



City Commission Regular Meeting

Agenda

February 8, 2023 @ 3:30 pm

City Hall - Commission Chambers
401 S. Park Avenue

welcome

Agendas and all backup material supporting each agenda item are accessible via the city's website at cityofwinterpark.org/bpm and include virtual meeting instructions.

assistance & appeals

Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office ([407-599-3277](tel:407-599-3277)) at least 48 hours in advance of the meeting.

"If a person decides to appeal any decision made by the Board with respect to any matter considered at this hearing, a record of the proceedings is needed to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based." (F.S. 286.0105).

please note

Times are projected and subject to change.

1. Meeting Called to Order**2. Invocation**

- a. Jocelyn Williamson, Central Florida FreeThought Community 1 minute

Pledge of Allegiance**3. Approval of Agenda****4. Mayor Report****5. City Manager Report**

- a. City Managers Report 5 minutes

6. City Attorney Report**7. Non-Action Items**

- a. Board Appointment 1 minute
W. Kevin McClanahan to Economic Development Advisory Board
(Mayor Anderson)

8. Public Comments | 5 p.m. or soon thereafter

(If the meeting ends earlier than 5:00 p.m., public comments will be at the end of the meeting)

(Three minutes are allowed for each speaker)

9. Consent Agenda

- a. Approve the minutes of the regular meeting, January 25, 2023. 1 minute
- b. Approve the following piggyback contracts: 1 minute
1. Atlas Concrete Products, Inc. - City of Sanford Contract #IFB22/23-04 - Cemetery Opening & Closing of Graves; For services on an as-needed basis during the term of the Agreement through January 18, 2026; Amount: \$250,000.
 2. Eurofins Environment Testing Southeast, LLC - Volusia County Contract #ITB20-B-15LL - Laboratory Analysis and Sampling; For services on an as-needed basis during the term of the Agreement through February 3, 2024; Amount: \$120,000.
 3. Rental Digger Derricks, Bucket Trucks, Cable Placers, & Equipment; For services on an as-needed basis during the

term of the Agreement through August 27, 2024; Amount: \$250,000.

4. Duval Ford LLC - Florida Sheriffs Association Contract #FSA20-VEL28.0 - Pursuit, Administrative, and Other Vehicles; For goods on an as-needed basis during the term of the Agreement through September 30, 2023; Amount: \$500,000.
5. Alan Jay Fleet Sales - Sourcewell Contract #091521-NAF - Cars, Trucks, Vans, SUVs, Cab Chassis, & Other Vehicles; For goods on an as-needed basis for the remainder of the term of the Agreement through November 08, 2025; Amount: \$900,000.
6. Safety Products, Inc. - City of Sunrise Contract #17-46-09-HR - Safety Supplies and Equipment; For goods on an as-needed basis during the term of the Agreement through December 31, 2024; Amount: \$75,000.

- c. [Approve the following contracts:](#) 1 minute
 1. Paymentus Corp. - FY20-75 - Payment Management & Processing Services; Amount \$630,000 for services on an as needed basis during the term of the Agreement.
 2. Kimley-Horn and Associates, Inc. - RFQ27-21 - Continuing Urban Design Services; Amount: \$75,000 for services on an as needed basis for the remainder of the current term through January 21, 2024.
- d. [Verizon Wireless Pole Attachment Agreement](#) 5 minutes

10. Action Items Requiring Discussion

- a. [Old Library Site Discussion](#) 30 minutes

11. Public Hearings: Quasi-Judicial Matters

(Public participation and comment on these matters must be in-person.)

- a. [Ordinance - vacating and abandoning that portion of Aragon Avenue lying east of Nicolet Avenue. \(1st Reading.\)](#) 10 minutes
- b. [Request of Villa Tuscany Holdings LLC for approval of a subdivision wall and landscaping for the four lot Via Veneto subdivision at 1292-1298 Howell Branch Road.](#) 10 minutes
- c. [Ordinance 3262-23 - Vacating and abandoning portion of Elvin Avenue right-of-way. \(2nd reading\)](#) 5 minutes

12. Public Hearings: Non-Quasi Judicial Matters

(Public participation and comment on these matters may be virtual or in-

person.)

- | | | |
|----|--|------------|
| a. | Ordinance 3261-23: Updating Section 58-87, lakefront and waterfront zoning regulations and amending Chapter 114, Lakes and Waterways to incorporate regulations concerning docks and boathouses. (2nd Reading) (Tabled from January 25, 2023)
Request from staff to table to February 22, 2023. | 10 minutes |
| b. | Ordinance 3263-23 - Amending Chapter 58, "Land Development Code", Article III, "Zoning", Section 58-94 "Appeals from interpretations and enforcement decisions of the building and zoning official", to modify the process for appeals. (2nd Reading) | 5 minutes |
| c. | Ordinance 3264-23 - Amending Chapter 58, "Land Development Code", Article III, "Zoning" Section 58-84 "General provisions for nonresidential zoning districts", to ensure that no air traffic hazards will be created by structures and other appendages by following the heights detailed in the Orlando/Orange County Airport Zoning Regulations text and map. (2nd Reading) | 5 minutes |
| d. | Ordinance 3265-23- Amending Chapter 58, "Land Development Code", Article III, "Zoning" Section 58-72 "Office (O-1) district", to add a new permitted use for state licensed establishments involved in the rendering of a personal or business service limited to barber shops and hair salons, day spas, and cosmetic treatments subject to certain conditions. (2nd Reading) | 5 minutes |

13. City Commission Reports

14. Summary of Meeting Actions

15. Adjournment



City Commission **agenda item**

item type Invocation	meeting date February 8, 2023
prepared by Kim Breland	approved by
board approval	
strategic objective	

subject

Jocelyn Williamson, Central Florida FreeThought Community

motion / recommendation

background

alternatives / other considerations

fiscal impact



City Commission **agenda item**

item type City Manager Report	meeting date February 8, 2023
prepared by Jennifer Guittard	approved by Peter Moore, Michelle del Valle, Randy Knight
board approval Completed	
strategic objective	

subject

City Managers Report

motion / recommendation

background

alternatives / other considerations

fiscal impact

ATTACHMENTS:

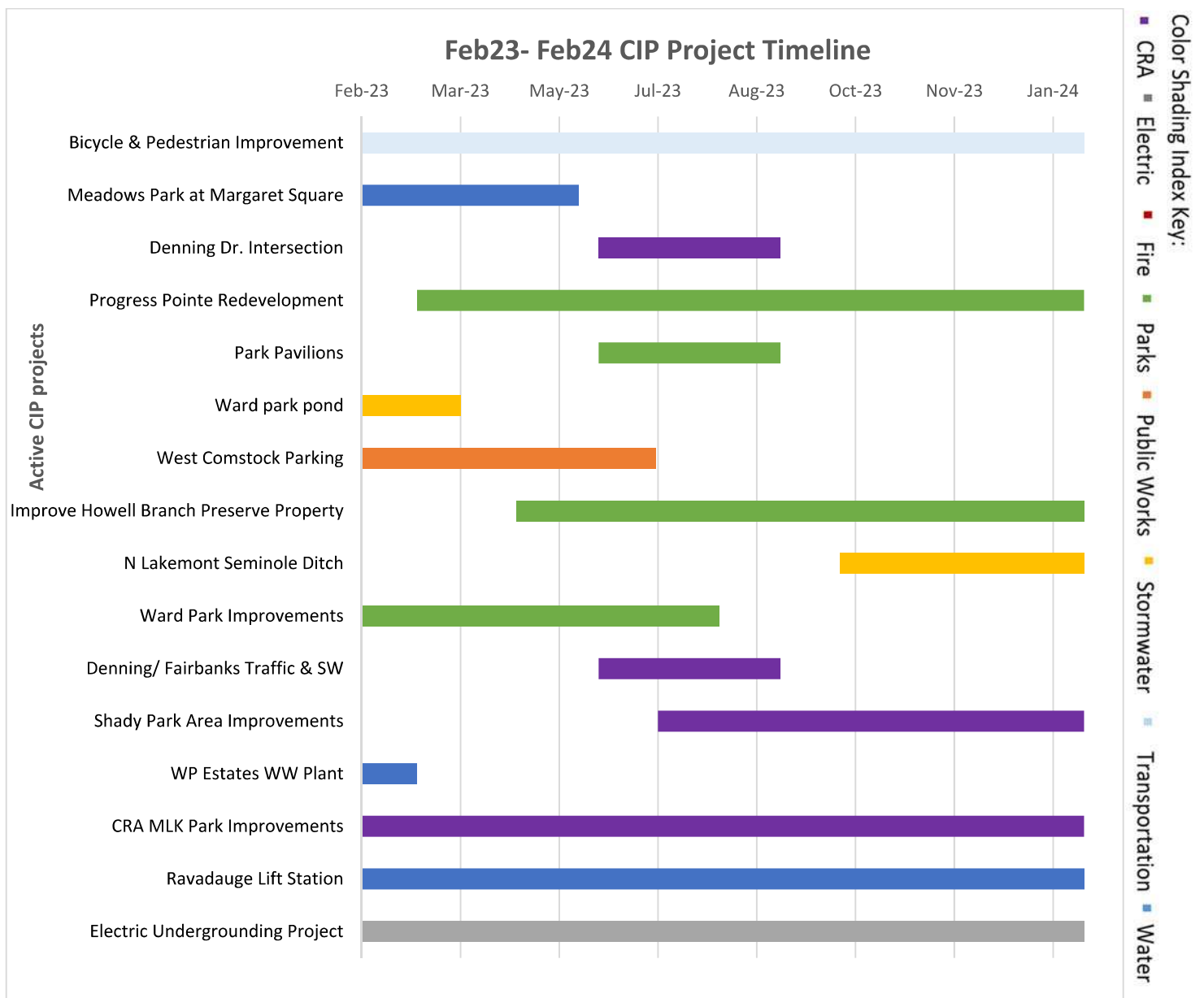
[City Managers Report 2.8.23.pdf](#)



This report is updated monthly to monitor capital projects occurring throughout the city and to provide information about recently completed projects. The project status options have been adjusted to (Planning, Active, Pending). To define; all projects in design, research, or review are in the Planning status. All projects with purchases, construction, and implementation are in the Active status. The remaining projects have a Pending status that have stopped the planning or active work of a project such as pending review and approval, additional funding, and scheduling.

Count by Status

Project Status	Planning Status	Active Status	Pending Status
Count Total 50	20	17	15



Title 1: Planning Status

Project	Project Update	Strategic Objective	Division
1792 Streetscape Imp.	MOU amendment approved at CRA meeting 1/27/20. Design review underway by FDOT and staff including lighting and landscaping. FDOT in process of due diligence and potential ROW acquisition. FDOT and Metroplan currently evaluating projects based on new pricing for materials and labor.	Intelligent Growth & Development	CRA
Bicycle & Pedestrian Improvement	Various pavement marking improvements throughout the City are being evaluated. New RRFBs to be installed on Denning Dr south of Webster Ave, Lakemont Ave near the hospital, and Mizell by the hospital. Additional projects are being planned.	Exceptional Quality of Life	Transportation
CRA MLK Park Improvements	Staff is proceeding with memorial corner design including a Call for Artists solicitation on January 4th to integrate a sculpture element into the corner and overall park improvement approved by the Agency on November 9th, 2022. Selection committee members comprised of the Public Art, Parks and Recreation, and CRA Advisory Board. Staff is additionally coordinating for an additional MLK playground public meeting to clarify design and amenity enhancements. Meeting is slated for February 7th at 6:00pm at the Community Center.	Exceptional Quality of Life	CRA
Denning Dr. Intersection	Extension to railroad north of Webster approved by CRA Agency on August 24 with a value of 500k. Design concept at 60%. Working through internal review with anticipated construction date of summer 2023.	Investment in Public Assets & Infrastructure	CRA
Denning/Fairbanks Traffic & SW	Purchase of both 901 and 919 W. Fairbanks complete. Demolition of both properties and sod installation complete. Design schematics complete for transportation improvements, and sent for comment by FDOT including a separate southbound right turn lane to ease traffic congestion. Improvements approved by the CRA Agency at their August 24th meeting. Plans in coordination with FDOT and city consultant Kimley-Horn for final comment with solicitation and bid forthcoming. Currently, anticipated construction is Summer 2023.	Investment in Public Assets & Infrastructure	CRA

Project	Project Update	Strategic Objective	Division
Dinky Dock Renovations	Concept approved by PRAB. Work is being performed internally by our Public Works department. Scheduled to commence 1Q23.	Exceptional Quality of Life	Parks
Downtown Enhancements	Coordination with Parks Department for new irrigation system in Central Park areas complete. Park Avenue parking sensor project pilot complete. Sensors installed with monitoring through November at no cost to the city. Staff is coordinating with the vendor on a second pilot for Q2 2023 with further enhancements to data accuracy for both the end user and staff on parking availability.	Exceptional Quality of Life	CRA
FDOT 17-92 UT Line Relocate	Draft design complete. Department is evaluating direction of project for next phase.	Investment in Public Assets & Infrastructure	Water & Sewer
Fire Safety Equipment	Station 61 floor resurfacing is underway and is expecting completion February 3rd. The alerting system will be going to bid for RFP. The CAD vendor has finished the software updates and the beta testing is underway.	Public Health & Safety	Fire
Improve Howell Branch Preserve Property	The initial treatment of invasive species at the Howell Branch Preserve Trail Grant project properties has taken place and quarterly treatment has begun as well. Commission approved design concept on 10/12 and City and Dix Hite are moving forward with permitting process.	Investment in Public Assets & Infrastructure	Parks
Improve Mead Garden	Work is being scheduled for this Spring 2023 to update the walkways in phase 1 main ada trail loop. Mead board is determining pavilion replacement.	Exceptional Quality of Life	Parks
Kennedy Rd Wide Force Mn	Met with Orange County and other Utility Agency Owners (UAOs) in mid-July 2022 to review updated plans and utility location issues. Orange County to send updated plans to UAOs for coordination of utility relocations. Roadway project split into 2 phases. City force main within Phase 2 which is scheduled to begin July 2026.	Investment in Public Assets & Infrastructure	Water & Sewer
Lift Station R&R	Reviewing lift station conditions for future rehabilitations next fiscal year.	Intelligent Growth & Development	Water & Sewer
N Lakemont Seminole Ditch	The survey is complete and the design was submitted to Seminole County for review at 60% completion on October 28, 2022. Final design and permitting will follow and	Investment in Public Assets & Infrastructure	Stormwater

