Cooper

Les Hess
Mary Smothers
David McGee
Sylvester Smith

The following people spoke in support of the Sandpiper project. Both speakers were from Wekiva Preserve and Mr. Peronti was representing the Wekiva Preserve HOA. They had concerns in that

this project would represent the closest comparable to Wekiva Preserve homes. In meeting with them, the developer agreed to set the minimum square footage of the homes at 2200 and Wekiva Preserve minimum is 1800 and pavers in the driveway and/or a side entry.

Mike Peronti

Colleen Kelly

Attorney Fitzgerald said she did not intend to insult anyone, she was trying to state the standard and the Council makes their determination of what is competent substantial evidence their decision will be based upon. She affirmed they will not be clear cutting this property and each individual lot will be subject to the City's stringent code. She stated much of the 15 acres on the west side will be left in its natural state, although it will be cleared out some, but is reserved for an open/recreation area. There is a commitment with regards to the lots on the lake front will be restricted to clearing of a maximum of 15 feet on their property for lake access. She advised that since this is a PUD, there are very specific provisions that supersede the R-1 zoning. She affirmed they had agreed with the Wekiva Preserve HOA to have at least 500 square feet of driveway pavers per house, or a side/court yard entry to be determined on an individual basis. She reviewed proposed conditions offered by the developer (list on file in the Clerk's office) in addition to those in the staff recommendation and requested approval.

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

City Attorney Shepard reiterated if the Council is going to deny or approve, it needs to be based on competent, substantial evidence in the record that supports their decision. It cannot be based upon your own testimony.

In response to Commissioner Velazquez regarding if the applicant has met the criteria for approval. Mr. Moon stated this project went through staff review and based upon the Development Review Committee, they determined the plan, as proposed, is consistent with the Land Development Code, and the Comprehensive Plan. He said this project is compatible with the general character of the surrounding area, as well as past actions Council has taken to approve similar projects. With regards to comments by Commissioner Ruth to find a compromise between the original project and this presentation, Mr. Moon affirmed the same responsibilities apply to this City Council as it did with the 2008 City Council, in that the decision has to be based upon the findings of fact presented, as referenced by the City Attorney.

MOTION was made by Commissioner Ruth to deny because of findings of fact of 2008 for a minimum size of 3000 square feet and dropped to 2200 square feet. Motion failed due to lack of a second.

MOTION was made by Commissioner Arrowsmith, and seconded by Commissioner Velazquez, to accept the First Reading of Ordinance No. 2386 based on the findings of fact, and hold it over for a Second Reading, with the opportunity for staff to negotiate/reconsider certain conditions between now and the Second Reading. Motion carried by a 4-1 vote with Mayor Kilsheimer, and Commissioners Arrowsmith, Dean, and Velazquez voting aye and Commissioner Ruth voting nay.

The meeting recessed at 4:44 p.m. and reconvened at 4:52 p.m.

2. ORDINANCE NO. 2388 – FIRST READING - 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.”

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.

Mayor Kilsheimer said we no longer have to worry about a large medical marijuana business coming to the State of Florida since Amendment 2 did not pass. However, we do have an approved licensed and regulated product the Florida Legislature passed known commonly as the Charlotte’s Web Law. Subsequently, the State Department of Health has been proposing rules and regulations to govern how certain businesses might be awarded licenses. In order to be in this business, they must have some statement of cooperation from their local jurisdiction and in discussing, it has been determined Apopka may have approximately five businesses that would preliminarily qualify. He advised that staff has drafted an ordinance with regards to this legislation.

Mr. Moon said the City Attorney’s office has reviewed the draft ordinance and he handed out a copy with highlighted, stricken language that relates to Federal Laws and is not necessary to be included. He affirmed if the motion is to adopt at First Reading, then it should be subject to the document with the stricken language.

Mayor Kilsheimer opened the meeting for a public hearing.

Kerry Herndon said he owns Kerry’s Nursery at 450 E. Keene Road as well as Twyford International at 4550 Fudge Road. He reviewed Senate Bill 1030 and why it is important to Florida. He stated it approved a particular form of cannabis that has a high concentration of CBD. He affirmed the CBD does not get people high. He stated that CBD is the most powerful neuronal protectant ever encountered and has extremely beneficial effects to protect peoples neurons from damage by stroke, ALS, Parkinson’s, HIV, dementia, Down Syndrome, and benefits for people

undergoing chemotherapy. He affirmed if approved to grow, they will have extremely high levels of security.

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

MOTION was made by Commissioner Arrowsmith, and seconded by Commissioner Dean, to accept the First Reading of Ordinance No. 2388, and hold it over for a Second Reading. Motion carried by a 3-2 vote with Mayor Kilsheimer, and Commissioners Arrowsmith, and Dean, voting aye, and Commissioners Velazquez and Ruth voting nay.

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 #s: 28-20-28-0000-00-010 & 28-20-28-0000-00-075)**

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 Ruth, and seconded by Commissioner Velazquez, to accept the First Reading of Ordinance No. 2390, and hold it over for a Second Reading. 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)**

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 accept the First Reading of Ordinance No. 2391, and hold it over for a Second Reading. 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 #: 15-21-28-0000-00- 095 & 15-21-28-0000-00-096)**

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 Arrowsmith, and seconded by Commissioner Velazquez, to accept the First Reading of Ordinance No. 2392, and hold it over for a Second Reading. 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

1. **FINAL DEVELOPMENT PLAN (MINOR)** – Circle K Gas Station, owned by Clarcona Keene Retail, LLC; engineer Florida Engineering Group c/o Samir J. Sebaali, P.E, property located north of East Keene Road and west of Clarcona Road. (Parcel ID #: 22-21-28-0000-00-225)

Jay Davoll, Community Development Director gave a lead in for the Final Development Plan explaining a preliminary development plan was not required due to the size. This site meets our Stormwater standards and there are two onsite retention ponds. He advised they will be paying \$1,016 dollars into the City tree fund. They will be submitting a master sign plan that will be before the Planning Commission at their meeting next week. They are requesting one waiver, asking that they be allowed to have the dumpster enclosure match the exterior of their building, which staff does not object to this waiver request. The Planning Commission voted 7-0 to approve the Final Development Plan at their October 21, 2014 meeting and the Development Review Committee recommends approval.

MOTION by Commissioner Arrowsmith and seconded by Commissioner Dean to approve the Final Development Plan for the Circle K Gas Station, owned by Clarcona Keene Retail, LLC, as presented. Motion carried unanimously with Mayor Kilsheimer, and Commissioners Arrowsmith, Dean, Velazquez, and Ruth voting aye.

DEPARTMENT REPORTS AND BIDS –

1. **Sanitary Sewer and Potable Water Concurrency Management System** - Jay Davoll - Community Development Director reviewed the Sanitary Sewer and Potable Water Concurrency Management System as presented in the agenda packet.

MAYOR'S REPORT - Mayor Kilsheimer wished Mayor Land a Happy Birthday and stated Mayor Land listens to the audio of the Council meetings and downloads the agenda packets online, keeping up on everything the City is doing.

Mayor Kilsheimer reported the City is moving forward on the selection of the City Administrator stating out of the 52 applicants that submitted resumes, 32 responded to the questionnaires. These 32 applicants were reviewed by the Selection Committee and brought to six potential finalists at their first meeting and at their second meeting on Tuesday, November 4th, they came down to a final three applicants. The three applicants will receive a tour of the City by Mayor Kilsheimer next Thursday and have a personal interview. All three applicants will be attending the Taste of Apopka.

OLD BUSINESS

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

2. **PUBLIC** – There was no old business from the Public.

NEW BUSINESS

1. **COUNCIL**


Commissioner Arrowsmith inquired if the city had looked into what the financial impact may be with regards to the red light cameras to which Mayor Kilsheimer said Chief Manley was looking into the matter.

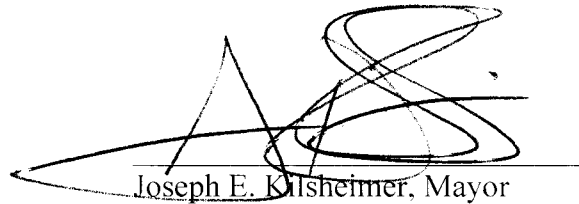
Commissioner Ruth requested some time with staff to be able to ask questions as a teaching mechanism to which Mayor Kilsheimer requested all communications be with either the City Attorney or the City Clerk to direct questions with staff.

2. **PUBLIC** – There was no new business from the Public.

ADJOURNMENT - There being no further business to discuss, the meeting adjourned at 5:39 p.m.

ATTEST:


Linda F. Goff, City Clerk


Joseph E. Kilsheimer, Mayor

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, James William "Bill" Arrowsmith, hereby disclose that on November 5, 20 14 :

(a) A measure came or will come before my agency which (check one or more)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____ ;
- inured to the special gain or loss of my relative, _____ ;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of Bank First, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

AGENDA ITEM:

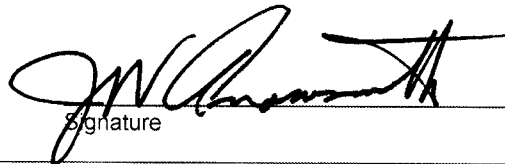
ORDINANCES AND RESOLUTIONS

1. 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

CONFLICT: The owner is a client of the bank I serve as Executive Vice President.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

November 19, 2014
Date Filed


Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

DOCUMENTS
HANDED TO CLERK
AT THE
11/5/14 REGULAR COUNCIL MEETING

Curriculum Vitae
MIRANDA F. ("Randi") FITZGERALD
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 N. Eola Drive
P. O. Box 2809
Orlando, FL 32802-2809
(407) 843-4600 (Main)
(407) 418-6340 (Direct)
miranda.fitzgerald@lowndes-law.com

Areas of Practice:

Land use, zoning, real estate development and environmental law, including Comprehensive Planning, Zoning, Property Rights, Development of Regional Impact (DRI) and DRI Rescission, Property Rights, Vested Rights, Impact Fees and Alternative Dispute Resolution (Certified Court Mediator, certified by Florida Supreme Court, concentrating in private and public disputes affecting real property and intergovernmental disputes).

Employment Experience:

Shareholder/Director/ Co-chair, Land Use Practice Group	Lowndes, Drosdick, Doster, Kantor & Reed, P.A. 215 North Eola Drive P. O. Box 2809 Orlando, Florida 32802 October, 1993 - Present
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Shareholder/Member	Maguire, Voorhis & Wells, P.A. Orlando, Florida December, 1983 - October, 1993
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Associate	Maguire, Voorhis & Wells, P.A. Orlando, Florida February, 1979 - December, 1983
-----------	---

Law Clerk/ Administrative Assistant	Macfarlane, Ferguson, Allison & Kelly Tallahassee, Florida 1974 - 1978
---	--

Professional:

Admitted to The Florida Bar in 1979;
Previously admitted to practice before the United States Circuit Court of Appeals, Fifth and Eleventh Circuits and the United States District Court for the Middle and Southern Districts;
Circuit Court Mediator certified by the Florida Supreme Court.

Honors and Awards:

- Named in Chambers USA America's Leading Business Lawyers 2004 to 2014;
- Named Orlando's Administrative/Regulatory Lawyer of the Year for 2014 and 2012 by *Best Lawyers*;
- Named Orlando's Government Relations Lawyer of the Year for 2012 by *Best Lawyers*;
- Named Orlando's Environmental Lawyer of the Year for 2010 by *Best Lawyers*;
- Named Orlando's Real Estate Lawyer of the Year for 2009 by *Best Lawyers*;
- Recognized by *Best Lawyers* every year since 1995;
- Selected for inclusion in 2006-2014 Florida Super Lawyers;
- Selected for inclusion in World's Leading Women in Business Law 2013;
- Selected as one of Florida's Top 50 Women Super Lawyers 2006-2013;
- Selected as one of the Top 50 Female Attorneys by *Law and Politics* 2006-2013;
- Named by Orange County Mayor Jacobs as Chair of the Orange County Regulatory Streamlining Task Force (2011-2012);
- Named by *Florida Trend* as one of Florida's Legal Elite 2004 to Present;
- Featured in *Orlando Magazine* articles on Orlando's Best Attorneys each year since 2001;
- Featured in *Orlando Magazine* article: "Attorneys You Can Trust - Six Legal Legends," December 1997;
- Featured in *Orlando Magazine* article: "Orlando's Leading Women - Redefining Power," September 1995;
- Martindale-Hubble Rating: AV, 1986 to Present

Speeches:

- Panel member for "Environmental and Land Use Mediations" presentation to Environmental Land Use Section of The Florida Bar (2014)
- Moderated panel and participated in presentation on "What's Ahead for DRI's" at the Florida Chamber Environmental Summer School (2014)
- Participated in panel presentation on "Legal and Practical Issues of Easements in Florida" sponsored by Lorman (2014)
- Moderated panel and participated in presentation on DRI issues at the Florida Chamber Environmental Summer School (2013)
- Presented "Defending Land Use Decisions on Appeal" to the Local Government Section of The Florida Bar (2012);
- Moderated panel and participated in presentation on "Recently Enacted Growth Management Laws—Impact, Issues and Implementation" at 2012 Florida Planning & Zoning Association Annual Meeting (2012);
- Moderated panel and participated in presentation on DRI Issues at Florida Chamber Environmental Summer School (2012);
- Served as panel member for discussion on "How's it Going—a View from the Battlefield" at the CLE International Land Use Law Seminar (2012);
- Participated as panel member at American Planning Association Seminar discussing "The Planner as Expert—From Staff Reports to Testimony at Trial" (2011).

- Participated as panel member at Florida Chamber Growth Management, Energy and Climate Change Short Course discussing “Aftermath of Hometown Democracy--What’s Next for Growth Management in Florida” (2011).
- Lecturer on Land Use Mediation at seminar sponsored by Local Government Section of The Florida Bar, 2010.
- Moderated panel discussion on new growth management laws at Florida Chamber Environmental Network Permitting Summer School (2005 to Present).
- Guest Lecturer for MBA Students at Rollins College on the impact of land use entitlements on land valuation (annually).
- Moderated panel discussion at 2004 Florida Chamber of Commerce Growth Management Short Course on Florida Hometown Democracy Constitutional Amendment Initiative;
- Presented “Practical Aspects of Land Use and Concurrency,” for Association of Certified Commercial Investment Managers (2002, 2003).
- Presented “Growth Management Law Update,” 2001, 2002, 2003 Florida Chamber Environmental Summer School.
- Moderated panel on “How to Make DRI’s Work For You,” 2000, 2001, 2002 for Florida Chamber of Commerce Growth Management Short Course;
- Presented “History of Land Use and Zoning Law,” 2000 preparation course for American Institute of Certified Planners Designation.

Publications:

- “School Overcrowding Legislation Target New Residential Development,” (Fall 2002), *The Fine Print*;
- “School Concurrency - Opportunity for Cooperative Solutions” (Spring 2000), *Orlando Welsh Market Update*;

Memberships:

- Member, Environmental and Land Use Law Section of The Florida Bar;
- Member, Orange County Bar Association and the American Bar Association;
- Chairman, Orange County Regulatory Streamlining Task Force (2011);
- Chairman, Orange County School Impact Fee Advisory Group (2011); Member (2005 – 2007);
- Member, Florida Chamber Growth Leadership Committee (2004 - Present)
- Member, Health Care Center for the Homeless Board of Directors (2002 - 2010);
- Member, Health Care Center for the Homeless Advisory Board (2010 – Present)
- Member, Urban Land Institute (2000 - Present);
- Member, CREW (Commercial Real Estate Women) (2000 - Present);
- Member, FSU Law School Board of Visitors (1995-2003);
- Chairman, City of Orlando Customer Review Team (1997-1998);
- Member, Orange County Concurrency Management Review Committee (1994 - 1997);
- Member, City of Orlando City Ordinance “Peer Review” Committee (1992 - 1998).

Education:

Legal: Graduated from Florida State University College of Law with high honors; J.D. in 1978.
Undergraduate: Graduated from Florida State University, with honors, B.A. in American Studies, 1972.
Other: Certificate in Dental Hygiene, University of North Carolina, Chapel Hill. 1967.

Major Law School Activities:

President, Florida State University Moot Court Team, 1978;
Member, First Place Team, 1978 Wagner National Labor Law Moot Court Competition;
National Semi-finalist, 1978 National Moot Court Competition;
Note and Comment Editor, Florida State University Law Review, 1978;
Co-author: "Defining a Fair Share, The Proposed Revision to Florida's Corporate Profits Tax"
Florida State University Law Review, Vol. 6, No. 3 (Summer, 1978);
Member, Phi Alpha Delta legal fraternity; Order of the Coif.

0099998/010901/608335/4

Sandpiper - Surrounding Residential Livable & Lot Area

Parcel ID	Property Address	Livable Area (Sq. Ft.)	Lot Area (Acreage) +/-	Lot Area (Sq. Ft.)	Relation to Sandpiper Boundary
03-21-28-0000-00-036	801 Ustler Rd	2720	1.84	80,231	North
03-21-28-0000-00-068	585 E Sandpiper St	3282	1.92	83,570	North
03-21-28-0000-00-112	589 E Sandpiper St	3497	4.77	207,775	North
03-21-28-0000-00-111	E Sandpiper St	Vacant	1.59	104,034	North
03-21-28-0000-00-014	607 E Sandpiper St	2242	2.39	104,132	North
03-21-28-0000-00-018	659 E Sandpiper St	2739	4.79	208,559	North
03-21-28-0000-00-074	705 E Sandpiper St	Vacant	4.8	208,951	North
03-21-28-0000-00-068	805 E Sandpiper St	1910	1.92	83,570	North
03-21-28-0000-00-055	855 E Sandpiper St	5699	15.51	675,451	North
02-21-28-0000-00-122	909 E Sandpiper St	5062	1.82	79,304	North
02-21-28-0000-00-124	925 E Sandpiper St	1952	1.82	79,288	North
02-21-28-0000-00-004	1005 E Sandpiper St	2163	1.82	79,273	North
02-21-28-0000-00-112	1030 E Sandpiper St	2506	1.79	78,013	East
02-21-28-7328-00-010	730 N Thompson Rd	2112	1.16	50,409	East

Living Area

Acres

02-21-28-7382-00-020	720 N Thompson Rd	2422	1.13	49,213	East
02-21-28-7382-00-030	710 N Thompson Rd	2418	1.23	53,735	East
02-21-28-7382-00-040	700 N Thompson Rd	2202	1.3	56,681	East
02-21-28-7382-00-050	632 N Thompson Rd	1865	1.28	55,793	East
02-21-28-9090-00-010	1163 Oakpoint Cir	2449	1.27	55,371	South
02-21-28-9090-00-020	1157 Oakpoint Cir	2821	1.26	55,367	South
02-21-28-9090-00-030	1151 Oakpoint Cir	2668	1.24	54,075	South
02-21-28-9090-00-001	1147 Oakpoint Cir	Vacant	1.24	54,096	South
03-21-28-6131-00-400	1139 Oakpoint Cir	5412	1.93	84,044	South
03-21-28-6131-00-390	1133 Oakpoint Cir	2723	0.8	34,796	South
03-21-28-6131-00-380	1127 Oakpoint Cir	2513	0.72	31,436	South
03-21-28-6131-00-370	1121 Oakpoint Cir	3210	0.69	30,206	South
03-21-28-6131-00-360	1115 Oakpoint Cir	2405	0.71	31,092	South
03-21-28-6131-00-350	906 Oakpoint Cir	2641	0.64	27,685	South
03-21-28-6131-00-340	912 Oakpoint Cir	2393	0.57	24,772	South
03-21-28-6131-00-330	918 Oakpoint Cir	2226	0.57	24,722	South

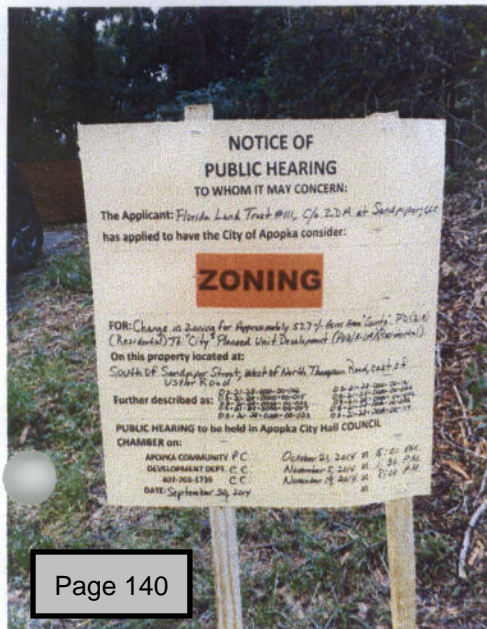
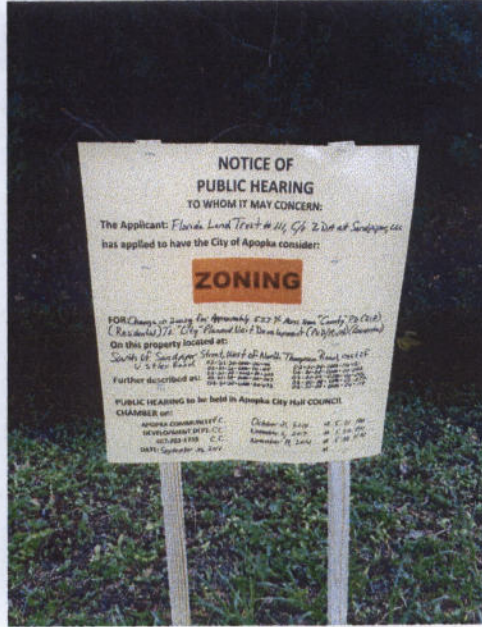
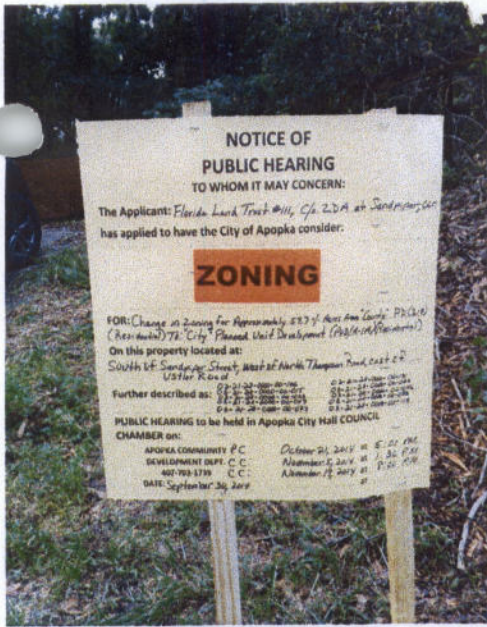
Living Area

ACVPS



03-21-28-6131-00-320	924 Oakpoint Cir	2490	0.58	25,137	South
03-21-28-6131-00-300	6099 Oakpoint Cir	2864	0.55	23,973	South
03-21-28-6131-00-290	617 Oakpoint Cir	3803	1.52	66,245	South
03-21-28-1137-00-050	527 Sir Arthur Ct	1874	1.18	51,555	South
03-21-28-1137-00-040	519 Sir Arthur Ct	2177	0.82	35,591	South
03-21-28-1137-00-010	593 Ustler Rd	2495	1.005	43,765	South
03-21-28-0000-00-063	455 Tanglewilde St	1566	1.48	64,350	West
03-21-28-0000-00-102	626 Ustler Rd	7298	2.5	108,899	West
03-21-28-0000-00-087	642 Ustler Rd	3697	2.98	130,015	West
03-21-28-0000-00-059	724 Ustler Rd	1959	0.5	21,746	West
03-21-28-0000-00-025	750 Ustler Rd	1795	0.52	22,496	West

Average **108,270**
2,776 39 homes



Advertisement

CITY OF APOPKA
APOPKA CITY HALL
PUBLIC NOTICE
120 East Main Street
Apopka, Florida 32703

TO WHOM IT MAY CONCERN:

NOTICE is hereby given that FLORIDA LAND TRUST #111, c/o ZDA AT SANDPIPER, LLC has made an application, in accordance with Florida Statutes 166.041 and the Apopka Code of Ordinances, Part III, Land Development Code, Article XII, Section 12.04.00, to the City of Apopka City Council and Apopka Planning Commission for a CHANGE IN ZONING FOR APPROXIMATELY 57.7 +/- ACRES FROM "COUNTY" PD (ZIP) (RESIDENTIAL) TO "CITY" PLANNED UNIT DEVELOPMENT (PUD/R-1A) (RESIDENTIAL).

This application relates to the following described properties located south of Sandpiper Street, west of North Thompson Road, east of Ustler Road:

The Northeast ¼ of the Southeast ¼ of the Northeast ¼ of Section 3, Township 21 South, Range 28 East, Orange County, Florida.

The West 275.0 feet of the Northwest ¼ of the Southwest ¼ of the Northwest ¼ of Section 2, Township 21 South, Range 28 East, Orange County, Florida, less the North 30 feet thereof.

The West ½ of the North ½ of the Southeast ¼ of the Northeast ¼ of Section 3, Township 21 South, Range 28 East, Orange County, Florida, LESS, the North 330 feet of the East 200 feet of the West 220 feet thereof, AND LESS the North 30 feet thereof.

That part of the Southwest ¼ of the Northwest ¼ of Section 2, Township 21 South, Range 28 East, Orange County, Florida, beginning at a point South 00 degrees 02 minutes 00 seconds West, 30.0 feet and North 89 degrees 35 minutes 59 seconds East, 550.0 feet from the Northwest corner of said Southwest ¼ of the Northwest ¼, run North 89 degrees 35 minutes 59 seconds East, 108.90 feet along the South line of Sandpiper Road; thence run South 00 degrees 01 minutes 08 seconds West, 312.00 feet; thence run North 89 degrees 35 minutes 59 seconds East, 193.00 feet; thence run South 00 degrees 03 minutes 49 seconds West, 320.19 feet; thence run South 89 degrees 35 minutes 00 seconds West, 301.81 feet; thence run North 00 degrees 02 minutes 00 seconds East, 632.27 feet to the POINT OF BEGINNING.

ALSO: The East 275.0 feet of the West 550.00 feet of the Northwest ¼ of the Southwest ¼ of the Northwest ¼ of Section 2, Township 21 South, Range 28 East, Orange County, Florida, less the North 30 feet thereof for Sandpiper Road.

The Northeast ¼ of the Southwest ¼ of the Northeast ¼ of Section 3, Township 21 South, Range 28 East, Orange County, Florida; less the North 30 feet thereof.

The North 330.00 feet of the West 220.00 feet of the West ½ of the North ½ of the Southeast ¼ of the Northeast ¼ of Section 3, Township 21 South, Range 28 East, Orange County, Florida, LESS the North 30.00 feet thereof, AND LESS the West 20.00 feet thereof.

The West 145 feet of North 643 Feet of the West ½ of the Southwest ¼ of the Northeast ¼ of Section 3-21-28 (Less R/W on North & West)

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	03-21-28-0000-00-119

Combined Acreage 57.7 +/- Acres

Notice is given that the City of Apopka Planning Commission will hold a public hearing to consider the Change of Zoning request at its regularly scheduled meeting in the City Council Chambers of the Apopka City Hall on Tuesday, October 21, 2014, beginning at 5:01 p.m., or as soon thereafter as possible.

FURTHER NOTICE is given that a series of public hearings on the proposed amendment will be held by the City of Apopka City Council at its regularly scheduled meetings in the City Council Chambers of the Apopka City Hall on Wednesday, November 5, 2014, beginning at 1:30 p.m., or as soon thereafter as possible AND on Wednesday, November 19, 2014, beginning at 8:00 p.m., or as soon thereafter as possible.

All interested parties may appear and be heard with respect to these hearings. Please be advised that, under State law, if you decide to appeal a decision made with respect to this matter, you will need a record of the proceedings and may need to ensure that a verbatim record is made, which record includes the testimony and evidence upon which the appeal is to be based. In accordance with the Americans with Disabilities Act (ADA), persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office at 120 East Main Street, Apopka FL 32703, Telephone: 407-703-1704, no less than 48 hours prior to the proceeding.

Apopka City Council
Apopka Planning Commission
Community Development Department

OCTOBER 3, 2014

58.23 +/- Total Acres; 48.4 Developable Acres
 Existing Zoning Maximum Allowable Development: 49 Dwelling Units
 Proposed Zoning Maximum Allowable Development: up to 49 Dwelling Units
 Proposed Zoning Change
 From: "County" PD (ZIP)

To: "City" Planned Unit Development (PUD/R-1A)

Parcel ID #s:	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	03-21-28-0000-00-119



VICINITY MAP

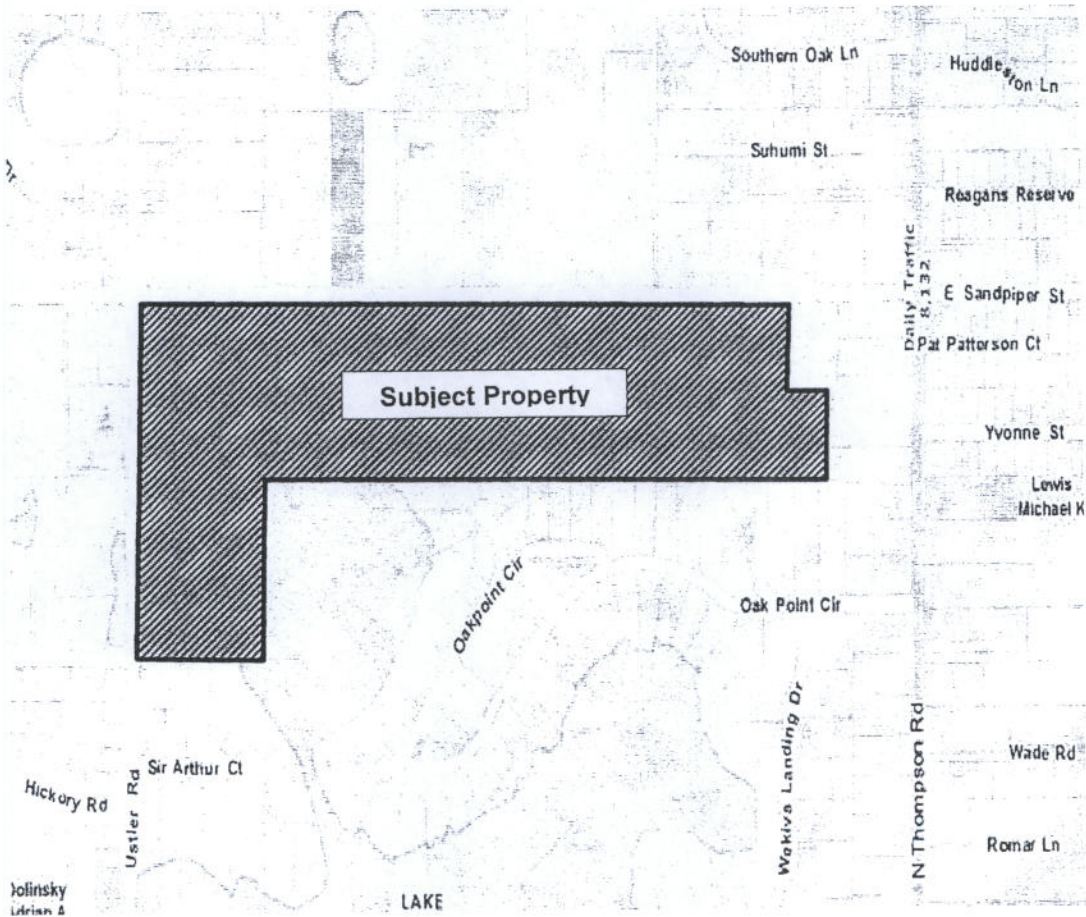


Exhibit "A" 2/2

WEAN & MALCHOW, P.A.

ATTORNEYS AT LAW

PAUL LEONARD WEAN, JD *

HELENA GUTIERREZ MALCHOW, JD

JAMES E. OLSEN, JD
ERYN M. MCCONNELL, JD
IAN J. LYLEN, JD

646 EAST COLONIAL DRIVE
ORLANDO, FLORIDA 32803

SABRINA S. MILLER †
STACY F. ARCAND †
JANICE L. KREBSBACH †
GAYLENE D. COOVER †

(* ALSO MEMBER OF MA BAR)

(407) 999-7780
(800) 895-WEAN
FAX (407) 999-LAW 1
<http://www.wmlo.com>

(† PARALEGAL)

November 4, 2014

SENT VIA HAND DELIVERY

The Members of the Apopka City Council
The City of Apopka
120 E. Main Street
Apopka, FL 32703

**RE: ORDINANCE NO. 2386 – FIRST READING - 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.**

Dear Members of the City Council:

Please be advised that the undersigned is general counsel for the Oakwater Estates Homeowners' Association, Inc. **I have been asked to write to you to express my client's opposition to the proposed amendment to the PD zoning for the above property.**

As you know, prior to its incorporation into the City of Apopka, this property was approved by Orange County for single family development. However, the current owners are now before your City Council presenting a substantially revised plan which seeks to place forty nine (49) homes within a much smaller developable footprint.

The current plan calls for approximately 15 acres of the approximately 48 acre tract to be held for the sole purpose of containing a 15,000 square foot recreational amenity. The net result is to substantially increase the density on the remaining 30+ areas of the proposed development to something much different than was considered by Orange County and something far denser than exists in the immediate area where the property is located. As shown on the proposed PD, the proposed density of the proposed lots will be only around 10-12,000 square feet. As such, they will not be compatible with existing development within the relevant 300 foot notice area surrounding of applicant's property. In order to achieve compatibility it would be necessary to reduce the total developable lots to 40 or less. Such a reduction would yield lot sizes and an overall density consistent with existing surrounding residential development.

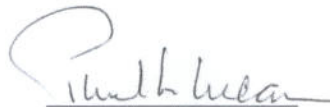
The Apopka Planning and Zoning Commission (P & Z) has now considered this application twice and each time has unanimously or near unanimously found a lack of compatibility based on the density issue. My client urges the City Council to accept these findings and deny the application as currently presented.

My client speaks for property owners, taxpayers and voters both within the City of Apopka and elsewhere and it wishes you to know that there is uniformly widespread opposition to the proposed PD from the affected property owners within the notice area. My client has tried to work with the applicant to have its concerns addressed, but the applicant remains unwilling to reduce the density of its proposal and has refused to work with my client and the other interested property owners to make the proposed PD more acceptable.

It is also my understanding that before the P & Z, the applicant appeared with legal counsel. My review of the meeting transcript indicates that the applicant's counsel incorrectly misstated the lot sizes in the proposed development, comparing only the largest lot sizes with those in adjoining developments, while ignoring the substantial number of undersized lots in the proposed PD. Further, counsel attempted to buttress her client's application by submitting her own professional credentials. Resort to this approach belies that lack of substantive merits in the application and substitutes wholly non-probative information for the dearth of information showing the application to be both compatible and consistent with the Apopka comprehensive plan.

For the stated reasons we respectfully request that the City Council find a lack of compatibility and inconsistency with the comprehensive plan and deny the application in its current form.

Sincerely,



PAUL L. WEAN,
For the Firm

PLW/fms

Recipient: Joe Kilsheimer, Billie Dean, Diane Velazquez, Sam Ruth, and Bill Arrowsmith

Letter: Greetings,

Please approve the City of Apopka Planning and Zoning's recommendation for the Sandpiper developers to redesign their planned development to a minimum 1/2 acre lots in order to be compatible and comparable to the surrounding community.

Signatures

Name	Location	Date
Kathy Youmans	, United States	2014-10-23
Robert Youmans	Apopka, FL, United States	2014-10-23
Colleen Kelly	Apopka, FL, United States	2014-10-23
Helen Nadon	Apopka, FL, United States	2014-10-23
Sarah Youmans	Apopka, FL, United States	2014-10-23
Sandy Garland	Apopka, FL, United States	2014-10-23
Jennifer Vose	Apopka, FL, United States	2014-10-23
Deb Ramsey	Apopka, FL, United States	2014-10-23
theodore mcgovern	apopka, CA, United States	2014-10-23
Katherine Haack	Apopka, FL, United States	2014-10-23
Andrew Owens	Apopka, FL, United States	2014-10-23
Peter Rigali	Apopka, FL, United States	2014-10-23
Jack Gillen	apopka, FL, United States	2014-10-23
son tran	apopka, FL, United States	2014-10-23
Ron Edenfield	Apopka, FL, United States	2014-10-23
Debbie Nelson	Apopka, FL, United States	2014-10-23
Jane Rigali	Apopka, FL, United States	2014-10-23
Robert fritz	apoka, FL, United States	2014-10-23
Henry Friedman	Apopka, FL, United States	2014-10-23
Mark Reilly	Apopka, FL, United States	2014-10-23
Anastasia Durden	Apopka, FL, United States	2014-10-23
Trentis Durden	Apopka, FL, United States	2014-10-23
Jacob Susla	Apopka, FL, United States	2014-10-23
grace lias	Apopka, FL, United States	2014-10-23
Mary Nesler	Apopka, FL, United States	2014-10-24
Karen Reilly	Apopka, FL, United States	2014-10-24
Diane Harmon	Apopka, FL, United States	2014-10-24
Doug Bankson	Apopka, FL, United States	2014-10-24
Kremsa Susla	Apopka, FL, United States	2014-10-24
thers	Apopka, FL, United States	2014-10-24

Name	Location	Date
Christian Butera	apopka, FL, United States	2014-10-24
Shelli Girard	Apopka, FL, United States	2014-10-24
Yasiu Kruszynski	Chicago, IL, United States	2014-10-24
Pam Boland	Grovetown, GA, United States	2014-10-24
Sher Grelick	Coconut Creek,, FL, United States	2014-10-24
Michelle Gayhart	Eustis, FL, United States	2014-10-24
Linda Trapp	apopka Fl., FL, United States	2014-10-24
Nicole Andrews	Sorrento, FL, United States	2014-10-24
Stefanie Smith	Longwood, FL, United States	2014-10-24
Kenyon Congdon	Apopka, FL, United States	2014-10-24
Jennifer Robertson	Winter Park, FL, United States	2014-10-24
John Hood	Apopka, FL, United States	2014-10-24
Kathleen Woods	Casselberry, FL, United States	2014-10-24
Derry Sampey	Apopka, FL, United States	2014-10-24
Travis Parker	Apopka, FL, United States	2014-10-24
Gene Stanglein	Apopka, FL, United States	2014-10-24
Sarah Zois	Land O Lakes, FL, United States	2014-10-24
Barbara Zakszewski	Apopka, FL, United States	2014-10-24
TJ Harmon	Apopka, FL, United States	2014-10-24
Joseph Butera	Gowanda, NY, United States	2014-10-24
Krista Keller	Mount Dora, FL, United States	2014-10-24
Susan Sablone	Lake Mary, FL, United States	2014-10-24
Amy DeZonia	Oviedo, FL, United States	2014-10-24
Deanna May	Fruitland Park, FL, United States	2014-10-24
Troy Overman	Apopka, FL, United States	2014-10-25
Jennifer Carter	Altamonte springs, FL, United States	2014-10-25
jenny McGee	Apopka, FL, United States	2014-10-25
Rob Keller	Mount Dora, FL, United States	2014-10-25
Jack Cooper	Apopka, FL, United States	2014-10-25
Nancy Edenfield	Apopka, FL, United States	2014-10-26
Lewis Johns	Apopka, FL, United States	2014-10-26
Charlotte Fooks	Apopka, FL, United States	2014-10-26

Name	Location	Date
Susan martin	Apopka, FL, United States	2014-10-26
Floride Nelson	Apopka, FL, United States	2014-10-27
Beth Kee	Orlando, FL, United States	2014-10-27
Sharon Cooper	Apopka, FL, United States	2014-10-27
Lisa Mellano	Apopka, FL, United States	2014-10-27
Dennis Wilcox	Apopka, FL, United States	2014-10-30
John Buffa	Apopka, FL, United States	2014-10-30
Deborah Laczko	Apopka, FL, United States	2014-10-30
John Holland	Apopka, FL, United States	2014-10-31
Jill Cooper	Apopka, FL, United States	2014-10-31
wendy milburn	Apopka, FL, United States	2014-10-31
Kelly Butera	Apopka, FL, United States	2014-10-31
James Grenkoski	Apopka, FL, United States	2014-10-31
paul han	Apopka, FL, United States	2014-10-31
Heike Corbin	Apopka, FL, United States	2014-10-31
Michael Evans	Apopka, FL, United States	2014-10-31
Brian Milburn	Apopka, FL, United States	2014-11-01
Ellen O'Connor	Apopka, FL, United States	2014-11-01
Tracey Grenkoski	Apopka, FL, United States	2014-11-01
Shawn Ryan	Orlando, FL, United States	2014-11-02
Patricia Delatte	Apopka, FL, United States	2014-11-02
Dianne Evans	Apopka, FL, United States	2014-11-02
Cheryl Corbett	Apopka, FL, United States	2014-11-02
Christine Rucker	Apopka, FL, United States	2014-11-02
Antoinette Zec	Apopka, FL, United States	2014-11-02
LILIAN MYERS	APOPKA, FL, United States	2014-11-03
John Cloran	Apopka, FL, United States	2014-11-03
Laura Murphy	Apopka, FL, United States	2014-11-03
Scott Smothers	Apopka, FL, United States	2014-11-03
Tim Hudspeth	Apopka, FL, United States	2014-11-03
Womack Rucker	Apopka, FL, United States	2014-11-03
Ana Ferreira	Apopka, FL, United States	2014-11-04

Name	Location	Date
robin hudspeth	Apopka, FL, United States	2014-11-04
Kathryn Morris	Apopka, FL, United States	2014-11-04
William Morris	Apopka, FL, United States	2014-11-04
Molly Novoad	Apopka, FL, United States	2014-11-04
John Toromanides	Apopka, FL, United States	2014-11-05
Patricia Tenbrook Cloran	Apopka, FL, United States	2014-11-05
Laurie Kennedy	Apopka, FL, United States	2014-11-05
Tammy Morris	Apopka, FL, United States	2014-11-05

Comments

Name	Location	Date	Comment
Jennifer Vose	Apopka, FL	2014-10-23	Our home shares property lines with this development. New developments should fit and support the current developments that surrounds it.
Andrew Owens	Apopka, FL	2014-10-23	I think the area should have homes similar in size and lot size to the immediately adjacent neighborhoods. Also, I think it is important that they try to keep as many of the large canopy trees as possible to keep this area around Lake McCoy a special place blending nature and community.
Peter Rigali	Apopka, FL	2014-10-23	I would like to keep the feel of my neighborhood. By allowing the minimum lot size in this area to be less than 1/2 acre, our neighborhood will resemble every other Orlando area suburb and loose its distinct charm.
Ron Edenfield	Apopka, FL	2014-10-23	The current design does not meet the surrounding areas. I have owned and lived on Sandpiper for over 35 years. I am asking that you protect the Sandpiper area and retain the current life style setting by requiring the current design to be replaced by the P & Z recommendation, at a minimum.
Debbie Nelson	Apopka, FL	2014-10-23	This property is literally in my back yard.
Mark Reilly	Apopka, FL	2014-10-23	I live across the lake from the development site. I do not want to see the wetlands and wildlife replaced with a high-density subdivision.
Anastasia Durden	Apopka, FL	2014-10-23	It will affect my home value and the new property is directly in my view across the lake from my home.
Trentis Durden	Apopka, FL	2014-10-23	It will affect my home value and the new property is directly in my view across the lake from my home.
Mary Nesler	Apopka, FL	2014-10-24	I love my surroundings, I love my solitude, that is why I chose to live off Ustler and Sandpiper Roads. If I wanted to live where roof tops touched together, that would have been terribly easy. I chose my home in order NOT to live on top of other people. Now you want to take my privacy away, all for the — all mighty dollar. If you cared about the quality of life that we are living you without hesitations would not have even gotten this far in the meetings but I believe it is all about MONEY and who is going to get rich. My quality of life means a lot more to me than money - I am sure that you are living the life you want to live - do not ruin ours. Thank you - Mary Nesler
Diane Harmon	Apopka, FL	2014-10-24	We built our home on Sandpiper Street and have lived here for 36 years. Lots of less than 1/2 acre would greatly affect our property value as well as detract from the pastoral atmosphere and cause increased traffic flow and congestion.
Doug Bankson	Apopka, FL	2014-10-24	i want to protect the wildlife and old growth in this beautiful sanctuary in Apopka. The appropriate size lots will keep the established ambiance and beauty.

Name	Location	Date	Comment
Mary Smothers	Apopka, FL	2014-10-24	The property on Sandpiper Street, that will be a new development, is on the last gem of acreage in the central Apopka area. Not only do we need larger lots (1/2 acre minimum) to be compatible with neighboring properties but we also encourage larger homes to achieve a quality neighborhood of forever homeowners with the means to help build and support the Apopka community. People who will be frequent visitors to our proposed Town Center, our fine dining restaurants, shops and venues. People to support our service clubs, schools, sports programs, arts, businesses, churches, hospital and doctors, etc. and more business men and women to join our Apopka Chamber of Commerce and be active in our community. We have lots of people already, with plenty more families to come, who support our fast food restaurants, dollar stores and auto parts stores. This could be one of the most beautiful and prestigious communities in our area and with one of the best locations. I think people would be lining up to purchase homes in this new neighborhood.
Christian Butera	apopka, FL	2014-10-24	The development project needs to be comparable to the surrounding areas.
Sher Grelick	Coconut Creek, FL, FL	2014-10-24	We are going to move there.
Michelle Gayhart	Eustis, FL	2014-10-24	I'm signing because I grew up on that street. There are enough high-density developments nearby; there is no reason to destroy the feel and look of Sandpiper for another one.
Kenyon Congdon	Apopk, FL	2014-10-24	Preservation of the beauty of our community should be a top priority over a private company's profits.
John Hood	Apopka, FL	2014-10-24	This is environmentally sensitive land and if it is going to be developed, larger lot sizes with minimal tree removal will help preserve the surrounding wetlands and lakes.
Kathleen Woods	Casselberry, FL	2014-10-24	My Aunt and Uncle live there and I grew up going to their beautiful house, I always loved their street. It should be left alone. It is beautiful the way it is...
Derry Sampey	Apopka, FL	2014-10-24	Because we must do all we can to keep this beautiful wooded environment and the oponds and springs in this area.
Gene Stanglein	Apopka, FL	2014-10-24	In only makes sense to require the lot sizes of this development to conform to the sizes of corresponding areas to maintain the beauty and continuity of the City of Apopka.
Barbara Zakszewski	Apopka, FL	2014-10-24	Concerned citizen living in Apopka
TJ Harmon	Apopka, FL	2014-10-24	Leave Sandpiper St the way it is
Krista Keller	Mount Dora, FL	2014-10-24	My parents still live on this street, I grew up on this street. The traffic became bad enough after the road was paved but to add more homes on the street will make entirely too much traffic. We are there multiple times a week with my children.
Susan Sablone	Lake Mary, FL	2014-10-24	This road is in need of repair.
Amy DeZonia	Oviedo, FL	2014-10-24	I grew up in Apopka and this saddens me.
Troy Overman	Apopka, FL	2014-10-25	To much traffic already. Leave the natural beauty of the landscape. Save the trees. Need larger lots if going to build. I would love to see it left alone.

Name	Location	Date	Comment
Nancy Edenfield	Apopka, FL	2014-10-26	I have lived on Sandpiper for over 30 years. Since the paving of Sandpiper, it now has heavy traffic resulting in numerous traffic crashes. Dense development of this property would result in more traffic, removal of 100 year old trees, more storm water run off and flooding. I have seen flood water from Lake McCoy over top Sandpiper Road to Lake Coroni, and nearly overtop Welch further down stream. Lots should be a minimum of 1/2 acre and a minimum of 2,500sf to be compatible with immediate surrounding homes. All property immediately to the north of the proposed development are 1 to 10 acre parcels.
Floride Nelson	Apopka, FL	2014-10-27	Small homes across the street from home with large lots isn't right!
Dennis Wilcox	Apopka, FL	2014-10-30	Needs to be comparable and Compatable
John Holland	Apopka, FL	2014-10-31	Need to have at least 1/2 acre lots and start at 2500 sq ft. 3000 sq ft and above would be better.
Kelly Butera	Apopka, FL	2014-10-31	Traffic congestion, school crowding and not comprehensive to surrounding areas.
Brian Milburn	Apopka, FL	2014-11-01	I'm signing this because the lot sizes need to be comparable and compatible with the adjacent communities.
Ellen O'Connor	Apopka, FL	2014-11-01	We want the development to be consistent and comparable to abutting neighborhoods to maintain the unique environment of our community and to protect the trees and wild like that make our community beautiful.
Shawn Ryan	Orlando, FL	2014-11-02	I am frequently in this area with friends who live there. The lot size, setback, sidewalks, and the absence of nearby higher density housing projects are the foundation of what makes that area special. By adding higher density homes, you will be damaging the homeowners who already live in that area.
Christine Rucker	Apopka, FL	2014-11-02	Sandpiper is a beautiful street with georgeous mature oak trees. Only large lots (my preference is no less than 1 acre) should be allowed. I would hate see the neighborhood of beauty, trees, shrubs, and native foliage be destroyed for a bunch of small homes. Please protect the beautiful environment. Very few areas of luscious verdue are left in Apopka!
LILIAN MYERS	APOPKA, FL	2014-11-03	We have attempted to work with the developer since 2006 to keep any development compatible and consistent with the immediately surrounding properties. Zoning stipulating min 1/2 lots is both minimally consistent with the surroundings and in keeping with the wording of Apopka's future land plan which calls out consistency and compatibility over density. In working toward this zoning in 2007, this developer threatened - in a public meeting - to annex the property into the city of Apopka if he could not get what he wanted in the county. He has taken us all for unsophisticated citizens and government offices for many years. Please don't allow his threats of legal action - also threatened when the project was in the county - to deter doing the right thing for the right reason.
John Cloran	Apopka, FL	2014-11-03	As a city resident that owns a home on 1 1/2 acres of land across from the planned development I would like to see the city make these lots compatable to what is next to the development. I have lived here for 40 yrs. Please support the P&Z ruling.

Name	Location	Date	Comment
Tim Hudspeth	Apopka, FL	2014-11-03	This property in question is an investment for the current owners and upon what ever decision is made by the City of Apopka this investor will either make a large return on investment or moderate return on investment - but in any case they will make a profit (I fully support their ability to do business in our great country). After they have completed this effort they will no longer be invested in the City of Apopka, but simply take there profit and move on to the next project. The residents that surround this property (I being one of them) and the City of Apopka will remain and be left with what ever decision is made. To be in line with the cities future land plan that states consistency and compatibility over density and come close to the compatibility of the surrounding properties which are closer to 1 + acre lots, I would request that the approval be contingent on Apopka's P&Z recommendation for the developer to present a plan to have a minimum 1/2 acre lot size.
Womack Rucker	Apopka, FL	2014-11-03	We don't want to over populate this community and create more traffic concerns in an area that is already getting congested. More homes squeezed into small spaces will decrease our home values
robin hudspeth	Apopka, FL	2014-11-04	I do not want a zero lot line neighborhood across from my house. Too much traffic, etc..
Patricia Tenbrook Cloran	Apopka, FL	2014-11-05	I am a resident of the City of Apopka, and one of the original property owners in this neighborhood since 1969, I have a shared one acre property line with the proposed development. I am requesting that the Apopka Mayor and City Council members uphold the Planning and Zoning's recommendation of a minimum of 1/2 acre lots to be compatible and comparable to the surrounding properties.
Laurie Kennedy	Apopka, FL	2014-11-05	This issue is important to me because I don't want to see the character of this area change. I feel such a dense development as has been proposed will add too much traffic to the area, as well as possible crowd the school in the zone in which it is located.

From: Allan Goldberg <goldgator@gmail.com>

To: Moon David B. Aicp <dmoon@apopka.net>

Cc: Fitzgerald Miranda F. <miranda.fitzgerald@lowndes-law.com>; C7Lawrence <C7Lawrence@aol.com>

Subject: Sandpiper Rd

Date: Tue, Oct 21, 2014 3:04 pm

David, I wanted to let you know before the meeting this afternoon, that I have made the following additional commitments in association with discussions with Crystal Lawrence, President of the Wekiva Preserve HOA. Don't hesitate to call me with any questions.

Minimum house size 2,200

Gated- All language within the PDP will be consistent with a gated community.

Each home will be required to have a maximum of 500 sq ft of driveway pavers or side loaded/courtyard entries on each house. To be decided on a house by house basis by the builder.

Allan Goldberg
407-947-4225
goldgator@gmail.com

From: Goldberg Allan <goldgator@gmail.com>

To: C7Lawrence <C7Lawrence@aol.com>

Subject: Re: Sandpiper Road Development

Date: Mon, Oct 20, 2014 6:33 pm

Crystal, I will agree to commit to do either a paver driveways with a max of 500 sq ft of pavers per lot or a side entry/court yard house. This choice would be at the builders discretion on each lot. Thus, a driveway that is 20' x 25' would be covered. Larger driveways would have a maximum of 500 sq ft of pavers and the remainder concrete.

Let me know if this work for your association. I look forward to meeting you tomorrow and getting your HOA's support.

Allan Goldberg
407-947-4225
goldgator@gmail.com

On Oct 17, 2014, at 9:55 AM, C7Lawrence@aol.com wrote:

Thank you for your time this morning. As we discussed, our board met last night and will support the development with a few request. We would like the provision allowing the roads to be public removed to ensure the community will be gated and we are requesting paver driveways. We are good with the 2200 sq. ft. minimum you have already promised.

I'm sure you can understand paver driveways being an important issue to us and we hope after reconsidering the issue, you will commit to that request. I look forward to hearing from you Monday.

Regards,

Crystal

From: Allan Goldberg <goldgator@gmail.com>

To: c7lawrence <c7lawrence@aol.com>

Subject: Sandpiper Road Approval

Date: Mon, Sep 29, 2014 2:13 pm

Ms. Lawrence,

Again I want to thank you for reaching out to me concerning my Sandpiper requested rezoning hearing. As I mentioned before, I would rather meet face to face with you and your concerned homeowners, but based on our discussion, the following is my proposal to you and your homeowners.

Minimum Heated Square Footage of Homes: 2,200 Sq Ft

I realize that this doesn't meet your requested 2,500 sq ft, but I am looking at your communities requirement as a guide. Your Declarations calls for a minimum of 1,800 sq ft., but the smallest home built per the county's appraisal website notes the smallest home at 1,976 and the average 2,911. As you can see the minimum set is rarely the actual minimum in the community. I would assume it will be the same in my community. I would assume that our average sq ft, will ultimately be close to your communities.

Commitment to Gate Community:

I will commit, as is noted on the Preliminary Development Plan (PDP) up for approval, that the community will have a gated entry.

Paver Drive Ways:

I unfortunately cant agree to this because I don't know if the potential builder is interested in constructing these based on how they will layout the homes. I will mention, that because of the size and width of the lots, there is a very good chance that the homes will be courtyard or side entry. Based on this, the lengths of the driveways will be much longer, but the community presentation will be much better. This type of home site layout, creates a feel of a custom community and hopefully the associated values.

Community Minimum Pricing:

As we discussed, in my presentation I guesstimated that pricing would be starting around \$250,000 and go up into the \$400,000's. Although I cant make a commitment to these amounts, based on my lot sales prices to the prospective builders, this is highly likely.

I hope this will alleviate some of your homeowners concerns about my community and how it could effect the values of your community. You have done a great job in keeping the look and values of your community and I would hope that my community will enhance what you have accomplished. I would be happy to discuss the above at your convenience. Let me know your thoughts. I look forward to your community's support in the upcoming hearings.

Allan Goldberg
407-947-4225
goldgator@gmail.com

Orange County Traffic Engineering

4200 John Young Parkway
Orlando, 32839 Florida

File Name : Sandpiper St at Park Av PM Delay 102314

Site Code : 00000000

Start Date : 10/23/2014

Page No : 1

Summary Information:

5:00:00 PM - 6:01:00 PM	Lane 1
Total Vehicle Count:	274
Delayed Vehicle Count:	274
Through Vehicle Count:	0
Average Stopped Time:	38.23
Maximum Stopped Time:	147
Min. Secs. for Delay:	0
Average Queue:	2.89
Queue Density:	3.83
Maximum Queue:	14
Delay in Vehicle Hour:	2.89
Total Delay:	10475

→ 1.0 or Higher
is a significant Delay

Orange County Traffic Engineering

4200 John Young Parkway
Orlando, 32839 Florida

File Name : Sandpiper St at Thompson Rd AM Delay 102114
Site Code : 00000000
Start Date : 10/21/2014
Page No : 1

Summary Information:

7:00:00 AM - 8:01:00 AM	Lane 1
Total Vehicle Count:	353
Delayed Vehicle Count:	353
Through Vehicle Count:	0
Average Stopped Time:	24.12
Maximum Stopped Time:	82
Min. Secs. for Delay:	0
Average Queue:	2.36
Queue Density:	3.22
Maximum Queue:	12
Delay in Vehicle Hour:	2.36
Total Delay:	8513

→ 1.0 or Higher is a significant delay

24 HOUR VOLUME SUMMARY

NO	HOUR	N PARK AVENUE			E SANDPIPER ROAD			10/1/2014		
		NB	SB	EB	WB	(NB+SB)	(EB+WB)	TOTAL	HOUR	
1	0-1	70	25	0	14	95	14	109	0-1	
2	1-2	33	31	0	11	64	11	75	1-2	
3	2-3	27	22	0	4	49	4	53	2-3	
4	3-4	18	40	0	3	58	3	61	3-4	
5	4-5	38	127	5	5	165	10	175	4-5	
6	5-6	122	374	9	16	496	25	521	5-6	
7	6-7	282	900	12	82	1182	94	1276	6-7	
8	7-8	453	1008	10	110	1461	120	1581	7-8	
9	8-9	436	781	9	89	1217	98	1315	8-9	
10	9-10	465	554	8	71	1019	79	1098	9-10	
11	10-11	479	479	5	86	958	91	1049	10-11	
12	11-12	602	506	5	84	1108	89	1197	11-12	
13	12-13	572	572	5	93	1144	98	1242	12-13	
14	13-14	730	600	13	126	1330	139	1469	13-14	
15	14-15	676	585	12	146	1261	158	1419	14-15	
16	15-16	797	566	15	161	1363	176	1539	15-16	
17	16-17	948	575	5	223	1523	228	1751	16-17	
18	17-18	1143	648	7	289	1791	296	2087	17-18	
19	18-19	796	622	14	227	1418	241	1659	18-19	
20	19-20	653	514	8	137	1167	145	1312	19-20	
21	20-21	516	423	9	94	939	103	1042	20-21	
22	21-22	339	200	7	84	539	91	630	21-22	
23	22-23	174	128	8	35	302	43	345	22-23	
24	23-24	104	55	0	14	159	14	173	23-24	
TOTAL		10,473	10,335	166	2,204	20,808	2,370	23,178		

STREET	ADT
N PARK AVENUE	20,808
E SANDPIPER ROAD	2,370

AM PEAK	HOUR	VOLUME
7-8	7-8	1,581
PM PEAK	17-18	2,087

24 HOUR VOLUME SUMMARY

NO	HOUR	N THOMPSON ROAD			E SANDPIPER ROAD			10/1/2014		
		NB	SB	WB	EB	WB	(NB+SB)	(EB+WB)	TOTAL	HOUR
1	0-1	17	6	0	7	0	23	7	30	0-1
2	1-2	17	7	0	4	0	24	4	28	1-2
3	2-3	9	6	0	5	0	15	5	20	2-3
4	3-4	7	7	0	7	0	14	7	21	3-4
5	4-5	11	18	0	23	0	29	23	52	4-5
6	5-6	36	59	0	63	0	95	63	158	5-6
7	6-7	118	156	0	204	0	274	204	478	6-7
8	7-8	206	266	0	364	0	472	364	836	7-8
9	8-9	178	217	0	219	0	395	219	614	8-9
10	9-10	160	149	0	161	0	309	161	470	9-10
11	10-11	159	121	0	106	0	280	106	386	10-11
12	11-12	153	128	0	96	0	281	96	377	11-12
13	12-13	216	144	0	106	0	360	106	466	12-13
14	13-14	246	131	0	137	0	377	137	514	13-14
15	14-15	294	154	0	157	0	448	157	605	14-15
16	15-16	316	131	0	148	0	447	148	595	15-16
17	16-17	422	133	0	139	0	555	139	694	16-17
18	17-18	461	173	0	160	0	634	160	794	17-18
19	18-19	374	141	0	153	0	515	153	668	18-19
20	19-20	247	122	0	120	0	369	120	489	19-20
21	20-21	201	78	0	94	0	279	94	373	20-21
22	21-22	165	54	0	49	0	219	49	268	21-22
23	22-23	59	21	0	24	0	80	24	104	22-23
24	23-24	30	24	0	15	0	54	15	69	23-24
TOTAL		4,102	2,446	0	2,561	0	6,548	2,561	9,109	

STREET	ADT	AM PEAK	PM PEAK	HOUR	VOLUME
N THOMPSON ROAD	6,548	836		7-8	836
E SANDPIPER ROAD	2,561		794	17-18	794

STREET	ADT
N THOMPSON ROAD	6,548
E SANDPIPER ROAD	2,561

24 HOUR VOLUME SUMMARY

NO	HOUR	USTLER ROAD			E WELCH ROAD			10/1/2014		
		NB	SB	WB	EB	WB	(NB+SB)	(EB+WB)	TOTAL	HOUR
1	0-1	1	0	41	20	41	1	61	62	0-1
2	1-2	0	0	29	19	29	0	48	48	1-2
3	2-3	0	0	23	8	23	0	31	31	2-3
4	3-4	1	0	16	17	16	1	33	34	3-4
5	4-5	2	0	27	62	27	2	89	91	4-5
6	5-6	10	0	90	173	90	10	263	273	5-6
7	6-7	24	0	274	510	274	24	784	808	6-7
8	7-8	33	0	471	736	471	33	1207	1240	7-8
9	8-9	24	0	434	534	434	24	968	992	8-9
10	9-10	16	0	349	412	349	16	761	777	9-10
11	10-11	19	0	373	315	373	19	688	707	10-11
12	11-12	24	0	378	337	378	24	715	739	11-12
13	12-13	22	0	431	320	431	22	751	773	12-13
14	13-14	25	0	511	377	511	25	888	913	13-14
15	14-15	30	0	554	416	554	30	970	1000	14-15
16	15-16	36	0	610	396	610	36	1006	1042	15-16
17	16-17	47	0	769	430	769	47	1199	1246	16-17
18	17-18	28	0	833	485	833	28	1318	1346	17-18
19	18-19	25	0	690	409	690	25	1099	1124	18-19
20	19-20	17	0	518	332	518	17	850	867	19-20
21	20-21	14	0	419	255	419	14	674	688	20-21
22	21-22	12	0	316	108	316	12	424	436	21-22
23	22-23	7	0	162	61	162	7	223	230	22-23
24	23-24	3	0	86	40	86	3	126	129	23-24
TOTAL		420	0	8,404	6,772	8,404	420	15,176	15,596	

STREET	ADT
USTLER ROAD	420
E WELCH ROAD	15,176

AM PEAK	HOUR	VOLUME
	7-8	1,240
PM PEAK	17-18	1,346

24 HOUR VOLUME SUMMARY

NO	HOUR	USTLER ROAD			E SANDPIPER ROAD			(NB+SB)	(EB+WB)	10/1/2014	
		NB	SB	WB	EB	WB	TOTAL			HOUR	
1	0-1	1	3	11	7	11	4	18	22	0-1	
2	1-2	0	0	12	6	12	0	18	18	1-2	
3	2-3	1	0	4	4	4	1	8	9	2-3	
4	3-4	0	1	2	6	2	1	8	9	3-4	
5	4-5	4	3	7	17	7	7	24	31	4-5	
6	5-6	9	7	19	50	19	16	69	85	5-6	
7	6-7	37	36	89	156	89	73	245	318	6-7	
8	7-8	41	50	118	285	118	91	403	494	7-8	
9	8-9	43	43	100	173	100	86	273	359	8-9	
10	9-10	43	50	85	116	85	93	201	294	9-10	
11	10-11	44	41	91	81	91	85	172	257	10-11	
12	11-12	31	30	85	86	85	61	171	232	11-12	
13	12-13	36	36	120	89	120	72	209	281	12-13	
14	13-14	48	33	142	115	142	81	257	338	13-14	
15	14-15	46	52	169	123	169	98	292	390	14-15	
16	15-16	50	39	190	112	190	89	302	391	15-16	
17	16-17	42	48	268	100	268	90	368	458	16-17	
18	17-18	37	61	309	144	309	98	453	551	17-18	
19	18-19	39	44	248	119	248	83	367	450	18-19	
20	19-20	19	29	167	98	167	48	265	313	19-20	
21	20-21	12	15	108	77	108	27	185	212	20-21	
22	21-22	7	13	102	48	102	20	150	170	21-22	
23	22-23	6	5	37	26	37	11	63	74	22-23	
24	23-24	3	3	16	11	16	6	27	33	23-24	
TOTAL		599	642	2,499	2,049	2,499	1,241	4,548	5,789		

STREET	ADT	AM PEAK	PM PEAK	HOUR	VOLUME
USTLER ROAD	1,241	494		7-8	494
E SANDPIPER ROAD	4,548		551	17-18	551

STREET	ADT
USTLER ROAD	1,241
E SANDPIPER ROAD	4,548

**PROPOSED CONDITIONS OF APPROVAL OFFERED BY DEVELOPER IN
ADDITION TO THOSE IN STAFF RECOMMENDATION**

- To be a gated community. All language in the conditions of approval to be consistent with gating.
- City and HOA to be co-grantees on 30-foot wide conservation easement along the southern boundary lines of Lots 15, 16, 23, 24, 25, 26, 27, 28, 29, 30 and 31.
- At least 500 sq. ft. of driveway pavers per house **or** side-loaded / courtyard entry for each house, to be decided on a house-by-house basis by the builder.
- Internalized sidewalk to connect at corner of Ustler and Sandpiper in lieu of sidewalk construction or sidewalk fees along Sandpiper and Ustler.
- Installation of Stop Signs at corner of Ustler and Sandpiper, if approved by Orange County.

Modify Item 4 under Buffers in the Staff Report as follows:

- Western project line. Approximately 15 acres are provided ~~preserved~~ as open space/recreation from Ustler Road eastward for a distance of approximately 640 feet.

CITY OF APOPKA

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 #s: 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 #: 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 #: 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

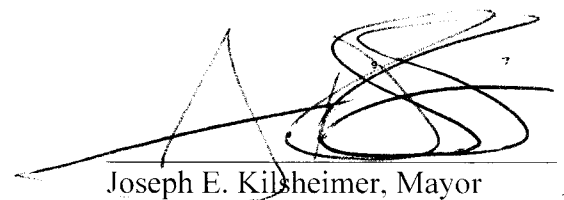
Ray Shackelford said he echoed the concerns of Commissioner Dean stating we cannot leave behind one person of the community.

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:


Linda F. Goff, City Clerk


Joseph E. Kilsheimer, Mayor

DOCUMENTS
HANDED TO CLERK
AT THE
11/19/14 REGULAR COUNCIL MEETING

SANDPIPER: ADDITIONAL DEVELOPMENT CONDITIONS

November 19, 2014

At the November 5 City Council hearing, Council included within its motion an instruction to staff to discuss mutually acceptable conditions for the Sandpiper PUD with the applicant. The proposed Additional Conditions as modified herein have been accepted by the Applicant as written.

1. Lot 10 shall be dedicated to the HOA as a passive park and placed in a 100-foot wide tract. Clearing of underbrush and installation of sod, irrigation, picnic tables and park benches will be provided with the Final Development Plan. Lot 12 will be 120 feet wide with a 20-foot wide eastern side yard setback. Lot 10 will be relocated to the north side of the west road.
2. Lots 40 – 49 will be reconfigured so that each lot will be a minimum of 80 feet wide at the building setback line, with a minimum lot area of 11,500 sq. ft. A new lot will be added to this area to compensate for the loss of Lot 10 which will meet the size criteria noted above. The pond area on the west side of these Lots will be reconfigured
3. On Lot 19, the eastern building line and setback will be adjusted to align with the front building line and setback of Lot 18.
4. Brick pavers. At least 500 sq. ft. of driveway pavers will be installed per house and must abut the front property line **or** a side-loaded / courtyard entry will be provided for each house, to be decided on a house-by-house basis by the builder.
5. Tree Planting Conditions. Minimum of two new trees shall be planted per lot, except that Lots 6 to 12 and 15 and 16 shall have a minimum of three new trees planted per lot, regardless of the number of trees saved on the any lot. The new trees shall be a minimum of 2.5 inches DBH at the time of planting and shall count toward the overall number of required tree replacement inches, if any.
 - a. On Lots 6 to 12, at least two of the three new trees shall be planted in the rear yard.
 - b. On Lots 15 and 16, at least two of the three new trees shall be planted on the south side yard or within the northern ten feet of the conservation easement. Note that this tree planting area will be removed from the 30-foot wide conservation area so that these trees can be maintained, i.e., watering, fertilization, etc.
 - c. On Lots 23 through 31, at least one of the two new trees shall be planted in the rear yard or within the northern ten feet of the conservation easement. Note that if the trees are planted within the conservation area, this tree planting area will be removed from the 30-foot wide conservation area so that these trees can be maintained, i.e., watering, fertilization, etc.
6. Minimum Livable Area. 2,200 sq. ft.

7. On Lots 15 and 16, if courtyard/side loaded entries are constructed, the garage doors must face north.
8. Park Site. The park site at the end of the western cul-de-sac shall total not less than 15,000 sq. ft. and shall be placed adjacent to the existing pond. This park will be an active park and include facilities as required by the Land Development Code.
9. A sidewalk shall be installed by the developer along the southern ROW of Sandpiper Road to the extent of the length of the project northern boundary.
10. Additional Landscaping. A ligustrum hedge will be planted south of the eastern cul-de-sac adjacent to Lots 15 and 16 at the edge of the conservation area. The hedge shall be planted in a 100-foot wide (east-west) by 5-foot deep (north-south) landscape easement to be maintained by the HOA. The length of the hedge equals the width of the cul-de-sac, and the height of the hedge shall be at least six feet within two years of planting.
11. Tree Protection Plan.
 - a. Any individual residential lot shall not be cleared until a building permit is approved. Existing trees (6" or greater DBH) shall appear on the plot plan (i.e. foundation survey). The plot plan shall identify the location of the driveway. Location of a house and its driveway shall be oriented with a reasonable consideration for the protection of existing trees, particularly trees with a DBH of 24 inches or greater. The Community Development Director shall determine if a reasonable consideration has been made and shall take final action on the plot plan, and may deny or accept the plot plan; provided, however, the Community Development Director's determination shall only consider the location of the house and other impervious surfaces on the lot and shall not consider the type or style of the proposed house. Applicant can appeal the Community Development Director's decision to the Planning Commission.
 - b. The Final Development Plan shall include tree protection techniques to prevent harm to any trees or encroachment into protected natural areas, including but not limited to tree barricades, silt fencing or other similar techniques accepted by the city engineer.
 - c. Clearing shall be allowed for road ROW, retention ponds, community recreation area at the end of the western cul-de-sac, utility and stormwater infrastructure, off-site improvements, and areas needed to make necessary grading transitions for a safe work environment.
12. Southern Buffer. The HOA shall enforce the protection of the southern conservation buffer as an undisturbed natural buffer area. If the HOA fails to enforce the buffer area, the City may require either the property owner or the HOA to take action to remedy any encroachment into the buffer area.

13. A tri-rail fence with columns shall be installed within the northern landscape buffer tract from the eastern project line westward to the eastern edge of the open space area. The columns shall have a stone, brick, or decorative block finish and shall be architecturally compatible with the entry feature. Final design of the tri-rail fence and columns shall be submitted with the final development plan. Within the buffer tract adjacent to Lots 6 to 12, the buffer will include a continuous ligustrum hedge that will reach a height of six feet within two years of planting. The buffer tract shall appear as generally provided in Exhibit "C".

14. Lot enumeration appearing on the master plan will be renumbered for consistency.

The above development standards will be incorporated into Exhibit "B" of the adopting ordinance and appear within the development standards appearing in the Master Plan.

Prepared by and return to:
Randolph J. Rush, Esq.
Winderweeple, Haines, Ward
& Woodman, P.A.
Post Office Box 880
Winter Park, FL 32790-0880



Orange Co FL 1999-0539060
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OR Bk 5902 Pg 3275
Rec 249.00

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
WEKIVA PRESERVE**

THIS DECLARATION, is made this 22 day of October, 1999, by M/I SCHOTTENSTEIN HOMES, INC., an Ohio corporation (hereinafter referred to as "Developer"), whose address is 237 S. Westmonte Drive, Suite 111, Altamonte Springs, Florida 32714.

WITNESSETH:

WHEREAS, the Developer is the owner of certain property in Orange County, Florida ("Property"), more particularly described as follows on Exhibit "A" attached hereto and by this reference made a part hereof; and

WHEREAS, Developer is developing the Property into a residential community of single family homes; and

WHEREAS, Developer intends and desires to impose certain covenants, conditions, restrictions, easements, and liens upon the Property and the use thereof, as part of a common plan of development upon the Property, and to protect its value and desirability.

NOW THEREFORE, the Developer hereby declares that the real property described above shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, and easements, which are for the purpose of protecting the value and desirability of, and which shall run with, said real property and be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Unless the context expressly requires otherwise, the following terms mean as follows wherever used in this Declaration, the Association's Articles of Incorporation ("Articles"), or the Association's By-Laws ("By-Laws").