Project	Project Update	Strategic Objective	Division
	bid package will be generated for a start of construction in fall of 2023.		
Park Pavilions	Ward Park pavilion replacement being planned for Summer 2023.	Investment in Public Assets & Infrastructure	Parks
Parks Swoope Facility BLD	Property swap complete. City working with architect firm for facility design.	Exceptional Quality of Life	Parks
Ravadauge Lift Station	Final design in progress. Design anticipated to be complete by August 2023.	Investment in Public Assets & Infrastructure	Water & Sewer
Richard Crotty Pkw	Roadway project pushed back by Orange County to begin construction Spring 2025. Water and wastewater utilities design 95% complete.	Investment in Public Assets & Infrastructure	Water & Sewer
Shady Park Area Improvements	Staff has met with the artist and community stakeholders with an agreed upon work plan. Next meeting is March 9th to review concept. Timeline for fabrication, installation of the art piece, and remaining amenity enhancements currently estimated at 12-14 months from July 2023.	Exceptional Quality of Life	CRA
UT Lines 434 Road Widening	Design is 90% complete. FDOT has delayed roadway project bid until July 2026.	Investment in Public Assets & Infrastructure	Water & Sewer

Title 2: Active Status

Project	Project Update	Strategic Objective	Division
Cemetery Improvements	Structures are fabricated and should be delivered and installed by Spring 2023. Site preparations and landscape/greenscreen install is underway.	Investment in Public Assets & Infrastructure	Parks
EL Substation upgrades	We continue to work with OUC on substation inspection and maintenance. We don't have any major upgrades planned currently, but will need to formulate a plan for some breaker change outs in the next cycle.	Investment in Public Assets & Infrastructure	Electric
Electric Undergrounding Project	Miles of Undergrounding performed Project J: 2.72 miles 45% complete Project L: 9.57 miles 68.5% complete Project R: 4.31 miles 37.8% complete Commission approved advancement Residential Service Conversions (RSC) Fiscal YTD: 105 TOTAL so far for FY 2023: 0.03 miles	Investment in Public Assets & Infrastructure	Electric

As of 2/8/23

Project	Project Update	Strategic Objective	Division
Facility Capital Improvements	Scheduling HVAC replacements for the remaining water plants with installs to be completed over the next couple of months. Evaluating HVAC replacement for Emergency Operations. Building 10 is scheduled to be painted over the next month.	Investment in Public Assets & Infrastructure	Public Works
IT Infrastructure Upgrade	Funding being utilized for modernization of IT infrastructure.	Fiscal Stewardship	IT
Meadows Park at Margaret Square	Playground equipment has been installed; Basketball court completed. Additional improvements to grounds will take place December with final completion of all improvements expected by late Winter/early Spring 2023.	Exceptional Quality of Life	Parks
Meter Data Management Upgrade	Harris Smartworks continues to coordinate with Water/Wastewater, Finance and IT Departments for software development. Upgrade to new RNI version complete.	Investment in Public Assets & Infrastructure	Water & Sewer
Post Office Acquisition	Awaiting response from Post Office regarding their opinion of the two Commission approved potential sites.	Investment in Public Assets & Infrastructure	CRA
Signalization Upgrade	New controllers have been purchased and delivered. The four intersections that are being tested will be converted to the new controllers that are consistent with FDOT's controllers. City staff is currently working with FDOT to evaluate traffic signal timings along the state roads to see if the timings can be optimized. Also, City staff is working on Fire Department preemption system. Phase I preemption installation includes 10 intersections and should start around February of 2023.	Investment in Public Assets & Infrastructure	Transportation
Stormwater Rehab	Hurricane Ian has introduced several pipe failures in the City's storm sewer system. Pipe lining on Whitehall Drive and Whitesell Drive is complete. Storm pipe cleaning is being scheduled for Winter park Pines Golf course.	Investment in Public Assets & Infrastructure	Stormwater
Upgrade Water Mains	Upgrading water mains. Currently working on Kingwood subdivision.	Investment in Public Assets & Infrastructure	Water & Sewer
Ward Park Improvements	Working on ADA walkways and final draft plans for concession stand.	Exceptional Quality of Life	Parks

Project	Project Update	Strategic Objective	Division
Ward park pond	Ward Park ponds construction is complete. Estimated completion of the necessary piping is March 2023.	Investment in Public Assets & Infrastructure	Stormwater
Water Treatment Plants R&R	Reviewing water treatment plant conditions for future rehabilitations next fiscal year.	Investment in Public Assets & Infrastructure	Water & Sewer
Winter Park Sports Complex	Baseball Fields complete. Drainage work on field 7 outfield to be complete. Scheduling Turf fields work to begin first quarter of 2023.	Investment in Public Assets & Infrastructure	Parks
WP Estates WW Plant	Contractor is mobilizing and has initiated permitting with City Building Department. Contractor scheduling project kickoff activities.	Investment in Public Assets & Infrastructure	Water & Sewer
WP Pines Golf Course	ADA restroom and plumbing improvements are scheduled for Summer 2023. The Driving Range upgrade to hitting mats are complete. Contracted canopy replacement and expansion for clubhouse/bar has been awarded and start date is being scheduled. Electrical upgrades to support expanded food items are complete.	Investment in Public Assets & Infrastructure	Parks

Title 3: Pending Status

Project	Project Update	Strategic Objective	Division
Cady Way Pool Improvements	Contract has been awarded to vendor and waiting on date of commencement to replace filter tank.	Exceptional Quality of Life	Parks
CRA Small Projects	Canton & Garfield pedestrian connection project is now on hold due to unforeseen added cost. Process moving forward is to evaluate in conjunction with other improvement opportunities. As the Central Park Stage project draws to conclusion, staff is reviving internal conversations on how to support pedestrian traffic to this new civic amenity. Staff is determining an updated cost for the project.	Intelligent Growth & Development	CRA
Decorative Lights and Trees in CRA	140 total decorative lights have been installed. Coordination with Electric Utility on assessment of light replacements/additions as needed.	Intelligent Growth & Development	CRA
East OC Service Improvement	Pending in house availability to planning redirection of flow to East plant.	Investment in Public Assets & Infrastructure	Water & Sewer

Project	Project Update	Strategic Objective	Division
EL Meter Replacement	The replacement of electric meters has been pending the integration of the utility billing software.	Investment in Public Assets & Infrastructure	Electric
Lake Bell Weir Improvements	Pending monitoring assessment.	Investment in Public Assets & Infrastructure	Stormwater
New York Streetscape	Phase I construction complete (Intersection of Fairbanks and New York Avenue) to improve turning lanes, ADA improved pedestrian crosswalks, and mast arm construction. Coordination on Phase II (New York Avenue to Morse Blvd intersections) streetscape and ADA enhancements underway. New York and Comstock intersection complete with intersections at Welbourne and Morse remaining. With the advent of Denning/Farbanks and Denning/Webster improvements taking shape, this project has been realigned to coordinate with available resources and priority, and will begin shortly after construction of the aforementioned projects.	Intelligent Growth & Development	CRA
Nicolete Ave Stormwater Replacement	A scope for modeling is being developed for the most effective stormwater treatment pond design.		Stormwater
Progress Pointe Redevelopment	Design approved and permitting underway. Construction fencing and graphic panels in process with fence up by Jan 13, 2023 and graphic banners projected by February 1, 2023 at latest. Purchasing has begun process for securing project management contract and road work project to begin 1Q23.	Investment in Public Assets & Infrastructure	Parks
Sewer Main Extensions	Extension of sewer mains to support new development or redevelopment.	Investment in Public Assets & Infrastructure	Water & Sewer
Showalter Field Cap.	Pending future funding for field improvements.	Exceptional Quality of Life	Parks
St. Andrews Trail	Design completed for which the City has been reimbursed by the FDOT. Due to the 250% increase in construction materials, this project has been delayed to FY2026-FY2027 per Metroplan Orlando.	Investment in Public Assets & Infrastructure	Transportation

Project	Project Update	Strategic Objective	Division
Temple Dr SW Imp	Future improvements pending funding in the 5yr capital plan.	Investment in Public Assets & Infrastructure	Stormwater
Tennis Center Upgrades	Pending project scope for replacement of pickleball space with block hitting wall and installation of well for clay court maintenance/irrigation.	Investment in Public Assets & Infrastructure	Parks
West Comstock Parking	West Comstock parking and an extension to the Library parking lot concept drawings are complete. Both are pending permitting by the SJRWMD.	Investment in Public Assets & Infrastructure	Public Works

Recently Completed Projects

Parks & Recreation Department

The Parks Department completed the scheduled Baseball field drainage improvements as part of Exceptional Quality of Life strategic objective.

Parks & Recreation Department

The Parks Department completed the driving range upgrade as part of Exceptional Quality of Life strategic objective.



Upcoming Advisory Board Meetings

This report provides a summary of upcoming board meetings currently scheduled on the calendar for the next month.

Additional information relating to all of the City's boards such as meeting schedules, agendas, minutes, and board membership can be located on the City website at:

<https://cityofwinterpark.org/government/boards/>

February Board Meetings

Advisory Board	Meeting Date	Meeting Time
Lake Killarney Board	2/1/23	10 a.m.
Code Compliance Board	2/2/23	3 p.m.
Winter Park Police Officers' Pension Board	2/2/23	4 p.m.
Winter Park Firefighters' Pension Board	2/2/23	6 p.m.
Civil Service Board	2/7/23	4 p.m.
Mead Botanical Garden FDEP Grant Meeting	2/7/23	5 p.m.
Martin Luther King, Jr. Park Community Playground Community Meeting	2/7/23	6 p.m.
Planning & Zoning Board	2/7/23	6 p.m.
Historic Preservation Board	2/8/23	9 a.m.
Winter Pines Golf Course Advisory Board	2/13/23	8 a.m.
Economic Development Advisory Board	2/14/23	8:15 a.m.
Lakes & Waterways Board	2/14/23	Noon
Parks & Recreation Advisory Board	2/15/23	5:30 p.m.
Community Redevelopment Advisory Board	2/16/23	5:30 p.m.
Public Art Advisory Board	2/20/23	Noon
Transportation Advisory Board	2/20/23	4 p.m.
KWPB & Sustainable Advisory Board	2/21/23	11:45 a.m.
Board of Adjustments	2/21/23	5 p.m.
Utilities Advisory Board	2/28/23	Noon

Upcoming Work Sessions

This report provides a summary of upcoming work sessions currently scheduled on the calendar for the next three months.

Work Sessions	Meeting Date	Meeting Time
City Commission Work Session	2/2/23	1 p.m.
KWPB & Sustainable Work Session	2/13/23	2 p.m.
Planning & Zoning Board Work Session	2/28/23	Noon



City Commission **agenda item**

item type Non-Action Items	meeting date February 8, 2023
prepared by Rene Cranis	approved by
board approval	
strategic objective	

subject

Board Appointment

item list

W. Kevin McClanahan to Economic Development Advisory Board (Mayor Anderson)

motion / recommendation

background

Mr. McClanahan will replace Bill Segal who was appointed to the Civil Service Board.

alternatives / other considerations

fiscal impact



City Commission **agenda item**

item type Consent Agenda	meeting date February 8, 2023
prepared by Rene Cranis	approved by Michelle del Valle, Randy Knight
board approval Completed	
strategic objective	

subject

Approve the minutes of the regular meeting, January 25, 2023.

motion / recommendation

background

alternatives / other considerations

fiscal impact

ATTACHMENTS:

[CC-min-2023-01-25 draft.pdf](#)



City Commission Regular Meeting Minutes

January 25, 2023 at 3:30 p.m.

City Hall, Commission Chambers
401 S. Park Avenue | Winter Park, Florida

Present

Mayor Phil Anderson; Commissioners Marty Sullivan, Sheila DeCiccio, Kris Cruzada and Todd Weaver; City Manager Randy Knight; Assistant City Manager Michelle del Valle; City Attorney Kurt Ardaman; City Clerk Rene Cranis.

1) Meeting Called to Order

Mayor Anderson called the meeting to order at 3:33 p.m.

2) Invocation

The invocation was given by Pastor Weaver Blondin, Mt. Moriah Missionary Baptist Church followed by the Pledge of Allegiance.

3) Approval of Agenda

Motion made by Mayor Anderson to table Item 12c to February 8, 2023; seconded by Commissioner Cruzada. Motion carried unanimously with a 5-0 vote.

The agenda was approved by consensus.

4) Mayor Report

Mayor Anderson stated that the Historical Museum and Chamber of Commerce are celebrating 100 years of commerce in Winter Park with an exhibit at the museum this evening.

Mayor Anderson reported that Commissioners Sullivan and DeCiccio qualified to run for their seat and without opposition, they are re-elected for a second term.

5) City Manager Report

a. Report on Multimodal Transportation Impact Fees

Mr. Knight reported the revenue and revenue sources and that there were no expenditures or encumbered funds. This report will be presented annually. At the request of Commissioner DeCiccio, staff will provide a report on eligible projects to be considered during the project process.

6) City Attorney Report

7) Non-Action Items

a. Presentation by Winter Park Library

Michael Voll, President, Library Board of Trustees, spoke about the evolution of programs at the Library and showed a video of the Library, visitors, programs and features at the Library. He provided statistics on monthly visits, items circulated, classes, education hours and library card holders. He complimented staff on their delivery of services to meet community needs and thanked city and community for their support.

Melissa Schneider, Library Interim Director, and Mr. Voll shared stories of visitors whose lives have been impacted by the Library and its services. He explained the "Reach For a Star" Program and the Library's goal to be the first starred library in Florida. He invited everyone to attend their annual upcoming gala.

Commissioner Sullivan asked for a detailed proforma line item budget in advance of budget discussions and that the board consider managing the library fund similar to an endowment fund. Mr. Voll advised that it is an endowment fund managed by Merrill Lynch and in accordance with an investment policy.

b. Report on brick streets.

Director of Public Works and Transportation Charles Ramdatt stated staff has begun some brick street repairs and has assembled a team to begin a comprehensive brick assessment. In the longer term, the public works, transportation and water and sewer departments will begin an assessment of all facilities and create an overlapping maintenance, rehab and replacement program. He reviewed the components and factors of the brick street assessment and plans for improvements, from repair to major construction, for which staff is pursuing grant funding. Prioritization will be developed and shared and while the assessment is being done, urgent repairs will be made.

8) Public Comments | 5 p.m. or soon thereafter (Heard after Item 12f)

9) Consent Agenda

- a. Approve the minutes of the regular meeting, January 11, 2023
- b. Approve the minutes of the work session, January 12, 2023
- c. Approve the following contract:
 1. 15Lightyears, Inc. - IFB18-21 - Residential & Commercial Energy Audit Services; Amount: \$100,000 for services on an as needed basis for the remainder of the current term through March 11, 2024.
- d. Approve the following piggyback contract:
 1. Graybar Electric Co. - OMNIA Partners Contract #EV2370 - Electrical, Communications & Security Solutions; For goods and services on an as-needed basis during the term of the Agreement through January 31, 2025; Amount: \$400,000.