Section 1. "Architectural Committee" shall mean the Architectural Committee, provided in Article VI hereof.

street sign within Wekiva Preserve, at the expense of the Association, in the event the same is not being performed by the Association.

ARTICLE III GENERAL USE RESTRICTIONS

Section 1. Use of Lots. Each Lot may be improved and used for residential purposes only and only single detached family homes, approved in accordance with Article VI may be constructed thereon. No trade, business, or profession of any kind, or any activity other than that of single family residence may be conducted on any Lot and no billboards or advertising signs shall be erected or displayed thereon, except for the business of the Developer and its transferees in developing the Properties and advertising signs in furtherance thereof. No building or other improvements on a Lot shall be rented or leased separately from the rental or lease of the entire Lot, and no part of any dwelling may be used for the purpose of renting rooms or for transient accommodations. No duplex, garage apartment, or apartment house shall be erected, converted, or allowed to remain on any Lot. Notwithstanding the previous sentence, if permitted by County regulation, a separate but connected living area may be included in the dwelling, intended for use by related parties.

Section 2. View Obstructions. The Association or the Developer shall have the right, but not the obligation, to remove, relocate, or require the removal or relocation of any fence, wall, berm, hedge, shrub, tree or other thing, natural or artificial, placed or located on any Lot if the location of the same will, in the sole and exclusive judgment of the Association, obstruct the vision of a motorist upon any road within the Property.

Section 3. Dwellings. Only one dwelling may be constructed on any Lot. The minimum square footage of each dwelling shall be one thousand eight hundred (1,800) square feet of air conditioned living space, with each dwelling having attached to it a two car garage of similar architectural style as the main dwelling unless otherwise approved by Developer. Notwithstanding the preceding sentence, the minimum square footage of each dwelling constructed on Lots 1, 2, 3, 4, 5, 33, 34, 54, 55 and 73 shall be a minimum of two thousand (2,000) square feet of air conditioned living space, with each dwelling having attached to it a two car garage of similar architectural style as the main dwelling unless otherwise approved by Developer.

Section 4. Screening. Except for regular collection and disposal, no receptacles for rubbish, trash, garbage or other waste material or accumulations, or mechanical or other equipment, may be kept, stored erected or permitted anywhere within the Properties, except inside the improvements on each Lot, or completely concealed from view by a fence, wall, or landscaping.

Florida
Rec Fee
Doc Tax
Int Tax
Total

Paid 81.00
By 10/21/86
81.00

THOMAS H. LOCKER,
Orange County
Comptroller
By 10/21/86
Deputy Clerk

OAKWATER ESTATES

2617185 ORANGE CO. FL.
02:17:20PM 10/10/86

OR3827 PG2127

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made as of the date hereinafter set forth by THE ROLLS GROUP, a Florida General Partnership; hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Orange, State of Florida, which is more particularly described in Exhibit "A" attached hereto;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Homeowners' Association" shall mean and refer to OAKWATER ESTATES HOMEOWNERS' ASSOCIATION, INC., a non-profit corporation organized under the laws of the State of Florida, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owners, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property described on the plat or plats of OAKWATER

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sale of residential dwellings within the Properties. Other than conducting the sale of residential dwellings, no trade, traffic or business of any kind, whether professional, commercial, industrial or manufacturing or other non-residential use shall be engaged in or carried on upon the Properties, or any part thereof; nor shall anything be done thereon which may be or which may become an annoyance or a nuisance to the Properties or adjacent properties.

Section 3. Single-Family Residential Use. No residential dwelling having a living area of less than 2000 square feet, under heating and air conditioning, shall be constructed on any lot. No building or structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single-family residential dwelling and appurtenant outbuildings or structures as may be suitable and necessary for the purposes for which said Lot is permitted to be used.

Section 4. Additional Covenants Pertaining to Water Front Lots. No boat house or any other similar structure shall be constructed on any lot nor extend from the shoreline into the lake. No boat landing, dock, pier, piling, or other water front structures shall be constructed to extend from the shoreline into the lake unless and until plans and specifications thereof shall have been approved in writing by the Board of Directors of the Homeowners' Association or architectural control committee. No boat canal or other waterways shall be dug or excavated into any of the water front lots. No lot or parcel shall be increased in size by filling in the waters on which it abuts. No sea wall shall be erected or constructed unless and until its location, design, materials, structure, strength, etc., shall have been approved in writing by the declarant and by the Orange County Environmental Department, and all other government regulatory agencies with authority.

971 So.2d 829

District Court of Appeal of Florida,
Third District.

Cesar A. HERNANDEZ-CANTON,
Elvis Cruz, William Hopper, Jack
Wolfe, and Al Sasiadeck, Petitioners,

v.

MIAMI CITY COMMISSION, City
of Miami, Kubik, LLC, and Biscayne
Premier Investments, Inc., Respondents.

No. 3D07-465. | Oct. 17, 2007. | Rehearing
and Rehearing En Banc Denied Jan. 2, 2008.

Synopsis

Background: Objectors sought certiorari review of city's zoning resolution, alleging that resolution had been overturned by prior decision of the District Court of Appeal. The Circuit Court, Appellate Division, Miami-Dade County, Jeffrey Rosinek, Ivan F. Fernandez, and J. Douglas Chumbley, JJ., denied petition. Objectors appealed.

Holdings: The District Court of Appeal, Cope, J., held that:

[1] as a result of District Court's prior decision, the zoning resolution was defective and had to be set aside;

[2] city commission would be required, on remand, to reopen record to afford developer and objectors opportunity to present new evidence; and

[3] commission's allotment of eight minutes per side for presentations regarding zoning resolution was insufficient.

Certiorari granted.

See also 917 So.2d 293.

West Headnotes (7)

[1] **Zoning and Planning**

➔ Affirmance, modification, reversal, vacation, or setting aside

Effect of District Court of Appeal's decision, finding that new version of section of city code was applicable to zoning resolution adopted after the section was amended, was that the zoning resolution was defective and had to be set aside, where city commission had applied old version of the section to make findings in support of the zoning resolution.

Cases that cite this headnote

[2] **Zoning and Planning**

➔ Remand and further proceedings below

Given District Court of Appeal's decision, setting aside zoning resolution that was based on an old version of city code section, city commission would be required, on remand, to reopen record to afford developer and objectors opportunity to present new evidence, so as to allow commission to determine whether proposed project complied with amended version of the city code.

Cases that cite this headnote

[3] **Zoning and Planning**

➔ Notice and Hearing

City commission's allotment of eight minutes per side for objectors and developer to make presentations on their positions regarding zoning resolution was insufficient, where applicable city code section contained nine design review criteria, some of which had multiple subdivisions, and commission was asked to make a total of 25 findings relating to design review criteria and their subdivisions.

Cases that cite this headnote

[4] **Certiorari**

➔ Legislative acts and ordinances

A petition seeking certiorari review is not the proper procedural vehicle to challenge the constitutionality of a statute or ordinance.

Cases that cite this headnote

[5] **Certiorari**

☛ Availability of relief in original proceeding

A challenge to the constitutionality of an ordinance must be determined in original proceedings before the circuit court, not by way of a petition for writ of certiorari.

Cases that cite this headnote

[6] **Certiorari**

☛ Decisions reviewable, and jurisdiction

Exercise of second-tier certiorari is appropriate where there has been an application of the incorrect law in the proceedings below.

Cases that cite this headnote

[7] **Certiorari**

☛ Decisions reviewable, and jurisdiction

Second-tier certiorari is appropriate where, after an earlier second-tier certiorari proceeding, there has been a departure from the terms of the appellate court ruling in the proceedings on remand.

Cases that cite this headnote

Attorneys and Law Firms

*830 Michael A. Sastre, Miami, for petitioners.

Greenberg Traurig, P.A., and Elliot H. Scherker and Lucia Dougherty and Brigid F. Cech Samole, Miami; Jorge L. Fernandez, City Attorney, and Rafael Suarez-Rivas, Assistant City Attorney, for respondents.

Before COPE, RAMIREZ, and SALTER, JJ.

Opinion

COPE, J.

The question before us in this proceeding is whether the Miami City Commission misinterpreted this court's prior ruling in *831 *Morningside Civic Ass'n, Inc. v. City of Miami Comm'n*, 917 So.2d 293 (Fla. 3d DCA 2005). We conclude

that our prior ruling was misinterpreted. We therefore remand for a new hearing.

In 2004, the Miami City Commission enacted a zoning resolution granting approval for a development proposed by Kubik, LLC and Biscayne Premier Investments, Inc. (collectively "the developer"). At the hearing before the City Commission, there was a disagreement about which version of Section 1305 of the Miami City Code would be applicable. Section 1305 had been amended in January 2004. The developer and the City Commission took the position that the old version was applicable. The objectors argued that the new version was applicable. *Id.* at 294.

The City Commission applied the old version and approved the project. The objectors sought certiorari review in the circuit court appellate division, which denied certiorari.

On second-tier certiorari review in this court, we concluded that the new version of Section 1305 was the applicable version. *Id.* Our court concluded that the City Commission and the appellate division of the circuit court had applied the incorrect law. *Id.* We quashed the ruling of the appellate division of the circuit court, *id.*, and by unpublished order on motion for clarification, stated that "[t]he matter shall be remanded by the Circuit Court to the Commission for further proceedings consistent with this court's opinion." Order, March 22, 2006.

When the matter returned to the City Commission, there was a disagreement about how to interpret this court's opinion. The City Attorney took the view that our court had left the 2004 zoning resolution intact, and had simply remanded so that the City Commission could make findings in support of its 2004 resolution. The objectors argued that the earlier zoning resolution could not stand in view of this court's determination that the 2004 resolution was based on the wrong law, i.e., the wrong version of Section 1305.

The City Commission accepted the proposition that its 2004 zoning resolution had not been overturned. The City Commission enacted a new zoning resolution which made the findings contemplated by the new version of Section 1305. The objectors sought certiorari review in the appellate division of the circuit court, which was denied.

The objectors then sought second-tier certiorari review in this court. The petition for certiorari is well taken.

[1] We must respectfully say that our prior opinion was misinterpreted in the proceedings on remand. In order for the developer's application to be approved, it was necessary for the developer to demonstrate compliance with the new version of Section 1305. Since the City Commission in 2004 applied the old version of Section 1305, it follows that the 2004 zoning resolution was defective and had to be set aside. It was necessary for the City Commission to conduct a new hearing and make a determination whether the developer's proposed project does, or does not, comply with the new version of Section 1305.

[2] We therefore grant certiorari and quash the decision of the circuit court appellate division. We vacate the 2006 and 2004 zoning resolutions. We remand this matter to the circuit court appellate division, with directions to remand the matter to the City Commission for a new hearing and determination by the City Commission whether the proposed project does, or does not, comply with Section 1305 as amended in 2004.

*832 At the new hearing, the developer has the burden of demonstrating compliance with the new version of Section 1305. The City Commission must reopen the record and afford the developer and the objectors an opportunity to present new evidence if they so choose. Alternatively, the developer and the objectors are free to rely on the existing record if they so choose.¹

[3] We address two other issues raised by the objectors in their petition. The objectors complain that, at the hearing below, the City Commission did not allow adequate time for the objectors to present their position. Under the circumstances of this case, we agree. The new version of Section 1305 contains nine Design Review Criteria, some of which have multiple subdivisions. The City Commission was asked to make a total of twenty-five findings relating to the Design Review Criteria and their subdivisions. The City Commission allotted only eight minutes per side for

the developer and the objectors to make their presentations. Under the circumstances, we must respectfully state that eight minutes per side was too short a time allotment. While we do not specify any particular length of time, on remand a reasonable time allotment shall be given to each side.

[4] [5] Second, the objectors in their petition raise a facial constitutional challenge to Section 502(c) of the City of Miami Zoning Code, which is the City's floor area ratio ordinance. We agree with the developer that a petition for writ of certiorari cannot be used for this purpose. "[A] petition seeking certiorari review is not the proper procedural vehicle to challenge the constitutionality of a statute or ordinance." *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So.2d 195, 199 (Fla.2003) (citation omitted). A challenge to the constitutionality of an ordinance "must be determined in original proceedings before the circuit court, not by way of a petition for writ of certiorari." *Id.* (internal quotation marks and citations omitted).

[6] [7] As we did in our prior opinion, we conclude that the exercise of "second-tier" certiorari is appropriate where, as here, there has been an application of the incorrect law in the proceedings below. *See Omnipoint Holdings*, 863 So.2d at 199 (Fla.2003); *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla.1982); *Morningside Civic Ass'n*, 917 So.2d at 295. Second-tier certiorari is also appropriate where, after an earlier second-tier certiorari proceeding, there has been a departure from the terms of the appellate court ruling in the proceedings on remand.

For the stated reasons we grant certiorari and remand for proceedings consistent with this opinion.

Parallel Citations

32 Fla. L. Weekly D2473

Footnotes

¹ We express no opinion on whether the existing record is, or is not, legally sufficient to support the position of either side.

261 So.2d 832
Supreme Court of Florida.

Grace RENARD, Petitioner,

v.

DADE COUNTY, a political subdivision of
the State of Florida, et al., Respondents.

No. 41388. | April 19, 1972.

Rezoning proceeding. The zoning officials rezoned tract from industrial to multiple family residence and abutting property owners sought certiorari. The Circuit Court for Dade County, Grady L. Crawford, J., entered ruling, and abutting property owner appealed. The District Court of Appeal, 249 So.2d 500, affirmed, and writ of certiorari issued. The Supreme Court, Boyd, J., held that owners of property abutting property sought to be rezoned from industrial to multiple family residence, with increased setback restrictions different in kind from community generally, had standing to bring suit attacking rezoning ordinance as not fairly debatable.

Affirmed.

West Headnotes (9)

[1] **Zoning and Planning**

☛ Right of Review; Standing

The aggrieved or adversely affected person having standing to sue is a person who has a legally recognizable interest which is or will be affected by the action of the zoning authority in question; the interest may be one shared in common with a number of other members of the community as where an entire neighborhood is affected, but not every resident and property owner of municipality can, as a general rule, claim such an interest. F.S.A. §§ 176.11, 176.16.

6 Cases that cite this headnote

[2] **Zoning and Planning**

☛ Right of Review; Standing

An individual having standing to challenge proposed zoning action must have a definite interest exceeding the general interest in the

community good shared in common with all citizens; so-called "spite suits" are not tolerated. F.S.A. §§ 176.11, 176.16.

5 Cases that cite this headnote

[3] **Zoning and Planning**

☛ Modification or amendment

In determining sufficiency of a party's interest to give standing to challenge action of zoning authority, factors such as proximity of his property to property to be zoned or rezoned, character of the neighborhood, including the existence of common restrictive covenants and set-back requirements, and the type of change proposed are considerations; fact that a person is among those entitled to receive notice under the zoning ordinance is a factor to be considered on the action of standing to challenge proposed zoning action but notice requirements of area are not controlled on question of standing. F.S.A. §§ 176.11, 176.16.

6 Cases that cite this headnote

[4] **Zoning and Planning**

☛ Burden of Showing Grounds for Review

Even though a person has sufficient standing to challenge action of the zoning authority, he must still carry the burden of proving that the challenged action was not fairly debatable.

1 Cases that cite this headnote

[5] **Zoning and Planning**

☛ Regulations in general

To have standing to enforce a valid zoning ordinance, party seeking enforcement must show special damages; however, a lenient application of that rule prevails.

3 Cases that cite this headnote

[6] **Zoning and Planning**

☛ Validity of regulations

Persons having a legally recognizable interest, which is adversely affected by the proposed zoning action, have standing to attack a

validly enacted zoning ordinance as being an unreasonable exercise of legislative powers.

6 Cases that cite this headnote

[7] **Zoning and Planning**

← Validity of regulations

An affected resident, citizen or property owner of the governmental unit in question has standing to challenge a zoning ordinance as void because not properly enacted such as where required notice has not been given.

20 Cases that cite this headnote

[8] **Zoning and Planning**

← Modification or amendment

Owners of property abutting property sought to be rezoned from industrial to multiple family residence, with increased setback restrictions different in kind from community generally, had standing to bring suit attacking rezoning ordinance as not fairly debatable.

9 Cases that cite this headnote

[9] **Zoning and Planning**

← Amendment or Rezoning, Sufficiency of Evidence

Record established that rezoning of one parcel of land in unincorporated area from industrial to multiple family residence was "fairly debatable" and therefore was a valid exercise of power by the zoning authority.

Cases that cite this headnote

Attorneys and Law Firms

*833 Eugene P. Spellman, of Law Offices of Eugene P. Spellman, Miami, for petitioner.

Stuart Simon, County Atty., and St. Julien P. Rosemond, Asst. County Atty., and Paul Siegel, of Sinclair, Louis, Sand & Siegel, Miami, for respondents.

Opinion

BOYD, Justice.

This cause is before us on petition for writ of certiorari to review the decision of the District Court of Appeal, Third District, reported at 249 So.2d 500. Jurisdiction is based on the certification of the District Court under *834 Article V, s 4(2) of the Florida Constitution, F.S.A., that the decision sought to be reviewed passes upon a question of great public interest, to-wit:

'The standing necessary for a plaintiff to (1) enforce a valid zoning ordinance; (2) attack a validly enacted zoning ordinance as not being fairly debatable and therefore an arbitrary and unreasonable exercise of legislative power; and (3) attack a void ordinance, i.e., one enacted without proper notice required under the enabling statute or authority creating the zoning power.'

Petitioner Renard and respondents Richter, owned certain adjoining properties in the unincorporated area of Dade County zoned IU-2, industrial. The Richters applied for a rezoning of their parcel. The Board of County Commissioners ultimately permitted a rezoning from IU-2 to multiple family residence with certain exceptions relative to a nine-hole golf course and a variance for private, in lieu of public, roads. This was in accordance with the recommendations of the planning board as approved by the zoning appeals board of the county.

Petitioner was an objector in the zoning proceedings held before the Dade County Zoning Appeals Board and an objector before the Board of County Commissioners. Following adverse rulings by the appeals board and County Commission, petitioner sought certiorari before the Circuit Court pursuant to applicable county ordinances.¹

The Circuit Court ruled that petitioner, not having alleged a special interest, had no standing to prosecute the matter in the Circuit Court and, even if she had standing, the record adequately demonstrated that the issue was fairly debatable and petitioner would not have been entitled to the relief sought.

On appeal, the District Court held that petitioner had sufficient standing to institute suit in the trial court but, that the rezoning in question was fairly debatable and therefore

within the legislative discretion of the Board of County Commissioners. The District Court affirmed the judgment of the trial court but certified its decision as one passing on a question of great public interest.

The decision of the District Court on the question certified is as follows:²

'First, as indicated above, the appellant as an abutting property owner to the property rezoned would, in fact, suffer a special damage by virtue of the increased setback restriction different in kind from the community generally; and this would meet the test of special damage. But, even without meeting this test, we hold that these cases would not be applicable to a property owner within the area wherein actual notice was required to be sent to him prior to any rezoning hearing. Anything to the contrary said in *S. A. Lynch Investment Corporation v. City of Miami*, supra, is hereby specifically receded from. We further note that there is a distinction in the cases relied on by the County when there is a proceeding in which a plaintiff seeks to enforce an existing zoning ordinance, such as a violation of a setback requirement, special damage is necessary, and no special damage is necessary when a plaintiff seeks to *835 have an act of a zoning authority declared void or is within the immediate area to be affected. *Hartnett v. Austin*, Fla.1956, 93 So.2d 86; *Josephson v. Autrey*, Fla.1957, 96 So.2d 784. In other words, we hold special damage must be shown when a taxpayer or property owner seeks to enjoin the violation of an existing ordinance (i.e. *Boucher v. Novotny*, Fla.1958, 102 So.2d 132; *Conrad v. Jackson*, Fla.1958, 107 So.2d 369), But need not be shown if the taxpayer or property owner is within the affected range of the property which requires actual notice before the rezoning made may be considered by the legislative body (*Hartnett v. Austin*, supra; *Elwyn v. City of Miami*, Fla.App.1959, 113 So.2d 849; *Friedland v. City of Hollywood*, Fla.App.1961, 130 So.2d 306; Vol. 3, *American Law of Zoning*, Anderson, s 21.05, p. 558), Or when he seeks to review an alleged void act. *Hartnett v. Austin*, supra; *Josephson v. Autrey*, supra; *Rhodes v. City of Homestead*, Fla.App.1971, 248 So.2d 674 (opinion filed May 25, 1971). Therefore, we find that in the instant case the appellant had the standing to institute the suit in the trial court.' (Emphasis supplied.)

In the years following this Court's decision in *Boucher v. Novotny*,³ a split has developed between the various District Courts on the issue of standing to sue on zoning matters. The *Boucher* case was a suit to enjoin the violation of the setback

requirements of a municipal zoning ordinance. The Bouchers sought to obtain mandatory injunctive relief to compel the Novotnys to remove allegedly illegal encroachments constructed on their motel. The City had approved the building plans for the Novotny's motel which included the complained of encroachment. The properties of the parties located in the City of Clearwater, were separated by a sixty-foot wide street. The Bouchers attempted to allege special damages by reason of proximity and by reason of being within the zoning area subject to the same setback requirements as the Novotny's property. This Court held, however, that the Bouchers did not have sufficient standing to sue and stated the following rule:⁴

'We, therefore, align ourselves with the authorities which hold that one seeking redress, either preventive or corrective, against an Alleged violation of a municipal zoning ordinance must allege and prove special damages peculiar to himself differing in kind as distinguished from damages differing in degree suffered by the community as a whole.' (Emphasis supplied.)

The 'special damage' rule of the *Boucher* case is an outgrowth of the law of public nuisance.⁵ Zoning violations have historically been treated as public nuisances not subject to suit by an individual unless that individual has suffered damages different in kind and degree from the rest of the community. The *Boucher* rule was not intended to be applied to zoning matters other than suits by individuals for zoning violations.⁶

The general rule regarding standing to contest the action of a zoning authority was *836 stated by this Court in *Josephson v. Autrey*:⁷

'We have on numerous occasions held that persons adversely affected by zoning ordinances or the action of zoning agencies have a status as parties sufficient to entitle them to proceed in court to seek relief.'

To like effect is this Court's decision in *Hartnett v. Austin*.⁸

In *Wags Transportation System v. City of Miami Beach*,⁹ this Court held that homeowners in a zoning district would be permitted to intervene in an appeal from a decree breaking zoning restrictions and commercializing the area where their homes were located.

The District Court of Appeal, Third District, in *Elwyn v. City of Miami*,¹⁰ held that abutting homeowners were entitled to maintain a suit challenging an ordinance granting a variance

for a gasoline service station. On petition for rehearing, the Boucher case was raised by the zoning authority and distinguished by the District Court as follows:

'That case (Boucher) was not applicable here because of material difference in the factual situations presented in the two cases.

'The instant case was not one dealing with the violation of a zoning ordinance, but one which challenged the validity of an amendatory zoning ordinance, which, by granting a variance amounting to spot zoning, permitted appellees to put their property to a liberal business use (gasoline service station), prohibited in the more restricted R-3 classification for which the area involved was zoned. The right of an adjacent or nearby home owner directly affected by an alleged improper intrusion of such liberal business to challenge the validity thereof, is recognized.'

A similar case is that of *Friedland v. Hollywood*,¹¹ wherein the District Court of *837 Appeal, Second District, held void an ordinance which would have allowed the variance for the construction of a service station in the vicinity of property owned by the plaintiffs.

Some of the foregoing cases attacking the validity of zoning ordinances came to the Circuit Court as petitions for writ of certiorari to review actions of the zoning board of adjustment under Florida Statutes Chapter 176, F.S.A.; others originated in the Circuit Court. On the question of standing to sue there is no basis for distinguishing between cases reaching the courts after appeal to a zoning board, in areas where such boards exist, and those cases originating in the court system.¹² Florida Statutes s 176.11, F.S.A., provides for appeals to the zoning board of adjustment by 'any person aggrieved.' Florida Statutes s 176.16, F.S.A., provides that 'any person aggrieved' by the decision of the zoning board of adjustment may petition the Circuit Court for writ of certiorari.

[1] [2] An aggrieved or adversely affected person having standing to sue is a person who has a legally recognizable interest which is or will be affected by the action of the zoning authority in question. The interest may be one shared in common with a number of other members of the community as where an entire neighborhood is affected, but not every resident and property owner of a municipality can, as a general rule, claim such an interest. An individual having standing must have a definite interest exceeding the general interest in community good share in common with all citizens.

So-called 'spite suits' will not be tolerated in this area of the law any more than in any other.

[3] In determining the sufficiency of the parties' interest to give standing, factors such as the proximity of his property to the property to be zoned or rezoned, the character of the neighborhood, including the existence of common restrictive covenants and set-back requirements, and the type of change proposed are considerations. The fact that a person is among those entitled to receive notice under the zoning ordinance is a factor to be considered on the question of standing to challenge the proposed zoning action. However, since the notice requirements of the many zoning laws throughout the State vary greatly, notice requirements are not controlling on the question of who has standing. Persons having sufficient interest to challenge a zoning ordinance may, or may not, be entitled to receive notice of the proposed action under the zoning ordinances of the community.

[4] It is to be remembered that even though a person has sufficient standing to challenge the action of the zoning authority, he must still carry the burden of proving that the challenged action of the zoning authority was not fairly debatable.¹³

[5] The question certified to this Court, set out supra, has three parts. Part (1) deals with standing to enforce a valid zoning ordinance. The Boucher rule requiring special damages still covers this type of suit. However, in the twenty years since the Boucher decision, changed conditions, including increased population growth and *838 density, require a more lenient application of that rule. The facts of the Boucher case, if presented today, would probably be sufficient to show special damage.

[6] Part (2) of the question certified to this Court deals with standing to attack a validly enacted zoning ordinance as being an unreasonable exercise of legislative power. As indicated above, persons having a legally recognizable interest, which is adversely affected by the proposed zoning action, have standing to sue.

[7] Part (3) of the question certified deals with standing to attack a zoning ordinance which is void because not properly enacted, as where required notice was not given. Any affected resident, citizen or property owner of the governmental unit in question has standing to challenge such an ordinance.¹⁴

[8] [9] The District Court found that petitioner Renard had sufficient standing to attack the rezoning here in question, but, on review of the record, determined that the rezoning was 'fairly debatable' and so was a valid exercise of power by the zoning authority. We agree.

Accordingly, and for the foregoing reasons, the decision of the District Court of Appeal is affirmed.

It is so ordered.

ROBERTS, C.J., and ERVIN, CARLTON and McCAIN, JJ., concur.

Footnotes

1 Metropolitan Code of Dade County, s 33-316: 'No Person aggrieved by any zoning resolution, order, requirement, decision or determination of an administration official or by any decision of the zoning appeals board may apply to the Court for relief unless he has first exhausted the remedies provided for herein and taken all available steps provided in this article . . . it is intended and suggested that such decision may be reviewed by the filing of a petition for writ of certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, in accordance with the procedures and within the time provided by the Florida Appellate Rules for the review of the rulings of any commission or board; and such time shall commence to run from the date of the decision sought to be reviewed.' (Emphasis supplied.)

2 Renard v. Dade County, 249 So.2d 500, 502 (Fla.App.3rd 1971).

3 102 So.2d 132 (Fla.1958).

4 Id. at 135.

5 Boucher v. Novotny, 102 So.2d 132, 135 (Fla.1958); North Dade Bar Assoc. v. Dade-Commonwealth Title Ins., 143 So.2d 201, 205 (Fla.App.3rd 1962): "* * * A public nuisance is an offense against the State, and as such is subject to abatement or indictment on the motion of the proper governmental agency. * * *

"* * * An individual cannot maintain an action for a public nuisance as such. But when an individual suffers special damage from a public nuisance, he may maintain an action.'

'This rule has been applied in Florida to suits to enjoin a zoning violation. Boucher v. Novotny, Fla.1958, 102 So.2d 132.'

6 Boucher has been subject to criticism even as applied to zoning violations: 12 Univ.Fla.L.Rev., Third Parties in Zoning, 16, 23, 40 (1959).

7 96 So.2d 784, 787 (Fla.1957).

8 93 So.2d 86, 90 (Fla.1956): 'We encounter no difficulty in concluding that the appellees were entitled to bring the suit. They occupied their homes immediately across the street from the proposed parking area. They relied on the existing zoning conditions when they bought their homes. They had a right to a continuation of those conditions in the absence of a showing that the change requisite to an amendment had taken place. They allege that the contemplated change would damage them and that it was contrary to the general welfare and totally unjustified by existing conditions. This gave them a status as parties entitled to come into court to seek relief. True their rights were subject to the power of the city to amend the ordinance on the basis of a proper showing. Nonetheless, they have a right to insist that the showing be made.'

See also, 35 Fla.Jur., Zoning Laws, s 30: 'Persons adversely affected by zoning ordinances or the action of zoning agencies have a status as parties sufficient to entitle them to proceed in court to seek relief.'

9 88 So.2d 751, 752 (Fla.1956): 'The petition for leave to intervene alleges that petitioners are within the same zoning district as the property described in the complaints in the consolidated causes, that the decree destroys the value of their property because petitioners have homes on said property which they use for residential purposes, therefore the decree of the lower court breaking these zoning restrictions and commercializing the district renders their property less suitable for residential purposes. Petitioners' property was purchased on the strength of the zoning ordinance and in reliance upon the fact that all property within the zoning district would be maintained as residential property. * * *

'We think the petition to intervene showed such an interest in the res that the ends of justice require that it be granted. * * * Nothing is more sacred to one than his home and the petitioners should have been permitted to come in and bring their rights in this to the attention of the court.'

10 113 So.2d 849 (Fla.App.3rd); cert. denied 116 So.2d 773, (Fla.1959).

11 130 So.2d 306 (Fla.App.2d 1961).

12 2 Rathkopf, Zoning and Planning, 36-1 (1971): 'Generally, any person who can show that the existence or enforcement of a zoning restriction adversely affects, or will adversely affect, a property interest vested in him or that the grant of a permit to another or

rezoning of another's land will similarly affect him, has the requisite justiciable interest in the controversy, and is a proper party plaintiff. In this aspect, the right of a litigant to sue for declaratory judgment or for an injunction is based upon the same criteria as are determinative of the status of a petitioner as a 'party aggrieved' to bring certiorari to review the determination of a board of appeals or adjustment. The difference, if any, relates only to the forum and form of the remedy.' (Emphasis supplied.)

13 City of Miami v. Hollis, 77 So.2d 834 (Fla.1959); City of Jacksonville v. Imler, 235 So.2d 526 (Fla.App.1st 1970).

14 See e.g., Rhodes v. City of Homestead, 248 So.2d 674 (Fla.App.3rd 1971); Knowles v. Town of Kenneth City, 247 So.2d 748 (Fla.App.2d 1971).

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627 So.2d 469
Supreme Court of Florida.

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY**, Florida, Petitioner,

v.

Jack R. **SNYDER**, et ux., Respondents.

No. 79720. | Oct. 7, 1993. |
Rehearing Denied Dec. 23, 1993.

Property owners brought original action seeking writ of certiorari after **county board** denied their application for rezoning of property from general use to medium density multiple-family dwelling use. The District Court of Appeal, 595 So.2d 65, granted petition. On review for direct conflict of decisions, the Supreme Court, Grimes, J., held that: (1) rezoning action which entails application of general rule or policy to specific individuals, interests or activities is quasi-judicial in nature, subject to strict scrutiny on certiorari review; (2) landowner who demonstrates that proposed use of property is consistent with comprehensive plan is not presumptively entitled to such use; (3) landowner seeking to rezone property has burden of proving that proposal is consistent with comprehensive plan, and burden thereupon shifts to zoning **board** to demonstrate that maintaining existing zoning classification accomplishes legitimate public purpose; and (4) although **board** is not required to make findings of fact in denying application of rezoning, upon review by certiorari in the circuit court it must be shown there was competent substantial evidence presented to **board** to support its ruling.

Decision of District Court of Appeal quashed.

Shaw, J., dissented.

West Headnotes (10)

[1] **Counties**

↔ Appeals from decisions

Legislative action of **county board of commissioners** is subject to attack in circuit court; however, in deference to policymaking function of **board** when acting in a legislative

capacity, its actions will be sustained as long as they are fairly debatable.

2 Cases that cite this headnote

[2] **Counties**

↔ Appeals from decisions

Rulings of **county board of commissioners** acting in its quasi-judicial capacity are subject to review by certiorari and will be upheld only if they are supported by substantial competent evidence.

1 Cases that cite this headnote

[3] **Counties**

↔ Appeals from decisions

It is character of hearing that determines whether or not **county board** action is legislative or quasi-judicial, for purposes of judicial review; generally speaking, legislative action results in formulation of a general rule of policy, whereas judicial action results in application of a general rule of policy.

10 Cases that cite this headnote

[4] **Zoning and Planning**

↔ Certiorari

Zoning and Planning

↔ Modification or amendment; rezoning

Zoning and Planning

↔ Modification or amendment; rezoning

Comprehensive rezonings affecting a large portion of the public are legislative in nature, and are subject to "fairly debatable" standard of review; however, rezoning actions which can be viewed as policy application, rather than policy setting, and which have an impact on a limited number of persons or property owners are quasi-judicial in nature and are properly reviewable by petition for certiorari; on such review they are subject to strict scrutiny and to substantial evidence standard.

33 Cases that cite this headnote

[5] **Zoning and Planning**

↳ Certiorari

County board's denial of landowner's application to rezone property to zoning classification which would allow construction of 15 residential units per acre was in the nature of a quasi-judicial proceeding, and was properly reviewable by petition for certiorari.

12 Cases that cite this headnote

[6] **Zoning and Planning**

↳ Right to Permission, and Discretion

Zoning and Planning

↳ Substantial evidence in general

Even where denial of a zoning application would be inconsistent with comprehensive plan, local government should have discretion to decide that maximum development density should not be allowed provided governmental body approves some development that is consistent with the plan and government's decision is supported by substantial, competent evidence.

11 Cases that cite this headnote

[7] **Zoning and Planning**

↳ Conformity of change to plan

Landowner who demonstrates that proposed use is consistent with comprehensive zoning plan is not presumptively entitled to such use if opposing governmental agency fails to prove by clear and convincing evidence that specifically stated public necessity requires a more restricted use; property owner is not necessarily entitled to relief by proving such consistency when agency action is also consistent with plan.

7 Cases that cite this headnote

[8] **Zoning and Planning**

↳ Maps, plats, and plans; subdivision regulations

Growth Management Act was not intended to preclude development but only to ensure that it proceed in an orderly manner. West's F.S.A. § 163.3161 et seq.

Cases that cite this headnote

[9] **Zoning and Planning**

↳ Public interest and need; general welfare

Zoning and Planning

↳ Conformity of change to plan

Zoning and Planning

↳ Hearing or meeting in general

Landowner seeking to rezone property has burden of proving that proposal is consistent with comprehensive plan and complies with all procedural requirements of zoning ordinance; burden thereupon shifts to governmental board to demonstrate that maintaining existing zoning classification with respect to the property accomplishes a legitimate public purpose; board will have burden of showing refusal to rezone property is not arbitrary, discriminatory, or unreasonable; if board carries burden, application should be denied.

13 Cases that cite this headnote

[10] **Zoning and Planning**

↳ Filing, publication, and posting; minutes and findings

Zoning and Planning

↳ Modification or amendment; rezoning

Although zoning board is not required to make findings of fact in making decision on landowner's application to rezone property, it must be shown there was competent substantial evidence presented to the board to support its ruling in order to sustain its action, upon review by certiorari in circuit court.

19 Cases that cite this headnote

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Opinion

GRIMES, Justice.

We review *Snyder v. Board of County Commissioners*, 595 So.2d 65 (Fla. 5th DCA1991), because of its conflict with *Schauer v. City of Miami Beach*, 112 So.2d 838 (Fla.1959); *City of Jacksonville Beach v. Grubbs*, 461 So.2d 160 (Fla. 1st DCA1984), review denied, 469 So.2d 749 (Fla.1985);

and *Palm Beach County v. Tinnerman*, 517 So.2d 699 (Fla. 4th DCA1987), review denied, *471 528 So.2d 1183 (Fla.1988). We have jurisdiction under article V, section 3(b)(3) of the Florida Constitution. Jack and Gail Snyder owned a one-half acre parcel of property on Merritt Island in the unincorporated area of **Brevard County**. The property is zoned GU (general use) which allows construction of a single-family residence. The **Snyders** filed an application to rezone their property to the RU-2-15 zoning classification which allows the construction of fifteen units per acre. The area is designated for residential use under the 1988 **Brevard County** Comprehensive Plan Future Land Use Map. Twenty-nine zoning classifications are considered potentially consistent with this land use designation, including both the GU and the RU-2-15 classifications.

After the application for rezoning was filed, the **Brevard County** Planning and Zoning staff reviewed the application and completed the county's standard "rezoning review worksheet." The worksheet indicated that the proposed multifamily use of the **Snyders'** property was consistent with all aspects of the comprehensive plan except for the fact that it was located in the one-hundred-year flood plain in which a maximum of only two units per acre was permitted. For this reason, the staff recommended that the request be denied.

At the planning and zoning board meeting, the county planning and zoning director indicated that when the property was developed the land elevation would be raised to the point where the one-hundred-year-flood plain restriction would no longer be applicable. Thus, the director stated that the staff no longer opposed the application. The planning and zoning board voted to approve the **Snyders'** rezoning request.

When the matter came before the board of county commissioners, Snyder stated that he intended to build only five or six units on the property. However, a number of citizens spoke in opposition to the rezoning request. Their primary concern was the increase in traffic which would be caused by the development. Ultimately, the commission voted to deny the rezoning request without stating a reason for the denial.

The **Snyders** filed a petition for certiorari in the circuit court. Three circuit judges, sitting en banc, reviewed the petition and denied it by a two-to-one decision. The **Snyders** then filed a petition for certiorari in the Fifth District Court of Appeal.

The district court of appeal acknowledged that zoning decisions have traditionally been considered legislative in nature. Therefore, courts were required to uphold them if they could be justified as being "fairly debatable." Drawing heavily on *Fasano v. Board of County Commissioners*, 264 Or. 574, 507 P.2d 23 (1973), however, the court concluded that, unlike initial zoning enactments and comprehensive rezonings or rezonings affecting a large portion of the public, a rezoning action which entails the application of a general rule or policy to specific individuals, interests, or activities is quasi-judicial in nature. Under the latter circumstances, the court reasoned that a stricter standard of judicial review of the rezoning decision was required. The court went on to hold:

(4) Since a property owner's right to own and use his property is constitutionally protected, review of any governmental action denying or abridging that right is subject to close judicial scrutiny. Effective judicial review, constitutional due process and other essential requirements of law, all necessitate that the governmental agency (by whatever name it may be characterized) applying legislated land use restrictions to particular parcels of privately owned lands, must state reasons for action that denies the owner the use of his land and must make findings of fact and a record of its proceedings, sufficient for judicial review of: the legal sufficiency of the evidence to support the findings of fact made, the legal sufficiency of the findings of fact supporting the reasons given and the legal adequacy, under applicable law (*i.e.*, under general comprehensive zoning ordinances, applicable state and case law and state and federal constitutional provisions) of the reasons given for the result of the action taken.

(5) The initial burden is upon the landowner to demonstrate that his petition or application for use of privately owned *472 lands, (rezoning, special exception, conditional use permit, variance, site plan approval, etc.) complies with the reasonable procedural requirements of the ordinance and that the use sought is consistent with the applicable comprehensive zoning plan. Upon such a showing the landowner is presumptively entitled to use his property in the manner he seeks unless the opposing governmental agency asserts and proves by clear and convincing evidence that a specifically stated public necessity requires a specified, more restrictive, use. After such a showing the burden shifts to the landowner to assert and prove that such specified more restrictive land use constitutes a taking of his property for public use for which he is entitled to compensation under the taking provisions of the state or federal constitutions.

Snyder v. Board of County Commissioners, 595 So.2d at 81 (footnotes omitted).

Applying these principles to the facts of the case, the court found (1) that the **Snyders'** petition for rezoning was consistent with the comprehensive plan; (2) that there was no assertion or evidence that a more restrictive zoning classification was necessary to protect the health, safety, morals, or welfare of the general public; and (3) that the denial of the requested zoning classification without reasons supported by facts was, as a matter of law, arbitrary and unreasonable. The court granted the petition for certiorari.

Before this Court, the **county** contends that the standard of review for the **county's** denial of the **Snyders'** rezoning application is whether or not the decision was fairly debatable. The **county** further argues that the opinion below eliminates a local government's ability to operate in a legislative context and impairs its ability to respond to public comment. The **county** refers to *Jennings v. Dade County*, 589 So.2d 1337 (Fla. 3d DCA1991), *review denied*, 598 So.2d 75 (Fla.1992), for the proposition that if its rezoning decision is quasi-judicial, the **commissioners** will be prohibited from obtaining community input by way of *ex parte* communications from its citizens. In addition, the **county** suggests that the requirement to make findings in support of its rezoning decision will place an insurmountable burden on the zoning authorities. The **county** also asserts that the salutary purpose of the comprehensive plan to provide controlled growth will be thwarted by the court's ruling that the maximum use permitted by the plan must be approved once the rezoning application is determined to be consistent with it.

The **Snyders** respond that the decision below should be upheld in all of its major premises. They argue that the rationale for the early decisions that rezonings are legislative in nature has been changed by the enactment of the Growth Management Act. Thus, in order to ensure that local governments follow the principles enunciated in their comprehensive plans, it is necessary for the courts to exercise stricter scrutiny than would be provided under the fairly debatable rule. The **Snyders** contend that their rezoning application was consistent with the comprehensive plan. Because there are no findings of fact or reasons given for the denial by the **board of county commissioners**, there is no basis upon which the denial could be upheld. Various amici

curiae have also submitted briefs in support of their several positions.

Historically, local governments have exercised the zoning power pursuant to a broad delegation of state legislative power subject only to constitutional limitations. Both federal and state courts adopted a highly deferential standard of judicial review early in the history of local zoning. In *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926), the United States Supreme Court held that “[i]f the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control.” 272 U.S. at 388, 47 S.Ct. at 118. This Court expressly adopted the fairly debatable principle in *City of Miami Beach v. Ocean & Inland Co.*, 147 Fla. 480, 3 So.2d 364 (1941).

Inhibited only by the loose judicial scrutiny afforded by the fairly debatable rule, local zoning systems developed in a markedly inconsistent manner. Many land use experts and practitioners have been critical of the local zoning system. Richard Babcock deplored the effect of “neighborhoodism” and *473 rank political influence on the local decision-making process. Richard F. Babcock, *The Zoning Game* (1966). Mandelker and Tarlock recently stated that “zoning decisions are too often ad hoc, sloppy and self-serving decisions with well-defined adverse consequences without off-setting benefits.” Daniel R. Mandelker and A. Dan Tarlock, *Shifting the Presumption of Constitutionality in Land-Use Law*, 24 Urb.Law. 1, 2 (1992).

Professor Charles Harr, a leading proponent of zoning reform, was an early advocate of requiring that local land use regulation be consistent with a legally binding comprehensive plan which would serve long range goals, counteract local pressures for preferential treatment, and provide courts with a meaningful standard of review. Charles M. Harr, “*In Accordance With A Comprehensive Plan*,” 68 Harv.L.Rev. 1154 (1955). In 1975, the American Law Institute adopted the Model Land Development Code, which provided for procedural and planning reforms at the local level and increased state participation in land use decision-making for developments of regional impact and areas of critical state concern.

Reacting to the increasing calls for reform, numerous states have adopted legislation to change the local land use decision-making process. As one of the leaders of this national reform, Florida adopted the Local Government

Comprehensive Planning Act of 1975. Ch. 75-257, Laws of Fla. This law was substantially strengthened in 1985 by the Growth Management Act. Ch. 85-55, Laws of Fla.

Pursuant to the Growth Management Act, each county and municipality is required to prepare a comprehensive plan for approval by the Department of Community Affairs. The adopted local plan must include “principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development” of the local government's jurisdictional area. Section 163.3177(1), Fla.Stat. (1991). At the minimum, the local plan must include elements covering future land use; capital improvements generally; sanitary sewer, solid waste, drainage, potable water, and natural ground water aquifer protection specifically; conservation; recreation and open space; housing; traffic circulation; intergovernmental coordination; coastal management (for local government in the coastal zone); and mass transit (for local jurisdictions with 50,000 or more people). *Id.*, § 163.3177(6).

Of special relevance to local rezoning actions, the future land use plan element of the local plan must contain both a future land use map and goals, policies, and measurable objectives to guide future land use decisions. This plan element must designate the “proposed future general distribution, location, and extent of the uses of land” for various purposes. *Id.*, § 163.3177(6)(a). It must include standards to be utilized in the control and distribution of densities and intensities of development. In addition, the future land use plan must be based on adequate data and analysis concerning the local jurisdiction, including the projected population, the amount of land needed to accommodate the estimated population, the availability of public services and facilities, and the character of undeveloped land. *Id.*, § 163.3177(6)(a).

The local plan must be implemented through the adoption of land development regulations that are consistent with the plan. *Id.* § 163.3202. In addition, all development, both public and private, and all development orders approved by local governments must be consistent with the adopted local plan. *Id.*, § 163.3194(1)(a). Section 163.3194(3), Florida Statutes (1991), explains consistency as follows:

- (a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order

or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

Section 163.3164, Florida Statutes (1991), reads in pertinent part:

(6) "Development order" means any order granting, denying, or granting with conditions an application for a development permit.

*474 (7) "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

Because an order granting or denying rezoning constitutes a development order and development orders must be consistent with the comprehensive plan, it is clear that orders on rezoning applications must be consistent with the comprehensive plan.

[1] [2] The first issue we must decide is whether the Board's action on Snyder's rezoning application was legislative or quasi-judicial. A board's legislative action is subject to attack in circuit court. *Hirt v. Polk County Bd. of County Comm'rs*, 578 So.2d 415 (Fla. 2d DCA1991). However, in deference to the policy-making function of a board when acting in a legislative capacity, its actions will be sustained as long as they are fairly debatable. *Nance v. Town of Indialantic*, 419 So.2d 1041 (Fla.1982). On the other hand, the rulings of a board acting in its quasi-judicial capacity are subject to review by certiorari and will be upheld only if they are supported by substantial competent evidence. *De Groot v. Sheffield*, 95 So.2d 912 (Fla.1957).

Enactments of original zoning ordinances have always been considered legislative. *Gulf & Eastern Dev. Corp. v. City of Fort Lauderdale*, 354 So.2d 57 (Fla.1978); *County of Pasco v. J. Dico, Inc.*, 343 So.2d 83 (Fla. 2d DCA1977). In *Schauer v. City of Miami Beach*, this Court held that the passage of an amending zoning ordinance was the exercise of a legislative function. 112 So.2d at 839. However, the amendment in that case was comprehensive in nature in that it effected a change in the zoning of a large area so as to permit it to be used as locations for multiple family buildings and hotels. *Id.* In

City of Jacksonville Beach v. Grubbs and *Palm Beach County v. Tinnerman*, the district courts of appeal went further and held that board action on specific rezoning applications of individual property owners was also legislative. *Grubbs*, 461 So.2d at 163; *Tinnerman*, 517 So.2d at 700.

[3] It is the character of the hearing that determines whether or not board action is legislative or quasi-judicial. *Coral Reef Nurseries, Inc. v. Babcock Co.*, 410 So.2d 648 (Fla. 3d DCA1982). Generally speaking, legislative action results in the formulation of a general rule of policy, whereas judicial action results in the application of a general rule of policy. Carl J. Peckinpugh, Jr., Comment, *Burden of Proof in Land Use Regulations: A Unified Approach and Application to Florida*, 8 Fla.St.U.L.Rev. 499, 504 (1980). In *West Flagler Amusement Co. v. State Racing Commission*, 122 Fla. 222, 225, 165 So. 64, 65 (1935), we explained:

A judicial or quasi-judicial act determines the rules of law applicable, and the rights affected by them, in relation to past transactions. On the other hand, a quasi-legislative or administrative order prescribes what the rule or requirement of administratively determined duty shall be with respect to transactions to be executed in the future, in order that same shall be considered lawful. But even so, quasi-legislative and quasi-executive orders, after they have already been entered, may have a quasi-judicial attribute if capable of being arrived at and provided by law to be declared by the administrative agency only after express statutory notice, hearing and consideration of evidence to be adduced as a basis for the making thereof.

[4] [5] Applying this criterion, it is evident that comprehensive rezonings affecting a large portion of the public are legislative in nature. However, we agree with the court below when it said:

[R]ezoning actions which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts

arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of ... quasi-judicial action....

Snyder, 595 So.2d at 78. Therefore, the board's action on Snyder's application was in the nature of a quasi-judicial proceeding and *475 properly reviewable by petition for certiorari.¹

We also agree with the court below that the review is subject to strict scrutiny. In practical effect, the review by strict scrutiny in zoning cases appears to be the same as that given in the review of other quasi-judicial decisions. See *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So.2d 996 (Fla. 2d DCA1993) (The term "strict scrutiny" arises from the necessity of strict compliance with comprehensive plan.). This term as used in the review of land use decisions must be distinguished from the type of strict scrutiny review afforded in some constitutional cases. Compare *Snyder v. Board of County Comm'rs*, 595 So.2d 65, 75-76 (Fla. 5th DCA1991) (land use), and *Machado v. Musgrove*, 519 So.2d 629, 632 (Fla. 3d DCA1987), review denied, 529 So.2d 693 (Fla.1988), and review denied, 529 So.2d 694 (Fla.1988) (land use), with *In re Estate of Greenberg*, 390 So.2d 40, 42-43 (Fla.1980) (general discussion of strict scrutiny review in context of fundamental rights), appeal dismissed, 450 U.S. 961, 101 S.Ct. 1475, 67 L.Ed.2d 610 (1981), *Florida High Sch. Activities Ass'n v. Thomas*, 434 So.2d 306 (Fla.1983) (equal protection), and *Department of Revenue v. Magazine Publishers of America, Inc.*, 604 So.2d 459 (Fla.1992) (First Amendment).

[6] At this point, we depart from the rationale of the court below. In the first place, the opinion overlooks the premise that the comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth. See *City of Jacksonville Beach*, 461 So.2d at 163, in which the following statement from *Marracci v. City of Scappoose*, 552 P.2d 552, 553 (Or.Ct.App.1976), was approved:

[A] comprehensive plan only establishes a long-range maximum limit on the possible intensity of land use; a plan does not simultaneously establish an immediate minimum limit

on the possible intensity of land use. The present use of land may, by zoning ordinance, continue to be more limited than the future use contemplated by the comprehensive plan.

Even where a denial of a zoning application would be inconsistent with the plan, the local government should have the discretion to decide that the maximum development density should not be allowed provided the governmental body approves some development that is consistent with the plan and the government's decision is supported by substantial, competent evidence.

[7] 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*:

[A]bsent 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 *476 scrutiny" of *Machado* to insure this does not happen.

619 So.2d at 1005-06.

[8] This raises a question of whether the Growth Management Act provides any comfort to the landowner

when the denial of the rezoning request is consistent with the comprehensive plan. It could be argued that the only recourse is to pursue the traditional remedy of attempting to prove that the denial of the application was arbitrary, discriminatory, or unreasonable. *Burritt v. Harris*, 172 So.2d 820 (Fla.1965); *City of Naples v. Central Plaza of Naples, Inc.*, 303 So.2d 423 (Fla. 2d DCA1974). Yet, the fact that a proposed use is consistent with the plan means that the planners contemplated that that use would be acceptable at some point in the future. We do not believe the Growth Management Act was intended to preclude development but only to insure that it proceed in an orderly manner.

[9] Upon consideration, we hold that a landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. At this point, the burden shifts to the governmental **board** to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. In effect, the landowners' traditional remedies will be subsumed within this rule, and the **board** will now have the burden of showing that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable. If the **board** carries its burden, the application should be denied.

[10] While they may be useful, 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. Further review in the district court of appeal will continue to be governed by the principles of *City of Deerfield Beach v. Vaillant*, 419 So.2d 624 (Fla.1982).

Based on the foregoing, we quash the decision below and disapprove *City of Jacksonville Beach v. Grubbs* and *Palm Beach County v. Tinnerman*, to the extent they are inconsistent with this opinion. However, in the posture of this case, we are reluctant to preclude the **Snyders** from any avenue of relief. Because of the possibility that conditions have changed during the extended lapse of time since their original application was filed, we believe that justice would be best served by permitting them to file a new application for rezoning of the property. The application will be without prejudice of the result reached by this decision and will allow the process to begin anew according to the procedure outlined in our opinion.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, KOGAN and HARDING, JJ., concur.

SHAW, J., dissents.

Parallel Citations

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Footnotes

1 One or more of the amicus briefs suggests that **Snyder's** remedy was to bring a de novo action in circuit court pursuant to section 163.3215, Florida Statutes (1991). However, in *Parker v. Leon County*, 627 So.2d 476 (Fla.1993), we explained that this statute only provides a remedy for third parties to challenge the consistency of development orders.

SUPREME COURT OF FLORIDA

BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA,
Petitioner, v. JACK R. SNYDER, et ux., Respondents.

No. 79,720

October 7, 1993

OPINION BY: GRIMES

The Motion for Rehearing filed by Petitioner, having been considered in light of the revised opinion, is hereby denied.

GRIMES, J.

We review *Snyder v. Board of County Commissioners*, 595 So. 2d 65 (Fla. 5th DCA 1991), because of its conflict with *Schauer v. City of Miami Beach*, 112 So. 2d 838 (Fla. 1959); *City of Jacksonville Beach v. Grubbs*, 461 So. 2d 160 (Fla. 1st DCA 1984), review denied, 469 So. 2d 749 (Fla. 1985); and *Palm Beach County v. Tinnerman*, 517 So. 2d 699 (Fla. 4th DCA 1987), review denied, 528 So. 2d 1183 (Fla. 1988). We have jurisdiction under article V, section 3(b)(3) of the Florida Constitution. Jack and Gail Snyder owned a one-half acre parcel of property on Merritt Island in the unincorporated area of Brevard County. The property is zoned GU (general use) which allows construction of a single-family residence. The Snyders filed an application to rezone their property to the RU-2-15 zoning classification which allows the construction of fifteen units per acre. The area is designated for residential use under the 1988 Brevard County Comprehensive Plan Future Land Use Map. Twenty-nine zoning classifications are considered potentially consistent with this land use designation, including both the GU and the RU-2-15 classifications.

After the application for rezoning was filed, the Brevard County Planning and Zoning staff reviewed the application and completed the county's standard "rezoning review worksheet." The worksheet indicated that the proposed multifamily use of the Snyders' property was consistent with all aspects of the comprehensive plan except for the fact that it was located in the one-hundred-year flood plain in which a maximum of only two units per acre was permitted. For this reason, the staff recommended that the request be denied.

At the planning and zoning board meeting, the county planning and zoning director indicated that when the property was developed the land elevation would be raised to the point where the one-hundred-year-flood plain restriction would no longer be applicable. Thus, the director stated that the staff no longer opposed the application. The planning and zoning board voted to approve the Snyders' rezoning request.

When the matter came before the board of county commissioners, Snyder stated that he intended to build only five or six units on the property. However, a number of citizens spoke in opposition to the rezoning request. Their primary concern was the increase in traffic which would be caused by the development. Ultimately, the commission voted to deny the rezoning request without stating a reason for the denial.

The Snyders filed a petition for certiorari in the circuit court. Three circuit judges, sitting en banc, reviewed the petition and denied it by a two-to-one decision. The Snyders then filed a petition for certiorari in the Fifth District Court of Appeal.

The district court of appeal acknowledged that zoning decisions have traditionally been considered legislative in nature. Therefore, courts were required to uphold them if they could be justified as being "fairly debatable." Drawing heavily on *Fasano v. Board of County Commissioners*, 264 Ore. 574, 507 P.2d 23 (Or. 1973), however, the court concluded that, unlike initial zoning enactments and comprehensive rezonings or rezonings affecting a large portion of the public, a rezoning action which entails the application of a general rule or policy to specific individuals, interests, or activities is quasi-judicial in nature. Under the latter circumstances, the court reasoned that a stricter standard of judicial review of the rezoning decision was required. The court went on to hold:

(4) Since a property owner's right to own and use his property is constitutionally protected, review of any governmental action denying or abridging that right is subject to close judicial scrutiny. Effective judicial review, constitutional due process and other essential requirements of law, all necessitate that the governmental agency (by whatever name it may be characterized) applying legislated land use restrictions to particular parcels of privately owned lands, must state reasons for action that denies the owner the use of his land and must make findings of fact and a record of its proceedings, sufficient for judicial review of: the legal sufficiency of the evidence to support the findings of fact made, the legal sufficiency of the findings of fact supporting the reasons given and the legal adequacy, under applicable law (i.e., under general comprehensive zoning ordinances, applicable state and case law and state and federal constitutional provisions) of the reasons given for the result of the action taken.

(5) The initial burden is upon the landowner to demonstrate that his petition or application for use of privately owned lands, (rezoning, special exception, conditional use permit, variance, site plan approval, etc.) complies with the reasonable procedural requirements of the ordinance and that the use sought is consistent with the applicable comprehensive zoning plan. Upon such a showing the landowner is presumptively entitled to use his property in the manner he seeks unless the opposing governmental agency asserts and proves by clear and convincing evidence that a specifically stated public necessity requires a specified,

more restrictive, use. After such a showing the burden shifts to the landowner to assert and prove that such specified more restrictive land use constitutes a taking of his property for public use for which he is entitled to compensation under the taking provisions of the state or federal constitutions.

Snyder v. Board of County Commissioners, 595 So. 2d at 81 (footnotes omitted).

Applying these principles to the facts of the case, the court found (1) that the Snyders' petition for rezoning was consistent with the comprehensive plan; (2) that there was no assertion or evidence that a more restrictive zoning classification was necessary to protect the health, safety, morals, or welfare of the general public; and (3) that the denial of the requested zoning classification without reasons supported by facts was, as a matter of law, arbitrary and unreasonable. The court granted the petition for certiorari.

Before this Court, the county contends that the standard of review for the county's denial of the Snyders' rezoning application is whether or not the decision was fairly debatable. The county further argues that the opinion below eliminates a local government's ability to operate in a legislative context and impairs its ability to respond to public comment. The county refers to *Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3d DCA 1991), review denied, 598 So. 2d 75 (Fla. 1992), for the proposition that if its rezoning decision is quasi-judicial, the commissioners will be prohibited from obtaining community input by way of ex parte communications from its citizens. In addition, the county suggests that the requirement to make findings in support of its rezoning decision will place an insurmountable burden on the zoning authorities. The county also asserts that the salutary purpose of the comprehensive plan to provide controlled growth will be thwarted by the court's ruling that the maximum use permitted by the plan must be approved once the rezoning application is determined to be consistent with it.

The Snyders respond that the decision below should be upheld in all of its major premises. They argue that the rationale for the early decisions that rezonings are legislative in nature has been changed by the enactment of the Growth Management Act. Thus, in order to ensure that local governments follow the principles enunciated in their comprehensive plans, it is necessary for the courts to exercise stricter scrutiny than would be provided under the fairly debatable rule. The Snyders contend that their rezoning application was consistent with the comprehensive plan. Because there are no findings of fact or reasons given for the denial by the board of county commissioners, there is no basis upon which the denial could be upheld. Various amici curiae have also submitted briefs in support of their several positions.

Historically, local governments have exercised the zoning power pursuant to a broad delegation of state legislative power subject only to constitutional limitations. Both federal and state courts adopted a highly deferential standard of judicial review early in the history of local zoning. In *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926), the United States Supreme Court held that "if the

validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." 272 U.S. at 388. This Court expressly adopted the fairly debatable principle in *City of Miami Beach v. Ocean & Inland Co.*, 147 Fla. 480, 3 So. 2d 364 (1941).

Inhibited only by the loose judicial scrutiny afforded by the fairly debatable rule, local zoning systems developed in a markedly inconsistent manner. Many land use experts and practitioners have been critical of the local zoning system. Richard Babcock deplored the effect of "neighborhoodism" and rank political influence on the local decision-making process. Richard F. Babcock, *The Zoning Game* (1966). Mandelker and Tarlock recently stated that "zoning decisions are too often ad hoc, sloppy and self-serving decisions with well-defined adverse consequences without off-setting benefits." Daniel R. Mandelker and A. Dan Tarlock, *Shifting the Presumption of Constitutionality in Land-Use Law*, 24 *Urb. Law.* 1, 2 (1992).

Professor Charles Harr, a leading proponent of zoning reform, was an early advocate of requiring that local land use regulation be consistent with a legally binding comprehensive plan which would serve long range goals, counteract local pressures for preferential treatment, and provide courts with a meaningful standard of review. Charles M. Harr, "In Accordance With A Comprehensive Plan," 68 *Harv. L. Rev.* 1154 (1955). In 1975, the American Law Institute adopted the Model Land Development Code, which provided for procedural and planning reforms at the local level and increased state participation in land use decision-making for developments of regional impact and areas of critical state concern.

Reacting to the increasing calls for reform, numerous states have adopted legislation to change the local land use decision-making process. As one of the leaders of this national reform, Florida adopted the Local Government Comprehensive Planning Act of 1975. Ch. 75-257, *Laws of Fla.* This law was substantially strengthened in 1985 by the Growth Management Act. Ch. 85-55, *Laws of Fla.*

Pursuant to the Growth Management Act, each county and municipality is required to prepare a comprehensive plan for approval by the Department of Community Affairs. The adopted local plan must include "principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development" of the local government's jurisdictional area. § 163.3177(1), *Fla. Stat.* (1991). At the minimum, the local plan must include elements covering future land use; capital improvements generally; sanitary sewer, solid waste, drainage, potable water, and natural ground water aquifer protection specifically; conservation; recreation and open space; housing; traffic circulation; intergovernmental coordination; coastal management (for local government in the coastal zone); and mass transit (for local jurisdictions with 50,000 or more people). *Id.* § 163.3177(6).

Of special relevance to local rezoning actions, the future land use plan element of the local plan must contain both a future land use map and goals, policies, and measurable objectives to guide future land use decisions. This plan element must designate the

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"proposed future general distribution, location, and extent of the uses of land" for various purposes. Id. § 163.3177(6)(a). It must include standards to be utilized in the control and distribution of densities and intensities of development. In addition, the future land use plan must be based on adequate data and analysis concerning the local jurisdiction, including the projected population, the amount of land needed to accommodate the estimated population, the availability of public services and facilities, and the character of undeveloped land. Id. § 163.3177(6)(a).

The local plan must be implemented through the adoption of land development regulations that are consistent with the plan. Id. § 163.3202. In addition, all development, both public and private, and all development orders approved by local governments must be consistent with the adopted local plan. Id. § 163.3194(1)(a). Section 163.3194(3), Florida Statutes (1991), explains consistency as follows:

(a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

Section 163.3164, Florida Statutes (1991), reads in pertinent part:

(6) "Development order" means any order granting, denying, or granting with conditions an application for a development permit.

(7) "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

Because an order granting or denying rezoning constitutes a development order and development orders must be consistent with the comprehensive plan, it is clear that orders on rezoning applications must be consistent with the comprehensive plan.

The first issue we must decide is whether the Board's action on Snyder's rezoning application was legislative or quasi-judicial. A board's legislative action is subject to attack in circuit court. *Hirt v. Polk County Bd. of County Comm'rs*, 578 So. 2d 415 (Fla. 2d DCA 1991). However, in deference to the policy-making function of a board when acting in a legislative capacity, its actions will be sustained as long as they are fairly debatable. *Nance v. Town of Indialantic*, 419 So. 2d 1041 (Fla. 1982). On the other hand, the rulings of a board acting in its quasi-judicial capacity are subject to review by certiorari and will be upheld only if they are supported by substantial competent evidence. *De Groot v. Sheffield*, 95 So. 2d 912 (Fla. 1957).

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Enactments of original zoning ordinances have always been considered legislative. *Gulf & Eastern Dev. Corp. v. City of Fort Lauderdale*, 354 So. 2d 57 (Fla. 1978); *County of Pasco v. J. Dico, Inc.*, 343 So. 2d 83 (Fla. 2d DCA 1977). In *Schauer v. City of Miami Beach*, this Court held that the passage of an amending zoning ordinance was the exercise of a legislative function. 112 So. 2d at 839. However, the amendment in that case was comprehensive in nature in that it effected a change in the zoning of a large area so as to permit it to be used as locations for multiple family buildings and hotels. *Id.* In *City of Jacksonville Beach v. Grubbs* and *Palm Beach County v. Tinnerman*, the district courts of appeal went further and held that board action on specific rezoning applications of individual property owners was also legislative. *Grubbs*, 461 So. 2d at 163; *Tinnerman*, 517 So. 2d at 700.

It is the character of the hearing that determines whether or not board action is legislative or quasi-judicial. *Coral Reef Nurseries, Inc. v. Babcock Co.*, 410 So. 2d 648 (Fla. 3d DCA 1982). Generally speaking, legislative action results in the formulation of a general rule of policy, whereas judicial action results in the application of a general rule of policy. Carl J. Peckinpugh, Jr., Comment, *Burden of Proof in Land Use Regulations: A Unified Approach and Application to Florida*, 8 Fla. St. U. L. Rev. 499, 504 (1980). In *West Flagler Amusement Co. v. State Racing Commission*, 122 Fla. 222, 225, 165 So. 64, 65 (1935), we explained:

A judicial or quasi-judicial act determines the rules of law applicable, and the rights affected by them, in relation to past transactions. On the other hand, a quasi-legislative or administrative order prescribes what the rule or requirement of administratively determined duty shall be with respect to transactions to be executed in the future, in order that same shall be considered lawful. But even so, quasi-legislative and quasi-executive orders, after they have already been entered, may have a quasi-judicial attribute if capable of being arrived at and provided by law to be declared by the administrative agency only after express statutory notice, hearing and consideration of evidence to be adduced as a basis for the making thereof.

Applying this criterion, it is evident that comprehensive rezonings affecting a large portion of the public are legislative in nature. However, we agree with the court below when it said:

Rezoning actions which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of . . . quasi-judicial action

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Snyder, 595 So. 2d at 78. Therefore, the board's action on Snyder's application was in the nature of a quasi-judicial proceeding and properly reviewable by petition for certiorari.¹

We also agree with the court below that the review is subject to strict scrutiny. In practical effect, the review by strict scrutiny in zoning cases appears to be the same as that given in the review of other quasi-judicial decisions. See *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So. 2d 996 (Fla. 2d DCA 1993) (The term "strict scrutiny" arises from the necessity of strict compliance with comprehensive plan.). This term as used in the review of land use decisions must be distinguished from the type of strict scrutiny review afforded in some constitutional cases. Compare *Snyder v. Board of County Comm'rs*, 595 So. 2d 65, 75-76 (Fla. 5th DCA 1991) (land use), and *Machado v. Musgrove*, 519 So. 2d 629, 632 (Fla. 3d DCA 1987), review denied, 529 So. 2d 693 (Fla. 1988), and review denied, 529 So. 2d 694 (Fla. 1988) (land use), with *In re Estate of Greenberg*, 390 So. 2d 40, 42-43 (Fla. 1980) (general discussion of strict scrutiny review in context of fundamental rights), appeal dismissed, 450 U.S. 961, 101 S. Ct. 1475, 67 L. Ed. 2d 610 (1981), *Florida High Sch. Activities Ass'n v. Thomas*, 434 So. 2d 306 (Fla. 1983) (equal protection), and *Department of Revenue v. Magazine Publishers of America, Inc.*, 604 So. 2d 459 (Fla. 1992) (First Amendment).

At this point, we depart from the rationale of the court below. In the first place, the opinion overlooks the premise that the comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth. See *City of Jacksonville Beach*, 461 So. 2d at 163, in which the following statement from *Marracci v. City of Scappoose*, 26 Ore. App. 131, 552 P.2d 552, 553 (Or. Ct. App. 1976), was approved:

[A] comprehensive plan only establishes a long-range maximum limit on the possible intensity of land use; a plan does not simultaneously establish an immediate minimum limit on the possible intensity of land use. The present use of land may, by zoning ordinance, continue to be more limited than the future use contemplated by the comprehensive plan.

Even where a denial of a zoning application would be inconsistent with the plan, the local government should have the discretion to decide that the maximum development density should not be allowed provided the governmental body approves some development that is consistent with the plan and the government's decision is supported

¹ One or more of the amicus briefs suggests that Snyder's remedy was to bring a de novo action in circuit court pursuant to section 163.3215, Florida Statutes (1991). However, in *Parker v. Leon County*, Nos. 80,230 and 80,288, 627 So.2d 476 (Fla. Oct. 7, 1993), we explained that this statute only provides a remedy for third parties to challenge the consistency of development orders.

by substantial, competent evidence.

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 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.

619 So. 2d at 1005-06.

This raises a question of whether the Growth Management Act provides any comfort to the landowner when the denial of the rezoning request is consistent with the comprehensive plan. It could be argued that the only recourse is to pursue the traditional remedy of attempting to prove that the denial of the application was arbitrary, discriminatory, or unreasonable. *Burritt v. Harris*, 172 So. 2d 820 (Fla. 1965); *City of Naples v. Central Plaza of Naples, Inc.*, 303 So. 2d 423 (Fla. 2d DCA 1974). Yet, the fact that a proposed use is consistent with the plan means that the planners contemplated that that use would be acceptable at some point in the future. We do not believe the Growth Management Act was intended to preclude development but only to insure that it proceed in an orderly manner.

Upon consideration, we hold that a landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. At this point, the burden shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. In effect, the landowners' traditional remedies will be subsumed within this rule, and the

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board will now have the burden of showing that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable. If the board carries its burden, the application should be denied.

While they may be useful, 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. Further review in the district court of appeal will continue to be governed by the principles of *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982).

Based on the foregoing, we quash the decision below and disapprove *City of Jacksonville Beach v. Grubbs* and *Palm Beach County v. Tinnerman*, to the extent they are inconsistent with this opinion. However, in the posture of this case, we are reluctant to preclude the Snyders from any avenue of relief. Because of the possibility that conditions have changed during the extended lapse of time since their original application was filed, we believe that justice would be best served by permitting them to file a new application for rezoning of the property. The application will be without prejudice of the result reached by this decision and will allow the process to begin anew according to the procedure outlined in our opinion.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, KOGAN and HARDING, JJ., concur.
SHAW, J., dissents.

JUDGES: GRIMES, BARKETT, OVERTON, McDONALD, KOGAN, HARDING,
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Excerpted from: [Florida Land Development Regulations](#)
For writers, administrators, users, and challengers of Florida land development regulations.

<http://floridaldrs.com/2011/07/08/what-is-competent-substantial-evidence-in-florida-land-use-hearings/>

What is Competent Substantial Evidence in Florida Land Use Hearings?

In Florida, the review conducted for most zoning type actions (rezonings,¹ conditional uses,² variances,³ site plan reviews, etc.⁴) are quasi-judicial in nature. In a quasi-judicial review by the local government, the applicant has the responsibility of proving (“burden of proof”⁵) that the application meets the applicable requirements and, if the applicant’s burden of proof is met, the burden of proof shifts to those seeking the denial of the application.⁶ This means that it is the applicant’s duty to establish (read: convince the reviewer of) the truth that the application complies with all of the applicable requirements. If that is done, it then becomes the opponent’s duty to establish the truth of what is required to deny the application.⁷ **The implication of meeting or not meeting these burdens is that, for all quasi-judicial land use reviews, if it is demonstrated that the application does not meet the standards, it must be denied. And, except for rezonings, if the application does meet the standards, it must be approved.** This makes the analysis of compliance or non-compliance with the standards the only point of the review.⁸

What is key, for this discussion, is that all of this proof and the final decision has to be based on evidence (oral or written statements, documents, or materials) presented in the review process. And that evidence has to rise to the level of being “competent substantial evidence.” The applicant and the opponents are supposed to present competent substantial evidence to meet their burdens of proof. The local reviewer/decision maker is supposed to make a decision based on the competent substantial evidence that was most convincing on the question of whether or not the application met the applicable review requirements. And, if the decision is appealed, there must be evidence in the record supporting that decision that rises to the level of being competent substantial evidence. But what does competent substantial evidence actually mean?

The courts recognize two types of competent substantial evidence – the type that has to be presented before the reviewing agency to meet the applicable burdens of proof (as the “standard of proof”) and the type that the “first-tier” reviewing court will look for (as the standard of review).⁹ The hearing version of competent substantial evidence involves the questions of the quality (character, convincing power, probative value or weight) of the evidence and the court review version involves questions on quantity (whether there is some evidence as to each essential element) and as to the legality and admissibility of that evidence.¹⁰ But despite those differences, the kind of evidence that is considered competent and substantial essentially appears to be the same between the two types.