- e. Appoint Michelle del Valle as alternate to the South Seminole North Orange County Wastewater Transmission Authority Board (SSNOCWTA).
- f. Approve the letter outlining plans to update the Comprehensive Plan per Chapter 163.3191, Florida Statutes (Evaluation and appraisal notification to the Florida Department of Economic Opportunity).

Motion made by Commissioner Sullivan to approve the Consent Agenda; seconded by Commissioner Weaver. There were no public comments. **Motion carried unanimously with a 5-0 vote.**

10) Action Items Requiring Discussion

11) Public Hearings: Quasi-Judicial Matters

12) Public Hearings: Non-Quasi-Judicial Matters

- a. ORDINANCE 3259-23 - AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AMENDING ORDINANCE 3182-20 TO KEEP AS PERMANENT THE REGULATIONS FOR THE ISSUANCE OF BACKYARD CHICKEN PERMITS AND THE KEEPING OF BACKYARD CHICKENS ADOPTED BY ORDINANCE 3182-20; AMENDING SECTION 18-18 OF THE CITY CODE CONCERNING GENERAL CONDITIONS FOR THE KEEPING OF BACKYARD CHICKENS; AMENDING SECTION 58-71(i)(11) OF THE CITY CODE CONCERNING BACKYARD CHICKEN ACCESSORY STRUCTURES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, CORRECTION OF SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE. (2nd reading).

Attorney Ardaman read the ordinance by title.

Motion made by Commissioner Weaver to adopt the ordinance; seconded by Mayor Anderson.

Commissioner Weaver expressed his concern about language requiring approval by neighbors and will not support the ordinance with that language.

Commissioner DeCiccio said she is not in favor of restricting approval to residential neighbors. She noted that although this requires review in 2025, it could be reviewed sooner.

Discussion was held on the basis of requiring approval from only residential property owners. Mayor Anderson and Commissioner Cruzada supported leaving the residential language in the ordinance. Commissioner Sullivan said with review in 2025 and potentially sooner, he can support what is presented.

There were no public comments. **Upon a roll call vote, Commissioners Sullivan, DeCiccio and Cruzada and Mayor Anderson voted yes. Commissioner Weaver voted no. Motion carried with a 4-1 vote.**

- b. ORDINANCE 3260-23 - AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, ADDING A NEW DIVISION 3 OF ARTICLE VI, CHAPTER 2, OF THE CITY OF WINTER PARK CODE OF ORDINANCES, PROVIDING FOR THE ASSESSMENT OF THIRD PARTY CITY CONSULTANT COSTS, EXPENSES AND FEES INCURRED BY THE CITY OF WINTER PARK IN REVIEWING, PROCESSING AND REGULATING PROPOSED PLATS, LOT SPLITS, SITE PLANS, REZONINGS, CONDITIONAL USES, VARIANCES, DEVELOPER'S AGREEMENTS, COMPREHENSIVE PLAN AMENDMENTS, ANNEXATIONS AND OTHER DEVELOPMENT ORDER AND PERMIT REQUESTS AND DEVELOPMENT RELATED MATTERS; PROVIDING FOR REVIEW DEPOSITS, PROCEDURES FOR HANDLING REVIEW DEPOSITS AND CITY INVOICES; PROVIDING FOR FAILURE OF APPLICANTS TO PAY INVOICES; DEFINING ASSESSABLE COSTS, EXPENSES AND FEES; PROVIDING FOR ADMINISTRATIVE PROCEDURES; PROVIDING FOR FEE SCHEDULES; PROVIDING FOR OBJECTIONS AND APPEALS, PROVIDING FOR AMENDMENTS; SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.. (2nd reading)

Attorney Ardaman read the ordinance by title.

Motion made by Commissioner Weaver to adopt the ordinance; seconded by Commissioner DeCiccio. There were no public comments. **Upon a roll call vote, Commissioners Sullivan, DeCiccio, Cruzada and Weaver and Mayor Anderson voted yes. Motion carried unanimously with a 5-0 vote.**

- c. Ordinance 3261-23: Updating Section 58-87, lakefront and waterfront zoning regulations and amending Chapter 114, Lakes and Waterways to incorporate regulations concerning docks and boathouses. (2nd Reading)

This item is tabled to February 8, 2023.

- d. Ordinance - Vacating and abandoning portion of Elvin Avenue right-of-way (1st reading) Tabled from January 11, 2022.

Attorney Ardaman read the ordinance by title.

Motion made by Mayor Anderson to approve the ordinance with the condition that efforts are made to preserve the tree until the development program comes forward and alternatives can be considered at that time; seconded by Commissioner DeCiccio.

Commissioner Weaver asked about the poor condition of northern properties and expressed his concern about the poor condition and lack of sidewalk along Bennett.

Dan Bellows, Sydgan Corp., applicant displayed photos taken today of the property showing the maintained property. The property adjacent to the sidewalk on the opposite side of the street (which he sold in the fall of 2022) was used by contractors

when Fairbanks Avenue was under construction. He said that section of road will have infrastructure improvements and improvements will be seen in this area in the next six months. He said they will be undergrounding poles and putting decorative lights on the City of Maitland side. He advised that the City of Maitland does not want sidewalks on Monroe or on-street parking and asked for Winter Park staff to help in his efforts with City of Maitland to provide consistency of streets.

Commissioner Weaver addressed the traffic at intersections with Lee Road and reviewed his suggestion provided to city staff on intersection of Bennett and Lee Road. Mr. Bellows spoke about difficulties in moving forward in making improvements

There were no public comments. **Upon a roll call vote, Commissioners Sullivan, DeCiccio, Cruzada and Weaver and Mayor Anderson voted yes. Motion carried unanimously with a 5-0 vote.**

- e. Ordinance - Amending Chapter 58, "Land Development Code", Article III, "Zoning", Section 58-94 "Appeals from interpretations and enforcement decisions of the building and zoning official", to modify the process for appeals (1st Reading)

Attorney Ardaman read the ordinance by title.

Assistant Director of Planning Allison McGillis said this clarifies process for appeal of interpretation and enforcement by the building or zoning official and reduces the appeal period to 15 days.

Motion made by Commissioner DeCiccio to approve the ordinance; seconded by Commissioner Weaver.

Mr. Ardaman said that the applicant can still appeal to the Commission after P&Z decision. This gives certainty to the property owner while providing for appeal.

There were no public comments. **Upon a roll call vote, Commissioners Sullivan, DeCiccio, Cruzada and Weaver and Mayor Anderson voted yes. Motion carried unanimously with a 5-0 vote.**

- f. Ordinance - Amending Chapter 58, "Land Development Code", Article III, "Zoning" Section 58-84 "General provisions for nonresidential zoning districts", to ensure that no air traffic hazards will be created by structures and other appendages by following the heights detailed in the Orlando/Orange County Airport Zoning Regulations text and map. (1st Reading)

Attorney Ardaman read the ordinance by title.

Motion made by Commissioner DeCiccio to approve the ordinance; seconded by Commissioner Sullivan. There were no public comments. **Upon a roll call vote, Commissioners Sullivan, DeCiccio, Cruzada and Weaver and Mayor Anderson voted yes. Motion carried unanimously with a 5-0 vote.**

A recess was held from 4:42 to 5:00 p.m.

8) Public Comments | 5 p.m. or soon thereafter

Mayor Anderson stated the Commission received a letter from Mary Jane Fries regarding flooding at the Winter Pines Golf Course and neighborhood. Commissioner Cruzada said he toured area with Assistant Director of Public Works Don Marcotte who believes there is a blockage and is having staff look at and unclog it to reduce flooding on her and other's property. Staff will give an update at the next meeting.

Forest Michael, 358 W. Comstock Avenue, presented a drawing of SR 426 and gave a historic account of issues affecting this road. He said he feels the large amount of traffic on this road is unsustainable, has no bicycle facilities, and extreme vehicular traffic issues. Also, Howell Creek watershed was blocked years ago and channeled it into the canals which may have caused some of the flooding on Lake Virginia. He suggested corrective issues be discussed with FDOT. Mayor Anderson advised that staff is working closely with FDOT on SR 426 matters.

Mary Jane Fries, Fairway Avenue, spoke about drainage issues from the golf course drainage system impacting Fairway Drive. She asked for an update on dredging work and corrections on hazards around storm sewer and review of elevation and slope changes to the 9th fairway. Mayor Anderson said staff is looking at projects and the project is on the short-term list.

Michael Tudor, 1714 Westchester Avenue, said he feels he is being treating unfairly by the city and harassed by code enforcement and the police. He said he sells items from his driveway to raise money to pay his bills and is forced to shut down. He said he reported unpermitted driveways and short-term rental of homes against city code to staff who did not respond and have not investigated. Mayor Anderson asked staff to review and report.

John Thompson, 1124 Fairway Drive, spoke about drainage issues on Fairway Drive stating pipes cannot handle impervious materials. He advised of the impact from the parking lots along 436 in unincorporated Orange County which slopes into backyards of properties on Fairway Drive causing flooding. Mayor Anderson asked staff to look at the issues that involve Seminole and Orange Counties.

12) Public Hearings: Non-Quasi-Judicial Matters

- g. To be heard after 5:00 p.m. - Ordinance Amending Chapter 58, "Land Development Code", Article III, "Zoning" Section 58-72 "Office (O-1) district", to add a new permitted use for state licensed establishments involved in the rendering of a personal or business service limited to barber shops and hair salons, day spas, and cosmetic treatments subject to certain conditions. (1st Reading)

Attorney Ardaman read the ordinance by title.

Mrs. McGillis explained the provision to allow personal business services as permitted use in O-1 zoning with the exception of nail salons (sole use) or tattoo parlors. This change is largely in response to request of landlords to allow lease of smaller office suites which has decreased due to pandemic and move toward remote working.

Motion made by Commissioner Weaver to approve the ordinance; seconded by Mayor Anderson.

Discussion was held on whether to allow tattoo parlors, which are not permitted in the city, and typically have extended hours and nail salons given the odor created by products used. Mrs. McGillis presented proposed language that would allow these businesses under conditions: "Furthermore, these establishments shall not create a nuisance to other tenants within a building by reason of sound, fumes, heat, odors and the like, and those found not in conformity to this provision shall rectify the situation immediately to the satisfaction of the city or must discontinue operations."

The additional language was accepted as amendment to the motion by Commissioner Weaver and Mayor Anderson.

Further discussion ensued on odors created by nail salons and tattoo parlor operating hours beyond typical office hours.

There were no public comments. **Upon a roll call vote on the motion as amended, Commissioners Sullivan, DeCiccio, Cruzada and Weaver and Mayor Anderson voted yes. Motion carried unanimously with a 5-0 vote.**

- h. RESOLUTION 2267-23 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, ADOPTING A SUSTAINABILITY ACTION PLAN; PROVIDING FOR SEVERABILITY, NON-LIMITATION OF AUTHORITY, AND AN EFFECTIVE DATE.

Attorney Ardaman read the resolution by title.

Director of Natural Resources and Sustainability Gloria Eby provided the brief summary of the development of the Sustainability Action Plan (SAP).

Motion made by Mayor Anderson to approve the resolution; seconded by Commissioner Sullivan.

Mayor Anderson addressed the indicators on Page 9 that relate to renewable energy and greenhouse gases stating he feels it is premature to fill in goals until feasibility study is complete.

Motion made by Mayor Anderson to change the 2025 and 2035 targets for CR1, CR2, E1 and E2 to TBD.

Commissioner Weaver said aspirational goals are needed in the document and cannot support the amendment.

Mayor Anderson said he feels these dates could be added back into the document when the feasibility study is complete in the next few months and because these four indicators will be part of a strategic plan being developed for electric utilities. He suggested that an alternative could be to table this resolution until the study is completed.

Motion made by Commissioner Sullivan to add a footnote for these indicators stating these are based on preliminary estimates and are subject to revision rather than changing to TBD.

Discussion followed on the need to adopt the plan before the feasibility study is completed.

Commissioner Weaver seconded the motion made by Commissioner Sullivan but would prefer that the goals as stated are the minimum.

Motion to change goals to TBD was seconded by Commissioner DeCiccio.

Mayor Anderson addressed climate resilience and commitment to undergrounding and expressed concern that the target completion date of 2030 is too far out. **Motion made by Mayor Anderson to amend the main motion to add under Climate Resiliency, CR-5, complete system hardening of 100% of undergrounding power lines by 2030; seconded by Commissioner Sullivan.**

Motion made by Mayor Anderson to amend the main motion to change on Page 35, "Implement affordable and workforce housing with a quarter mile from major employers" to "Assess affordable and workforce housing during the comp planning process"; seconded by Commissioner Cruzada.

Motion made by Mayor Anderson to add language in Section 4 that would clarify that this plan is a guide but does not preclude the applicability of or supersede other city regulations; seconded by Commissioner Cruzada.

Attorney Ardaman recommended changing "Procurement Policy" to "Sustainability Action Plan" in Section 5. In accordance with Mayor Anderson's motion regarding amending to Section 4 of the resolution, Mr. Ardaman recommended the following language "The Sustainability Action Plan is an aspirational guide and subordinate to the city's comprehensive plan, land development regulations and other legally binding requirements of the City Code."

Mayor Anderson revised his motion to amend Section 4 and Section 5 as recommended by Mr. Ardaman; accepted by Commissioner Cruzada.

There were no public comments.

Upon a roll call vote on the amendment to the Resolution as recommended by the City Attorney, Commissioners Sullivan, DeCiccio, Cruzada and Weaver and Mayor Anderson voted yes. Motion carried unanimously with a 5-0 vote.

Upon a roll call vote on the amendment to affordable housing language, Commissioners Sullivan, DeCiccio and Cruzada and Mayor Anderson voted yes. Commissioner Weaver voted no. Motion carried with a 4-1 vote.

Upon a roll call vote on the amendment to add CR-5 regarding undergrounding, Commissioners Sullivan, DeCiccio, Cruzada and Weaver and Mayor Anderson voted yes. Motion carried unanimously with a 5-0 vote.

Mayor Anderson clarified his motion is to change the targets for CR1 and 2 and E1 and 2 to TBD based on the feasibility study and joint work sessions with KWPB/S and the UAB and the Commission. Commissioner Sullivan clarified that his motion Commissioner Sullivan clarified his motion is to add a footnote or asterisk indicating that the numbers are subject to further information and result of the study.

Mrs. Eby clarified that the plan has been reviewed by advisory boards; however, future work sessions are related to the feasibility study.

Upon a roll call vote on the amendment to add a footnote, Commissioners Sullivan and Weaver voted yes. Commissioners DeCiccio and Cruzada and Mayor Anderson voted no. Motion failed with a 2-3 vote.

Upon a roll call vote on the motion to change target indicators to TBD, Commissioners DeCiccio and Cruzada and Mayor Anderson voted yes. Commissioners Sullivan and Weaver voted no. Motion carried with a 3-2 vote.

Upon a roll call vote on the main motion with amendments, Commissioners Sullivan, DeCiccio, Cruzada and Weaver and Mayor Anderson voted yes. Motion carried unanimously with a 5-0 vote.

13) City Commission Reports

Commissioner Sullivan – No report.

Commissioner DeCiccio -

- Asked about commission's participation in the St Patrick's Day Parade. Consensus was for staff to decorate one float using Commissioner Weaver's boat.
- Spoke about John Rife's presentation at Rotary regarding Audubon/Corrine Main Street program, voted the Number One in the state, and asked that he make a presentation at an upcoming work session. Agreed by consensus.
- Asked for a comprehensive report on infrastructure improvements that identifies projects that need to be done yesterday, now, in six months, a year and in five years, to prepare for budget discussions. Agreed to by staff.

Commissioner Cruzada - No report

Commissioner Weaver

- Congratulated Commissioners Sullivan and DeCiccio on their re-election.
- Reported that Dr. Richard James, member of broadband task force, and will be difficult to replace. He asked for permission to go outside of city limits for expertise on this committee. Agreed to by consensus.
- Said there is property within Lake Rose and suggested the city move to acquire the property to be part of stormwater management. Agreed by consensus.
- Advised that he is pulling his support for the work session on old library RFP. He gave a presentation on the cost to demolish the library, remove and haul the concrete and the cost to make and replace the concrete which he estimates to be \$4.6M to \$6.1M. He believes the current proposer could renovate the building at a much lower cost than their estimated \$14M. He showed projects in South Carolina and examples of renovated older buildings, including the current Foxtail Building on Orange Avenue. He feels the response time in the original RFP was insufficient and there is not an urgent need to move forward and asked that the RFP be reissued with a longer response time of 6-9 months. Mr. Ardaman advised the commission not to discuss this further and until the work session.

Mayor Anderson – No report.

14) Summary of Meeting Actions

- Received presentation from Winter Park Library.
- Received report on brick streets.
- Approved the Consent Agenda.
- Staff to bring back potential uses for the Multimodal Transportation Fee.
- Adopted ordinance on backyard chicken program.
- Adopted ordinance to pass-through third-party attorney and consulting fees for development applications.
- Approved ordinance vacating Elvin Avenue on first reading.
- Approved ordinance on appeal procedures of interpretation by building or zoning official on first reading.
- Approved ordinance adding regulations to ensure structures do not interfere with air traffic on first reading.
- Approved ordinance allowing certain uses in O-1 zoning with amendments.
- Approve SAP resolution and Plan with amendments.
- Asked staff to provide report on Mr. Tudor's comments
- Provide report on impact of parking lot in unincorporated properties on 436 related to flooding of properties on Fairway Drive.
- Invite John Rife to make presentation at upcoming work session on the Main Street Program..

- Staff to provide a complete short and long-term infrastructure needs report
- Allow a non-resident on Broadband and Smart City Task Force
- Staff to pursue purchase of property within Lake Rose
- Staff to decorate a single float for St. Patrick's Day Parade.

15) Adjournment

The meeting adjourned at 6:39 p.m.

Mayor Phillip M. Anderson

ATTEST:

City Clerk Rene Cranis



City Commission **agenda item**

item type Consent Agenda	meeting date February 8, 2023
prepared by Michael Hall	approved by Jennifer Maier, Michelle del Valle, Randy Knight
board approval Completed	
strategic objective Fiscal Stewardship	

subject

Approve the following piggyback contracts:

item list

1. Atlas Concrete Products, Inc. - City of Sanford Contract #IFB22/23-04 - Cemetery Opening & Closing of Graves; For services on an as-needed basis during the term of the Agreement through January 18, 2026; Amount: \$250,000.
2. Eurofins Environment Testing Southeast, LLC - Volusia County Contract #ITB20-B-15LL - Laboratory Analysis and Sampling; For services on an as-needed basis during the term of the Agreement through February 3, 2024; Amount: \$120,000.
3. Rental Digger Derricks, Bucket Trucks, Cable Placers, & Equipment; For services on an as-needed basis during the term of the Agreement through August 27, 2024; Amount: \$250,000.
4. Duval Ford LLC - Florida Sheriffs Association Contract #FSA20-VEL28.0 - Pursuit, Administrative, and Other Vehicles; For goods on an as-needed basis during the term of the Agreement through September 30, 2023; Amount: \$500,000.
5. Alan Jay Fleet Sales - Sourcewell Contract #091521-NAF - Cars, Trucks, Vans, SUVs, Cab Chassis, & Other Vehicles; For goods on an as-needed basis for the remainder of the term of the Agreement through November 08, 2025; Amount: \$900,000.
6. Safety Products, Inc. - City of Sunrise Contract #17-46-09-HR - Safety Supplies and Equipment; For goods on an as-needed basis during the term of the Agreement through December 31, 2024; Amount: \$75,000.

motion / recommendation

Commission approve items as presented and authorize the Mayor to execute the Agreements.

background

1-6: The originating agencies conducted a formal solicitation process to award these contracts.

alternatives / other considerations

N/A

fiscal impact

Total expenditures included in approved budgets.



City Commission **agenda item**

item type Consent Agenda	meeting date February 8, 2023
prepared by Rebecca Watt	approved by Jennifer Maier, Michelle del Valle, Randy Knight
board approval Completed	
strategic objective Fiscal Stewardship.	

subject

Approve the following contracts:

item list

1. Paymentus Corp. - FY20-75 - Payment Management & Processing Services; Amount \$630,000 for services on an as needed basis during the term of the Agreement.
2. Kimley-Horn and Associates, Inc. - RFQ27-21 - Continuing Urban Design Services; Amount: \$75,000 for services on an as needed basis for the remainder of the current term through January 21, 2024.

motion / recommendation

Approve items as presented and authorize Mayor to execute Agreements.

background

1. Requesting additional funds for the remainder of the term through November 7, 2023 for previously approved and executed master services agreement.
2. A formal solicitation was issued to award this contract. The previous vendor, Canin Associates, Inc., recently joined Kimley-Horn and Associates, Inc., and this contract has been reassigned to Kimley-Horn and Associates, Inc.

alternatives / other considerations

N/A

fiscal impact

Total expenditures included in approved budgets.



City Commission agenda item

item type Consent Agenda	meeting date February 8, 2023
prepared by Peter Moore	approved by Michelle del Valle, Randy Knight
board approval Completed	
strategic objective Quality of Life Investment in Public Infrastructure	

subject

Verizon Wireless Pole Attachment Agreement

motion / recommendation

Approve the agreement as attached.

background

Cellular service providers have been expanding wireless service options through 4 & 5G expansions on smaller scale micro sites. Two years ago, the city signed a master agreement with Extenet, a third-party provider of cellular node construction and services, so that they could start placing small-scale cellular sites throughout the city on behalf of their clients. AT&T has deployed approximately 20 sites (which have largely already been built throughout the city) and Verizon is contracted to deploy about 46 sites (which are currently in permitting). This original master agreement was intended to serve as the model for all other cellular providers looking to reach agreement with the city regarding cellular pole attachments.

Verizon has worked with staff and the city attorney's office to establish their own master agreement with the city. This agreement is largely identical to the version signed with Extenet and would allow Verizon to work directly with the city to permit and install node sites on their own. Verizon has not informed staff of any additional sites they are intending to request, outside of the 46 that are already being performed through Extenet.

Under this agreement, Verizon is required to meet our design guidelines which have been established as decorative street light poles that match the existing character of the city's current poles and fixtures. It provides for master metering agreements that limit the number of unsightly boxes and equipment on the poles, and it includes a process for pole removal and replacement by the company if a node site is ever abandoned. The only material change from the previous agreement is that this one is updated for changes in

the law which now cap the funding the city can charge annually to a cellular company at \$270 per node location.

alternatives / other considerations

The City Commission is able to make suggested changes to the agreement but settled law both at the State and Federal level allows cellular companies broad latitude to place attachments on poles in public rights-of-way. Signing this agreement does not change that right but gives both parties the rules by which they each expect to play.

fiscal impact

The fiscal benefit to the city is minimal. Node locations will be billed for the expected energy usage they consume based on prevailing rates. In addition, the city will receive \$100 in permitting revenue per node submitted, and \$270 a year in revenue for each node location.

ATTACHMENTS:

[Verizon-Winter Park Pole Attachment Agreement - Final.pdf](#)

POLE ATTACHMENT AGREEMENT

Between

**City of Winter Park, acting as the Winter Park
Electric Utility Department**

and

Cellco Partnership d/b/a Verizon Wireless

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POLE ATTACHMENT AGREEMENT

THIS POLE ATTACHMENT AGREEMENT ("Agreement") is made as of this _ day of _____, 2023, by and between the City of Winter Park, a Florida municipal corporation, acting as the Winter Park Electric Utility Department, a Florida municipal electric utility ("Pole Owner" or "City") and Cellco Partnership d/b/a Verizon Wireless ("Licensee", which term shall include its wholly-owned subsidiaries).

In consideration of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

1. PURPOSE AND CONSTRUCTION OF AGREEMENT.

1.1 Licensee desires to locate certain of its Attachments on electrical distribution poles and streetlight poles that are owned by Pole Owner either wholly or jointly with others within Pole Owner's electric service territory.

1.2 Pole Owner owns, either wholly or jointly with others, valuable streetlight poles and other and associated infrastructure that the City acquired, constructed and maintains at considerable cost and expense. The parties agree that it would serve their mutual economic and other interests of Licensee, under the conditions set forth herein and to the extent it may lawfully do so, to attach its Attachments to certain of Pole Owner Poles upon Licensee's compliance with the provisions of this Agreement. Pole Owner will permit the placement of Licensee's Attachments to certain street light poles, provided (a) Pole Owner receives appropriate compensation as set forth in this Agreement; (b) such Attachments does not materially, as determined by Pole Owner in its reasonable discretion, interfere with Pole Owner's own service and operating requirements, including considerations of safety, reliability, functionality, and engineering; and (c) Licensee complies with all other provisions of this Agreement. The permission to use Pole Owner Poles being granted by Pole Owner to Licensee hereunder shall be subject and subordinate in all respects to Pole Owner's service and operating requirements.

1.3 This Agreement is not intended, and shall not be construed, to authorize any action by Licensee that would adversely affect the quality or reliability of the electrical or other services provided by Pole Owner. Nor shall this Agreement be construed so as to preclude Pole Owner from taking any action that Pole Owner considers reasonably necessary or appropriate to maintain the safety, reliability, functionality or quality of such service or to ensure the safety of its employees, its customers, or the public.

1.4 Through this Agreement, Pole Owner intends to grant Licensee and Licensee intends to receive a non-exclusive license to use particular Pole Owner Poles for Licensee's Attachment(s) only in the manner and solely for the

purposes set forth herein. No leasehold or easement rights and no interest in real estate or other interest in property is granted or intended to be granted by this Agreement. No use, however extended, of Pole Owner Poles under this Agreement shall create or vest in Licensee any ownership or property rights in Pole Owner Poles.

1.5 The laws of the State of Florida, all applicable federal statutes and regulations, the FCC Declaratory Ruling and Third Report and Order and the Winter Park City Code (collectively the "Telecommunications Laws and Regulations"), shall govern the construction of this Agreement, such that wherever possible this Agreement shall not be construed to conflict with the foregoing authorities, except that no Telecommunications Law or Regulation shall govern this Agreement or limit either party to the extent that such Law or Regulation has been declared invalid by a court of competent jurisdiction.

2. DEFINITIONS.

2.1 "Antenna Attachment" means the antenna, coax, support masts, grounding or bonding wires, power supply, nuts, washers, through bolts, and other equipment related to such antenna, owned, controlled, and/or used by Licensee to provide Licensee Service, that are attached to a Pole Owner Pole pursuant to this Agreement.

2.2 "Attachment(s)" means an item of Licensee's equipment that is owned, controlled, and/or used by Licensee in providing wireless telecommunications service and that is placed on a Pole Owner Pole pursuant to this Agreement. "Attachment(s)" collectively includes "Antenna Attachments" and all other equipment placed or proposed to be placed upon a Pole Owner Pole, including but not limited to support mast and mounts, fiber optic cable and cable equipment, amplifiers, conduits, coaxial cable, receivers, radios, battery units, equipment cabinets, through bolts, washers, nuts, power supply cabinets, power meters, grounding or bond wires, and all other equipment. Subject to the requirements in this Agreement, Licensee's Attachments may be made on the Pole only with the prior express written consent from the City in accordance with any applicable application process provided in this Agreement, the City Code, applicable Telecommunications Laws and Regulations or otherwise.

2.3 "Cable" means a single cable or wire or fiber optic strand used by Licensee to provide Licensee Service and any hardware or equipment thereto, owned, controlled, and/or used by Licensee and attached to Pole Owner Poles pursuant to this Agreement. A Cable is "placed on" or "attached to" a Pole Owner Pole if any portion of the Cable is physically located on the Pole Owner Pole; provided, however the Cable must be located inside the Pole or if allowed by the City the entire length of the Cable must be attached to the exterior of the Pole within a covering or conduit approved in writing by the City. Licensee shall provide a detailed description of Licensee's Cable in its Application.

2.4 “Cost(s)” means Pole Owner’s fully-allocated costs, including without limitation all direct costs for labor, time, services, material, contractors and related engineering and administrative expense, as determined by Pole Owner in accordance with its standard and applicable engineering, construction, accounting and billing practices and procedures.

2.5 “Customer Work Agreement” means the invoice for billing Costs associated with the Marked-Up Application for engineering and construction of the Pole Attachment Application.

2.6 “Effective Date” means the date that this Agreement is fully executed by both parties hereto.

2.7 “Environmental Laws” means all federal and state statutes and local ordinances, and all regulations or ordinances of any applicable federal, state, city, county or local regulatory agency, relating to the protection of the environment and/or health and safety issues related to environmental pollution including, without limitation, the Clean Air Act, the Water Pollution Control Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substance Control Act, all statutes, rules and regulations applicable to wetlands and all similar state and local laws now or hereinafter enacted or amended.