So what is it? It has been variously described:

- “Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.”¹¹
- “‘Substantial’ requires that there be ... real, material, pertinent, and relevant evidence (as distinguished from ethereal, metaphysical, speculative or merely theoretical evidence or hypothetical possibilities) having definite probative value (that is, “tending to prove”) as to each essential element”¹²
- Relevant evidence is evidence tending to prove or disprove a material fact. “To be legally relevant, evidence must pass the tests of materiality (bearing on a fact to be proved), competency (being testified to by one in a position to know), and legal relevancy (having a tendency to make the fact more or less probable) and must not be excluded for other countervailing reasons.”¹³
- Competent evidence. “In employing the adjective ‘competent’ to modify the word ‘substantial,’ we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the “substantial” evidence should also be ‘competent.’”¹⁴
- “Competency of evidence refers to its admissibility under legal rules of evidence.”¹⁵
- “Competent substantial evidence is tantamount to legally sufficient evidence.”¹⁶
- Competent substantial evidence must:
 1. be reliable¹⁷ or credible
 2. be factually-based and not unsupported generalized statements¹⁸
 3. do more than merely creates a suspicion or give equal support to inconsistent inferences.¹⁹
 4. possess something of substantial and relevant consequence.²⁰
 5. “must not consist of vague, uncertain, or irrelevant matter not carrying the quality of proof”²¹
 6. “must amount to more than bare allegations or objections because it must establish a justifiable reason for support of or opposition to an issue.”²²
 7. must be more than surmise, conjecture or speculation.²³
 8. “must be based on something more than mere probabilities, guesses, whims, or caprices, but rather ... [support] a reasonable foundation for the conclusion reached.”²⁴

Putting these together, competent substantial evidence would be evidence that:

- is legally sound (sufficient and admissible under the rules of evidence, although it doesn’t have to comply with courtroom formality);
- is real (non-speculative, non-hypothetical) and based on facts (more than conjecture, unsupported generalized statements, surmise, mere probabilities, guesses, whims, or caprices);
- is reliable (credible, believable);
- is material (pertinent, relevant);

- tends to prove the points (facts, elements, standards) that must be proven (not just create a suspicion or could equally support another result);
- establishes a reasonable, substantial justification (basis of fact) for the point argued; and
- a reasonable mind would accept it as enough (adequate) to support the argued for conclusion.

Summarizing it further, competent substantial evidence is real, fact based, material, reliable evidence that tends to prove the points that must be proven and a reasonable mind would accept it as enough to support the argued for conclusion.

Conversely, hypothetical, speculative, fear or emotion based generalized statements that do not address the relevant issues and, although perhaps politically persuasive, cannot be reasonably said to support the action advocated, are not competent substantial evidence, and have no role to play in the review of a land use application. Context can also change the quality of the evidence; evidence that would be competent substantial evidence in one context (e.g. flooding risk evidence in a site plan flood plain analysis) would not be competent substantial evidence in another context (e.g. a use appropriateness evaluation for alcoholic beverage sales) if it isn't relevant to the issue at hand (i.e. flooding risks assessment is not a factor listed in determining whether alcoholic beverage sales are allowed²⁵).

Competent substantial evidence can come from anyone,²⁶ as long as it meets the competent substantial evidence standard.²⁷ But if the testimony is on a technical issue, the witness needs to have the necessary technical expertise to be able to speak on the issue.²⁸ There are cases that suggest that just lay witness opinions are not enough to justify a decision,²⁹ but a closer review seems to indicate that what is intended is that just opinions of anyone, lay-witness or expert, are not enough if they do not rise to the level of competent substantial evidence. It doesn't matter if the room is full of people offering their views, if their views do not rise to the level of competent substantial evidence, their testimony should have no effect on the decision.³⁰

So, now you know what it is and who can present it. But what does it mean in the real world? See the attached example ([Competent Substantial Evidence Hypothetical](#)) which explores this question in one hypothetical situation. See also the article, [Conducting Florida Quasi-Judicial Hearings That Work](#), for more on how competent substantial evidence can realistically be applied in quasi-judicial land use hearings.

Quasi-judicial hearings and the requisite competent substantial evidence has been the requirement in Florida for many years now. It is a complex issue that to date has frequently not been addressed well in local land use hearings. Hopefully this article provides some assistance in understanding better what competent substantial evidence means in a Florida quasi-judicial land use review and can help that to change.

End Notes:

1. *Board of County Commissioners of Brevard County v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993).

2. *City of Melbourne v. Hess Realty Corp.*, 575 So.2d 774, 775 (Fla. 5th DCA 1991)(confirming that a conditional use permit is a quasi-judicial function).
3. *Walgreen Co. v. Polk County*, 524 So.2d 1119, 1120 (Fla. 2d DCA 1988)(confirming that reviews of variances, even variances for alcoholic beverage sales, are quasi-judicial).
4. *Park of Commerce Assoc. v. City of Delray Beach*, 636 So.2d 12, 15 (Fla. 1994) (holding “decisions of local governments on building permits, site plans, and other development orders ... are quasi-judicial in nature”).
5. The term “burden of proof” has two distinct meanings. The one at issue here, however, appears to be the burden or “duty of establishing the truth of a given proposition or issue by such a quantum of evidence as the law demands in the case in which the issue arises” *In re Ziy’s Estate*, 223 So.2d 42, 43-44 (Fla. 1969).
6. *Irvine v. Duval County Planning Commission*, 495 So. 2d 167 (Fla. 1986).
7. That the application does not comply with the applicable requirements and is adverse to the public interests (*Irvine v. Duval County Planning Com’n*, 495 So.2d 167, 167 (Fla. 1986)) or, for rezoning applications, that maintaining the existing zoning classification accomplishes a legitimate public purpose and that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable, *Snyder*, 627 So. 2d at 476 (Fla. 1993).
8. See [*We could play this game much better if we knew the rules*](#) for more on this.
9. If the reviewer’s decision is appealed, the first-tier appeals court (in addition to a couple of other appeal issues) can, without reweighing the evidence, look at whether there is competent substantial evidence in the record to support the decision the reviewer made. At this level, competent substantial evidence becomes the standard of review – whether there is any evidence that rises to the level of competent substantial evidence to support the decision made. It is not a question of whether there was more evidence on one side or the other, whether the right decision was made, or any other weighing factor; just whether there is some competent substantial evidence to support the decision. *Florida Power & Light Co. v. City of Dania*, 761 So.2d 1089, 1092 (Fla. 2000).
10. Concurring opinion of Judge Cowart in *Dunn v. State*, 454 So.2d 641, 649 n.11 (Fla. 5th DCA 1984) as reported by *Lonergan v. Estate of Budahazi*, 669 So.2d 1062, 1064 (Fla. 5th DCA 1996).
11. *DeGroot v. Sheffield*, 95 So.2d 912, 916 (Fla.1957) (citations omitted) as cited by *Verizon Florida, Inc. v. Jaber*, 889 So.2d 712, 721, fn. 1 (Fla. 2004).
12. Concurring opinion of Judge Cowart in *Dunn v. State*, 454 So.2d 641, 649 n.11 (Fla. 5th DCA 1984) as reported by *Lonergan v. Estate of Budahazi*, 669 So.2d 1062, 1064 (Fla. 5th DCA 1996).
13. §90.401, F.S. and *Sims v. Brown*, 574 So.2d 131, 134 (Fla. 1991).
14. *DeGroot v. Sheffield*, 95 So.2d 912, 916 (Fla.1957) (citations omitted) as cited by *Verizon Florida, Inc. v. Jaber*, 889 So.2d 712, 721, fn. 1 (Fla. 2004).
15. Concurring opinion of Judge Cowart in *Dunn v. State*, 454 So.2d 641, 649 n.11 (Fla. 5th DCA 1984) as reported by *Lonergan v. Estate of Budahazi*, 669 So.2d 1062, 1064 (Fla. 5th DCA 1996).
16. *Florida Power & Light Co. v. City of Dania*, 761 So.2d 1089, 1092 (Fla. 2000).
17. *Florida Rate Conference v. Florida R. R. & Pub. Utilities Comm’n*, 108 So.2d 601, 607 (Fla. 1959) (“Although the terms ‘substantial evidence’ or ‘competent substantial evidence’ have been variously defined, past judicial interpretation indicates that an order

which bases an essential finding or conclusion solely on unreliable evidence should be held insufficient”).

18. *City of Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So.2d 202, 204-05 (Fla. 3d DCA 2003) (“Under this standard, generalized statements in opposition to a land use proposal, even those from an expert, should be disregarded. *See Div. of Admin. v. Samter*, 393 So.2d 1142, 1145 (Fla. 3d DCA 1981) (“[n]o weight may be accorded an expert opinion which is totally conclusory in nature and is unsupported by any discernible, factually-based chain of underlying reasoning”). However, contrary to the circuit court’s decision, relevant fact-based statements, whether expert or not, are to be considered. *See Blumenthal*, 675 So.2d at 607 (“[u]nder the correct legal standard, citizen testimony in a zoning matter is perfectly permissible and constitutes substantial competent evidence, so long as it is fact-based”); *see also Metro. Dade County v. Sportacres Dev. Group*, 698 So.2d 281, 282 (Fla. 3d DCA 1997)(holding that materials in the record in conjunction with neighbors’ testimony could constitute competent substantial evidence”).
19. *Florida Rate Conference v. Florida R. R. & Pub. Utilities Comm’n*, 108 So.2d 601, 607 (Fla. 1959), (“[T]he substantial evidence rule is not satisfied by evidence which merely creates a suspicion or which gives equal support to inconsistent inferences.”) citing *N. L. R. B. v. A. S. Abell Co.*, 4 Cir., 1938, 97 F.2d 951, 958.
20. *Florida Rate Conference v. Florida R. R. & Pub. Utilities Comm’n*, 108 So.2d 601, 607 (Fla. 1959) (“[E]vidence to be substantial must possess something of substantial and relevant consequence and must not consist of vague, uncertain, or irrelevant matter not carrying the quality of proof or having fitness to induce conviction.”), citing *Milford Copper Co. of Utah v. Industrial Commission*, 1922, 61 Utah 37, 210 P. 993, 994.
21. *Id.*
22. *Citinvest Const. Corp. v. City of Tampa*, 94-8171, 1995 WL 17079555 (Fla. Cir. Ct. 1995) *aff’d*, 662 So.2d 937 (Fla. 2d DCA 1995).
23. *Florida Rate Conference v. Florida R. R. & Pub. Utilities Comm’n*, 108 So.2d 601, 607 (Fla. 1959) (“Surmise, conjecture or speculation have been held not to be substantial evidence.”), citing *White v. Valley Land Company*, 1958, 64 N.M. 9, 322 P.2d 707, 709.
24. *Dep’t of Highway Safety & Motor Vehicles v. Trimble*, 821 So.2d 1084, 1086-87 (Fla. 1st DCA 2002).
25. It might be an issue for the site plan review of the building housing the alcoholic beverage sales, but not the question of whether the use is an appropriate use, unless there is something in the adopted code that directly makes the connection.
26. There are cases (e.g. *National Advertising Company v. Broward County*, 491 So. 2d 1262 (Fla. 4th DCA 1986)) that say that the testimony of an attorney representing a client at the hearing cannot be considered competent substantial evidence, but this may be more of an issue of an attorney holding him or herself out as a representative (not sworn in) rather than a witness or the attorney did not have the expertise or first hand knowledge to make the evidence presented competent substantial evidence. It does raise the question, however, of, not only should an attorney be sworn in, but whether it’s wise for attorneys with no first hand knowledge or expertise to be the sole witness for a side at a quasi-judicial hearing.
27. *Metro. Dade County v. Blumenthal*, 675 So.2d 598, 607 (Fla. 3d DCA 1995) (“Under the correct legal standard, citizen testimony in a zoning matter is perfectly permissible and

- constitutes substantial competent evidence, so long as it is fact-based”); *Bd. of County Com'rs of Pinellas County v. City of Clearwater*, 440 So.2d 497, 499 (Fla. 2d DCA 1983) (“The local, lay individuals with first-hand knowledge of the vicinity who were heard in opposition at the two public hearings were as qualified as “expert witnesses” to offer views on the ethereal, factual matter of whether the City’s proposed dock would materially impair the natural beauty and recreational advantages of the area”).
28. *Jesus Fellowship, Inc. v. Miami-Dade County*, 752 So.2d 708, 710 (Fla. 3d DCA 2000) (“Where technical expertise is required lay opinion testimony is not valid evidence upon which a special exception determination can be based in whole or in part”); *Katherine’s Bay, LLC v. Fagan*, 52 So.3d 19, 30 (Fla. 1st DCA 2010) (“Lay witnesses may offer their views in land use cases about matters not requiring expert testimony. For example, lay witnesses may testify about the natural beauty of an area because this is not an issue requiring expertise. Lay witnesses’ speculation about potential “traffic problems, light and noise pollution,” and general unfavorable impacts of a proposed land use are not, however, considered competent, substantial evidence. Similarly, lay witnesses’ opinions that a proposed land use will devalue homes in the area are insufficient to support a finding that such devaluation will occur (citations omitted)”).
29. *Katherine’s Bay, LLC v. Fagan*, 52 So.3d 19, 30 (Fla. 1st DCA 2010) (“There must be evidence other than the lay witnesses’ opinions to support such claims”).
30. *City of Apopka v. Orange County*, 299 So.2d 657, 659 (Fla. 4th DCA 1974).

November 19, 2014

Via Hand Delivery

Members of Apopka City Council
The City of Apopka
120 E. Main Street
Apopka, FL 32703

Re: ORDINANCE NO. 2386 – CHANGE IN ZONING FOR FLORIDA LAND TRUST #111 – ZDA AT SANDPIPER, LLC FROM “COUNTY” PD (ZIP) (RESIDENTIAL) TO “CITY” PLANNED UNIT DEVELOPMENT (PUD/R-1A) (RESIDENTIAL) AND APPROVAL OF THE PLANNED UNIT DEVELOPMENT MASTERSITE PLAN; AND HOLD OVER FOR SECOND READING & ADOPTION ON NOVEMBER 19, 2014. (PARCEL ID NUMBERS: 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)

Dear City Council Members,

I am writing you in reference to the second reading of Ordinance No. 2386 on Wednesday, 11/19/2014 involving the above listed development proposal and zoning change. The City Council has already been presented with evidence in support of the proposal, as well as evidence against the proposal. However, I am concerned that the process to this point and the consideration of evidence thus far has been flawed since coming before the City Council, and that the results may be a product of such flaws.

The developer here bears the initial burden of presenting substantial evidence to support his proposal, and to show that his proposed changes are consistent with the City of Apopka Comprehensive Plan, as well as the City of Apopka Land Development Code. Third parties challenging the proposed development must establish noncompliance through competent evidence.

The evidence submitted by the applicant developer has been focused solely on the development's compliance with the Comprehensive Plan and Development Code. His attorney's position has been simply one of "it is consistent, therefore it must pass." This position in itself has proven arguable, if not inaccurate. More importantly, case law from the Florida Supreme Court provides that it is not enough to show just that the proposed development complies with the Comprehensive Plan and the Code. Rather, when the zoning classification is challenged, **the applicant must show that the current classification is no longer reasonable.** The developer has not presented this claim, or provided any evidence in support of such a claim. Such a review is subject to strict scrutiny. Please find the attached Florida Supreme Court case providing as such (*Board of County Commissioners of Brevard County v. Snyder*, 627 So. 2d 469 (Fla. 1993)).

Further, it is important to note that, even if the developer is able to demonstrate that the change in zoning and the proposed development is consistent with the Comprehensive Plan and the Development Code, he is not presumptively entitled to an order in his favor. Other evidence should be considered, and the discretion is with the City Council as to whether or not to allow the use proposed by the developer. But the mere showing of compliance with the Comprehensive Plan and Development Code does not *ipso facto* create a property right for the developer that did not previously exist. I fear that this Council has already reached a preliminary decision while not properly considering the developer's burden of proof or the evidence challenging the development.

My further concern is that the demonstration of evidence against the approval of the development has been stifled by the selective focus of the City Council so far. Typically for a proposal and zoning change such as this, the City Council relies on the recommendations of the Apopka Planning Commission. In fact in the history of this matter, the proposal twice came before the Planning Commission so that it could submit such recommendations. Ultimately however, the City Council elected to completely disregard the recommendations of the Planning Commission due to concerns of due process in those meetings. Moving forward then without those recommendations, the City Council has now violated the due process rights of those challenging the proposed development.

While the applicant developer and his attorney were given an open forum to present evidence in favor of the proposed development at the first reading, challengers to the development's approval were only been given four minutes to present opposing evidence. Further, I understand that challengers may not yield time to any other challenger, thus preventing any challenger of authority or industry expertise from having the requisite time needed to present a competent demonstration of evidence. Quite simply, the challengers are unable to organize a unified voice against the development's approval. Case law in Florida has found that in fact eight minutes is far too little time to present competent evidence (See attached 3rd DCA case *Herndandez-Canton v. Miami City Commission*, 971 So.2d 829). This handicapping of the presentation of evidence is a denial of proper due process in a quasi-judicial setting. Not to mention that transcribed minutes of these readings are not made available to interested parties until months after decisions have already been made.

In reviewing what evidence has been considered by the City Council, it becomes clear that the proceedings have been quite one-sided. While the applicant developer and his attorney were allowed a full demonstration to submit all their evidence, the challenging parties were given mere minutes to attempt to provide counter evidence, and they were not given the ability to cross examine witnesses, or require testimony under oath. Among the challengers are third parties who face special damages, who have legal standing to challenge such a proposal, and who have come before this City Council only to be denied a fair proceeding (See attached case *Renard v. Dade County*, 261 So.2d 832 (Fla. 1972) for the test for legal standing in these proceedings). These parties have identifiable legal interests in this proposed development, but the City Council has not given them a fair seat at the table. Further, the City Council has disregarded the only other possible factual evidence from the Planning Commission- leaving the developer with a heavy advantage on the record.

Should the City Council fail to consider relevant opposing evidence at the 11/19/2014 reading and decide to approve the developer's proposal, those parties challenging the development will be left with no option other than to file for declaratory judgment and writ of certiorari with the Circuit Court of the Ninth Judicial Circuit. It is not clear that enough evidence has been presented by the developer to show that the initial burden has been met to prove that both: a) the development is consistent with the Comprehensive Plan and the Development Code; and b) that the current zoning

classification has become unreasonable. However, competent evidence is available which suggests that there is good reason to deny the developer's development plan altogether. The City Council, unfortunately, has been selective in its review of evidence.

In order to create a more objective and fair record of facts, the City Council should choose to proceed with one or both of the following options:

- 1) Send the proceedings back before the Planning Commissions once again so that proper findings of facts can be constructed and recommendations can be considered by the City Council before a final decision is reached. The City Council should instruct the Planning Commission to either conduct the hearing in an appropriate manner with no commissioners presenting factual evidence, or to recuse any commissioners from the hearing who have a conflict of interest in the matter.
- 2) Open up its floor on Wednesday 11/19/2014 or at another reading before the City Council, and allow the challengers to present an organized demonstration from myself to properly present the existing competent evidence against the development. Further, to allow a representative of the challengers such as myself to cross examine witnesses, require testimony be submitted under oath, and conduct the quasi-judicial proceeding in a more formal manner. As a quasi-judicial proceeding, parties are entitled to cross-examine witnesses, demand testimony under oath, and demand a decision that is based on both a correct application of the law and the competent evidence in the record.

I request that I be granted no fewer than 1 hour to complete my demonstration, cross examine witnesses, and to have a question and answer session with the City Council so that I may present evidence and answer questions from the Council on behalf of the challengers to the proposed development.

If you have any questions, please feel free to contact me at my office, which contact information can be found on page 1 of this letter.

Sincerely,



Scott A. Smothers, Esq.

Scott@SmothersLawFirm.com

24 HOUR VOLUME SUMMARY

NO	HOUR	N THOMPSON ROAD		E SANDPIPER ROAD		WB	(NB+SB)	(EB+WB)	TOTAL	HOUR
		NB	SB	EB	WB					
1	0-1	17	6	7	0	0	23	7	30	0-1
2	1-2	17	7	4	0	0	24	4	28	1-2
3	2-3	9	6	5	0	0	15	5	20	2-3
4	3-4	7	7	7	0	0	14	7	21	3-4
5	4-5	11	18	23	0	0	29	23	52	4-5
6	5-6	36	59	63	0	0	95	63	158	5-6
7	6-7	118	156	204	0	0	274	204	478	6-7
8	7-8	206	266	364	0	0	472	364	836	7-8
9	8-9	178	217	219	0	0	395	219	614	8-9
10	9-10	160	149	161	0	0	309	161	470	9-10
11	10-11	159	121	106	0	0	280	106	386	10-11
12	11-12	153	128	96	0	0	281	96	377	11-12
13	12-13	216	144	106	0	0	360	106	466	12-13
14	13-14	246	131	137	0	0	377	137	514	13-14
15	14-15	294	154	157	0	0	448	157	605	14-15
16	15-16	316	131	148	0	0	447	148	595	15-16
17	16-17	422	133	139	0	0	555	139	694	16-17
18	17-18	461	173	160	0	0	634	160	794	17-18
19	18-19	374	141	153	0	0	515	153	668	18-19
20	19-20	247	122	120	0	0	369	120	489	19-20
21	20-21	201	78	94	0	0	279	94	373	20-21
22	21-22	165	54	49	0	0	219	49	268	21-22
23	22-23	59	21	24	0	0	80	24	104	22-23
24	23-24	30	24	15	0	0	54	15	69	23-24
TOTAL		4,102	2,446	2,561	0	0	6,548	2,561	9,109	

Thompson Sandpaper

STREET	ADT
N THOMPSON ROAD	6,548
E SANDPIPER ROAD	2,561

AM PEAK	PM PEAK	HOUR	VOLUME
		7-8	836
		17-18	794

5-6 pm

Total for 1 Day at Intersection w/ 2 way stop

ORANGE COUNTY TRAFFIC ENGINEERING DEPARTMENT

ADT = All Day Total

24 HOUR VOLUME SUMMARY

NO	HOUR	USTLER ROAD		E SANDPIPER ROAD		WB	(NB+SB)	(EB+WB)	TOTAL	HOUR
		NB	SB	EB	WB					
1	0-1	1	3	7	11	4	4	18	22	0-1
2	1-2	0	0	6	12	0	0	18	18	1-2
3	2-3	1	0	4	4	1	1	8	9	2-3
4	3-4	0	1	6	2	1	1	8	9	3-4
5	4-5	4	3	17	7	7	7	24	31	4-5
6	5-6	9	7	50	19	16	16	69	85	5-6
7	6-7	37	36	156	89	73	73	245	318	6-7
8	7-8	41	50	285	118	91	91	403	494	7-8
9	8-9	43	43	173	100	86	86	273	359	8-9
10	9-10	43	50	116	85	93	93	201	294	9-10
11	10-11	44	41	81	91	85	85	172	257	10-11
12	11-12	31	30	86	85	61	61	171	232	11-12
13	12-13	36	36	89	120	72	72	209	281	12-13
14	13-14	48	33	115	142	81	81	257	338	13-14
15	14-15	46	52	123	169	98	98	292	390	14-15
16	15-16	50	39	112	190	89	89	302	391	15-16
17	16-17	42	48	100	268	90	90	368	458	16-17
18	17-18	37	61	144	309	98	98	453	551	17-18
19	18-19	39	44	119	248	83	83	367	450	18-19
20	19-20	19	29	98	167	48	48	265	313	19-20
21	20-21	12	15	77	108	27	27	185	212	20-21
22	21-22	7	13	48	102	20	20	150	170	21-22
23	22-23	6	5	26	37	11	11	63	74	22-23
24	23-24	3	3	11	16	6	6	27	33	23-24
TOTAL		599	642	2,049	2,499	1,241	1,241	4,548	5,789	

STREET	ADT
USTLER ROAD	1,241
E SANDPIPER ROAD	4,548

AM PEAK	PM PEAK	HOUR	VOLUME
		7-8	494
		17-18	551

24 HOUR VOLUME SUMMARY

NO	HOUR	USTLER ROAD		E WELCH ROAD		(NB+SB)	(EB+WB)	TOTAL	HOUR
		NB	SB	EB	WB				
1	0-1	1	0	20	41	1	61	62	0-1
2	1-2	0	0	19	29	0	48	48	1-2
3	2-3	0	0	8	23	0	31	31	2-3
4	3-4	1	0	17	16	1	33	34	3-4
5	4-5	2	0	62	27	2	89	91	4-5
6	5-6	10	0	173	90	10	263	273	5-6
7	6-7	24	0	510	274	24	784	808	6-7
8	7-8	33	0	736	471	33	1207	1240	7-8
9	8-9	24	0	534	434	24	968	992	8-9
10	9-10	16	0	412	349	16	761	777	9-10
11	10-11	19	0	315	373	19	688	707	10-11
12	11-12	24	0	337	378	24	715	739	11-12
13	12-13	22	0	320	431	22	751	773	12-13
14	13-14	25	0	377	511	25	888	913	13-14
15	14-15	30	0	416	554	30	970	1000	14-15
16	15-16	36	0	396	610	36	1006	1042	15-16
17	16-17	47	0	430	769	47	1199	1246	16-17
18	17-18	28	0	485	833	28	1318	1346	17-18
19	18-19	25	0	409	690	25	1099	1124	18-19
20	19-20	17	0	332	518	17	850	867	19-20
21	20-21	14	0	255	419	14	674	688	20-21
22	21-22	12	0	108	316	12	424	436	21-22
23	22-23	7	0	61	162	7	223	230	22-23
24	23-24	3	0	40	86	3	126	129	23-24
TOTAL		420	0	6,772	8,404	420	15,176	15,596	

STREET	ADT
USTLER ROAD	420
E WELCH ROAD	15,176

AM PEAK	PM PEAK	HOUR	VOLUME
		7-8	1,240
		17-18	1,346

24 HOUR VOLUME SUMMARY

NO	HOUR	N PARK AVENUE		E SANDPIPER ROAD		(NB+SB)	(EB+WB)	TOTAL	HOUR
		NB	SB	EB	WB				
1	0-1	70	25	0	14	95	14	109	0-1
2	1-2	33	31	0	11	64	11	75	1-2
3	2-3	27	22	0	4	49	4	53	2-3
4	3-4	18	40	0	3	58	3	61	3-4
5	4-5	38	127	5	5	165	10	175	4-5
6	5-6	122	374	9	16	496	25	521	5-6
7	6-7	282	900	12	82	1182	94	1276	6-7
8	7-8	453	1008	10	110	1461	120	1581	7-8
9	8-9	436	781	9	89	1217	98	1315	8-9
10	9-10	465	554	8	71	1019	79	1098	9-10
11	10-11	479	479	5	86	958	91	1049	10-11
12	11-12	602	506	5	84	1108	89	1197	11-12
13	12-13	572	572	5	93	1144	98	1242	12-13
14	13-14	730	600	13	126	1330	139	1469	13-14
15	14-15	676	585	12	146	1261	158	1419	14-15
16	15-16	797	566	15	161	1363	176	1539	15-16
17	16-17	948	575	5	223	1523	228	1751	16-17
18	17-18	1143	648	7	289	1791	296	2087	17-18
19	18-19	796	622	14	227	1418	241	1659	18-19
20	19-20	653	514	8	137	1167	145	1312	19-20
21	20-21	516	423	9	94	939	103	1042	20-21
22	21-22	339	200	7	84	539	91	630	21-22
23	22-23	174	128	8	35	302	43	345	22-23
24	23-24	104	55	0	14	159	14	173	23-24
TOTAL		10,473	10,335	166	2,204	20,808	2,370	23,178	

STREET	ADT
N PARK AVENUE	20,808
E SANDPIPER ROAD	2,370

AM PEAK	PM PEAK	HOUR	VOLUME
		7-8	1,581
		17-18	2,087

Orange County Traffic Engineering

4200 John Young Parkway
Orlando, 32839 Florida

5

File Name : Sandpiper St at Thompson Rd AM Delay 102114
Site Code : 00000000
Start Date : 10/21/2014
Page No : 1

Summary Information:

7:00:00 AM - 8:01:00 AM	Lane 1
Total Vehicle Count:	353
Delayed Vehicle Count:	353
Through Vehicle Count:	0
Average Stopped Time:	24.12
Maximum Stopped Time:	82
Min. Secs. for Delay:	0
Average Queue:	2.36
Queue Density:	3.22
Maximum Queue:	12
Delay in Vehicle Hour:	2.36
Total Delay:	8513

6

Orange County Traffic Engineering

4200 John Young Parkway
Orlando, 32839 Florida

File Name : Sandpiper St at Park Av PM Delay 102314

Site Code : 00000000

Start Date : 10/23/2014

Page No : 1

Summary Information:

5:00:00 PM - 6:01:00 PM	Lane 1
Total Vehicle Count:	274
Delayed Vehicle Count:	274
Through Vehicle Count:	0
Average Stopped Time:	38.23
Maximum Stopped Time:	147
Min. Secs. for Delay:	0
Average Queue:	2.89
Queue Density:	3.83
Maximum Queue:	14
Delay in Vehicle Hour:	2.89
Total Delay:	10475

Parcel ID: 1
 Owner Name(s): CLOLAN PATRICIA TENBROOK
 Property Address: TENBROOK CLARA E LIFE ESTATE
 City: Apopka
 State: FL
 Zip: 32712
 Acres (+/-): 1
 Heated Area: 2495
 Zoning Code(s): R-1AAA

03-21-28-1137-00-010	CLOLAN PATRICIA TENBROOK TENBROOK CLARA E LIFE ESTATE REM: PATRICIA TENBROOK CLOLAN	593 USTLER RD	Apopka FL 32712	1	2495	R-1AAA
03-21-28-1137-00-020	OBRyant NANCY L OBRyant RANDY C	505 SIR ARTHUR CT	Apopka FL 32712	0.56	3030	A-2
03-21-28-1137-00-030	LOY VIRGINIA SIMPkins MARY E	511 SIR ARTHUR CT	Apopka FL 32712	0.45	1464	A-2
03-21-28-1137-00-040	SCHWARBERG BEAU	519 SIR ARTHUR CT	Apopka FL 32712	0.82	2177	A-2
03-21-28-1137-00-050	WILLIAMS GEORDA E SHEIKH FARRIS A	527 SIR ARTHUR CT	Apopka FL 32712	1.18	1874	A-2(ZIP)
03-21-28-1137-00-060	SHEIKH DAYNA M NADON JOHN F	535 SIR ARTHUR CT	Apopka FL 32712	1.02	3469	A-2(ZIP)
03-21-28-1137-00-070	NADON HELEN H NOLAN DOUGLAS SEAN	536 SIR ARTHUR CT	Apopka FL 32712	2.27	2931	A-2
03-21-28-1137-00-080	NOLAN TARA LYNNE MIXSON WAYNE C	528 SIR ARTHUR CT	Apopka FL 32712	1.68	2476	A-2
03-21-28-1137-00-090	MIXSON LURLIE A JONES DONALD G	520 SIR ARTHUR CT	Apopka FL 32712	1.43	3443	A-2
03-21-28-1137-00-100	JONES MARTHA J TOLEDO ALEXIS	510 SIR ARTHUR CT	Apopka FL 32712	1.47	0	A-2
03-21-28-1137-00-110	TOLEDO SANDRA MIXSON WAYNE C	504 SIR ARTHUR CT	Apopka FL 32712	1.47	2560	A-2
03-21-28-1137-00-120	MIXSON LURLIE A	524 SIR ARTHUR CT	Apopka FL 32712	0.1	0	A-2
AVERAGE				1.12	2160	

Oakwater Estates

Parcel ID	Owner Name(s)	Property Address	City	State	Property Type	Zip	Acres (+/-)	Area	Heated	Permit	Zoning Code(s)
03-21-28-6131-00-001	ORANGE COUNTY BCC	979 OAKPOINT CIR	Apopka	FL	32712		0.35		0		R-1AAAA
03-21-28-6131-00-002	ORANGE COUNTY BCC	919 OAKPOINT CIR	Apopka	FL	32712		0.7		0		R-1AAAA
03-21-28-6131-00-003	OAKWATER ESTATES HOMESOWNERS ASSOC INC	990 OAKPOINT VIEW CT	Apopka	FL	32712		1.9		0		R-1AAAA
03-21-28-6131-00-004	OAKWATER ESTATES HOMESOWNERS ASSOC INC	608 OAKPOINT RIDGE CT	Apopka	FL	32712		0.22		0		R-1AAAA
03-21-28-6131-00-010	DURR EVELYN L	1146 OAKPOINT CIR	Apopka	FL	32712		1.02		2639		R-1AAAA
03-21-28-6131-00-020	LIAS JOHN H LIAS GRACE B	1140 OAKPOINT CIR	Apopka	FL	32712		0.92		2290		R-1AAAA
03-21-28-6131-00-030	HOOD JOHN E HOOD JEAN BETH	1128 OAKPOINT CIR	Apopka	FL	32712		0.93		2963		R-1AAAA
03-21-28-6131-00-040	YOUMANS ROBERT P YOUMANS KATHERINE H	1122 OAKPOINT CIR	Apopka	FL	32712		0.92		2718		R-1AAAA
03-21-28-6131-00-050	FRITZ ROBERT J JR	1116 OAKPOINT CIR	Apopka	FL	32712		0.92		2831		R-1AAAA
03-21-28-6131-00-060	GRENKOSKI JAMES CHARLES GRENKOSKI TRACEY	1098 OAKPOINT CIR	Apopka	FL	32712		0.92		3884		R-1AAAA
03-21-28-6131-00-070	FRIEDMAN HENRY P BUFFA JOHN S	1092 OAKPOINT CIR	Apopka	FL	32712		0.92		2383		R-1AAAA
03-21-28-6131-00-080	WEINREB MURRAY ELLIOTT TR WEINREB ELIZABETH K TR	1086 OAKPOINT CIR	Apopka	FL	32712		1.31		2674		R-1AAAA
03-21-28-6131-00-090	WILCOX JOYCE	1080 OAKPOINT CIR	Apopka	FL	32712		1.48		2392		R-1AAAA
03-21-28-6131-00-100	MILBURN BRIAN	1074 OAKPOINT CIR	Apopka	FL	32712		1.46		2258		R-1AAAA

Oakwater Estates

03-21-28-6131-00-110	RHEINHART MARK D RHEINHART ELIZABETH B	1068 OAKPOINT CIR	Apopka	FL	32712	1.44	3256	R-1AAAA
03-21-28-6131-00-120	KIMBRIEL DUANE A KIMBRIEL LAURA LEE	1062 OAKPOINT CIR	Apopka	FL	32712	1.4	3611	R-1AAAA
03-21-28-6131-00-130	SUSLA JACOB SUSLA KREMESA	1056 OAKPOINT CIR	Apopka	FL	32712	1.32	3060	R-1AAAA
03-21-28-6131-00-140	TRAN SON NGOC TRAN THUY QUYEN	1050 OAKPOINT CIR	Apopka	FL	32712	2.14	4069	R-1AAAA
03-21-28-6131-00-150	HOLLAND JOHN ROBERT HOLLAND MARLENE B	1044 OAKPOINT CIR	Apopka	FL	32712	2.47	3181	R-1AAAA
03-21-28-6131-00-160	OREN PAMELA F TR	1038 OAKPOINT CIR	Apopka	FL	32712	1.89	2301	R-1AAAA
03-21-28-6131-00-170	OCONNOR ELLEN M SCHWEER PAUL ROBERT	1032 OAKPOINT CIR	Apopka	FL	32712	2.31	3089	R-1AAAA
03-21-28-6131-00-180	REYNOLDS CHERYL SUE DELATTE LON R	996 OAKPOINT CIR	Apopka	FL	32712	2.43	4167	R-1AAAA
03-21-28-6131-00-190	DELATTE PATRICIA E CARSON ROBERT	984 OAKPOINT VIEW CT	Apopka	FL	32712	2.19	3493	R-1AAAA
03-21-28-6131-00-200	CARSON CYNTHIA E DASSE FRANK A	978 OAKPOINT CIR	Apopka	FL	32712	2.14	2644	R-1AAAA
03-21-28-6131-00-210	DASSE ELIZABETH S REILLY MARK	972 OAKPOINT CIR	Apopka	FL	32712	2.33	2599	R-1AAAA
03-21-28-6131-00-220	REILLY KAREN	966 OAKPOINT CIR	Apopka	FL	32712	2.53	2804	R-1AAAA
03-21-28-6131-00-230	DICKSON ALICE COOPER JACK D	960 OAKPOINT CIR	Apopka	FL	32712	2.72	2860	R-1AAAA
03-21-28-6131-00-240	COOPER JILL G DURDEN PEYTON TRENTIS	954 OAKPOINT CIR	Apopka	FL	32712	2.61	2358	R-1AAAA
03-21-28-6131-00-250	DURDEN ANASTASIA HAN MYUNG SOO	948 OAKPOINT CIR	Apopka	FL	32712	2.22	2608	R-1AAAA
03-21-28-6131-00-260	HAN KATHERINE C	942 OAKPOINT CIR	Apopka	FL	32712	0.7	3113	R-1AAAA
03-21-28-6131-00-270	ZEC ANTON	936 OAKPOINT CIR	Apopka	FL	32712	0.5	2905	R-1AAAA