2.8 “FCC Declaratory Ruling and Third Report and Order” or “Order,” means that certain Declaratory Ruling and Third Report and Order adopted by the Federal Communications Commission September 26, 2018.

2.9 “Hazardous Materials” means any waste, pollutant, toxic substance or hazardous substance, contaminant or material regulated by any Environmental Laws including, without limitation, petroleum or petroleum-based substances or wastes, asbestos and polychlorinated biphenyls.

2.10 “Licensee Service” means the wireless telecommunications services provided or intended to be provided by Licensee using one or more Pole Owner Poles.

2.11 “Make Ready” is the replacements, changes and rearrangements, if any, to the facilities, equipment or plant of Pole Owner and the facilities of other users and all related engineering and administrative work necessary to accommodate the attachment of Licensee’s Attachments to Pole Owner Poles, or its proposed Modifications to Licensee’s Attachments.

2.12 “Marked-Up Application” means Licensee’s Application as reviewed and marked up or modified by Pole Owner to identify any Make Ready or installation work, and any special conditions governing attachment, placement, Modification or removal of any Attachment on or from Pole Owner Poles.

2.13 "Modification(s)", or "Modify" means any change or alteration affecting the Attachment, including without limitation any change in the number, type, ownership or use of the Attachment, which causes the information provided by Licensee in the prior Application(s) to be incorrect or incomplete in any material respect.

2.14 "Permit" means the document issued by Pole Owner when an Application is granted, providing permission to Licensee for the attachment, placement, Modification, or removal on or from Pole Owner Poles of the specific Attachment identified in the Marked-Up Application. The form of Permit shall be prescribed by Pole Owner in accordance with Telecommunications Laws and Regulations and incorporated into Pole Owner's Standards and Specifications.

2.15 "Pole Attachment Application" (herein "Application") means the form documents, and information submitted by Licensee to obtain permission from Pole Owner for Attachments or for the attachment, placement, Modification or removal of any of Licensee's Attachment(s) on or from Pole Owner Poles. The form of Application and information required shall be prescribed by Pole Owner in accordance with Telecommunications Laws and Regulations and incorporated into Pole Owner's Standards and Specifications.

2.16 "Pole Owner Pole" or "Pole" means a streetlight pole, including but not limited to support mast and mounts, that Pole Owner owns or controls solely or jointly with others.

2.17 "PUC" shall mean the FLORIDA PUBLIC UTILITIES COMMISSION OR EQUIVALENT.

2.18 "Standards and Specifications" means all standards, practices, procedures, rules, regulations, ordinances, and other requirements adopted or required by Pole Owner and applicable to the construction, installation, modification, repair, maintenance, use, operation, relocation or removal of any Attachment, as such requirements may be revised, modified, restated, supplemented or updated by Pole Owner from time to time and the National Electric Safety Code (NESC)."

3. TERM OF AGREEMENT.

3.1 This Agreement shall commence on its Effective Date and shall remain in effect for an initial period of ten (10) years following the Effective Date (the "Initial Term"), unless terminated sooner in accordance with this Agreement. The Agreement will automatically renew on the same terms and conditions set forth herein for four (4) successive five (5) year renewal periods (each such five-year period referred to as a "Renewal Term"), except that the Annual Fees for each Attachment will be adjusted in accordance with Section 11.1.2 below. The Agreement will be subject to termination by Licensee or Pole Owner upon the giving of written notice to the other party at least sixty (60)

days prior to the end of the Initial Term, or thereafter sixty (60) days prior to the last day of the then current Renewal Term, unless the Agreement is otherwise terminated in accordance with this Agreement.

4. AUTHORITY FOR ATTACHMENTS AND MODIFICATIONS.

4.1 No Attachment shall be placed upon any Pole Owner Poles or Modified until (a) an Application has been submitted by Licensee, reviewed, marked-up and approved by Pole Owner, and accepted in marked-up form by Licensee, and a Permit has been issued by Pole Owner, all in accordance with Articles 5.0, 6.0, 7.0 and 8.0 of this Agreement, and (b) Licensee has obtained all necessary permits, licenses, consents, certifications and approvals from all governmental authorities and third parties in connection therewith, including, if required, a permit from the joint owner of any jointly owned Pole Owner Poles.

4.2 Subject to Telecommunications Laws and Regulations, Pole Owner may accept or reject an Application for a specific Pole or Poles on a nondiscriminatory basis in its sole reasonable discretion based on capacity, safety, reliability, aesthetic considerations, in accordance with the equipment specifications incorporated in Exhibit B, generally applicable engineering purposes reasons, and/or based on other requirements under the City Code and applicable laws, and may condition any such approval upon a specific size, location and manner of installation of the Attachment. Only as an example and not in any way as a limitation, subject to applicable laws, Pole Owner may withhold its consent to a particular Pole Owner Pole or to a particular size, location or manner of installation if Pole Owner determines in Pole Owner's reasonable discretion that (i) Licensee's use of a proposed Pole Owner Pole is unsuitable or incompatible with Pole Owner's use or proposed use of the Pole Owner Pole or other property of Pole Owner, (ii) a site or Pole Owner Pole has insufficient capacity or is otherwise unsuitable based upon safety, reliability, aesthetic considerations or generally applicable engineering standards, (iii) the Attachment(s) jeopardizes the structural integrity of the Pole Owner Pole, or (iv) the Permit would violate any existing covenants and restrictions applicable to the Pole Owner Pole, other Pole Owner facilities, or the property on which it is located. Without limiting matters to which Licensee is subject, Licensee is subject to Pole Owner's right to use such Pole Owner Pole for its energy business and lighting purposes.

4.3 Licensee agrees to comply with any and all applicable laws, statutes, ordinances, rules and regulations related to the installation, use and operation of its Attachments. Additionally, Licensee shall obtain and maintain, at its sole cost and expense, any and all easements, licenses, consents, franchises, certifications, permits or other authorizations required from any property owner or governmental entity in connection with the installation, use and operation of Licensee's Attachments on any Pole Owner Poles. Licensee shall be responsible for the cost of all such permits or approvals, whether such charges are imposed against Licensee or Pole Owner. Pole Owner may, at its reasonable discretion, request evidence that all such easements, licenses,

consents, franchises, certifications, permits, approvals and authorizations have been obtained and are in full force and effect, and Licensee agrees to promptly provide the requested information.

4.4 Licensee shall not place any Attachment on Pole Owner Poles until all Permits have been issued, all necessary Make Ready work has been performed by Pole Owner or its agent, Licensee has paid all required fees and costs, and all other applicable requirements have been met.

4.5 Licensee shall install, maintain and remove all Attachments in accordance with Pole Owner's Standards and Specifications. Licensee shall be responsible for familiarizing itself with the Standards and Specifications. Pole Owner will provide Licensee with a current copy of its Standards and Specifications at the time of execution of this Agreement. Subsequently, upon Pole Owner's receipt from Licensee of an Application for the Placement, Modification or removal of any of Licensee's Attachments on or from Pole Owner Poles, Pole Owner will provide Licensee with a copy of its then-current Standards and Specifications. In the event the Standards and Specifications do not address all the issues and requirements necessary to address the safe, efficient and legally compliant installation, placement, modification, relocation, replacement, removal, or other work related to an Attachment, including objective design criteria, or such Standards and Specifications then do not exist or are incomplete, the City and Licensee shall agree on what shall apply, failing which the City shall issue such Standards and Specifications in compliance with Telecommunications Laws and Regulations within thirty (30) days of such impasse.

4.6 The permission given by Pole Owner to Licensee to use the Pole Owner Poles under this Agreement is non-exclusive and shall in no way limit Pole Owner's use of Pole Owner Poles for its own business operations, or the rights or privileges previously or subsequently given by Pole Owner to any third parties not party to this Agreement, to use any Pole Owner Poles, whether or not such Pole Owner Poles are at any time occupied by Licensee's Attachment(s), provided Pole Owner shall not grant third parties use of a Pole Owner Pole licensed to Licensee in a manner that interferes with Licensee's use of the Pole Owner Pole as contemplated by this Agreement. Insofar as other wireless providers are already using the Pole Owner Poles, Licensee agrees that its operations will not interfere with then existing equipment of thus pre-existing users of the Poles.

4.7 In the event of any emergency or condition during or after installation that threatens persons or property, Pole Owner may, in its sole discretion, order Licensee to stop work and/or take other action as appropriate. Pole Owner will give such order and notice in such manner as is practicable under the circumstances. In the event that any Pole Owner Pole housing Licensee's Attachment(s), or any portion of such Pole Owner Pole or Attachment housed thereon, falls or otherwise becomes a hazard for any reason including but not limited to weather events or other emergencies, the

City may in its discretion remove, repair, re-erect, or take other action to rectify any resulting hazard, the costs of which shall be reimbursed by Licensee at its sole expense.

4.8 As an alternative to use of Pole Owner Poles, Pole Owner may in its discretion request that Licensee use of any other structure owned by Pole Owner within or outside the public right-of-way for installation of Licensee's Attachments, subject to suitability to Licensee and terms and pricing to be negotiated by the parties. Licensee shall consider any such request in good faith, but shall not be required to take any action inconsistent with the law.

4.9 All Attachments shall conform to the equipment specifications described in Exhibit B to this Agreement, unless otherwise agreed by the parties.

4.10 Provided that Licensee is performing in accordance with all terms and conditions of this Agreement, Pole Owner shall not intentionally disturb Licensee's use of its Attachments, except as necessary in a safety, emergency or natural disaster situation, or if Licensee's equipment is interfering with that of another Licensee in violation of this Agreement, or if FDOT requires removal or relocation of a Pole Owner Pole, as determined in Pole Owner's reasonable judgment.

5. APPLICATION FOR ATTACHMENTS AND MODIFICATIONS.

5.1 Licensee shall submit a written request and all associated and supporting documentation and completion of Pole Owner required forms and materials required by Pole Owner ("Application") to Pole Owner for each Attachment and the attachment of any and all other proposed Attachment(s) to Pole Owner Poles or for the Modification of any and all such Attachments and shall specify therein the kind of Attachment sought and the date proposed for such Attachment, a detailed description of the Attachments, the number of Attachments that are included, the proposed Modification, if any, to the Attachment, the proposed location of each Attachment to each Pole Owner Pole, and the location of the affected Pole Owner Poles. Each Application for an Attachment shall indicate the Global Positioning Satellite coordinates for the Pole to which Licensee wishes the Attachments attached.

Each Application shall be accompanied by Licensee's payment in the amount of \$100 per Antenna Attachments in order to process the Application. For fiber-only attachment applications, Pole Owner shall charge the same non-discriminatory application fee it charges other wireline communication services applicants.

Each Application for an Attachment shall detail the technical specifics of Licensee's proposed Attachments, including but not limited to Licensee's engineering plans stamped by a professional Florida engineer and an analysis of the structural integrity of Pole Owner's Facilities in light of the Licensee's

proposed Attachments thereon.

5.2 Licensee's submission of each Application to the City signifies Licensee's determination and representation to the City that the existing uses will not cause interference to Licensee's Attachments, provided such existing uses and Licensee's Attachments are properly and lawfully installed and operated. If Licensee's Attachments interfere with any lawful use existing prior to the execution of the Permit, or if Licensee's Attachments cause measurable interference, as defined by the FCC or as otherwise determined by Pole Owner, to Pole Owner or any entity jointly owning Poles with Pole Owner, or to other lawful users of Pole Owner's property or distribution system with respect to those uses existing prior to the execution of the Permit, Licensee, at Licensee's expense, agrees to take all steps necessary to immediately correct and eliminate the interference. Notwithstanding any other provisions in this Agreement, if Licensee fails to correct and eliminate such interference within twenty-four (24) hours of notice thereof, Pole Owner shall have the option (but not the obligation) to require Licensee to cease all operations until such interference is corrected (failing which Pole Owner may correct or eliminate such interference at Licensee's expense) or eliminated and shall have the right (but not the obligation) to engage outside consultants, at Licensee's expense, to resolve interference issues. Following the installation of Licensee's Attachment(s), Licensee shall, at its own expense, if requested to do so by Pole Owner, prepare and conduct an evaluation of the potential for interference, whether upon Pole Owner's own behalf or as a result of concerns expressed to Pole Owner by a third party.

5.3 Licensee agrees that the uninterrupted operation of Pole Owner Poles, facilities, and equipment, and the provision of electricity to its customers and lighting of rights of way are of paramount importance hereunder and, therefore, any mitigation of interference that may be caused to Licensee's Attachment(s) by Pole Owner's Facilities, existing or future, shall be solely Licensee's responsibility and accomplished solely at the expense of Licensee. Licensee shall eliminate such interference by adjustment to its Attachment(s) or by termination of the applicable Permit. Under no circumstances shall Pole Owner be required to interrupt, suspend or alter its uses of the Pole Owner's Facilities in order to accommodate the Licensee or its rights granted hereunder.

5.4 Unless otherwise agreed by Pole Owner and Licensee, each Application submitted by Licensee to Pole Owner for Attachments to Pole Owner Poles or the Modification of such Attachment(s) shall not exceed, in total, Attachments to more than 200 Pole Owner Poles.

5.5 Licensee shall have the right to accompany Pole Owner, or a Pole Owner designated contractor, on all pre-construction walks scheduled by Pole Owner to the extent reasonably necessary to determine the nature and extent of required Make Ready work related to the proposed Attachment to Pole Owner Poles as set forth in the Application. Pole Owner shall provide Licensee with notice of any such pre-construction inspection. With respect to

Modifications, Licensee shall also have the right to accompany Pole Owner on any field verifications scheduled by Pole Owner to the extent reasonably necessary to determine the feasibility of the proposed Modification set forth in the Application and whether any Make Ready work related to the proposed Modification is required. Pole Owner shall provide Licensee with notice of any such field verifications. Licensee shall pay all Costs incurred by Pole Owner in conducting such pre-construction walks or conducting such field verifications, provided, however, Pole Owner shall provide to Licensee a written estimate of such anticipated Costs for Licensee's approval, and the actual Costs shall not be incurred until Licensee provides its written approval and shall not exceed such approved estimate.

5.6 Pole Owner will indicate on the Marked-Up Application or on supplemental or associated documents the Make Ready work necessary to accommodate the proposed Attachment or the proposed Modifications and the Cost of such Make Ready work via Customer Work Agreement. Pole Owner will also specify on the Marked-Up Application or on supplemental or associated documents any special conditions that will govern the proposed Modifications or the placement of Licensee's Attachment(s) on Pole Owner Poles. The Marked-Up Application, or return of the Application due to incompleteness, or requested additional documentation or information will be provided to Licensee within thirty (30) days of submission.

5.7 If, after receiving the Customer Work Agreement and Marked-Up Application or Customer Work Agreement, Licensee still desires to have its Attachment(s) placed on Pole Owner Poles or to implement the proposed Modifications under the terms and conditions indicated on the Customer Work Agreement and Marked-Up Application, Licensee shall accept such terms and conditions by signing the Marked-Up Application and returning the same to Pole Owner within ten (10) business days after delivery by Pole Owner, together with payment in full of the Customer Work Agreement. Billing for applicable fees as set forth in Article 11.0 and Article 5.1 will be performed under a separate invoice and are in addition to the foregoing payments required in this Article 5.7.

5.8 Pole Owner will cause Make Ready work on Pole Owner's facilities, if any, identified in the Marked-Up Application to be scheduled and performed in accordance with this Article 5.0 and Article 7.0. Pole Owner will provide Licensee with a preliminary schedule for the work under each Application (which may not request or identify attachments to more than 50 Poles) as soon as reasonably practical. As to each Application, once a preliminary schedule has been provided to Licensee, Pole Owner will use its best efforts to provide Licensee with such updated schedules as may change from time to time. In no event will the period starting from Licensee's submission of a correct and complete Application to the completion of the Make-Ready exceed one hundred thirty (130) days, provided such period will be tolled during all periods for which the action lies with Licensee (e.g. payment of fees or acceptance of Marked-Up Application) and other delays by Licensee. Pole Owner will notify Licensee upon

completion of such Make Ready work and issue a Permit authorizing the Attachment, Modification or removal of Licensee's Attachment(s) pursuant to the Marked-Up Application upon Licensee's submission of all required documents and payment and subject to the terms and conditions set forth therein.

5.9 Pole Owner's approval of an Application submitted by Licensee shall only constitute approval of the Attachment(s) specifically described in such Application. Licensee shall not make any Modification or install or allow any other party to install any additional Attachment(s) upon any Pole Owner Pole without obtaining express written approval from Pole Owner. Licensee expressly acknowledges that Pole Owner Poles may not be suitable for collocation of more than one Antenna Attachment, and Licensee shall not house more than one Antenna Attachment on any Pole Owner Pole without express written approval by Pole Owner.

6. ATTACHMENT OF EQUIPMENT TO POLE OWNER POLES.

6.1 After completion of the Application process and issuance of the Permit and payment of all fees, Licensee may then attach its Attachment to the designated Pole Owner Poles or make any Modifications in accordance with (a) the terms and conditions of the Marked-Up Application, (b) Pole Owner's then-current Standards and Specifications, (c) the Permit requirements, and (d) all applicable laws, statutes, ordinances, rules and regulations imposed by any governmental entity with jurisdiction over the construction, operation, use, maintenance, repair, replacement or removal of the Attachment(s), Pole Owner Poles or other facilities thereon, including, but not limited to, the Occupational Safety and Health Administration Regulations ("OSHA"), as amended from time to time. Licensee will follow the procedures for a new Pole Owner energy delivery customer necessary to activate the Attachment(s) for use in their designated purpose. Licensee shall have the right to accompany Pole Owner on any post-construction inspections scheduled by Pole Owner to the extent necessary to determine Licensee's compliance with the terms and conditions of this Agreement and the Marked-Up Application. Pole Owner shall provide Licensee with sufficient notice prior to any such post-construction inspection. Licensee shall pay when billed for all reasonable Costs incurred by Pole Owner in conducting any such post-construction inspections, provided, however, Pole Owner shall provide to Licensee a written estimate of such anticipated Costs for Licensee's approval, and the actual Costs shall not be incurred until Licensee provides its written approval and shall not exceed such approved estimate.

Licensee shall require a qualified and Florida licensed electrical contractor reasonably acceptable to Pole Owner, shall undertake the installation of any and all Attachments and related equipment on or connected to Pole Owner Poles in accordance with the plans and specifications as approved pursuant to the issuance of a Permit. Such installation shall be at Licensee's sole cost and expense.

6.2 All Attachments shall be clearly labeled at each Pole location with Licensee's name and a telephone number where a representative of Licensee can be reached, twenty-four (24) hours a day, seven (7) days a week, to receive reports of problems with the Attachment(s). Licensee shall investigate all such reports in a timely manner and perform all necessary repair and maintenance to remedy such problems.

6.3 Placement of any of Licensee's Attachments at a new or different position than as approved in a Permit on any Pole Owner Pole shall, in each instance where such Attachment has not been specifically approved by a prior Permit, constitute a Modification requiring the submission of a new Application and issuance of a Permit, and shall be subject to immediate removal (absent Pole Owner's specific approval) by Licensee at Licensee's expense if Pole Owner so elects.

7. COST AND SCHEDULING OF MAKE READY.

7.1 Licensee agrees to pay in advance the Cost of all Make Ready, as such Cost is identified in the Customer Work Agreement. Upon receipt of such payment and the Customer Work Agreement and Marked-Up Application as accepted by Licensee, Pole Owner will cause the Make Ready work to be performed in accordance with a schedule that avoids conflict or interference with Pole Owner's prior work commitments and regular business operations. The Make Ready work will be performed as soon as is reasonably practical consistent with the preliminary schedule and any updated schedule(s) provided to Licensee in accordance with Article 5.8, above.

7.2 Licensee may request in writing that all or part of the Make Ready work be performed on a schedule different than that which otherwise would be implemented by Pole Owner pursuant to Articles 5.8 and 7.1. If Licensee makes such a request in writing, Pole Owner will meet with Licensee to determine if the requested schedule is feasible and will not interfere with Pole Owner's business operations and with its obligations to its own customers and to other licensees. If Pole Owner decides that it is feasible to undertake a different schedule for Make Ready work for Licensee than would otherwise result under Articles 5.8 and 7.1, based on Licensee's written request and Pole Owner's meeting with Licensee, Pole Owner and Licensee will negotiate a final schedule acceptable to both, which schedule must be confirmed in writing. Licensee agrees to pay Pole Owner all costs incurred in meeting the revised schedule for Make-Ready, including, but not limited to, those costs associated with overtime and with penalties which may be owed to the bargaining unit for work performed by contractors.

7.3 Licensee agrees to pay for reasonably necessary engineering work performed by Pole Owner, which includes analysis, field survey or inspection of the proposed route of Licensee's Attachment(s) and all other equipment and facilities installed by Licensee, provided, however, Pole Owner shall provide to Licensee a written estimate of such anticipated Costs for Licensee's approval,

and the actual Costs shall not be incurred until Licensee provides its written approval and shall not exceed such approved estimate. In addition, Licensee agrees to pay all reasonable Costs (to the extent not paid pursuant to Articles 7.1 or 7.2 above) approved by Licensee in writing, for the preparation of engineering documentation or work orders and drawings, that are necessary to accommodate Licensee's Attachment(s) and Pole Owner's schedule, whether occurring prior to the placement of any Attachment on Pole Owner Poles, or whether occurring subsequent to the placement of any Attachment on Pole Owner Poles in connection with the required post-construction inspections to determine whether Licensee's Attachment(s) has been attached properly and in accordance with the Application and all applicable Permits. Pole Owner shall provide Licensee with a written estimate for such additional work for Licensee's prior written approval, and Cost overruns in excess of 10% of the estimate shall require Licensee's prior written approval.

7.4 Licensee agrees to pay the Costs incurred by Pole Owner to upgrade or replace Pole Owner Poles to which Licensee's Attachment(s) are attached if the upgrade or replacement is required solely or partially required due to the addition or Modification of Licensee's Attachment(s). Pole Owner shall provide Licensee with a written estimate for such Costs for Licensee's prior written approval, and any Cost overruns in excess of 10% of the estimate shall require Licensee's prior written approval. In accordance with Florida Statutes, Fees for make-ready work, including any Pole replacement, will be commensurate with the actual costs or amounts charged to communications service providers other than wireless service providers for similar work.

7.5 In connection therewith, upon the commencement of construction of Lessee's Attachment, Pole Owner shall, at Lessee's sole cost and expense, provide Lessee with electrical service. As consideration for the electrical service, Lessee shall pay to Pole Owner on a monthly basis the minimum sum based on the formula attached as Exhibit C for each Antenna Attachment installed on a Pole Owner Pole, or some other amount as agreed by the parties. Should construction of Lessee's Attachment commence on a day other than the first day of the month, the electrical service charges shall be prorated for the first month. Pole Owner shall notify Lessee in writing of any increase in electrical rates and provide evidence of said increase. Upon notification by Pole Owner, Lessee shall adjust the monthly electrical service charges paid to Pole Owner accordingly.

8. MAINTENANCE AND REPAIR.

8.1 Pole Owner will maintain the Pole Owner Poles and repair or replace Pole Owner Poles as necessary to fulfill its own service requirements and as required by law. Pole Owner is not required to maintain any Pole Owner Poles for a period longer than is necessitated by its own service requirements. In the event that Pole Owner determines that it will decommission and remove a Pole Owner Pole upon which any Attachment is attached, Pole Owner will send Licensee at least ninety (90) days written notice that it will no longer maintain

the Pole Owner Pole. In such event, Pole Owner must offer Licensee available space on another Pole Owner Pole for the Attachment, and Licensee may accept provided that such alternative space and Pole Owner Pole is functionally equivalent to the original Pole and the installation upon such new Pole would meet all requirements of this Agreement. Licensee also may request that it transfer any of its Attachments to any available substitute Pole Owner Pole, at Licensee's sole cost and expense, which request may be approved or denied by Pole Owner in its reasonable discretion.

8.2 Licensee shall, at its sole cost and expense, maintain its Attachments in good and safe condition and repair in accord with Pole Owner's Standards and Specifications and in compliance with all applicable law, statutes, ordinances, rules and regulations, as referenced in Article 6.1 herein. Further, Licensee shall at all times and at its sole cost maintain its Attachments in a clean condition, and shall ensure that any maintenance, repair, or replacement of any Attachment or component thereof does not substantially affect the aesthetic impact of the Attachment as originally approved by Pole Owner. Additionally, Licensee agrees to maintain its Attachments in such a manner so as not to endanger or interfere with the use of Pole Owner Poles by Pole Owner or others granted a right to attach to said Pole Owner Poles. Upon receipt of any notice from Pole Owner or any court or governmental entity that any Attachment of Licensee is interfering with or endangering any persons, equipment, property, use, or facilities of Pole Owner or any other party including the general public, Licensee agrees that it will, at its sole cost and expense, immediately take all necessary steps to remedy such danger or interference. In the event Licensee fails to remedy such danger or interference within twenty-four (24) hours after notice thereof from Pole Owner or any court or governmental entity, Pole Owner may take all actions it deems necessary or appropriate to remedy such matter, including without limitation the removal from Pole Owner Poles of any Attachment(s) causing such danger or interference. In the event that any Pole Owner Pole housing Licensee's Attachment(s), or any portion of such Pole Owner Pole or Attachment thereto, falls or otherwise becomes an immediate hazard for any reason including but not limited to weather events or other emergencies, the City may in its discretion remove, repair, re-erect, or take other action to rectify any resulting hazard, without giving twenty-four (24) hours' notice as provided in this paragraph. Pole Owner shall have no liability of any kind or nature whatsoever for any actions taken by Pole Owner to remedy such danger or interference and, unless such liability is caused by Pole Owner's gross negligence or willful misconduct, Licensee shall pay Pole Owner upon demand for all Costs of such activities.

A qualified and Florida licensed electrical contractor reasonably acceptable to Pole Owner will, at Licensee's sole cost and expense, perform all maintenance, repair and removal work on any of Licensee's Attachment(s) located within or above the so-called "neutral" space on Pole Owner Poles.

8.3 Nothing contained in this Agreement shall be construed as a

limitation, restriction or prohibition on Pole Owner with respect to any agreement or arrangement Pole Owner has heretofore entered into or may enter into in the future with respect to any Pole Owner Poles. In no event will Pole Owner be liable for any noise, induced voltages, currents or other interference affecting any of Licensee's Attachments, unless caused by Pole Owner's gross negligence or intentional misconduct. Except for the Make-Ready work expressly described in the Marked-Up Application, Licensee hereby acknowledges and agrees that Pole Owner has not agreed to undertake any alterations or improvements to make the Pole Owner Poles suitable for Licensee's intended use and that Licensee hereby accepts use of the Pole Owner Poles in their AS-IS, WHERE-IS CONDITION, WITH ALL FAULTS AND WITHOUT ANY WARRANTY OR REPRESENTATION BY POLE OWNER AS TO THE SUITABILITY OF THE POLES FOR LICENSEE'S PURPOSES.

9. REMOVAL, REPLACEMENT OR RELOCATION.

9.1 Licensee may at any time surrender any Permit for Attachment and remove its Attachments from the affected Pole. In the event Licensee wishes to remove any of its Attachments from any Pole Owner Poles, Licensee shall so notify Pole Owner in writing and submit an Application describing the location, number and type of Attachments to be removed. Pole Owner will review and mark-up the Application to identify thereon any special conditions governing Licensee's removal of the subject Attachments in accordance with the timeframes and process set forth in Section 5.6 of this Agreement. Upon Licensee's acceptance and return of the Customer Work Agreement and Marked-Up Application and compliance with this Agreement, Pole Owner will issue a Permit authorizing such removal. No refund of any fees or charges previously paid to Pole Owner shall be made as a result of such removal. Licensee shall notify Pole Owner in writing within ten (10) days after the completion of such removal work, and no adjustment in future fees due and payable by Licensee hereunder pursuant to Article 11 shall be made until Pole Owner has received such notice of completion from Licensee and has had an opportunity to field verify the number of Pole Owner Poles from which Licensee's Attachments have been removed (which verification shall be completed within thirty (30) days of Licensee's notice of completion).

A qualified and Florida licensed electrical contractor reasonably acceptable to Pole Owner shall undertake the removal of any and all Attachments or related equipment on or connected to Pole Owner Poles located in, or above the so called "neutral space". Such removal shall be at Licensee's sole cost and expense.