Oakwater Estates

03-21-28-6131-00-280	HAACK KATHERINE E	616 OAKPOINT RIDGE CT	Apopka	FL	32712	1.31	2516	R-1AAAA
	RUCKER WOMACK H JR							
03-21-28-6131-00-290	RUCKER CHRISTINE J	617 OAKPOINT RIDGE CT	Apopka	FL	32712	1.52	3803	R-1AAAA
	MC GEE DAVID A							
03-21-28-6131-00-300	MC GEE JENNY L	609 OAKPOINT RIDGE CT	Apopka	FL	32712	0.55	2864	R-1AAAA
	HARDNETT MARVIN							
03-21-28-6131-00-310	HARDNETT DORIS	930 OAKPOINT CIR	Apopka	FL	32712	0.52	3249	R-1AAAA
	GIRARD CHRISTOPHER							
03-21-28-6131-00-320	GIRARD SHELLI	924 OAKPOINT CIR	Apopka	FL	32712	0.58	2490	R-1AAAA
	GARLAND SAUNDRA L							
03-21-28-6131-00-330	GARLAND SAUNDRA L	918 OAKPOINT CIR	Apopka	FL	32712	0.57	2226	R-1AAAA
	CORBETT CRAIG							
03-21-28-6131-00-340	CORBETT CHERYL	912 OAKPOINT CIR	Apopka	FL	32712	0.57	2393	R-1AAAA
	STANGLEIN EUGENE F							
03-21-28-6131-00-350	STANGLEIN NANCY L	906 OAKPOINT CIR	Apopka	FL	32712	0.64	2641	R-1AAAA
	CORBIN MICHAEL R							
03-21-28-6131-00-360	CORBIN HEIKE C	1115 OAKPOINT CIR	Apopka	FL	32712	0.71	2405	R-1AAAA
	BRASS DREW E							
03-21-28-6131-00-370	BRASS SHARON K	1121 OAKPOINT CIR	Apopka	FL	32712	0.69	3210	R-1AAAA
	GIBBON ROBERT W							
03-21-28-6131-00-380	GIBBON BRITTA C	1127 OAKPOINT CIR	Apopka	FL	32712	0.72	2513	R-1AAAA
	VOSE WADE C							
03-21-28-6131-00-390	VOSE JENNIFER A	1133 OAKPOINT CIR	Apopka	FL	32712	0.8	2723	R-1AAAA
	BUTERA CHRISTIAN N							
03-21-28-6131-00-400	BUTERA KELLY J	1139 OAKPOINT CIR	Apopka	FL	32712	1.93	5412	R-1AAAA
	OSTER TIMOTHY R							
03-21-28-6131-00-420	OSTER CONNIE	1087 OAKPOINT CIR	Apopka	FL	32712	0.54	2301	R-1AAAA
	MCCORMACK KEVIN							
03-21-28-6131-00-430	MCCORMACK LISA	937 OAKPOINT CIR	Apopka	FL	32712	0.5	2296	R-1AAAA
	MCGOVERN THEODORE B							
03-21-28-6131-00-440	MCGOVERN MARIA K	1081 OAKPOINT CIR	Apopka	FL	32712	0.51	3348	R-1AAAA
	EVANS MICHAEL H							
03-21-28-6131-00-450	EVANS DIANE L	949 OAKPOINT CIR	Apopka	FL	32712	0.57	4055	R-1AAAA

Oakwater Estates

03-21-28-6131-00-460	GILLEN JACK I GILLEN LYDIA L	1069 OAKPOINT CIR	Apopka FL 32712	0.5	2988	R-1A AAAA
03-21-28-6131-00-470	RAMSEY THOMAS L RAMSEY DEBORRAH K	961 OAKPOINT CIR	Apopka FL 32712	0.5	2438	R-1A AAAA
03-21-28-6131-00-480	SANDON MICHAEL S FERREIRA JORGE	1063 OAKPOINT CIR	Apopka FL 32712	0.51	2119	R-1A AAAA
03-21-28-6131-00-490	FERREIRA ANA L	1051 OAKPOINT CIR	Apopka FL 32712	0.52	2244	R-1A AAAA
AVERAGE				1.20	2680	

Wekiva Landing

Parcel ID	Owner Name(s)	Property Address	City	State	Property Type	Acres (+/-)	Heated Area	Zoning Code(s)
02-21-28-9090-00-001	WEKIVA LANDING HOMEOWNERS ASSOC INC	1147 OAKPOINT CIR	Apopka	FL	32712	1.24	0	R-CE
02-21-28-9090-00-002	WEKIVA LANDING HOMEOWNERS ASSOC INC	558 WEKIVA LANDING DR	Apopka	FL	32712	1.82	0	R-CE
02-21-28-9090-00-003	WEKIVA LANDING HOMEOWNERS ASSOC INC WILLIAM D COOK AND ROBYN D COOK REVOCABLE TRUST	549 WEKIVA LANDING DR	Apopka	FL	32712	0.43	0	R-CE
02-21-28-9090-00-010	NELSON BRYAN NELSON DEBBIE	1163 OAKPOINT CIR	Apopka	FL	32712	1.27	2449	R-CE
02-21-28-9090-00-020	STONE DAVID E	1157 OAKPOINT CIR	Apopka	FL	32712	1.27	2821	R-CE
02-21-28-9090-00-030	STONE PATRICIA A	1151 OAKPOINT CIR	Apopka	FL	32712	1.24	2668	R-CE
02-21-28-9090-00-040	DIGIOVANNI COLOGERO DIGIOVANNI JOSIE HOLDER MARC RANDALL LIFE ESTATE REM: MARC RANDALL	593 WEKIVA LANDING DR	Apopka	FL	32712	1.02	3004	R-CE
02-21-28-9090-00-050	HOLDER TRUST PICKELS LOWELL E	577 WEKIVA LANDING DR	Apopka	FL	32712	1.01	3164	R-CE
02-21-28-9090-00-060	PICKELS STACEE	569 WEKIVA LANDING DR	Apopka	FL	32712	1.05	1996	R-CE
02-21-28-9090-00-070	LUNDBERG WAYNE A LUNDBERG KATHRYN T	563 WEKIVA LANDING DR	Apopka	FL	32712	1.06	3476	R-CE
02-21-28-9090-00-080	WESIGHAN FRANK C WESIGHAN LYNN H	557 WEKIVA LANDING DR	Apopka	FL	32712	1.07	3875	R-CE

Wekiva Landing

02-21-28-9090-00-090	BULLAS JEREMY W ESTATE LOVE DIANA S	551 WEKIVA LANDING DR	Apopka FL	32712	0.96	3140	R-CE
02-21-28-9090-00-100	MUSSER WILLIAM D MUSSER KAREN D	545 WEKIVA LANDING DR	Apopka FL	32712	1.44	3212	R-CE
02-21-28-9090-00-110	JOHNSON MICHAEL S VIAR PAUL E	533 WEKIVA LANDING DR	Apopka FL	32712	1.04	2133	R-CE
02-21-28-9090-00-120	VIAR SUE W MCKILLOP JAMES H	521 WEKIVA LANDING DR	Apopka FL	32712	1.06	2973	R-CE
02-21-28-9090-00-130	MCKILLOP DEBORAH L	510 WEKIVA LANDING DR	Apopka FL	32712	2.77	2681	R-CE
02-21-28-9090-00-140	BURNS LANDRY E FOLEY JOSEPH D JR	516 WEKIVA LANDING DR	Apopka FL	32712	3.98	3432	R-CE
02-21-28-9090-00-150	FOLEY CAROL R AYA HORTENSIA	522 WEKIVA LANDING DR	Apopka FL	32712	2.89	3184	R-CE
02-21-28-9090-00-160	AYA EDGAR H HOOVER AARON M	528 WEKIVA LANDING DR	Apopka FL	32712	2.58	3458	R-CE
02-21-28-9090-00-170	HOOVER TARA	534 WEKIVA LANDING DR	Apopka FL	32712	2.34	0	R-CE
02-21-28-9090-00-180	WELTON LISA A LIFE ESTATE REM: LISA A WELTON REVOCABLE LIVING TRUST OWENS ANDREW DAVID	540 WEKIVA LANDING DR	Apopka FL	32712	1.79	2768	R-CE
02-21-28-9090-00-190	OWENS BETSY LYNN	546 WEKIVA LANDING DR	Apopka FL	32712	0.95	4026	R-CE
02-21-28-9090-00-200	CRAIG SHARON E	570 WEKIVA LANDING DR	Apopka FL	32712	1.78	2248	R-CE
AVERAGE					1.57	2466	

555 E. Sandpiper St	1.49
585 E. Sandpiper St	1.92
589 E. Sandpiper St	3.85
607 E. Sandpiper St	2.39
659 E. Sandpiper St	2.59
705 E. Sandpiper St	4.80
805 E. Sandpiper St	1.33
855 E. Sandpiper St	15.51 OUT
909 E. Sandpiper St	1.82
925 E. Sandpiper St	1.82
1005 E. Sandpiper St	1.82
1041 E. Sandpiper St	1.70
1063 E. Sandpiper St	1.71
1030 E. Sandpiper St	1.79

Average	Average wo skew
3.18	2.23

730 N Thompson Rd	1.16
720 N Thompson Rd	1.13
710 N Thompson Rd	1.23
700 N Thompson Rd	1.30
632 N Thompson Rd	1.28

801 Ustler	1.84
750 Ustler	0.52
742 Ustler	2.98
626 Ustler	2.5

455 Tanglewilde	1.48
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555 E. Sandpiper St	1.49
585 E. Sandpiper St	1.92
589 E. Sandpiper St	3.85
607 E. Sandpiper St	2.39
659 E. Sandpiper St	2.59
705 E. Sandpiper St	4.80
805 E. Sandpiper St	1.33
855 E. Sandpiper St	15.51 OUT
909 E. Sandpiper St	1.82
925 E. Sandpiper St	1.82
1005 E. Sandpiper St	1.82
1041 E. Sandpiper St	1.70
1063 E. Sandpiper St	1.71
1030 E. Sandpiper St	1.79

Average	Average wo skew
3.18	2.23

730 N Thompson Rd	1.16
720 N Thompson Rd	1.13
710 N Thompson Rd	1.23
700 N Thompson Rd	1.30
632 N Thompson Rd	1.28

801 Ustler	1.84
750 Ustler	0.52
742 Ustler	2.98
626 Ustler	2.5

455 Tanglewilde	1.48
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Created 11/19/2014

Map is for reference only and is not a survey.

2466 SQ. FT. AVERAGE
1.47 AVERAGE AVERAGE



EXHIBIT "C"

PLANNING COMMISSION MINUTES

OCTOBER 21, 2014

MINUTES OF THE PLANNING COMMISSION MEETING HELD ON OCTOBER 21, 2014, AT 5:01 P.M. IN THE CITY COUNCIL CHAMBERS, APOPKA, FLORIDA.

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

ABSENT: Orange County Public Schools (Non-voting)

OTHERS PRESENT: R. Jay Davoll, P.E. – Community Development Director/City Engineer, David Moon, AICP - Planning Manager, Cody Rodden, Michael Holmes, Robert Fritz, Bill Morris, David McBee, Jenny McBee, Lou Haubner, Diann Haubner, Thurston Squires, Shirley Squires, Bob Loomis, LeeAnn Belanger, John Cloran, Pichai Toochinda, Miranda Fitzgerald, David Stokes, Spring Thigpen, Steve Loomis, Steven Loomis, Roy L. Lester, Jill Cooper, Colleen Kelly, Les Hess, Larry Metzler, Ted McGovern, Chris DiRocco, Ed Velazquez, Jan Charles Potter, Mary Schwarberg, Crystal Lawrence, Mike Peronti, Connor Michael Peronti, Mary Smothers, Jerry Smothers, and Jeanne Green – Community Development Department Office Manager/Recording Secretary.

OPENING AND INVOCATION: Chairperson Hooks called the meeting to order and asked Melvin Birdsong to give the invocation. The Pledge of Allegiance followed.

CHANGE OF ZONING – APPLY LANE HOLDINGS, LLC – Chairperson Hooks stated that this item has been pulled from the agenda due to applicant not submitting all of the required documentation.

APPROVAL OF MINUTES: Chairperson Hooks asked if there were any corrections or additions to the September 9, 2014 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 September 9, 2014.

Motion: Melvin Birdsong made a motion to approve the Planning Commission minutes from the September 9, 2014 meeting, and Teresa Roper seconded the motion. Aye votes were cast by Steve Hooks, Mallory Walters, Melvin Birdsong, James Greene, Teresa Roper, Robert Ryan, and Pamela Toler (7-0).

Chairperson Hooks asked if there were any corrections or additions to the October 14, 2014 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 14, 2014.

Motion: James Greene made a motion to approve the Planning Commission minutes from the October 14, 2014 meetings, and Mallory Walters seconded the motion. Aye votes were cast by Steve Hooks, Mallory Walters, Melvin Birdsong, James Greene, Teresa Roper, Robert Ryan, and Pamela Toler (7-0).

VARIANCE – LOOMIS FUNERAL HOME – David Moon, Planning Manager, stated this is a request for approval of a variance of the City of Apopka Code of Ordinances, Part III, Land Development Code, Article VIII – Signs, Sections 8.04.02.C and 8.04.06.B.1 to allow a non-conforming sign (pole sign) to be replaced as a pole sign containing an electronic reader board. The owner is Loomis Funeral Home. The property is located at 420 West Main Street. The future land use is Commercial and the zoning is C-2. The existing and proposed use is a mortuary. The tract size is 0.75 +/- acres. The staff report and its findings are to be incorporated into and made a part of the minutes.

MINUTES OF THE PLANNING COMMISSION MEETING HELD ON OCTOBER 21, 2014 AT 5:01 P.M.

The applicant is requesting a variance to allow for an electronic (LED) reader board and to continue to use the existing pole site and to allow the size area of electronic reader board to exceed the maximum area allowed by the sign code.

The applicable city code for the variance request for the reuse of an existing sign pole is Section 8.04.02.C. that states that all freestanding signs shall be monument signs as regulated unless determined by the Planning Commission that hardships created by existing site conditions cause construction of a monument sign to be impractical or to create a potential hazard. The applicable city code for the variance request to be allowed to place an electronic reader board (LED) sign within a pole sign is Section 8.04.06.B.1 that states that pole signs are not allowed to hold or contain an electronic reader board.

The proposed electronic reader board is approximately 28 sq. ft. The total sign area is approximately 51.2 sq. ft., making the electronic reader board just over 55% of the total sign area. If approved the electronic reader board cannot be larger than the business sign.. Section 8.04.06.A.3., LDC, restricts the area of an electronic reader board to an area equal to or less than 50% of the total sign face.

When evaluating a variance application, the Planning Commission shall not vary from the requirements of the code unless it makes a positive finding, based on substantial competent evidence on each of the seven variance criteria. The applicant's response to the seven variance criteria are as follows:

1. There are practical difficulties in carrying out the strict letter of the regulation [in] that the requested variance relates to a hardship due to characteristics of the land and not solely on the needs of the owner.

Applicant Response: The practical difficulties that relates to a hardship due to the characteristics of the land is the fact we have a horseshoe type entrance and exit to our facility. In order to meet the City Code we would be forced to use a monument sign which would block the view, create a traffic issue and endanger our customers.

Staff Response: NEGATIVE FINDING - The site has a sufficient amount of space to construct a monument sign that would comply with Section 8.04.02.C of the code. The northwest frontage of the property along Orange Blossom Trail extends 85 feet from the eastern edge of the driveway to the property line. Furthermore, the variance applicant owns an additional 125 feet along Orange Blossom Trail.

2. The variance request is not based exclusively upon a desire to reduce the cost of developing the site.

Applicant's Response: This request has no effect on developing this site. We are keeping our existing sign pole and location, which has been the same now for over 28 years.

Staff Response: FINDING - Not applicable.

3. The proposed variance will not substantially increase congestion on surrounding public streets.

Applicant's Response: Because the previous sign, which has been in the same location for over 25 years, there is no substantial reason to feel that there will be an increase in congestion on surrounding street.

MINUTES OF THE PLANNING COMMISSION MEETING HELD ON OCTOBER 21, 2014 AT 5:01 P.M.

Staff Response: POSITIVE FINDING: Variance will not cause congestion on the surrounding streets.

4. The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.

Applicant's Response: The Loomis family feels that this improvement to our location does not in any way diminish property values. It in fact compliments and improves our surrounding neighbors.

Staff Response: POSITIVE FINDING: The intent of the Sign Code requirement for a monument sign is to improvement appearance along roadways within Apopka. The sign code promotes a sign type and design to create and promote a desired character along roadways within Apopka.

5. The effect of the proposed variance is in harmony with the general intent of this code and the specific intent of the relevant subject area(s) of the code.

Applicant's Response: We believe that we are in harmony with the general intent of this code based on the city's sign ordinance... 8.04.02. Free standing signs for single and multiple occupancy development; if we choose to keep our pole sign have a sign allowance of 64 SF (which is 20% less than the 80 SF allowance to monument signs) and our new sign will be 19 SF less than that.

Staff Response: NEGATIVE FINDING: The electronic reader board exceeds 50% of the sign face area. The total sign area covering an area of approximately 51.2 sq.ft., and the electronic reader board is approximately 28.1 sq. ft. or 51% of the sign face area.

6. Special conditions and circumstances do not result from the actions of the applicant.

Applicant's Response: There are no special conditions or circumstances.

Staff Response: NEGATIVE FINDING – The integration of an electronic reader board may set a precedent for the continuation of legal non-conforming signs. If the variance is granted, the City may have to allow other existing pole signs to have electronic reader boards placed on them.

7. That the variance granted is the minimum variance which will make possible the reasonable use of the land, building or structure. The proposed variance will not create safety hazards and other detriments to the public.

Applicant's Response: This proposed variance will not create a safety hazard, in fact by following the code we feel that this would create an unsafe hazard to our citizens, specially our aging population, which is projected to double within the next five years.

Staff Response: NEGATIVE FINDING: A monument sign will impede the line of sight at the current sign location. The current pole sign stanchion will be used to support the sign and electronic reader board. However, sufficient land area occurs at the eastern half of the property frontage to accommodate a monument sign.

MINUTES OF THE PLANNING COMMISSION MEETING HELD ON OCTOBER 21, 2014 AT 5:01 P.M.

The Development Review Committee finds no valid hardship exists to support the variance request to allow the use of an electronic reader board within a pole sign, or to allow an electronic reader board to exceed the 50 percent of the sign face area.

As per the Land Development Code, Article XI - 11.05.00.A. - The Planning Commission has been established as a citizen board to review and approve variances.

Staff's recommendation to the Planning Commission is to deny the following variance requests:

1. Section 8.04.02.C. Sign Code: All freestanding signs shall be monument signs as regulated unless determined by the Planning Commission that hardships created by existing site conditions cause construction of a monument sign to be impractical or to create a potential hazard. Note: if Planning Commission denies request for an electronic reader board on a pole sign, then request numbers 2 and 3 do not apply.
2. Place an electronic reader board (LED) sign within a pole sign. Section 8.04.06.B.1, Sign Code: Pole signs are not allowed to hold or contain an electronic reader board.
3. The sign area of the electronic reader board portion of the sign shall not exceed fifty percent of the total sign face.

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. The Planning Commission is delegated authority to make final action on this case, and may approve, deny, or approve with conditions based on the findings of fact presented at a public hearing.

Bob Loomis, Loomis Family Funeral Homes, 420 West Main Street, presented to the Commission members a booklet of information regarding the requested sign. He stated that his family has served the area for four generations. He said his family has served Apopka, very proudly, Rotarian, Past President, Past President of the Sertoma Club service to mankind to his mother working with the Women's Club. He said his family has always tried to uphold their professionalism and promote the City of Apopka in many ways. He stated that he feels the proposed sign is good for the City and where their business is located. He addressed the seven criteria outlined in the booklet that he presented to the Commission:

Criteria 1 – In staff's response it says that "The northwest frontage of the property along Orange Blossom Trail extends 85 feet from the eastern edge of the driveway to the property line" The driveway is two feet from our property line there. There is no way we can put a monument sign on that northwest corner.

Criteria 2 – Staff's response was that it was not applicable.

Criteria 3 – Staff's response was that this sign would not substantially diminish property values in, nor alter the essential character of the area surrounding streets. Mr. Loomis stated that this sign is over \$50,000 sign and the improvements will have a positive impact on our area.

Criteria 4 – Staff's findings were positive to the improvement to our location.

Criteria 5 – Mr. Loomis stated that earlier Mr. Moon mentioned in his presentation that the sign area was 55% but the staff report states that it is 51%. He said that the reason they chose the tear drop was to keep the sign very professional and classy. He said they are always promoting Apopka and making it a wonderful town. He said that if the Planning Commission would prefer that the tear

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drop shape (12.67 sq. ft.) incorporated into the sign, he is willing to square the top out which would be 22.75 sq. ft.

Mr. Loomis referenced a study done by the University of Nottingham that found that street level and monument advertisement signs were more of a distraction than raised pole signs. The research used eye movement tracking to measure the difference in street-level advertisement in terms of how they held the driver's attention.

Criteria 6 – Mr. Loomis stated that a lot of towns and municipalities have gone through the process of saying we want monument signs everywhere. They are beautiful and aesthetically pleasing but when you are on a five-lane highway with over 50,000 cars passing you a day, there monuments or street level signs create a huge distraction. These studies are from reputable entities such as the Highway Safety Manual from Washington DC, the United States Department of Transportation, and The AAA Foundation for Traffic Safety. All these reports come back saying that monument signs on high density, high traffic area create more of a hazard than they should and they are dangerous. He said the main obstacle with these monument or street level signs on the five lane highway is basically, referencing the Highway Safety Manual from Washington, DC, says that a driver's eye height is 3.5 feet when they are sitting in a car. The top of the car is 4.2 feet, pickup trucks are 7 feet. The height requirement for these monument signs or street level signs are 8 feet high. So now people are trying to find your sign, they can't see it, they are in traffic, trying to peek between cars coming at you and going with you to try to find a business creates a huge distraction. He suggested the City go back and revisit this and say that maybe on that corridor of a major highway running through the City that monument or street level signs is not the way to go. It's going to create a hazard. He said that in their business they deal a lot with the elderly and it's projected in the next five years that there are going to be over 5 million drivers 65 years and older. He said that he had been told that a driver had come to the City because one of the newly monument signs that was put on 441 created a distraction and caused him to have an accident.

Criteria 7 – Mr. Loomis said that on the west side of our property, the property line is two feet from our driveway. On the west side, the exact same thing exists. There's an egress or a driveway that runs right along the side of the funeral home. He said that they had purchased the property beside there because their intention is the build a canopy there. He said that most funeral homes line up their hearst and their family cars along side the chapel and we recently purchased the property beside us to do that. That driveway is going to be right out the side there. If we move that monument sign to that westerly side area we are going to be in the exact same scenario. That monument sign is going to impede and create another hazard. We can't move our sign. There is no other option for us because we want to grow and promote our business just like every other business wants to.

Mr. Loomis requested the Commission look over the handout and to take into consideration how he and his family treat the City and how they give a lot of their time by his mother being in the Women's Club, his brother being in Sertoma, or hisself being in Rotary and being a director of the Chamber. He said they always have the best interest of the City. He said that the proposed new sign is smaller than the existing sign. He said they are a funeral home and will not have flashing lights. This is a time and temperature sign. He said they are trying to be very professional and that he hopes the Commission will allow them to continue doing what they do.

In response to question by Chairperson Hooks, Mr. Moon stated that the northeast corner and not the northwest corner of the property would be an appropriate place for a monument sign and the current location of the pole sign is not appropriate for a monument sign because of line of sight issues. He stated that he could not comment on a canopy and whether a monument sign would be

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appropriate on the northeast corner because a site plan has not been submitted for review. He said there are several recent projects such as Sams Club, RaceTracs, Aldi's, WaWas, Florida Hospital, and the Waffle House that located on major highways had their plans submitted by professional engineers and no one made the argument that the monument sign was less safe than a pole sign.

Chairperson Hooks opened the meeting for public hearing.

Chris DiRocco, 404 West Main Street, stated that he supports the applicant's request to use a pole sign with the electronic board reader. He stated that he thinks it is a wonderful idea and will enhance the neighborhood. He said the trend in the City is to use digital signage. The proposed sign is beautifully designed and he finds it to be aesthetically appealing. He said that anything at ground level will impede the line of sight.

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

Chairperson Hooks reminded the Commission that they are the ones who put the sign code together and sent it to Council so they needed to be careful not to set a precedent with it and also with a variance request, the Planning Commission is the final authority. If the Commission grants it, it ends there, but if it is denied the applicant has appeal rights to the City Council.

Mr. Greene stated that the City may want to review the sign code to address the concerns Mr. Loomis raised; however, the request is significantly contrary to what is in the Sign Code and recommended that the Commission deny the request.

Chairperson Hooks stated that he likes the appearance of what is being presented and believes it would enhance the property; however, approving this request would create a Pandora's Box by becoming a precedence. He suggested that the City consider going back and reviewing this section of the Code.

Motion: James Greene made a motion to deny the request for variance of the City of Apopka Code of Ordinances, Part III, Land Development Code, Article VIII – Signs, Sections 8.04.02.C and 8.04.06.B. to allow a non-conforming sign (pole sign) with an electronic reader board because the codes state that all freestanding signs shall be monument signs as regulated and the Planning Commission found that the hardships created by the existing site conditions do not cause construction of a monument sign to be impractical or to create a potential hazard, for property located at 420 West Main Street and owned by Loomis Funeral Home, and Teresa Roper seconded the motion. Aye votes were cast by Steve Hooks, Mallory Walters, Melvin Birdsong, James Greene, Teresa Roper, Robert Ryan, and Pamela Toler (7-0).

Chairperson Hooks advised Mr. Loomis that, pursuant to the Land Development Code, he could appeal the decision through the City Council.

COMPREHENSIVE PLAN - LARGE SCALE – FUTURE LAND USE AMENDMENT – METZLER FAMILY TRUST – Mr. Moon stated this is a request to recommend approval of the Small Scale Future Land Use amendment from "County" Low Density Residential (0-4 du/ac) and "City" Residential Very Low Suburban (0-2 du/ac) to "City" Agriculture (1 du/5 ac) for the property owned by the Metzler Family Trust, c/o Larry Metzler. The property is located east of Vick Road, north of West Lester Road. The existing and proposed use is a container nursery. The existing maximum allowable development is 29 Units (5 ac. x 4 du/ac) plus (4.97 ac x 2 du/ac) and the

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proposed future land use would allow a maximum allowable development of 2 Units (9.97 x 1 du/5 ac). The tract size is 9.97 +/- acres. The staff report and its findings are to be incorporated into and made a part of the minutes.

The subject parcels were annexed into the City of Apopka on March 18, 1998 for Parcel # 28-20-28-0000-00-075, through the adoption of Ordinance No. 1151 and on October 1, 2014 for Parcel # 28-20-28-0000-00-010, through the adoption of Ordinance No. 2380. The proposed Small-Scale Future Land Use Amendment is requested by the owner, who has operated a foliage nursery at this site for more than a decade and desires to continue to do so for many years. Changing the zoning to Agriculture will also help preserve future agriculture tax credits with the Orange County Property Appraiser's office.

A request to assign an Agriculture zoning category to the Property is being processed in conjunction with this FLUM amendment. The FLUM amendment application covers approximately 9.97 acres. The property owner intends to continue using the site for a container nursery.

In conjunction with state requirements, staff has analyzed the proposed amendment and determined that adequate public facilities exist to support this land use change (see attached Land Use Report).

The existing and proposed use of the property is consistent with the Agriculture Future Land Use designation and the City's proposed AG Zoning designation. Site development cannot exceed the intensity allowed by the Future Land Use policies.

Staff has notified Orange County Public Schools (OCPS) of the proposed Future Land Use Map Amendment. The Future Land Use change to "City" Agriculture will generate fewer homes and thus fewer students for certain elementary, middle and high schools than the can be anticipated from higher residential densities allowed by "County" Future Land Use of Low Density and the "City" Future Land Use of Very Low Suburban. This Future Land Use amendment is subject to school capacity enhancement review.

The JPA requires the City to notify the County 30 days before any public hearing or advisory board. The City properly notified Orange County on September 24, 2014.

The Development Review Committee finds the proposed amendment consistent with the Comprehensive Plan and recommends approval of the change in Future Land Use from "County" Low Density Residential (0-4 du/ac) and City "Very Low Suburban) to "City" Agriculture for the property owned by the Metzler Family Trust.

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.

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

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Motion: Mallory Walters made a motion to recommend approval of the Small Scale Future Land Use Amendment from "County" Low Density Residential (0-4 du/ac) and "City" Residential Very Low Suburban (0-2 du/ac) to "City" Agriculture (1 du/5 ac) for the property owned by the Metzler Family Trust, c/o Larry Metzler and located east of Vick Road, north of West Lester Road, and the information and findings in the staff report. Motion seconded by Melvin Birdsong. Aye votes were cast by Steve Hooks, Mallory Walters, Melvin Birdsong, James Greene, Teresa Roper, Robert Ryan, and Pamela Toler (7-0).

CHANGE IN ZONING – Metzler Family Trust - Mr. Moon stated this is a request to recommend approval of the Change in Zoning "County" A-1 (ZIP) and "City" R-1AA to "City" AG for the property owned by the Metzler Family Trust, c/o Larry Metzler. The property is located east of Vick Road, north of West Lester Road. The existing and proposed use is a container nursery. The existing maximum allowable development under the current zoning is 39 Units and the proposed zoning would allow 2 Units. The tract size is 9.97 +/- acres. The staff report and its findings are to be incorporated into and made a part of the minutes.

The subject parcels were annexed into the City of Apopka on March 18, 1998 for Parcel # 28-20-28-0000-00-075, through the adoption of Ordinance No. 1151 and on October 1, 2014 for Parcel # 28-20-28-0000-00-010, through the adoption of Ordinance No. 2380. The proposed Small-Scale Future Land Use Amendment is requested by the owner, who has operated a foliage nursery at this site for more than a decade and desires to continue to do so for many years. Changing the zoning to Agriculture will also help preserve future agriculture tax credits with the Orange County Property Appraiser's office. Pursuant to Florida law, properties containing less than ten acres are eligible to be processed as a small-scale amendment. Such process does not require review by State planning agencies. Pursuant to Florida law properties containing less than ten acres are eligible to be processed as a small-scale amendment and does not require review by State planning agencies.

Staff has analyzed the proposed amendment and determined that adequate public facilities exist to support this zoning change as depicted in the Zoning Report.

The proposed AG rezoning is consistent with the Future Land Use Designation of Agriculture (1 dwelling unit per 5 acres) that is assigned to the property. Minimum lot size for property assigned the AG zoning category is 5 acres.

The proposed rezoning will result in a decrease in the number of residential units which could be developed at the subject property, resulting in fewer students than anticipated from the current zoning. A capacity enhancement agreement with OCPS is not necessary because the impacts on schools will be less than that generated by the current zoning.

The JPA requires the City to notify the County 30 days before any public hearing or advisory board. The City properly notified Orange County on September 24, 2014.

The Development Review Committee recommends approval of the change in Zoning from "County" A-1 and "City" R-1AA to "City" AG for the parcel owned by Metzler Family Trust.

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.

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

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Motion: Mallory Walters made a motion to recommend approval of the Change in Zoning from "County" A-1 (ZIP) and "City" R-1AA to "City" AG for the property located east of Vick Road, north of West Lester Road, owned by the Metzler Family Trust, subject to the information and findings in the staff report; and James Greene seconded the motion. Aye votes were cast by Steve Hooks, Mallory Walters, Ben Dreiling, James Greene, Teresa Roper, Robert Ryan, and Pamela Toler (7-0).

CHANGE IN ZONING – Norman E. Sawyer – David Moon, AICP, Planning Manager, stated this is a request to recommend approval of the Change in Zoning from "County" I-1/I-5 (ZIP) (Light Industrial) to "City" I-1 (Restricted Industrial), for the property owned by Norman E. Sawyer. The property is located north of 13th Street, east of Lambing Lane. The current Future Land Use is "City" Industrial. The existing and proposed maximum allowable development is 60,113 sq. ft. The proposed development is light industrial or commercial. No development plans have been submitted to the City. The tract size is 2.0 +/- acres. The staff report and its findings are to be incorporated into and made a part of the minutes.

The subject property was annexed into the City of Apopka on January 16, 2008, through the adoption of Ordinance No. 2009. The proposed zoning change is compatible with the character of the surrounding area. As the Property is assigned a Future Land Use Designation of Industrial, the property owner desires to assign a compatible City zoning category. A city zoning category currently is not assigned to the Property. Prior to annexation into the City, the Property was assigned an I-1/I-5 zoning category by Orange County government.

In conjunction with state requirements, staff has analyzed the proposed amendment and determined that adequate public facilities exist to support this zoning change (see attached Zoning Report).

The proposed I-1 rezoning is consistent with the Future Land Use Designation of Industrial that is assigned to the property. Site development cannot exceed the densities or intensities allowed by the Future Land Use policies. Development standards for the proposed I-1 zoning category establish a minimum lot area standard of 15,000 sq. ft.

The proposed zoning is for a non-residential use. Therefore, a school capacity enhancement agreement is not required.

The JPA requires the City to notify the County 30 days before any public hearing or advisory board. The City properly notified Orange County on September 24, 2014.

The Development Review Committee recommends approval of the change in Zoning from "County" I-1/I-5 (ZIP) (Light Industrial) to "City" I-1 (Restricted Industrial) for the property owned by Norman E. Sawyer.

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.

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

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Motion: Mallory Walters made a motion to recommend approval of the Change in Zoning from "County" I-1/I-5 (ZIP) (Light Industrial) to "City" I-1 (Restricted Industrial) for the property located north of 13th Street, east of Lambing Lane, owned by Norman E. Sawyer, subject to the information and findings in the staff report; and Teresa Roper seconded the motion. Aye votes were cast by Steve Hooks, Mallory Walters, Melvin Birdsong, James Greene, Teresa Roper, Robert Ryan, and Pamela Toler (7-0).

FINAL DEVELOPMENT PLAN (MINOR) – CIRCLE K – CLARCONA ROAD – Jay Davoll, P.E., Community Development Director/City Engineer, stated this is a request to recommend approval of the Final Development Plan (Minor) for the Circle K to be located north of East Keene Road and west of Clarcona Road. The owner is Clarcona Keene Retail, LLC. The applicant/engineering firm is Florida Engineering Group, Inc., c/o Samir J. Sebaali, P.E. and Rick Abt, Project Manager. The existing use is vacant land and the proposed use in 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. containing 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.

The Circle K – (Minor) Final Development Plan proposes a 7,000 square foot retail center and convenience store with a fuel station canopy covering 5,040 square feet. A preliminary development plan is not required for a project of this size. The proposal will require parking areas, retention ponds for stormwater management, and landscaping. A retail center with convenience store and gas station are permitted uses within the C-2 commercial zoning district. Any future phases shall be approved as a separate development plan application.

The stormwater management system will be handled by two on-site dry retention ponds. The stormwater ponds have been designed to meet the City's Land Development Code requirements.

The applicant has provided a detailed landscape and irrigation plan for the property. The planting materials and irrigation system design are consistent with the water-efficient landscape standards set forth in Ordinance No. 2069. A ten-foot wide buffer typically is provided adjacent to public right of ways.

Total inches on-site:	1,968
Total number of specimen trees:	0
Total inches removed:	1,968
Total inches retained:	0
Total inches required:	256.66
Total inches replaced:	255
Total inches post development:	255
Tree inches Deficit	101.66

The City's Land development Code and Tree Bank policy permit the applicant to make a contribution to the City's Tree Bank to mitigate the remaining deficient tree inches at \$10.00 per inch. The total amount required to be paid into the Tree Bank will be (\$1,016.60) dollars

Fifty-eight parking spaces are required per the City's standards and sixty-four spaces are provided. There are two full access points proposed onto East Keene Road and Clarcona Road.

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Staff has found the proposed building and fuel station canopy elevations to meet the intent of the City's Development Design Guidelines. Copies of the exterior elevations, as proposed by the applicant, are attached.

A master sign plan was submitted by the applicant but not with sufficient time prior for DRC review prior to the Planning Commission hearing. The master site plan shall appear on the November 10 Planning Commission agenda.

The applicant is requesting a waiver from section 6.06.00(c)5 of the Land Development Code and the city approved Dumpster Enclosure Detail - Figure (601), which requires the use of brick or stone cap block on the exterior walls of dumpster enclosure. The applicant is proposing to use building materials compatible with the exterior of the building. Staff does not object to this waiver request.

The conditions of approval is that a master sign plan must be approved by the Planning Commission prior to issuance of a building permit.

The Development Review Committee recommends approval of the Circle K - Final Development Plan, subject to the findings of this staff report.

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 questions by Chairperson Hooks, Mr. Davoll stated that there would be retail space for other users as well as the convenience store. The gasoline pumps would be located at the front of the convenience store on the south side of the property. This project does not fall within the Ocoee Apopka Road Small Area Study.

In response to a question by Ms. Toler, Mr. Davoll stated that the fuel tanks are typically underground and are regulated by the State.

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

Motion: Melvin Birdsong made a motion to recommend approval of the Circle K to be located north of East Keene Road, west of Clarcona Road Final Development Plan; and the waiver request to allow the applicant to use building materials compatible with the exterior of the building, subject to the condition of approval that a master sign plan be approved by the Planning Commission prior to the issuance of a building permit and the information and findings in the staff report. Mallory Walters seconded the motion. Aye votes were cast by Steve Hooks, Mallory Walters, Melvin Birdsong, James Greene, Teresa Roper, Robert Ryan, and Pamela Toler (7-0).

OLD BUSINESS:

Planning Commission:

FINDINGS OF FACT - CHANGE IN ZONING/MASTER SITE PLAN/PRELIMINARY DEVELOPMENT PLAN – FLORIDA LAND TRUST #111 – ZDA AT SANDPIPER, LLC –

Hooks: Old Business. All right, David.

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Mr. Moon: Chairman, Planning Commission, I'm David Moon, Planning Manager, with the Community Development Department. This case is not unfamiliar to the Planning Commission. You held a hearing on September 9th at which time the Planning Commission, based on the evidence presented thereat made a recommendation to City Council to deny. On September 17th, City Council held a hearing and directed the Planning Commission to rehear the case and form a statement of findings if it further determines that it is... further takes the position to deny the request to change the zoning to PUD as well as its Master Site Plan. Based on discussions with the attorney's office regarding this hearing, he states that the Planning Commission needs to hear from the public regarding information and testimony regarding this application as well as that from the applicant. Based on the direction from City Council the Planning Commission is to, if it chooses to deny, based on the information presented at this hearing as well as the September 9th hearing which is reflected in the meeting minutes for that hearing date, a Findings of Fact to Deny is necessary in order to proceed to City Council. What is a Finding of Fact? Finding of Fact is a decision or opinion arrived by the Planning Commission regarding the issues related to the facts that are submitted for decision by the Planning Commission at a public hearing. The facts that are submitted should be based on competent substantial evidence related to a relationship to the Comprehensive Plan, Land Development Code, and other City ordinances. General issues related to public health, safety, and welfare can be considered. One general issue is the topic of compatibility. If the motion is to deny then there is a need to reference the facts supporting your decision. Examples would be reference to a City code or policy or under a determination of non-compatibility a general term as to why the Planning Commission finds it not compatible with the adjacent communities or the character of the surrounding area. This application is a request to assign a PUD zoning. Under Planned Unit Development, it does allow flexibility in the design so long as it creates an equal or greater development design than that that would be required under straight zoning. So the intent of Planned Unit Development offers the applicant the ability to offer some differences from the current code. Now the issue with compatibility, under Florida Statute 163.3164, the definition of compatibility means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time so as that no use or condition is unduly negatively impacted directly or indirectly by another use or condition. That's right out of the State statutes that the 2014 State statutes. Now regarding the history of this project. It's not a factor in the decision that should be made this evening; however, there's repeat questions though of the history of approval of this project and we do also have a new Planning Commissioner that is starting this evening. So I do need to give a little background on the property as well as an explanation of its history. This property was annexed into the City on September 17, 2008. At that hearing date, a preliminary development plan was also presented to City Council, that the annexation hearing was the City Council hearing, the preliminary development plan was unanimously approved by the City Council with a condition that the final development plan further consider flooding issues and tree protection that were brought up by the public during the hearing. This preliminary development plan

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expired on March of 2009. Prior to City Council holding that hearing on the preliminary development plan, the Land Development Review Board conducted a hearing on August the 8th, 2008, at which it recommended to approve the preliminary development plan by a vote of five to one. The dissenting vote was Mallory Walters and the Chairman at the time was the existing Chairman. At the time those hearings occurred, and following the annexation, a City land use designation and zoning had not yet been assigned to the property. Per Florida Statutes, regarding annexations and the relationship to the future land use and zoning, as well as the comprehensive plan and development regulations, the statutes in 2007 and 2008 stated that if an area annexed was subject to a county land use plan and county zoning or subdivision regulations, these regulations remain in full force and affect until the municipality adopts a comprehensive plan amendment that includes the annexed area. Thus in 2008 when the Planning Commission made a recommendation at a vote of 5 to 1 and the City Council recommended to approve the preliminary development plan, it do so by finding the plan to be consistent with the county's comprehensive plan and city's... I'm sorry the county's comprehensive plan and the county's land development code. In 2011, the City adopted a future land use designation of Very Low Suburban to the subject property. Very Low Suburban allows for a density up to two units per acre. The county's designation was Low Density Residential up to four dwelling units per acre. At that time, the City assigned a future land use designation, based on Florida Statutes, any review of development plans for that property are to be consistent with the City's Land Development Code and Comprehensive Plan and any other development related ordinances that the City may have adopted. Therefore, any decision made by the Planning Commission this evening regarding this application should not reference what the Board of County Commissioners may or may not have done because in 2008 the review was based on the county's codes. Tonight's application is based on consistency with the City's comprehensive plan and land development code. Based on the hearing on September the 9th before the Planning Commission, the Development Review Committee recommendation was that the application was consistent with the Comprehensive Plan... the City's Comprehensive Plan and the City's Land Development Code. In addition, the Development Review Committee found that it was compatible with the character of the surrounding area subject to two objections within the plan related to buffering and the sidewalk that was missing along Sandpiper Street. The staff presentation from the September 9th meeting is carried forward to this evening so I'm not going to repeat the application and the presentation from the last hearing. The staff presentation is reflected in the minutes. So our new commissioner understands the request is to assigned a City zoning of Planned Unit Development to 58.23 acres for a property located south of Sandpiper Street, west of Ustler... east of Ustler Road, and generally west of Thompson Road. The maximum number of units proposed are 49 single family residential lots. The minimum livable area of the house is 49... is 2,000 square feet. The density for the property is approximately 1.0 dwelling units per acre and that's based on the developable acreage of 48.4 acres.

Hooks:

And once again, I will point out to you that that is backwards. You did the math backwards. It's like that .92.

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- Moon: The....
- Hooks: 49 dwelling units in 48 acres does not equal one point something. You did the math backwards.
- Moon: If there are....
- Hooks: There 49 lots and 48 acres...
- Moon: Right.
- Hooks: You can't have one acre per lot.
- Moon: I did the math. I believe that calculation is correct. If there are 400 lots in 100 acres, that's 4 units per acre. So we have...
- Walters: Get your calculator out.
- Moon: We have more lots than we do have... we have more homes than we have acres.
- Hooks: Which means there can't mean one acre per lot. Not the other way around.
- Moon: The... Since the question has been asked, although the comment was raised that the decision was made by the Board of County Commission should not be taken into consideration, I am going to point out some general differences between the proposed plan and that which was previously approved by the City Council with a recommendation from the Planning Commission. In the 2008 plan, which I will show in a second, there are three lots located at the western end of the Sandpiper property. Two join at this location and one along Ustler. Those three lots were moved to the interior of the property. Primarily on the north side of Lake McCoy. There are one... this is one additional lot along Lake McCoy. The lot widths are less wide than they were in the previous plan. These are, I believe, 70... 75 to 80 feet side; however, in this plan, there is the condition that no more than fifteen feet can be cleared from the rear yard down to the lake side. So these homes will be screened by the existing natural vegetation... that vegetation along the lake. On the interior of the property the lots that are abutting Oak Pointe, in this plan the house is 50 feet from the property line. In the 2008 plans there were 30 feet from the property line. The current plan proposes a 30 foot conservation easement in which no swimming pools or fences or accessory structures can be located within that 30 feet. The previous plans required a brick wall. There was no condition on accessory uses so swimming pools could have been... screened swimming pools could have been as close as 10 feet from the south property line. Now a swimming pool has to be a minimum of 30 feet from the south property line. This also applies to the eastern lots where the house has to be at least 40 feet from the property line with a 30 foot buffer. Previously this was only 20 feet with a 10 foot buffer and brick wall. Along the

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eastern portion of the property, is the same number of lots and the lots are consistent with the size of the 2008 plans with the exception of these interior lots which are 80 feet wide instead of 90 feet. The reason for that was to move the homes further to the north from Oak Pointe. One change that has been presented at this meeting that wasn't discussed at the first hearing before the Planning Commission is along Sandpiper Road. This won't be straight but unfortunately I can't rotate this, but from the northeastern corner to the stormwater pond, which is east of the entrance, there is a 10 foot landscape tract which was previously proposed; however, there is a 6 foot shrub within that 10 foot buffer with a canopy tree planted every 35 feet. That's to occur behind these lots along Sandpiper Street within the eastern side of the project. In addition to that, there is a country style tri-rail fence that will extend from the northeast of the project to the point where the open space area starts at its western end. Similar to the staff presentation on the 9th of September, staff recommends a sidewalk along Sandpiper Street all the way to Ustler to accommodate the pedestrian traffic that will be generated by Sandpiper. Particularly the elementary school students and middle school students that are assigned to Dream Lake and Apopka Middle School. They are in the walking distance requirement and will not be bused to those schools so we believe it is a public safety issue to provide that sidewalk. That completes my presentation on the.... any changes that have occurred from the last presentation and provide information regarding the City Council's direction to prepare a finding of fact if the recommendation is to deny. The staff recommendation has not changed since the last meeting other than DRC does support the applicant's proposal for the new buffer along Sandpiper. Staff still... DRC still request that the Planning Commission, in its motion if you decide to approve, that you require that sidewalk along Sandpiper Street. That concludes my presentation and I'll address any questions you may have.

Hooks: Just now you mentioned canopy trees along Sandpiper. What's a canopy tree?

Moon: Canopy tree typically is a deciduous tree that is going to provide shade. A palm tree...

Hooks: Okay.

Moon: ... would not be considered a canopy tree.

Hooks: There are power lines running down there. There's no point in putting in trees to have Duke Energy come in and take them half out. What's the point? If we are going to make them put trees in and just to watch Duke Energy come by six months later and cut them all out, what's the point? Why do we keep doing that? Anyway, that's just a whole other issue. Compatibility from the DRC. What is their definition of compatible? Why did they determine that this development is compatible with the surrounding area. How did they come to that conclusion?

Moon: Well, based on the information that was presented at the last hearing, a review was presented of the residential communities in the surrounding area and determined that

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there were lot sizes and house sizes that were compatible with that which is being proposed. I can go over that again. The lot widths that are proposed within this application....

Hooks: How many lots did you find that were compatible with the surrounding subdivisions? And which subdivisions did you look at? Let's start with across the street on the north side of Sandpiper. Were any of those....

Moon: Lot widths of 110 feet are compatible with the lots widths to the

Hooks: Let's talk about acreage....

Moon: south....

Hooks: Let's talk about acreage.

Moon: Okay.

Hooks: How many lots across the street, north of Sandpiper, have any lots comparable to this subdivision to the north?

Moon: They are larger. They are under the low density residential designation which doesn't prevent them from applying to the County for higher density.

Hooks: Okay, but we are trying to decide compatibility here. So everything to the north is significantly larger.

Moon: Residential is considered compatible if residential in our land use... future land use chart within the Land Development Code PUD is a compatible zoning category with the very low residential subdivision. When we go to the other surrounding neighborhoods....

Hooks: You said the DRC found this compatible with the surrounding neighborhoods. That's how you came to your decision to recommend approval.

Moon: That includes neighborhoods besides the abutting neighborhoods.

Hooks: Name one. I came prepared tonight, David. I hope you all did. On the north side the smallest lot on Sandpiper is 1.33 acres. It goes from there all the way to 15.51 acres. There is nothing in this development that's compatible with that. And if you want to go to the south I've got that too. The average lot size in Oak Point Estates, not including Wekiva Landing which are larger even, but just these lots that abut this property the average lot size is 1.24 acres. The smallest is a half-acre.

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Moon: I'll have to defer to the minutes from the last meeting when we look at the character of the area. We have all these residential subdivisions which abut and within proximity....

Hooks: They don't abut.

Walters: They don't.

Moon: ...across the road.

Hooks: They do not abut. They may be in proximity across another road but they do not abut. The properties along Thompson Road range from 1.13 acres to 1.30 acres on the east side of their property. They don't abut anything smaller than an acre. So I don't see how in the world you all came up that this was compatible with the surrounding area. To the north, to the east, to the west, to the south. If you want to go down to the southwest to Camelot which is Sir Arthur Court. The average lot size in that subdivision is 1.21 acres. There's nothing anywhere close to this. If you want to go across the street on Ustler, those lots range from 1.84 acres to almost 3 acres, 2.98 acres on Ustler to the east of this property. So there is nothing compatible about it and why DRC came up with this being compatible is beyond me but we're going to have a talk about it tonight. I want to make a point of record for the... for those of you who are here.

Moon: Staff presentation complete or do you have further questions?

Hooks: I'm done.

Ryan: Yes, I have a question...

Hooks: Anybody else? All right go ahead, Bob.

Ryan: In 2008 the City Council approved 49 lots. Is that correct?

Moon: That is correct.

Ryan: But they were larger lots.

Moon: They were generally in the same size as the lot that are proposed now with the exception of the lake front lots which are generally smaller. As they were... the applicant moved the three lots from Ustler and western Sandpiper to that location and then there are a few lots at the eastern end of the cul-de-sac that are 10 feet less...

Ryan: But on average...

Moon: Ten feet less in width to accommodate the buffer along the south property line adjacent to the...

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Ryan: I understand, but on average their smaller now. Right?

Moon: On average?

Ryan: The average lot sizes smaller than what they approved in 2008. The City Council.

Moon: The... The lot size... the typical lot size, yes would be slightly smaller; however, the density of the property is also less than what it is when the Council reviewed it and the other form of this board reviewed it in 2008. There is an additional 2.5 acres that was added to this project at the northwest corner that were at that 2008 that were left... that were owned by the same property owner but left out of the project.

Ryan: And what was the

Moon: That property recently annexed in the City and was pulled into the project. So from that standpoint this... the density of this project is slightly less than what it was.

Ryan: And what was the minimum living area in 2008?

Moon: In 2008, in the approved plans the minimum living area was 3,000 square feet. In the current plans, it's 2,000 square feet. Based on the zoning category that would typically be assigned to this site, the largest zoning category is around.... for straight zoning is around 1,800 square feet. The applicant agreed to increase that to 2,000 square feet. A survey was conducted for the residential homes in the surrounding, abutting land on the north side of Sandpiper, and to the south in Oak Point, there's homes abutting Sandpiper within Oak Point that are 2,200 square feet. There are homes on the north side of Sandpiper across the street that are 1,900 square feet. There are some homes that are larger but there is a diversity that typically ranges from 1,900 to 5,000 square feet. The 5,000 square foot homes represent a small portion of the homes that abut Sandpiper.

Ryan: I think there is a big difference between 3,000 square feet and 2,000 square feet. I also agree with you that there needs to be a sidewalk along Sandpiper.

Hooks: All right, any other from the Board?

Roper: I have a question.

Hooks: Okay.

Roper: Just for my clarification, and you might have covered this already and excuse me if you did, how do you determine compatibility? What do you look at? Is that a definition that's been defined in the Code somewhere?

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Moon: We follow the state definition. There isn't a definition of compatibility within the Land Development Code or Comprehensive Plan. So we refer to the general terminology of compatibility as well as that which is in the Florida Statutes. We look at the future land use designations assigned to adjacent properties; we look at the density of the property; we look at the impact on water and sewer and transportation. We evaluate the character of the subdivision design and what that, in the typical, general area of the project. We review the Comprehensive Plan for consistency with the required policies ranging from the future land use, conservation elements, transportation element, housing element, recreation.. so forth. And in the Land Development Code there's a chart that lists the zoning categories that are compatible with each of the land use categories and the zoning categories. And PUD is considered compatible with the very low suburban and, yes, we look at the general lot sizes that are in the area. We don't look at the value of the homes. That's not an issue of compatibility from the Land Development Code and Comprehensive Plan perspective. Lot size is not an indication of the value of the home. There are 25 acre parcels in the Apopka area or abutting areas that have trailer homes on them and 25 acres is a good size lot. And we... there are homes in the Orlando area that are 5,000 square foot lots that are worth half a million dollars on a 5,000... 6,000 square foot lot and there are homes that are 200,000 square feet that are on a half-acre... \$200,000 on a half-acre property. So it's a diversity. It depends on the market. It also depends on the home builder and also depends on what the homebuilder believes they can market in a particular area plus a number of other categories. But values of a home isn't an issue that staff takes into consideration. It's a long answer but there are a lot of factors that go into consideration of... for compatibility determination.

Hooks: Jim?

Greene: Yes, I know in our meeting in September, it certainly seemed to me that the subdivision immediately to the south and immediately to the north had much larger lot sizes on average and larger house sizes on average. I think it is difficult to say that the smaller subdivision proposed here is compatible and I would think there is a significant likelihood that it would have an adverse impact of the value of the subdivisions directly to the south and to the north. I don't know if that constitutes a statement of facts but that seems to me to be a realistic likelihood.

Hooks: I'm clearly opposed as we heard from this Commission, this particular development. I am not opposed to this piece of property being developed that's characteristic to the surrounding area and I don't think anybody here is either. They understand that's going to happen. This is clearly not it so I would like to work as we have done in the past to come to some compromise on what is compatible with the surrounding area that all these people can enjoy and Mr. Goldberg can enjoy as well. I think there is some middle ground somewhere in here.

Moon: The only other piece of information that I can provide is that staff looked at the development characteristics of the surrounding area, through aerial photos going back from 2008 to 2014 and the development characteristics in the area have not

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changed one bit. At that time there was a recommendation to approve 49 units on similar size lots. The character of the area has not changed. So from that perspective....

Hooks: But the land use went... cut in half. There was a reason that the land use went from 4 to 2. From the County to the City. So... and you keep referring back to the County's approval of this project and you told us that we can't do that. Now let's stay consistent. Either we can or we can't.

Moon: I am not referring to the County codes and policies, I am referring to the density of the property which hasn't changed and the characteristics of the surrounding area.

Hooks: I agree. The characteristics of this...

Moon: They haven't changed.

Hooks: The characteristics of the surrounding area, and I pointed out to you, Oak Pointe Estates, the average lot size is 1.24 acres and that includes some lots that are half acre. That's the smallest in there and this development that's almost the largest in it. That's not compatible and across the street there are two acres, just slightly less than two acres and above. That's not compatible. And that's our statement of fact. The fact is on the lots to the north of this proposed development on Sandpiper, let me get my right piece of paper here, excluding the fifteen acre lot, I'll take that out, for consistency sake. That's.. excuse the data. The average lot size across the street and along Ustler and Tanglewilde is 1.93 acres. Okay. And I took out the fifteen acre lot that would skew that data. The average lot size on Sir Arthur Court, which is called Camelot Subdivision, is 1.21 acres. That is on the southwest bottom side of the lake... Lake McCoy. The average lot size is Wekiva Landing, which is a spur off of Oak Pointe Estates, is 1.63 acres. These are the statement of facts. The Oak Pointe Estate subdivision the average lot size is 1.24 acres. That is a statement of fact. These are the facts that show that this particular proposed development is not compatible with the surrounding area and the characteristics of the neighborhoods that abut it. There is just no comparison.

Moon: My suggestion to the Planning Commission is that you proceed with the public hearing portion...

Hooks: I intend to.

Moon: to listen to the evidence and testimony then make your determination based on the information provided at the hearing as well as that provided by staff. That completes my presentation.

Hooks: Thank you. All right. Yes, ma'am?

Fitzgerald: I am representing the applicant...

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Hooks: Give us your name and address. We're glad to see you. Who's got the green... green...

Fitzgerald: Nice to see you too.

Hooks: Oh, you're flashing it at yourself?

Fitzgerald: My name....

Hooks: Somebody is targeting you already.

Fitzgerald: My name is Miranda Fitzgerald. I'm an attorney with Lowndes, Drosdick, Doster, Kantor & Reed law firm, 215 North Eola Drive, in Orlando, representing the owner of the property, Alan Goldberg, who is here with me. Alan is a representative of the Trust that owns the property. And I haven't appeared.... I haven't done anything in the City of Apopka for years and so what I thought I would do, and I don't know any of you personally, and because of that what I would like to do is give you some credentials. Let you know a little bit about me and primarily because this is a quasi-judicial hearing and I'll talk a little bit about that in a minute but if I may I would like to give the clerk a copy of my resume and I have copies for each of you.

Hooks: Sure. David, we are going to run over the 6:30 time limit. I don't know what we need to do about the people that's coming...

Davoll: They are going to wait outside.

Hooks: Okay. Are they going.... Is somebody outside?

Davoll: They already know that this could have run over...

Hooks: Okay.

Davoll: So they were going to wait outside.

Hooks: Thank you.

Green: Excuse me. Is the door unlocked? Can people get in?

Officer: That should be able to.

Green: Okay.

Hooks: Thank you. Sorry.

Green: Thank you.

Fitzgerald: As I said, this a quasi-judicial hearing. Anytime you're dealing with zoning unlike comprehensive planning, but when you are dealing with zoning that's quasi-judicial. That... that has a meaning that's important and it means, as David has already said, that your decision... your recommendation this evening and ultimately the decision the City Commission is... has got to be based on competent substantial evidence. The staff report that you've received is always deemed to be competent substantial evidence. It's prepared by professionals. They know what they're doing. It's.... If your decision is supported by that staff report that staff report is going to be deemed as competent substantial evidence in the record. Testimony from neighbors, neighboring property owners, may or may not be deemed to be competent substantial evidence. It really depends on what the topic is that is being discussed and whether there is some kind of special expertise that they have to talk about it. For example, to talk about traffic issues you really... just because you sit in traffic every day doesn't mean that you're really qualified to talk about whether the roads operate at an adequate level of service. If you talk about the fact that you see an eagle flying over the property periodically doesn't necessarily mean that your competent... have the credentials to talk about whether there are listed species on the property for example. And similarly, testimony from an attorney, such as myself, is not competent substantial evidence unless there is some expertise there and that is the reason I wanted to show you my resume. I've... For thirty-five years my practice has been limited to land use, zoning, annexations, comprehensive plans. Every manner of land use that you can probably think of and I have been qualified to testify as an expert before several circuit courts in Florida and will be testifying to you tonight not only as a representative of the owner but because of that special expertise that I have I would like to be considered to have some expertise in the matters that I am going to be talking about. So let me start. What I would like to do, and Mr. Chairman, I heard your comments. What I would like to do is kind of start at the back end. As David has said, we have had a lot of discussion with neighbors since the last hearing that you had and I was not here at that time but I have read the minutes, we've had some changes. We've had discussions with some of the neighboring property owners and I want to hand out if I can some proposed or revised conditions should you choose to agree to recommend this project. So what... what we've done... David, can we get the plan back up there. I don't what you all are working from to make that happen. Anyway what we've.... Thank you. Handy little gizmos there. So what has happened, you all have read the staff report that has been presented. And one correction that we need to make right at the outset, and I'm sure this is not going to make the Chairman happy, but we're going to say it anyway. The actual minimum... the minimum.. the smallest lot that is proposed in this subdivision or plan as 11,691 square feet. The staff report actually says that the minimum is 12,800 square feet. I just wanted to point out that that is not correct.

Hooks: What did you say it was?

Fitzgerald: It's 11,691 square feet. The largest lot is 29,600. Slightly over 29,600. So it's a blend. A mix of sizes. But I wanted to make that correction. On average the lot

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sizes are 18,000 + square feet in this plan. David had talked about the... the tri-rail fence, the second condition... addition here is the tri-rail fence with dense landscape buffer to reach six feet in height within two years. I didn't put in this document that you all are looking at where that is located but David went over that when he gave his presentation. It's not the entire frontage on Sandpiper but it's the eastern portion before you get to the retention pond. I think that's right, David, correct?

Moon: Yes.

Fitzgerald: We have made a commitment to the residents in the Wekiva Preserve subdivision not to have less than 2,200 square foot house. They asked for that. They also asked, and we've agreed, that this will be a gated community. There is some... In the earlier draft there was... that was left to be kind of an option. Something to be decided later. We've gone ahead and made the commitment that it will be a gated community and any language that's in the staff report or otherwise that would be inconsistent with gating we are asking to have that changed so that it will be a gated community. And then also in negotiation with the Wekiva Preserve owners we've agreed that at least 500 square feet of driveway pavers per house or, as an alternative, side loaded or court yard entries for each house. And that decision would be made on a house by house basis by the builder at the time of construction. We've asked for, and we are in disagreement with staff on this, and I just want to point this out, we've asked to have an internalized sidewalk. We have sidewalks along all of the streets in the development but we've asked to have an internalized sidewalk that would go... let me find my graph here. Can we switch to an overhead? How do I do that? Let me just.. there it is. That's better. So I just wanted to show you... So the idea would be to connect the internal roads with an additional road that would come up in this... a walkway... up to the corner of Ustler and Sandpiper and that way all of the students, all of the people that are living in this development could have internal sidewalk to this corner. There is already a sidewalk on the other side of Sandpiper and our thought was we can provide for the residents in this community internally that would be our preference and so we would make that request. The... We've also heard concern last time and from reading the minutes there's concerns just about traffic on Sandpiper. Staff agrees, our traffic consultant agrees, that the roads in the area operate at satisfactory levels of service. They operate appropriately. It's not creating a degraded condition of the road network but if it would help and if the City would approve it, we would be willing to install stop lights... there's already stop lights going....

Hooks: Stop signs or stop lights?

Fitzgerald: Not stop lights, I said the wrong... stop signs. Sorry. Stop signs here but to make this kind of a four-way stop at Ustler and Sandpiper just to slow traffic down. Cause again there was quite a bit of concern expressed last time about that. So those... those... I'll come back to these at the end but I wanted to next just go through... I was going to go a little bit into the history but I don't think I really need to do that. You've heard a lot about that and I know time is precious. So let me... let me do

this, let me go to comments from the last from the minutes of the last meeting and doing that I want to show... I want to show you two graphics. I don't know if I can put these up... let me show one first and then I'll put the other one up because I think this, at least from my perspective, interesting. What you're looking at here, this property.... It won't show up...yeah, there we go... This property is the property that we are talking about tonight. All the property on this graphic in yellow is in the City of Apopka. Every bit of the property in white on this map is in unincorporated county. So all of the neighbors that you heard from during your last meeting, neighbors to the south, neighbors to the north, a few neighbors to the east, are not city residents, and to the extent that that makes any difference in your mind, I think it's important and I want to tell you why I think it's important. It's one thing to say that we want to you be compatible, we want you to be consistent with the neighbors to the south and to the north that are in unincorporated county. Those properties are developed under county standards. They were developed a long time ago. The County regulations to the north have that as agricultural property. Just by its terms, agricultural are larger lots. To the south the Oak Water Estates area developed in the County. It's R-1AAAA. The minimum lot size that could have been developed in that subdivision is one-half acre and the reason has nothing to do, I mean realistically, had nothing to do with really saving trees, or making it pretty, or anything else. The reason you have a minimum of one-half acre lots is because there is no sewer in that area. Orange County did not provide sewer service to any of these areas in northwest Orange County. Doesn't exist. And so to get sewer service you have to annex into cities. And so one of the revenue streams, candidly, that the City of Apopka has, is its utilities and so what this project is bringing to the City, not only is tax revenue because you have the additional ad valorem tax, but you also are going to get sewer revenues and water revenues. And I don't know, I've tried to find out, I don't know if the Oak Water Estates people are on City water or County water or if they have wells. I don't have the answer to that but I am sure they don't have sewer. And this property has to have sewer. That changes the economics because when you have to install sewer lines and extend sewer lines that adds a cost. And so to have larger lots and sewer lines on top of that, which benefit the City, it just... it adds... it adds to the price. It doesn't make it as... it makes the houses more expensive and so on a square footage basis any of the houses that are developed in this property are going to cost more today. Prices are coming up again and they are going to be more expensive. So we have... the other thing that troubles me a bit is because we have county residents in large lots subdivisions approved in the county, coming to the City and saying we want you to duplicate exactly what we have and more and, you know, if you don't do that we don't want you to be approved. So they are telling the City, yes, you install the sewer system, yes you gets revenues, but we don't want you to maximize those revenues. We want you to have large lots and where you could have smaller lot we don't want you to do that. We want you to have larger lots and in fact, your comp plan, the City's Comprehensive Plan, says that there is a need during the planning horizon for the comp plan that the City of Apopka will need 41,005 new single family residential units and 7,493 new multi-family units during the planning period of your comp plan. You are not going to achieve that if you force people to have 1.3 acre lots. It is just not going to happen. And so...

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Hooks: Explain that. I don't quite understand why you're saying that. What do you mean we have to have? To do what? What's that?

Fitzgerald: Your comprehensive plan... first off let me back up a little bit. When the City, when any jurisdiction, adopts a comprehensive plan what that plan is, it's a long range look of population needs, demographics, what it is that the city is planning for as it goes out on the planning horizon. And in looking at the future your.... The housing element that is in your comprehensive plan says to satisfy the demand that is projected to be coming to the City of Apopka reasonably they expect that the City is going to need to approve and have available 41,005 new single family residences in the planning horizon and that goes out to 2030. It's not happening tomorrow. It's a long range plan but it's still a lot of houses. And so I understand that the people in the neighborhood bought into an area that was rural. A lot of west Orange County, Northwest Orange County has been rural for years. That fact is changing. I mean it is becoming more urbanized. All you have to do is go down 441, 436. Any of the areas. It is more urbanized today and it's nice that there are enclaves and areas like Oak Water Estates because that provides an alternative lifestyle. It's a lifestyle that will attract people looking for those large lot subdivisions. Looking for that area but it isn't everybody. Not everybody can afford that. Not everybody wants that lifestyle. Not everybody wants the huge yards that you have to maintain and the huge pool that you have to maintain. More and more, the demographics are that you want a pretty large house but you want them on smaller lots because of the maintenance cost is so much less if you don't have the yard guy coming every week and the pool guy coming every week. So again, just demographics have changed by making the commitment for 2,200 square foot lots... houses on an average lot size that will be 18,000 square feet, we do think this is compatible and we think it's... it's particular compatible to the areas that already annexed into the City. Let me show you a couple of those. The... This is Wekiva Preserve. It's a gated community. This will be a gated community. This is R-1AAA lots in the City. The R-1AAA lots, it's interesting, because the City's lot sizes are larger than the County lot sizes. So when this was approved in the County the County's R-1AAA lot size, under their standard zoning, is 14,520 square feet. The City's is 16,000 square feet so the R-1AAA is what... is what this property has. Again this has... the is R-1AAAA. The City's doesn't even have an R-1AAAA category. It's not apples to apples at all between the City categories and the County categories. The City categories are generally larger. The County's R-1AAAA, which is Oak Water, is a minimum half-acre lots and, as the Chairman said, there are some lots that are half-acre in there and you can't have them less than a half-acre because they are on septic tanks. So that was... that was the driver that made that subdivision what it is today. The City is requiring this property to have sewers. We don't have the option of having septic tanks. Even... Even if we went to half-acre lots or one-acre lots, the City would not let us develop those lots on anything other than sewer. So we cannot do septic and that is a cost and it is also a benefit to the environment not to have leaking septic tanks over time. So under any circumstance irrespective of what's in the code, and I know there was a lot some concern because the staff reports talks about minimum lot sizes, minimum

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house size based on the R-1A code in the City which in R-1A is only a 10,000 square foot minimum but the PUD that we are doing trumps that. Nothing.. Nothing... where the code has one condition on the same topic and the PUD has another condition on the topic, every day the PUD condition is going trump the code. So as I said earlier we've got one lot in this project that is 11,000.... Whatever I said.... 11,691 square feet all the way up to 29,600 square feet. The average 18,000 square feet for this development that is in the City that's on sewer. We've talked... another... Another big issue that the... at the meeting the last... before I... before I want to leave.... Before I want to say one more thing about sewer lines because I think it's really important. The only way that a City grows its tax base is to annex. It can also raise its millage, it could do that, but that's not generally very popular with the existing residents in the City. So your way of raising revenues in a City is annexation. And when you have a development and you have a utility system. You're getting revenue off of your utility systems. And you have a development that is going to extend sewer lines farther into unincorporated county territory that opens up more of an opportunity in the future for the City to annex additional land and grow the city, grow the city's tax base. And there will be, I am sure, eventually, some of this land, maybe not Oak Water Estates, but some of the agricultural lands that is up in this area is likely to annex into the City and because of this property you now have the opportunity for that annexation and you have the opportunity to have additional sewer revenues that you wouldn't have unless somebody else came in and extended those sewer lines. The house size... we've already talked a little bit about the house size, was also a big issue at your last meeting. At that point the issue before you was whether 2,000 square feet was going to be adequate. The City's standard is 1,800? David is that right?

Moon: The maximum that we have in that category is 1,800.

Fitzgerald: 1,800. So that's the maximum...

Moon: For straight zoning.

Fitzgerald: For straight zoning. So we started at 2,000. Many of the homeowners thought that was inadequate. We've increased it to 2,200. That's on the table today for your consideration. Very, very few of the houses in the area were built to minimum house size. And so I think when you see those minimums in code. I mean, just look at... I don't know where you all live but I mean if you look at your own subdivisions when you have those minimums in single family residential housing areas, generally the buyers come in and want the dormer on the house or they want the added on bonus room or they want something more than just the minimum. So it's not... I would say it's probably rare that you would ever have a majority of the very minimum house sizes in any kind of a mix of a subdivision. I want to talk a little bit.... Just a little bit about house value. We touched on that a bit. There was some concerns about. I'm not an appraiser but I do know that you can go to... you can look at what houses are selling for today on Zillow and other things. The houses in this community will start, the lowest price is expected to be \$250,000 and on the lake front lots, they are

expected to be \$400,000 to \$500,000 as a start. These are not... these are not starter homes. These are not going to be kids right out of college that are, you know, have their first job and are going to get their first house. That is not going to be who lives in these houses. So value, we think, is certainly going to be comparable to what is there and that goes into my view that's part of compatibility. It's lot size, it's whether you are dealing with apples to apples. Is the infrastructure the same? Is there a benefit to the City to have lots that are smaller that generate more utility revenue for the City? And can those lots be compatible with the houses that are reasonable sized along with everything else. And as far as the homeowners in Oak Water, may this would be... I could.... Well let me just skip with this graphic because I can just... it's not quite... too many papers... if I can find it quickly.... This one might be a little bit better. So here you can.. is that clear enough or is it my eyes?... little out of whack... Anyway. So this... I think... hopefully you can see this... this says R-1AAAA. That's the county's half-acre standard lot size recognizing that a number of these lots are larger because they go into the lake. All of these lots are lake bottom, part of the lot is the lake bottom. So that's where you get your huge lot acreages for the property in the County that are immediately south of this. Part of the commitment on the project is to have a 30 foot City conservation easement along the south boundary and I was driving through the neighborhood today before the hearing because I wanted to see the homes and I wanted to see the property. And it is amazingly dense. I mean.. you... it is... I mean it's... you can't see anything. If this buffer stays, as it will, it is a complete... complete buffer to everything on this side. Again the buffer will not extend around the lake edge but as David said, every one of the... there are eight lake front lots... they get 15 feet each to clear on their boundary. So that is not going to be intrusive to the neighbors across the lake. They are still going to see a heavy vegetated area as they look out. But that buffer will stay. There's not going to pools in it. There won't be accessory buildings in it. It will remain as it is and it is very dense. The other trees... want to talk about this too... trees were a big issue the other night at the September hearing. People were very concerned. They didn't want trees to be... they didn't want this property to be clear cut. They didn't want mass grading done and one of the commitments that's reported in the staff report is that will not happen. The lots will be selectively cleared. You all have a very stringent tree ordinance. So on a site by site, lot by lot basis the goal is going to be preserve as many trees as possible and so as part of this project, part of the development, fifteen acres here is being established as a park for the neighborhood. And for... and again driving on Ustler today, incredible dense vegetation here. And I was... I was pretty impressed and there is a huge house.. right here... I don't know how big that house is but its giant. It's a really big house and I was thinking to myself, they are not hear. They're not complaining. They know they are not going to see anything that's in this development because that area is so dense and it will stay that way. It's open space. It's to be used for recreation. It will be selectively cleared but the buffer along the south edge, 30 feet, preservation, in the City, and the reason I'm making the distinction here, that is not going to be a St. Johns River Water Management District type of conservation easement. It's not wetlands but we will give an easement... a conservation easement to the City as an upland conservation area. Let me just touch real quick on wildlife. That was another

issue. There is only one protected species on this property. It's gopher tortoises. Those are virtually everywhere. I mean they are listed as a listed protected species but their just... I don't... I think I've had one site in as long as I've been doing land use that didn't have gopher tortoises but they will be relocated onto the park property that is going to be retained an open space. We talked a little bit about traffic as well and it does, as your staff report has indicated and our traffic engineer has indicated, traffic is not an issue for this development. It operates... the roads operate... will continue to operate at adequate satisfactory levels of service and the owner of the property has offered to install stop signs if the City thinks that would be beneficial to keep traffic more controlled on Sandpiper. So with that, Mr. Chairman, I would just wrap up. I would very much appreciate your consideration of approval... recommendation for approval of this. I know there are a lot of issues and I know you have concerns. We think this is the right thing for the City. We certainly know there is a market for it. It's not one of those things... there was some fear expressed at the last hearing.. well what happens if these guys go away and it doesn't develop. There is a tremendous demand right now. I'm seeing it in my business and I'm, you know, across... I'm sure you're seeing it too with just the number of applications that you're probably getting, but this will develop and it will be developed very nicely and it will be compatible with the neighborhood and we would appreciate your support. Thank you very much.