9.2 In the event that written notice is provided by a governmental body that Licensee's use of any Pole Owner Pole hereunder is in violation of any municipal, state or federal law, statute, ordinance, rule or regulation, over which said governmental entity has jurisdiction, or is not authorized by permit, license or other approval required from any governmental body, or in the event notice is provided by a property owner or joint owner of the Pole of such

violation or unauthorized use (a "Violation Notice"), Pole Owner may elect, in its reasonable discretion give Licensee written notice of intent to revoke any Permit authorizing Licensee's use of said Pole Owner Pole, such revocation to be effective upon the sixtieth (60th) day following the date of such notice. In the event Pole Owner issues a notice of intent to revoke such Permit, Licensee shall either provide Pole Owner written confirmation that the violations alleged in the Violation Notice have been cured or remove the subject Attachment, at Licensee's sole cost and expense, within sixty (60) days from the date of Pole Owner's revocation notice. If, however, the governmental entity, property owner or joint owner of the Pole providing notice of such violation or unauthorized use requires removal within less than the sixty (60) day time-frame, then Licensee shall perform such removal within the time frame set or required by said entity. In the event Licensee fails to perform any such removal, Pole Owner may, in its sole discretion, and at the sole cost and expense of Licensee, perform such removal without incurring any liability of any kind or nature whatsoever to Licensee, its customers, affiliates, parents, owners or subsidiaries. However, upon written request from the Licensee, Pole Owner shall permit the Licensee to continue to maintain its Attachment on such Pole or Poles until the Licensee exhausts its legal remedies with respect to the governmental determination, or the claim of the property owner or joint owner of the Pole, provided the Licensee: (i) promptly and diligently prosecutes such legal remedies or defends against the actions of the governmental or private agency, the property owner, or the joint owner of the Pole and seeks such stays, injunctions and protective orders as may be warranted; (ii) provides adequate protection, in the judgment of Pole Owner, to protect Pole Owner, other owners and other Licensees from loss due to the determination; and (iii) promptly removes its Attachment in the event the Licensee's action or defense is dismissed, decided or compromised unfavorably to Licensee, the stay or injunction is denied, or the protection of the stay or injunction becomes inadequate.

9.3 In the event of any emergency that threatens persons or property, Pole Owner may, in its sole discretion, without prior notice, remove any of Licensee's Attachments. Such removal shall be at Licensee's sole cost and expense, unless the removal was the result of gross negligence or willful misconduct by Pole Owner. Pole Owner will give notice subsequent to Pole Owner's removal of Attachment(s) as soon as practicable under the circumstances.

9.4 In non-emergency situations, if Pole Owner determines that its electric service or operating requirements, or considerations of safety, reliability, and engineering, require the removal, relocation, or replacement of any of Licensee's Attachments, Licensee shall, at its sole cost and expense, effect such removal, relocation, or replacement within sixty (60) days after receipt of such written notice from Pole Owner. If Licensee fails to perform such removal, relocation, or replacement within sixty (60) days after receipt of such written notice from Pole Owner, Licensee shall pay for any expenses Pole Owner incurs as a result of a return trip made necessary by Licensee's

failure to perform the required removal, relocation, or replacement within the sixty (60) day period. Also, if Licensee fails to perform such removal, relocation or replacement within said sixty (60) day period, Pole Owner may, in its reasonable discretion, and at the sole cost and expense of Licensee, perform such removal, relocation or replacement without incurring any liability of any kind or nature whatsoever to Licensee, its customers, affiliates, parents, owners or subsidiaries, unless caused by Pole Owner's gross negligence or willful misconduct.

9.5 As provided in Article 14.4, Licensee shall completely remove its Attachments from Pole Owner Poles no more than sixty (60) days after the termination of the Agreement, unless the parties have executed a new agreement covering the Pole Owner Poles hereto. As also provided in Article 14.4, if Licensee fails to remove its Attachments within the required time, Pole Owner may remove Licensee's Attachments, at Licensee's expense, from Pole Owner Poles and without any liability to Pole Owner unless such liability is caused by Pole Owner's gross negligence or willful misconduct.

9.6 In the event that any of Licensee's Attachments are removed from a Pole Owner Pole by either Licensee or Pole Owner, Licensee shall be solely responsible for all costs of restoring such Pole Owner Pole to a condition at least equivalent to its condition prior to installation of the Attachment(s), reasonable wear and tear excepted. Pole Owner, at its option, after Licensee's Attachments are removed, may require Licensee to replace a stealth streetlight pole with a regular streetlight pole that fits the existing streetscape, or it may keep existing stealth streetlight pole for other future users.

10. POLE OWNER FACILITIES.

10.1 Licensee covenants and agrees that Licensee and Licensee's agents, contractors, employees, invitees, customers and others will not, under any circumstances whatsoever, touch, handle, tamper with or contact, directly or indirectly, any of Pole Owner's facilities other than the Pole Owner Pole as allowed by Permit, without the express written consent of Pole Owner, which consent Pole Owner may withhold in its sole and absolute discretion. Licensee covenants and agrees that Pole Owner shall not be held responsible for, and Pole Owner is hereby expressly relieved from all liability by reason of injury (including death) or damage of any nature whatsoever to Licensee, or to its agents, contractors, employees, invitees, customers and others who are on the Pole Owner Poles under, through or by the authority of Licensee, or to property in, upon or about the Pole Owner Poles, except if such liability results from the willful misconduct of Pole Owner. In the event of a casualty or loss which results in the damage or destruction of Pole Owner's facilities to which Licensee's Attachments are attached or located, Pole Owner shall have no obligation hereunder to rebuild or restore the Pole Owner's facilities; provided that in the event the Pole Owner elects not to rebuild or restore Pole Owner's facilities, the Permit in question shall immediately terminate. In such event, Pole Owner will work in good faith to allow Licensee to place Attachments on a reasonable alternative Pole if available.

10.2 Pole Owner reserves the right to make periodic inspections of any and all Attachments of Licensee located on Pole Owner Poles, or any portion thereof, as often as conditions warrant as determined by Pole Owner in its sole discretion. If Pole Owner determines that corrections or changes need to be made in order to meet the National Electric Safety Code or Pole Owner's service or operating requirements, including, but not limited to considerations of economy, safety, and/or aesthetics, Licensee agrees that it will cause such corrections or changes to be made at its own expense, in a timely manner.

11.COMPENSATION

11.1 Licensee agrees to pay Pole Owner all fees and charges set forth in this Article within thirty (30) days from the date of receipt of invoices from Pole Owner.

11.2 The base annual fee for Licensee's use of a Pole Owner Pole shall be Two Hundred Seventy and 00/100 Dollars (\$270.00) per year for all Antenna Attachments for which Licensee has been issued a Permit to attach to or place on such Pole Owner Pole ("Attachment Fee"). Pole Owner may modify the Attachment Fee no more than once every twelve (12) months to reflect any Attachment Fees: (i) allowable under Telecommunications Laws and Regulations; and (ii) allowable by any state regulatory commission with pole attachment jurisdiction, provided that such increased fee is non-discriminatory and is based upon a reasonable approximation of costs incurred by Pole Owner, as determined by Pole Owner, related to its administration, inspection, and other matters related to Attachments under this Agreement. In the event Pole Owner desires to increase the base annual fee in accordance with this Section 11.1.2, Pole Owner shall provide a cost study to Licensee to support the annual fee increase. Above Attachment Fees shall be paid in the year Pole Owner grants a Permit for the placement of such Antenna Attachment, partial year prorated, and annually thereafter when billed by Pole Owner.

11.3 Charge for Unauthorized Attachment. The attachment of any Attachment to Pole Owner Poles without the approval of Pole Owner pursuant to the terms of this Agreement shall be considered an unauthorized Attachment. Licensee shall pay Pole Owner for each unauthorized Attachment an amount equal to twice the annual fee that would have been charged for Licensee's unauthorized use of the Pole Owner Pole for the year when the unauthorized Facility is discovered, multiplied by the lesser of: (i) 5 x annual Attachment Fee, per occurrence, or (ii) the Attachment Fee from date of last field survey or date the Attachment is reasonably demonstrated to have been placed on Pole by Licensee, whichever is less. Such charge shall be paid by Licensee without prejudice to any of Pole Owner's other rights under this Agreement, including Pole Owner's right to remove such unauthorized Attachment under the circumstances described elsewhere in this Agreement.

11.4 Interest. Licensee agrees to pay interest at the rate of 1.5 percent (1.5%) per month, on all monies to be paid under this Agreement from the date

such monies are due up to the date paid.

11.5 Taxes. Licensee will be solely responsible for any real estate taxes or assessments levied on any of its Attachments.

12. LIABILITY AND INDEMNIFICATION

12.1 Notwithstanding any permission granted by Pole Owner pursuant to any Application, Marked-Up Application or Permit issued hereunder, Pole Owner retains the right to maintain, replace, relocate, remove, operate and modify Pole Owner Poles and to maintain, replace, relocate, remove, operate and modify its facilities in such a manner as it deems necessary or appropriate to fulfill its own service requirements but in accordance with the terms and conditions of this Agreement. Accordingly, Pole Owner shall not be liable to Licensee, any customer of Licensee, any affiliate of Licensee, or any other person or entity, for any interruption of service or for any interference with the operation of an Attachment arising in any way out of Pole Owner's use, operation, maintenance, repair, removal or relocation of its poles or equipment in connection with Pole Owner's own business needs and requirements, unless such liability is caused by the gross negligence or willful misconduct of Pole Owner in its performance of such activities or a breach in Pole Owner's obligations under this Agreement. Without limiting the generality of the foregoing, Pole Owner will not be liable for any noise, induced voltages, currents or other interference in Licensee's Attachments, unless caused by Pole Owner's gross negligence or willful misconduct.

12.2 Licensee agrees to defend and hold harmless Pole Owner, its elected and appointed officials, directors, officers, employees, agents, contractors, subcontractors, successors and assigns (the "Indemnitees") from and against any and all third party claims, demands, actions, causes of action, liabilities, judgments, obligations, costs or expenses for any damage to property, or for injury to or death of any person or persons, or any other costs or expenses, including without limitation reasonable attorneys' fees and costs (including at the trial and appellate levels), related to or arising out of the extent caused by the placement, use, operation, repair, Modification or removal of any of Licensee's Attachments pursuant to this Agreement; provided, however, that Licensee shall have no obligation hereunder to indemnify any Indemnitees from the Indemnitees' own negligence or willful misconduct. The foregoing indemnification shall include, but not be limited to, claims made under any worker's compensation law or under any plan for employee's disability and death benefits (including, without limitation, claims and demands that may be asserted by employees, agents, contractors, and subcontractors). Licensee shall immediately notify Pole Owner of any such claims, demands, damages, injuries or deaths, and shall provide a written report, or other pertinent material or information, if requested.

12.3 Licensee agrees to be liable for and promptly reimburse Pole Owner (except to the extent of Pole Owner's own negligence or intentional

misconduct), any joint pole owner or any authorized Pole Owner Pole user for expenses incurred in repairing or replacing Pole Owner Poles or any facilities damaged or destroyed, if such damage or destruction is caused by or results from Licensee's actions or inactions.

12.4 At all times, Licensee shall conduct its operations and otherwise use or occupy Pole Owner Poles hereunder in compliance with all applicable Environmental Laws and shall not cause any Hazardous Materials to be introduced to or handled on or about Pole Owner Poles hereunder. Licensee hereby indemnifies and shall defend and hold harmless Pole Owner and all other Indemnitees from and against any suits, damages, injuries, costs and expenses of any kind including, without limitation, court costs, reasonable attorney and consultant fees (including at the trial and appellate levels), remediation costs, fines and penalties, whether asserted under Environmental Laws or at common law, arising out of or related to (a) any breach by Licensee of the environmental covenants set forth above; (b) any violation hereunder by Licensee, its employees, agents, or contractors of any Environmental Laws; or (c) the presence, release or threatened release of any Hazardous Materials at, on or about Pole Owner Poles hereunder caused by Licensee, its agents, employees, contractors, or any entity in privity with or providing a benefit to Licensee; provided, however, that Licensee shall have no obligation to so indemnify any Indemnitee from such Indemnitee's own negligence or willful misconduct or from conditions which existed prior to Licensee's Attachment. The foregoing covenants and indemnification obligations shall survive any termination of this Agreement.

12.5 Neither party shall have any liability to the other under this Agreement or otherwise for special, punitive or consequential damages, including without limitation, damages for lost profits, business or service interruption.

12.6 Licensee's duties and obligations to indemnify and hold harmless under this Article shall survive any termination and expiration of this Agreement.

13.INSURANCE AND BOND.

Insurance and bond requirements are outlined in Exhibit A of this document

14.DEFAULT, TERMINATION AND OTHER REMEDIES.

14.1 Breach of Representations or Warranties. Either party may terminate this Agreement upon the discovery of a breach by the other party of one or more of the representations or warranties set forth in Article 16 of this Agreement.

14.2 Other Breaches. Each Party agrees that the other Party may terminate this Agreement or an affected Permit upon the discovery of one or

more of the breaches of this Agreement identified in this Article 14.2 subject to applicable cure periods.

14.3 Bankruptcy or Insolvency. Each Party shall be in breach of this Agreement if it fails to make a payment or is at risk of failing to make a payment because it (a) makes any general assignment for the benefit of creditors; (b) initiates or is the subject of a request to initiate a bankruptcy or insolvency proceeding under any provision of law, including the United States Bankruptcy Code; or (c) files or is the subject of a filing for the appointment of a receiver.

14.4 Failure Materially To Comply. Each Party shall be in breach of this Agreement if it fails materially to comply with any of the provisions of this Agreement to be performed or observed by such Party, and such breach continues without cure (a) for thirty (30) days after written notice from the non-breaching Party; or (b) if such default cannot reasonably be cured within thirty (30) days, then for such longer period so long as the breaching Party proceeds with diligence to cure within ninety (90) days after written notice.

14.5 Loss of Operating Authority. Either Party shall be in breach of this Agreement if at any time it loses its operating authority, whether as a result of action by any appropriate governmental entity, applicable law, or otherwise.

14.6 Rights And Remedies For Breach. In the event either Party shall be in breach of this Agreement and such breach continues beyond any applicable cure period provided herein, the non-breaching Party may terminate this Agreement. In the event Licensee shall be in breach of this Agreement and such breach continues beyond any applicable cure period provided herein, the Pole Owner may exercise any one or more of the following rights and remedies: (a) terminate this entire Agreement or terminate any Permit or Permits given pursuant to this Agreement; (b) take any and all corrective action it deems necessary or appropriate to cure such default and charge the cost thereof to Licensee, together with interest thereon at 1.5 percent (1.5%) per month.