Hooks: Thank you.

Fitzgerald: I would like to reserve a little time for rebuttal, Mr. Chairman, if I may.

Hooks: Sure. One of the things that you mentioned in your report is that there was a demand for this type of subdivision and I agree that there is. We've seen it and we've planned for it. We've got some developments that are coming before the City, one after this, with Florida Hospital. That whole area is being looked at for those types of single family homes and Kelly Park Crossing will be another one and we just...

Fitzgerald: Right.

Hooks: approved a Small Lot Overlay to accommodate some of these smaller homes and there is a demand for larger homes on smaller lots. I give you that. But there's still also a demand, as Mr. Haubner pointed out last month at the meeting, that the calls to his office are for "Do you have some acre lots or two acre lots." Not "Do you have a small lot with a 4,000 square foot home or 6,000 square foot home" that... he says he is not getting those kinds of calls but he is getting for acreage and, you know, we have development on the north side of Apopka "Bluegrass Estates" that have very expensive homes in there and, to my knowledge, they are all sold. There aren't any vacant homes in there so there's also a demand, although much smaller, for that type of development and I could see this being similar to that development with larger lots. That... I'm going.... I'm here to represent the people and I don't care if they are county or city. That is immaterial to me and I want to hear from them. You say you have met with them and have come to these terms. I will point out that on the

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minimum lot size and the average lot size. Nothing's changed. Those are exactly as they were... The point... the 18,000 average that's what it is last month when we talked so that's not changed. The minimum lot of 11,691, that is exactly the same as last month so that hadn't changed either. I want to open up public hearing for anybody else who wants to speak. And first, before we get started, I'll go over those who have turned in sheets to speak and the first I have is Colleen Kelly and this is in no particular order. So if Colleen would come up and give us your name, please, and your address and make your comments. We've got four minutes setup on the timer set. I'm going to try not to go by that. What we don't want to hear is what you told us last month. I already heard all that. We're going to take that into consideration again, but if you all have met with the developer and have come to some consensus, I'd like to hear about that. I'm... I'm with you'all. I'm here to help you all and like I... like I can say I think we can leave here tonight with some compromise if you all haven't already accomplished that. You may have. So go ahead.

Kelly: Hi. My name is Colleen Kelly. I live at 918 Palm Oak Drive in the Wekiva Preserve subdivision. I just... I talked with one of our Board members and she is going to be speaking with the conditions that she has made with Mr. Goldberg. But I wanted to speak on, Mr. Hooks, is what you talked about with the trees that they want to put in on Sandpiper. I agree one hundred percent with you they shouldn't put canopy trees there. I was a code enforcer for 21 years with the City of Orlando and one of the jobs that I had was doing landscape inspections. And the City of Orlando's code has what they call canopy trees and understory trees. Canopy trees are large oak trees, large sycamore trees, sweetgum trees. Stuff like that. Yet the understory trees which are your crepe myrtles, your wax myrtles, and holly trees and stuff like that. And when they wanted to change out a tree plan, they had to do it two for one. So instead of putting the canopy trees along there, what they should do is maybe put in two to one or three to one understory trees, the crepe myrtle type of whatever like that. And I think that there should be a minimum or a minimum sized canopy tree that should be left in the subdivision like a 22 inch caliper or something like that. I'm not sure what caliper is on the property because I haven't... I don't feel it's my right to walk on that property.

Hooks: Right, right, right.

Kelly: But that's what I wanted to talk about was the trees basically.

Hooks: Okay.

Kelly: And what you can do.

Hooks: Thank you. The... I agree with you on the tree issue. I like the canopy trees over the roads but if the power companies are going to come cut them in half, there's no point. They look worse than if you just put up understory trees or whatever. All right, who were you referring to that is going to give us a presentation?

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Kelly: Crystal.

Hooks: What's your name?

Lawrence: Crystal Lawrence.

Hooks: All right. Let me get to yours and let me hear what you've got to say and then we can go from there. Okay. Fire away.

Peronti: I'm going to walk her down.

Hooks: Sure. You can hold her hand.

Lawrence: I need it. My name is Crystal Lawrence. I live at 842 Palm Oak Drive.

Peronti: Michael Peronti, 865 Palm Oak Drive.

Lawrence: I'm here on behalf of the Board of Directors of Wekiva Preserve. We are a gated community of 73 homes. We have an average home size of a little over 2,900 square feet. We are located in the City of Apopka on the corner of Sandpiper and Ustler. Due to our proximity and the fact that we are located within the City, the homes in the proposed development will be direct comparables for homes sales within our community. In an effort to protect our home values we will not oppose and we will support the proposed development provided homes be a minimum of 2,200 square feet. The community remains gated and the provision for public roads be removed and each lot will have a minimum 500 square feet of pavers or courtyard side-entry driveways. The only thing that I would like to add that I wasn't going to say was, if any of you have driven down Sandpiper and seen the condition of the property and the way it is now, it's become a dumping ground. And it's not doing anything for our property values. We have no way to bring people into our subdivision that's astatically pleasing. If they come down Sandpiper they see this property that has abandoned homes. It's being used as a dumping ground. If they come down Ustler the side of Ustler opposite of use is County where there's very little enforcement. So we, for all those reasons, and in an effort to protect our home values are going to support this development.

Hooks: Okay, thank you.

Peronti: Thank you.

Hooks: All right, Mary Schwarberg, on Sir Arthur Court.

Schwarberg: I was hoping I wouldn't be first. Hi, I'm Mary Schwarberg. I live on Sir Arthur Court.

Hooks: 519.

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Schwarberg: 519 Sir Arthur Court. I live on the bottom side. I do face the trees, that I very much do appreciate and I think there were some of the neighbors that were here before that are on the other side of Ustler. Something I am concerned about is the four-way stop. I walk my dog down Ustler around 5:30 and there's a tremendous amount of traffic that makes a left hand turn to go down to the post office where there is a light where they can get out and turn left onto Park. I know that some here are very much interested in getting that four-way stop but I do think it is going to increase the amount of traffic going down Ustler and onto Tanglewilde and Tanglewilde is not a safe road. So I think that if you're going to put a four-way stop in there we need to consider putting a stop light in on Park so that traffic will continue down that direction to make that left hand turn. The other thing that I'm concerned about, reading through some of the documents in the last month, when we talk about two acres or two homes per acre. Why aren't we talking about lot sizes? And I personally, I do not represent anybody else here, if we could get to a half acre lot size I'd be very appreciative. I think it would keep my home, which is nearly an acre, it would keep the value there and I do... One other thing, is that I bought my home about a year and a half ago. And when my husband and I were looking we looked for a year to find a home that did have a larger lot that we could build on because the essence of the area that it's in we could make that home larger and add more square footage onto it and that's something I think there is a market for. It might not be a large market but there definitely is a market and you cannot find a home like that. We took a 1973 home, gutted it, and put \$70,000 into so far and we have a lot more to go. There are people out there that... God, I would have loved... loved to buy a home that would have been a half-acre in that beautiful area that I didn't have to do that and pay more than what you're going to have to... what you would ask for... for a home on a half-acre lot. So I that's... that's all I have. Thanks.

Hooks: Thank you. Lou Haubner is next.

Haubner: Lou Haubner, 140 East First Street, Apopka, Florida. I live in the City and I live on Tanglewilde which is near this property. Number one I would like to ask exactly how many acres is actually developable of that property? With all the easements and conservation, well not conservation easements. We haven't gotten to that point yet, but all the easements and so forth that go through it. I'm wondering how much real developable acreage is there.

Hooks: Forty-eight point 4 acres.

Haubner: Okay, the real thing is that when we say two units per acre what we are really saying is the city approved low density suburban. Which is zero to two acres or two units per acre. So I would like to see it be zero but I would go along with half a house per acre or maybe even one. But that is one thing I think you need to consider is the zoning. The low density residential is zero to two, not two, zero to two. I'm not sure I would want to live in a gated community with trees around it and a wooden fence across the front. I think probably they need to put one of those dog wires around it and when you step on that dog wire you get electrocuted. I'm not sure a gated

community is a place for a buffer zone. And the second thing, I'm not sure you can put a walkway through a conservation area. They keep saying they are going to donate this property to the City along the lake. Well, who is going to take care of it? Is the City going to take care of or is the home owners going to take care of it? You got a fifteen foot right-of-way through that if you build a house there. Well those... sooner or later those are going to get wider and wider and wider cause, you know, they sell a lot of RoundUp and pretty soon you want to see the lake. If you buy a lake front house for half a million dollars probably want to see the lake. I would. So I probably start clearing there secretly without anybody knowing it. And the third thing. They talk about that fifteen acres, I think it is on the east...or the west side and I talked to the developer or one of the representatives for the developer, recently and I asked him, I said "Are you going to turn that into a conservation area? Well, who is that land going to belong to? That fifteen acres? Is it going to be deeded to the City? Is it going to be deeded to the community? Or is it going to be turned into a conservation area?" And I'm sure you are aware what a conservation area is. You can't do anything with your property from here to eternity if you give it to a conservation area. You can't put a walkway through it. If there is a bike path through there now or where people ride four-wheelers, you have to put it back into its original state as it was in the early 1900's. Before it can be turned into a conservation area and you certainly can't put a walkway through it. So those are some of the points that I wanted to hit and I think we need to look at the Comp Plan and look at the two units an acre and the square footage of the houses. There's a lot of negatives to this development so. Appreciate your time.

Hooks: Thank you. Jill Cooper.

Cooper: I'm Jim Cooper. I live at 954 Oak Point Circle, on Lake McCoy. I support the decision last month to reject the proposed zoning change. The first speaker said that the reason I have a large lot is that part of my land goes underwater. That is incorrect. I have a half-acre when the water is at its highest. If the lake dries up, it becomes two acres. I believe the average lot sizes that Mr. Hooks referenced are correct and those are all above water. You were incorrect when you said that my lot is large because it goes underwater. I'm just a little surprised that Mr. Goldberg sent a speaker to say that I was not competent to stand up here and speak to you and that my voice doesn't matter. Even though my property directly abuts the new neighborhood. As Mr. Hooks mentioned in the mission statement of the P&Z, one of the roles is to speak for the stakeholders. I am a stakeholder. I can see this property out of every window across the back of my house. I also thought that the definition of a PD was to give some flexibility to give the developer to work with the neighborhoods to come up with something that was consistent. Even though I live a few feet outside of the city limits, I am an Apopkan. I've lived here for thirty years. You spoke about taxes, I work for twenty-two years in the city limits. I shop here. I live here. I'm trying to stay very professional and positive but I'm just appalled that the speaker would come up and suggest that the citizens voice shouldn't be heard. Thank you for understanding the importance of choosing the proper density for this area. The density will determine the lot size, the house size, the setbacks, the future

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house size if someone wants to expand their home as a family grows, and most importantly the number of mature trees that can be saved and therefore the character of the neighborhood. We look forward to a new development on Sandpiper that takes more consideration of the character and consistency and lot sizes of the existing neighborhood. Thank you.

Hooks: Thank you. Mary Smothers. Mary Smothers.

Smothers: Mary Smothers, 1005 East Sandpiper Street. Several things that I just want to kind of mention in light of what Jill just said. Being an Apopkan for a very long time, I have lived in the house that we live in now for 36 years along with my husband and family. But my husband's an Apopkan from way, way back. He's been here 71 years. Almost from birth. His never lived in the City limits. His always been in Apopka. We fill like step children with those kind of comments. You know, like, you really don't belong here, but we live here, we shop here. We go to church here and everything we do is basically around Apopka. Centered in Apopka. So that kind of hurts. Hits kind of low. I thought Mr. Land said... Mr. Moon said, excuse me, Mr. Moon said that there was going to be a sidewalk on the south side of Apopka... of Sandpiper Street? Did you not say that?

Hooks: That's their suggestion.

Moon: Yes, that's the recommendation.

Smothers: It's what?

Hooks: That's his recommendation.

Smothers: Okay. That sounds good. I like that idea. Because now the children won't have to cross Sandpiper, go all the way down to the corner on Ustler, and cross Sandpiper back. So that sidewalk is a good proposal. The sidewalk going through the west end of the property is not a good proposal. It's more direct but if that's like, was mentioned that if that stays into the original land that it is now, swampy, woody, overgrowth, Mr. Harmon said at the last meeting, coming from his police background, he was concerned about the safety of children going through something like... even if it's a nice sidewalk. Not only do we have wildlife and critters like that but he was more concerned about the two-legged critters like mankind that could harm our children. Could be hiding out and harm our children. So that, even though it is a nice idea to get the children closer to the school, it was... there's a lot of concerns there. Many things came to my mind as people were talking here, but I did want to tell you that just today after 4:00 I got in my hands the first part of a traffic study. And for this area... that area. There will be more to come probably to do traffic lights and things but it will be here. As soon as I get it I'll get into the hands of the City, but I will just read the bottom line here of these. Because it's hour by hour. So over a 24 hour period traffic study. So I'm just going to read a couple of them for you. North Park Avenue and Sandpiper Street. The actual daily total Park Avenue and Sandpiper was 28,008. Sandpiper Street at Park was 2,370 in one day's

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time. That's why it was proposed that we have maybe a traffic light there at that so we don't go around to Tanglewilde like I've been doing for years. Thompson Road and Sandpiper. Thompson Road the actual daily count or total 6,548. Sandpiper Street and Thompson Road was 2,561 cars or automobiles. Ustler Road and Welch Road. Ustler Road at Welch is 420. That's today. Don't know what it will be if we get another whole bunch of people. A whole bunch of homes. I think the reason for that low number is if you go up there you can only turn right because it's almost impossible to turn left. Especially at certain times of the day. Welch Road 15,176 have already gone up and down Welch Road in a day's time. These are the exits for the development if they, once they get there. Ustler Road and Sandpiper Road. Ustler Road is having 1,241 cars a day. Sandpiper at Ustler 4,548 cars a day at this time. That's October. I'll get more information on their study in the near future and get it into everybody's hands that need it or want it. So I understand that this property was designed... or was proposed to have a maximum of 49 homes. That's maximum. That's like a speed limit, you know. The maximum speed is 65 let's all do 75 or 80, you know. That's the maximum but that doesn't mean we can't go under it. Now if we took those three homes.... I think it was three homes that was kind of dug out of the Ustler end and instead of squeezing them into the other, if we just drop those off, we still have a probably lot size, and a house size, that, I think we could live with. I think that would extend that just a little bit because you've squeezed those properties down now to add those other few homes back into your 49 count as well as squeezing them back up because of the buffer on the south side of the property and that squeezing them down again. So I'd love to see the larger homes and larger lots and we've talked about that and I know you've heard enough about it so I just wanted to be sure and give you, though, this traffic report that I just got today at 4:00 and just take that into consideration as your making your final decision.

Hooks: Thank you.

Smothers: Thank you.

Hooks: Les Hess. Yes, sir.

Hess: I'll try to be brief. I think the most important issue is that the density is not compatible with abutting properties.

Greene: Could you give us your name and address?

Hess: I'm sorry. My name is Les Hess. I live at 578 Wekiva Landing Drive. I appreciate the Chair's comments about the city versus county. I'm sure one day I'll be in the City of Apopka as Apopka is expanding. There's something unseemly when what has happened is that the County denied the application or at least put into it certain requirements that were unacceptable and so the developer goes to the City. Now when it comes to the City, he starts complaining about the cost of sewers and tries to pit city versus county. So that seems inappropriate and unseemly to me. This isn't a

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park on the west end. It's a swamp. Okay. I'm concerned about saving the large trees. You've heard a lot about that. I just wanted to highlight that and the last thing I want to mention is these buffer zones. I think it was Mr. Haubner spoke my mind when he talked about what's going to happen. The 30 foot area on the south side that is supposed to keep the south houses from this development from being right in the existing ones. The people who live there, unless we put up some kind of wire fence or something, they are going clean it up. They are going to clean up back into the woods behind their house and the 30 foot buffer zone is going to go away. And likewise on the lake, unless there is some barrier there, there's not going to be a policeman there or even a zoning or code enforcement person saying you can't RoundUp this you can't cut down that tree. It's just going to disappear with time. So the big picture is that this density is too much and to reduce that density would reduce much of the resistance. Most of us agree that something needs to be done with this property, but something more appropriate. Thank you.

Hooks: Before you leave, cause you're my last one. Have you got a recommendation on density?

Hess: Pardon me?

Hooks: Have you got a recommendation on density that your neighbors are....

Hess: No.. no, sir.

Hooks: Okay.

Hess: I did want to mention that the... the Wekiva Preserve who came up with some specifics...

Hooks: Right.

Hess: ...is not an abutting property.

Hooks: Right.

Hess: Thank you.

Hooks: Yes. All right, I got... have a couple of comments and then... yes, please come back. The traffic study that was referenced actually indicates that the roads are no at capacity. That this is not going to be a significant impact to the capacity of the roads and that's the report that you are eventually going to get on those numbers that you just presented. So that's not going to help your cause at all, but the four or five hundred traffic generated by this subdivision, as proposed, will have an effect on congestion and again I would like to get us through this tonight so that we can... as a Commission can make a recommendation to the City Council on something that we can approve. That we can agree on and its certainly does not appear that I'm going to

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ask you specifically who in the world did you'all talk to that you came to these conclusions that they were okay with it and don't tell me that its Wekiva Preserve because they don't abut this property.

Fitzgerald: They abut at the corner. I mean its...

Hooks: They abut on the corner.

Fitzgerald: contiguous on the corner and they are not in the city.

Hooks: They abut on a corner that is undevelopable.

Fitzgerald: They're in the City as well. All right, I'm going to...

Hooks: Okay.

Fitzgerald: I didn't make comments when the neighbors were up there. I'm again, Miranda Fitzgerald. Just to make a couple of closing comments. First off on the buffer. The owners of the property immediately to the south, the estate property, appointed a committee that agreed to the 30 foot buffer in lieu of a wall. We were doing that in conjunction, working cooperatively, with the neighbors to the immediately to the south. All of the lots, I left my point back at my chair, but all of the lot where lots abut lots with the 30 foot buffer in between they match exactly 110 feet across that back property line. Again there is a 30 foot swath of trees in between but those lot lines are the same dimension, so I'm going to hand this to the Clerk for the record. This is the... this is a letter from Mike Corban, who's one of the homeowners in the subdivision to the south. An overwhelming majority voted in favor of a 30 foot untouched natural buffer with the existing trees, vegetation and fence. We hope that it would become a separate parcel deeded to the new HOA. That is exactly what's proposed. We would like to begin referring to this buffer as Forever Green Zone or parcel. That's the buffer that is going to be dedicated to the homeowners association with a conservation easement over it to the City. The City will have enforcement rights over that buffer. So it's not going to be owned by the individual lot owners. It would be owned by the association. Again the City having enforcement rights through a conservation easement.

Hooks: Do you... Is that a document that is signed by somebody other than Mr. Corban?

Fitzgerald: It's a... It was an e-mail to Mr. Alan Goldberg from Mike Corban.

Hooks: Okay. And I am going to throw right back to you what you threw at us at the very beginning. Unless you've got a signed petition by other... all those people that he said... that is immaterial to me. Was one person's agreement... one person's agreement with what you said and so far I've heard nobody else agree to that and, you know, he's not an expert... you say he could be an expert witness but his not. He claims he represents those people but unless there is a signed petition with other

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signatures, means nothing. Its hearsay.

Fitzgerald: I understand your point of view. I wasn't in those meetings. Meetings were held, as I understand it, Mr. Goldberg participated, I didn't. So he can come up and address that, but let me make just a couple of more... couple of additional points. There was comments about the fifteen acres on the west side. That is not all wetlands. It is not proposed to be donated to the City. It is going to be conveyed to homeowners association. It's wetlands, its uplands, it will be open space and a park area. So it is... again... you're not prohibited from crossing or putting a trail through there or a sidewalk through there although I understand the position preference.

Hooks: I think what he was referring to is you indicated that they would dedicate it as a conservation area. In order to do that you have to take it back to its natural state. So then you could not build anything in there.

Fitzgerald: No... only... only...

Hooks: So I'm assuming you misspoke about donating it as a conservation area.

Fitzgerald: No, no, no. There are a lot of different types of conservation... if you're giving a conservation easement to a water management district or to the state... to a state agency...

Hooks: Right, right.

Fitzgerald: That's not the kind of conservation easement I'm talking about. I'm talking about....

Hooks: That.. that.

Fitzgerald: I'm talking about a conservation easement donated to the City.

Hooks: Yeah, that was my point.

Fitzgerald: Okay. And then I didn't... honestly, I did not mean to offend anybody in the audience. The situation is that when you're dealing with quasi-judicial hearings is that it is evidentiary based and you do have to have some knowledge. It doesn't mean that people can't talk about their houses. They can talk about astitics, they can talk about... it didn't say they couldn't talk about lot sizes or anything else. I said when you are talking about traffic, when you're talking about list of species, when you're talking about things that you have to have some experience with that's where it becomes..

Hooks: I think when they were offended was when you insinuated because they were not in the city limited they didn't matter. That's what offended them.

Fitzgerald: Well they don't pay tax to the City.

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Hooks: Okay.

Fitzgerald: They may shop in the City. They pay sales tax. But, you know, I understand. But I think, again, when you are talking about compatibility and when you are talking about zoning and when you are talking about comp planning. Every jurisdiction has their own and you have your comp plan. You have your city vision and it doesn't incorporate the white areas of the map. It's what the City sees as a vision for its area. I'm just pointing that out.

Hooks: Understand.

Fitzgerald: And, let me introduce... I'm just going to give one other letter we got. This is letter signed by, I'm hoping I can read this correctly, looks like Shane Rattel, R-a-t-t-e-l, "would like area to completed. It has been an eyesore for many years. I have reviewed plans and feel comfortable with project. It's inevitable someone will develop the area" from 920... She lives at 925 East Sandpiper Street in Apopka. [Unintelligible]

Green: Thank you.

Ryan: Steve, can we take a five minute break?

Hooks: Sure. Don't everybody go to the same restroom cause it's not that big. All right, lets adjourn for about ten minutes and we'll come back and try to iron this out.

Break: 7:19 p.m.

Reconvened: 7:24 p.m.

Hooks: Reconvene. We're going to pick it up where we left off. Did you have something else?

Fitzgerald: Yes, just very shortly. Mr. Chairman, just to wrap up. To take one thing off the table. I've just spoken to Mr. Goldberg. We will concede on the sidewalk issue and either development the sidewalk, put the sidewalk in on Sandpiper, or pay into the sidewalk fund and then again and I would like to just reiterate the proposed conditions that I gave you earlier. We'd like to stick with those with the exception of the sidewalk would appreciate your recommendation for approval.

Hooks: Okay. I want to make a couple of comments before we try to.... Yes, Lou, go ahead.

Haubner: Lou Haubner, 140 East First Street, Apopka. Two things. Number one the letters that they submitted was the community develop... community boards agreed to a 30 foot buffer, I think, or a 20 foot buffer whatever it might be... a buffer. They did not agree to 49 lots. That letter didn't say anything about approving the subdivision, keep that in mind, it only approved the buffer.

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Hooks: Right.

Haubner: Second thing, I would like to see a sidewalk put in, and Shirley came up with this idea, all the way up to Park Avenue. Either the City put it in or the developer put it in. Not only to Ustler Road. That might be a thought. Third thing, I would like to see them go to... When we talk about 2,200 square foot house, is that under roof? Does that include the garage?

Hooks: Typically, under air, right?

Moon: Livable area. Heat and air.

Haubner: So we're talking about a, probably, a 2,700 square foot under roof, 2,200 living area.

Hooks: Right.

Haubner: And I have no problem with that. I would like to raise it, maybe, to 2,500, but I would propose that they go to at least 22,000 square feet on the lot size and come back with a new development plan. Thank you.

Hooks: Thank you. Anybody else want to speak? Yes, ma'am. We'll get this public hearing out of the way and then we'll negotiate. Try to.

McBee: Hi, Jenny McBee, I live at 609 Oak Pointe Ridge Court in Apopka. One thing that keeps being said that is not true, I live on that southern border. It is not for every house a one to one, like your looking out your yard and you're going to see one new house. I've seen the lot... what's projected. I will look at two and a half houses. I currently look at one. My neighbor, one down from me, he will look at three. So it is not... there... it is true that some of them... some of the southern border lots will look one to one. What the lady was saying but not all of them. And I do live in the neighborhood. I've been to the board members. My husband... the board meetings. My husband and I are now members as large on the Board but it wasn't... we were presented with choices and everyone on that southern border did get to vote. I do think that was a legitimately done thing, you know, Mr. Goldberg did for... but these were our choices, either do the 30 foot buffer, which that letter somewhere did say we want something in front of that 30 foot buffer to assure that it doesn't just get gone somehow. We have a big row of bushes. We want something so that you can't intrude into it easily. But the way it was presented to us, "if you vote for a fence or a wall, that means we're going to have to come clear cut back here to get our concrete, or whatever, to build the wall or fence. We're going to have to come a lot closer and we're going to have to cut a lot more trees down. So it wasn't like, we loved this idea. It was like do you cut your right arm off or left arm off. So that's what it really was.

Hooks: Okay, thank you.

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McBee: And if...

Hooks: Go ahead.

McBee: One last thing. If we're talking about how many houses, at the last Board meeting, and I don't speak for the whole board, but just, there have been comments, we want the development but we would be a lot more at ease if we could have less homes in there on a bigger lots. If we could get down to ten houses I think you wouldn't get a big argument.

Hooks: Yeah, I'm sure you wouldn't. Yes, ma'am.

O'Connor: Hi, my name is Ellen O'Connor, I'm at 1032 Oak Pointe Circle which is in Oak Water Estates. Two... Just points of questions, I'm not sure who to pose it to, but that what is there any requirement for the developer to do any type of tree study. Is there any type of analysis of that that goes into that or what is the City's position on that. And then the second question that I have is that we do live on the lake, there is movement of water if you live in that area or your familiar with area on the north side of Sandpiper. There is a flow of water that goes onto the north side of Sandpiper. You know, when it's dry it looks like a pasture, but is not it's actually a lake area.

Hooks: Right.

O'Conner: So where does that factor into what's being done in this development/

Hooks: I'll let David or Jay address both of those.

Davoll: Well, the drainage portion is, she is correct, there is a large system that was studied many years ago, that comes through there and the area she is speaking of on the north is actually Lake Coroni and it is a dry lake half the year. But that is accommodated for in the requirements and they will not be sending any more water off site. What is currently going off site from the properties and yes, there is an extensive tree survey that required with Final Development Plan and most of you know about our tree requirements. One clarification while I'm speaking. Several times it has been brought about the intersection of Sandpiper and Ustler and some possible changes to the configu.... Or, you know, the...

Hooks: You're going to tell me that it's county.

Davoll: Yes, I am. The County would have to approve any changes to the current configuration or the current signage at that intersection.

Hooks: All right. I figured as much. All right anybody else? Mary, make it quick we need to get out of here.

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Smothers: I agree, let's go home. Those who can't... those who can. I failed to tell you that this Traffic Study was done by the Orange County Traffic Engineering department. I didn't come up with it and by pulling it out of the air.

Hooks: I understand.

Smothers: Moving the gopher tortoises to the west end. Which is mostly swamp even though there are some dry lands as well. How are you going to get them to stay there? If you put them in the wetlands they're going to drown. They don't like wetland. If they are on the dry land aren't they going to march right back where they came from?

Hooks: That's another whole.... Let's just worry about lot sizes and get this thing done. All right, here we have before us ten lots to 49 lots and of course everybody is going to like ten lots except... I understand but these people aren't going to like it and it's not financially viable for them and we understand that. Again, I think we all agree that something is eventually going to develop there and we need to accommodate it. I'm not convinced yet that 49 lots at the size that's been presented is that development yet and I was hoping you all would come and tell me or tell us a little bit about what you would be satisfactory with. Lou suggested 22,000 square feet which is just shy of a half-acre lot. That would put them down to about 40 lots, I think, if I did my math correctly. Forty, forty-one lots versus 49. Just show me your hands. Are you agreeable with that? Okay. Mr. Goldberg, the ball is in your court. Are you agreeable to half-acre lots?

Goldberg: No.

Hooks: I'm going to close the public hearing. We'll bring it back to the Board and we've got a couple of alternatives that we can do for City Council. We can give them the statement of facts that they want which is what I laid out in the beginning of the meeting on the compatibility issue with the surrounding area. There is no way it's compatible with the surrounding area. Whether it's in City or County is immaterial. The acreage doesn't match up. The land use doesn't match up with what is available to him to develop. We can do that and just recommend that they deny this project as it is requested of us. Secondly, we can go forward and recommend to City Council that they approve the project under this, this, this, this conditions under PUD, we have that right. So we can suggest to City Council we recommend approval if they're minimum half-acre lots in the developable area that's been presented with all stipulations that the staff has asked for in their recommendations from staff, and incorporate that. What's your discussion? Let's hear some discussion from the Commission about that.

Greene: In essence, and I think I can go along with what you're saying, in essence the City Council asked us for a statement of fact. Why we found it unacceptable and to me it was primarily lot size and house size. I think we can say, based on the subdivision to the south, that we should have a minimum lot size of a half-acre to be compatible with that. You could argue, I suppose, for something larger to go between what's on

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the south and what's on the north but since they are both on the same side of Sandpiper I think you could justify a minimum lot size of a half-acre. We could go to the Council with the statement of fact that we found it incompatible with that area because the lots were not at least a half-acre and if they were a half-acre we would have or could have approved it. I don't know if we want to mix it up that way.

Ryan: How many lots would there be if it were half-acre?

Hooks: About forty. Forty, forty-one under the same developable area I'm guessing.

Ryan: That fifteen acres is not developable. Is that the problem?

Hooks: Right. I didn't make that determination. That's what was presented to us is that it's not developable.

Ryan: Is that correct?

Davoll: As was before, they had some lots in that fifteen acres. This proposal they came to us now was moving the lots out of that fifteen acres and putting them into the larger area.

Ryan: Why did...

Walters: But why?

Davoll: So they could...

Ryan: What is they're advantage. I don't understand.

Davoll: To what?

Ryan: To move them out of the fifteen acres and make the lots smaller.

Davoll: You would have to ask the applicant that. I mean, we review what is provided before us. I mean setting aside the fifteen acres undisturbed was something staff looked as being more favorable.

Birdsong: Mr. Chairman?

Hooks: Yes.

Birdsong: So we're saying basically that, I mean from what I'm hearing, that if they utilize some of that fifteen acres, I'm just speaking, then they could feasibly, actually make the lot sizes a half-acre more easily and they not lose per say on the potential houses that they want to build. Is that a yes or no.. or...

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Hooks: I don't know what it's been determined its not developable. So I can't answer that.

Davoll: Part of it might be because of the sewer and the water and getting utilities to it may increase the cost. Those type of activities. The last survey that we had, I think, upstairs showed there is more higher ground than everybody wants to believe in that area. So there would be possibility of developing it but the cost possibly of running water and sewer to lots within that area because all the other areas is more concentrated. You have to be able to get all the utilities and services in there.

Hooks: Any other comments? I would like us to do two things. We want to stick with what we recommended last month, then we just provide this statement of facts of the lot sizes of the abutting properties and let City Council do what they want to with that. We're.... and again, contrary to what's in the package, we don't approve or disapprove this. We only recommend approval or disapproval to the City Council. They get paid the big bucks to deny or approve. That's not our job. We only recommend. The second part of that is I would like us to recommend to City Council that we could stand to approve a subdivision here if it were a minimum half-acre lots, 2,500 square feet... whatever we want to throw in there saying based on the same criteria of the PUD if it were this that we would recommend that you approve it and then they can act on whatever they want to do. That is strictly up to City Council. So I'm open to whatever you'all want to do. You'all in favor of how we would recommend it?

Birdsong: How would we support that?

Hooks: Is anybody....

Ryan: Mr. Arrowsmith stated that he wanted to know what happened to the agreement in 2009 from the draft here. It's not the same agreement as 2009 though.

Hooks: It's not the same because the land use has changed from County to City. It went from 4 to 2 dwelling units per acre on the land use. Their plan expired that they had approved with the County. So when they came into the City they essentially didn't have a plan that was approved and still don't to this day. But again I am not telling a developer that he cannot develop what he wants to put in there within reason. I just believe that this is unreasonable to go from acre plus lots to quarter acre and more in this subdivision. Quarter, third acre and some half acres in this plan.

Greene: Could we just explain that our reason for disapproval was the small lots size and we would recommend approval half-acre minimum lots sizes?

Ryan: What about the square footage of the houses and the sidewalk in the front on Sandpiper.

Hooks: That's part of the City's recommendation and I would go along with that if we were to approve that at larger lot sizes, or recommend approval of that.

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Roper: Are we going to recommend that they have larger houses, somebody mentioned 2,500 square foot. I don't understand the significance between raising it from 2,200 to 2,500. You're talking about 300 square foot and a lot of people, in my experience, want a house between 2,000 and 2,500 square foot. I don't think it matters so much to the value of the house if you built the house to certain standards. And if our thinking is that you're going to have more yard per house then to have a minimum of 2,200 versus 2,500 allows the capability of doing that.

Hooks: I'm good with 2,200. I mean that is what they agreed to. So what do you all want to do? Do you all want to...

Birdsong: Mr. Chairman, I like what you stated in the second half give up the half-acre and then when they said about the sidewalks on Sandpiper and, but, like what we discussed 2,200 square foot under roof if would actually be about 2,600, 2,700 square feet but how do we need to do the wording in order to make a proper motion?

Hooks: All right.. all right. I think I hear you. Let's do this. Let's give the City Council a statement of facts and why we choose to recommend that they disapprove the plan as it's been presented. The fact is that the average lot size in this development as proposed is 0.41 acres. That's fact. The average lot size to the southwest if 1.21 acres. The average lot size to the immediate south of the property is 1.63 acres and including... included in that is... well, I misspoke. That's not right. To the Immediate south the average lot size is 1.24 and including Wekiva Landing which is part of that subdivision, by all, anybody would consider that, you come into the same entrance is 1.63 acres. The average lot size excluding the 15 to 15.5 acre lot to the north and along Ustler and on Thompson Road, the properties that abut the property is 1.93 acres, therefore we do not believe that the proposed development is compatible and characteristic of the surrounding area and so we would have a motion that we, based on those facts, do not recommend approval of this particular development. Is there a motion to that affect?

Walters: So moved.

Hooks: There's a motion, is there a second?

Ryan: Second.

Hooks: Second. Any discussion? All in favor indicate by saying aye.

Hooks: Aye.

Walters: Aye.

Birdsong: Aye.

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Green: Aye.

Ryan: Aye.

Toler: Aye.

Hooks: Any opposed?

Roper: No.

Hooks: One opposed. Terry? All right. All right. I would further recommend, and it's... of course up to you all again, that we advise City Council that we would approve proposed subdivision as its laid out with the staff report, with the staff recommendations, with the proposed revised conditions of the developer, if the minimum lot size was a half-acre.

Greene: I'll make that motion.

Hooks: All right. There's a motion that we tell City Council... advise City Council we're and advisory capacity that we could recommend approval if the minimum lot size was half-acre in the subdivision with everything else to remain the same, including the staff recommendations on the sidewalk, the proposed and new revised conditions of approval that the developer presented to us tonight. So there is a motion from Jim Greene, is there a second?

Birdsong: Second.

Hooks: Motion seconded by Melvin. Any discussion? All in favor indicate by saying aye.

Hooks: Aye.

Walters: Aye.

Birdsong: Aye.

Green: Aye.

Ryan: Aye.

Toler: Aye.

Roper: Aye.

Hooks: All right. That's unanimous. All right, so this meeting... portion of the meeting is adjourned. Thank you for your patience.

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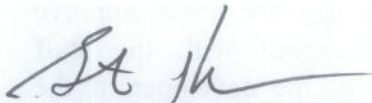
Public: None.

NEW BUSINESS:

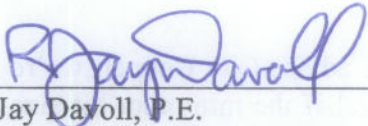
Planning Commission: None.

Public: None.

ADJOURNMENT: The meeting was adjourned at 7:45 p.m.



Steve Hooks, Chairperson



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