14.7 Upon termination of any Permit, Licensee shall have sixty (60) days to remove its Attachments from the affected Pole Owner Poles, and upon termination of the entire Agreement, Licensee shall have sixty (60) days to remove its Attachments from Pole Owner Poles. Pole Owner shall have the right, upon notice to Licensee, to remove all of Licensee's Facilities and Power Supplies from the Pole Owner Poles to which the Permit applies or from all of Pole Owner Poles where the entire Agreement has been terminated if Licensee fails to remove its Attachment(s) or related equipment within the specified and applicable time. Licensee shall pay Pole Owner for all Costs of such removal within ten (10) days after billing. Pole Owner shall deliver the Attachments to a location given by Licensee or designated by Pole Owner if location given by Licensee is determined by Pole Owner to be unreasonable, all without incurring any liability for the condition of the Attachments, or for any other loss, damage or casualty, of any kind or nature whatsoever, incurred or alleged to have been

incurred by Licensee arising out of or resulting from the removal of the Attachments.

14.8 **Duties and Obligations Remain.** In the event that Licensee is in default or in breach under this Agreement and Pole Owner elects to terminate Permits granted under this Agreement or the Agreement, in whole or in part, or in the event of any termination or expiration of this Agreement, Licensee shall not be relieved of any of its duties or obligations under this Agreement, so long as any Attachment remains on any Pole Owner Pole, or any monies remain owing by Licensee to Pole Owner under this Agreement. Further, Sections 12.0, 18.10, and 18.12 of this Agreement survive expiration and termination of this Agreement.

14.9 **Licensee's Remedies.** If Pole Owner is in default of this Agreement and does not cure its default with the cure periods prescribed by this Agreement, Licensee may elect to pursue any rights or remedies available to Licensee at law or in equity, including without limitation specific performance and remedies provided by Section 337.401(8), Florida Statutes.

15. **ASSIGNMENT.**

15.1 Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of Pole Owner, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Licensee may assign its interest in this Agreement (and thereafter be released from all liability under this Agreement) to its parent company, any subsidiary or affiliate of Licensee, or its parent company, or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of Licensee's stock or assets or to any entity which acquires all or substantially all of Licensee's assets in the market defined by the Federal Communications Commission in which the Poles are located by reason of a merger, acquisition or other business reorganization (each, a **"Permitted Transfer"**). The foregoing is applicable to assignments to affiliates or subsidiaries of Licensee as well as third-parties.

15.2 The obligations of Licensee under this Agreement shall extend to and be binding upon any successors or assigns of Licensee. All right, title and interest of Pole Owner hereunder shall be binding upon and for the benefit of Pole Owner's successors and assigns.

15.3 Nothing herein shall be deemed to restrict or limit Pole Owner's right to assign all or any portion of its right, title or interest in this Agreement.

15.4 Pole Owner and Licensee acknowledge that Licensee may enter into financing arrangements including promissory notes and financial and security agreements for the financing of Licensee's Attachment(s) (the "Collateral") with third party financing entities. In connection therewith, Pole Owner (i) consents to the installation of the Collateral consistent with the other terms of this Agreement and provided the requirements for installation under

this Agreement are met; and (ii) disclaims any interest in the Collateral, as fixtures or otherwise. Pole Owner and Licensee agree that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any rent due or to become due and that such Collateral may be removed or modified at any time consistent with the other terms of this Agreement without Licensee's recourse to legal proceedings. No financing arrangement, instrument, or agreement between Licensee and a third party shall alter or depart from any of the terms of this Agreement, and this Agreement shall control in the event of any conflict. The Collateral shall not include any property owned by Pole Owner, including but not limited to Pole Owner Poles.

15.5 Sub-licensing. Without the Pole Owner's prior written consent, in Pole Owner's sole discretion, Licensee shall not sub-license or lease to any third party any of Licensee's Attachments or Licensee's interest under this Agreement. Any such action shall constitute a material breach of this Agreement.

16. REPRESENTATIONS AND WARRANTIES.

16.1 Power and Authority. Licensee represents and warrants that it is a corporation duly organized, validly existing and in good standing in its state of organization, and each party represents and warrants that (a) it is qualified to do business (if a foreign corporation) under the laws of the State of Florida, and (b) it has full power and authority to enter into this Agreement and undertake the responsibilities and obligations contemplated by it in accordance with its terms.

16.2 Enforceability. Each party represents and warrants that this Agreement constitutes a valid and binding obligation of such party and is enforceable against such party in accordance with its terms and conditions. Each party further represents and warrants that it has independently reviewed this Agreement, including the charges set forth in Article 11, and concluded that this Agreement is just, reasonable, equitable, and compliant with the law.

17. FORCE MAJEURE.

17.1 Neither party shall be liable for any delay in performance or inability to perform any non-monetary obligations hereunder if such delay or inability is due to acts or omissions which are not voluntary by such party and beyond such party's reasonable control, including, but not limited to, acts or omissions of any governmental body, civil disturbance, acts of terrorism, war, fires, acts of nature, labor disputes, pandemic, government shut downs, shortages of materials and equipment, or the acts or omissions of the other party. In the event of any failure or delay resulting from such causes, the time for performance hereunder shall be extended for a period of time reasonably necessary to overcome the effects of such delays.

18. MISCELLANEOUS.

18.1 Confidential Information. Only matters in, or provided pursuant to this Agreement that the law makes confidential or exempt from public records or disclosure shall be confidential or exempt.

18.2 Merger. All understandings, agreements, negotiations, and representations, oral and/or written, heretofore made by and between the parties hereto are superseded by this Agreement. This Agreement, and the exhibits attached hereto, alone fully and completely expresses the agreement between Pole Owner and Licensee with respect to the subject matter hereof.

18.3 Waiver of Terms or Conditions. The failure of Pole Owner or Licensee to enforce or insist on compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment of any right to seek enforcement of such terms or conditions. The acceptance of payment by Pole Owner of any of the fees or charges set forth in this Agreement shall not constitute a waiver of any breach, default or violation of the terms or conditions of this Agreement. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

18.4 Change of Law and Severability.

(a) If any clause, phrase, provision or portion of this Agreement or the application thereof to any person or circumstances otherwise shall be held to be invalid or unenforceable under applicable law by any court or governmental body having jurisdiction, such invalidity or unenforceability shall not affect, impair or render invalid or unenforceable any other provision of this Agreement, nor shall it affect the application of such clause, phrase, provision or portion hereof to any other person or circumstances. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on current State and Federal law and any applicable rules and regulations promulgated thereunder by the Federal Communications Commission, the Public Utilities Commission, and/or any other agency with relevant jurisdiction, as of the Effective Date. In the event of any legislative amendment, or any legally binding legislative, regulatory, or judicial order, rule or regulation or other legal action that revises, amends, invalidates, or reverses any applicable law or regulation (collectively an "Amendment"), either Party may by providing written notice to the other Party requiring that the affected provisions be renegotiated in good faith and this Agreement be amended accordingly to reflect the pricing, terms and conditions of each such Amendment. In the event that such new terms are not negotiated within ninety (90) days after such notice, either party may terminate this Agreement upon written notice to the other party, and Licensee shall remove all of its Attachments from Pole Owner Poles and restore such Poles to a condition equal to or exceeding their condition before installation of such Attachments. Notwithstanding anything contained herein to the contrary, expiration or sooner termination of this Agreement shall not be construed to limit or waive any rights of either party under applicable laws, including without

limitation Telecommunications Laws and Regulations and the state or federal constitution.

18.5 Notice. Unless otherwise directed, all notices required to be given by either party to the other party under this Agreement shall be in writing and shall be deemed sufficient if given in any of the following ways: (a) delivery by a messenger service or private delivery service providing same or next day delivery, (b) sent by United States Certified Mail, return receipt requested, postage prepaid, and by United States First Class Mail, or (c) by facsimile copy and followed within 24 hours by an original copy deposited in the United States Mail, first class, postage prepaid, to the parties at the addresses set forth herein below. With respect to notification of completion of Make-Ready work (Article 5.6), notice of interference or endangerment (Article 9.2), notice of emergency action (Article 9.3), or such other notice requirements as Pole Owner and Licensee may agree from time to time to treat as follows, notice may first be made by telephone call to the person or persons specified below, to be followed within a reasonable time by a confirmation notice in writing as directed above. The parties and the addresses set forth herein below may be changed by any party by giving notice to the other party in accordance with this Section 18.5 to the last person and address specified herein below:

If to Pole Owner,

City:	City of Winter Park Attention: City Manager 401 South Park Avenue Winter Park, Florida 32789
Copy to:	City of Winter Park Attention: Director Electric Utility 401 South Park Avenue Winter Park, Florida 32789
Copy to:	Fishback Dominick City Attorney – Winter Park 1947 Lee Road Winter Park, FL 32789

If to Licensee,

Cellco Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

18.6 Agreement To Do All Things Necessary Or Appropriate. Both parties agree to do all things necessary or appropriate from time to time,

including the execution and delivery of such ancillary documents and agreements as Pole Owner may reasonably require, to carry out the express terms and conditions of this Agreement and the intentions and understandings of the parties as described herein.

18.7 No Partnership Or Joint Venture Created. The parties acknowledge and agree that this Agreement does not create a partnership between, or a joint venture of, Pole Owner and Licensee. Pole Owner and Licensee are each independent contractors and nothing contained in this Agreement shall be construed to constitute either party an agent of the other.

18.8 Revision Of Forms. The forms attached hereto are subject to revision by Pole Owner at any time and at its discretion.

18.9 Sovereign Immunity. Nothing contained in this Agreement and no actions or inactions by the City or its officers, elected and appointed officials, agents and representatives shall be considered or deemed a waiver of the City's sovereign immunity or any other privilege, immunity, or defense available to the City or its officers, elected and appointed officials, agents, and representatives.

18.10 Consistency with telecommunications laws. Licensee hereby acknowledges that, as of the effective date of this Agreement, Florida's Advanced Wireless Infrastructure Deployment Act, codified at Section 337.401, Florida Statutes (the "Act"), does not apply to Pole Owner Poles since Pole Owner is a "municipal electric utility" and is therefore exempt from certain requirements of the Act. To the extent not prohibited by law, for so long as the Act does not apply to Pole Owner Poles, Licensee expressly waives any claim arising under this Agreement or any Permit or Application issued under this Agreement related to any inconsistency or conflict with the Act or any City ordinance implementing the Act.

18.11 Public Records. To the extent required by Section 119.0701(2), Florida Statutes, Licensee shall:

- (a) Keep and maintain all records related to performance of services under this Agreement.
- (b) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Licensee does not transfer the records to the City.

(d) Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Licensee or keep and maintain public records related to the performance of services under this Agreement. If the Licensee transfers all public records to the City upon completion of the Agreement, the Licensee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Licensee keeps and maintains public records upon completion of the Agreement, the Licensee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: Winter Park City Clerk, 401 Park Ave. South, Winter Park, FL 32789; Email – cityclerk@cityofwinterpark.org; Telephone – (407) 599-3447.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties to this Agreement by their duly authorized representatives have executed this Agreement to be effective as of the day and year first written above.

CITY OF WINTER PARK, FLORIDA
A municipal corporation

By: _____

Printed Name: _____

Title: Mayor_____

Date: _____

CELLCO PARTNERSHIP d/b/a Verizon
Wireless

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

INSURANCE REQUIREMENTS

- A. Coverage. Without limiting its liability as stated elsewhere herein, Licensee agrees to provide and maintain in force, from companies authorized to do business in the State of Florida policies of insurance with limits as follows:
1. Worker's Compensation in compliance with the statutory requirements of the state(s) of operation and Employer's Liability insurance for all of Licensee's employees. Limit of insurance for Employer's Liability shall be \$500,000 each accident/disease/policy limit.
 2. Commercial General Liability insurance with a limit of \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate.
 3. Commercial Automobile Liability in an amount of \$1,000,000 combined single limit each accident for bodily injury and property damage covering owned, hired or non-owned vehicles).
 4. Excess/Umbrella Liability insurance with a limit of \$2,000,000 each occurrence and annual aggregate providing coverage above the primary Employer's Liability, Commercial General Liability, and Automobile Liability.
 5. Licensee shall include Pole Owner as an additional insured as their interest may appear under this Agreement for all coverage except Worker's Compensation and Employer's Liability. Such insurance shall be primary to any and all other insurance or self-insurance maintained by Pole Owner. Licensee shall include a Waiver of Subrogation on all required insurance in favor of Pole Owner, its governing board, officers, employees, successors and assigns.
 6. Any contractor or subcontractor of Licensee, relating to this Agreement, shall procure and maintain substantially the same insurance required of Licensee hereunder during the life of this Agreement. Licensee shall obtain copies of contractors' and subcontractors' certificates of insurance prior to allowing contractors and subcontractors to perform any work and shall maintain such copies in its files, available for inspection by Pole Owner upon request.
- B. Certificate. Within thirty (30) days of the effective date of this Agreement, Licensee shall furnish Pole Owner certificates from Licensee's insurance carrier showing that Licensee maintains the requisite insurance required herein.
- C. Limits. The limits of liability set out in this Section may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or

occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Pole Owner's or Licensee's exposure to risk.

- D. Self-Insurance. Notwithstanding the foregoing, Licensee may self-insure the above required coverage, upon presentation of a valid certificate of self-insurance from the State of Florida Department of Insurance or other evidence of self-insurance acceptable to Pole Owner.

EXHIBIT B

EQUIPMENT SPECIFICATIONS & DESIGN GUIDELINES

The Parties will agree upon the Equipment Specifications and pre-approved equipment designs per Sections 5 and 6 of this Pole Attachment Agreement. Construction Drawings depicting the specific pole and equipment design for each individual node will be submitted to the City Public Works Department through their Small Cell Permit Application process.

EXHIBIT C

MASTER METER FORMULA

Monthly electric energy usage will be estimated by Licensee for Licensor's approval and charged based on watts per month used by the 5G deployments as determined during permitting and billed using the Winter Park Electric General Service – Non-Demand 100% Load Factor usage rate which will include the customer charges rate, the current non-fuel energy charge contained in the GS-2 rate as well as applicable fuel cost recovery charge, gross receipts charges, franchise fees, and utility taxes. In the event a dispute over the applicable electrical energy usage occurs, the parties will work cooperatively to perform a sample meter and/or submeter Licensee's equipment to determine the monthly actual energy usage.



City Commission agenda item

item type Action Items Requiring Discussion	meeting date February 8, 2023
prepared by Peter Moore	approved by Michelle del Valle, Randy Knight
board approval In Progress	
strategic objective	

subject

Old Library Site Discussion

motion / recommendation

City Commission will discuss and provide direction to staff regarding next steps for the Old Library site.

background

Following the City Commission work session on February 2nd, this item is a placeholder to allow for additional conversation and potential action on next steps regarding the property.

The City Commission has outlined the following action points for discussion:

- 1) Receive a restated proposal from Harbert Realty based on the work session comments and choose to continue to pursue exclusive negotiations or to end them.
- 2) If negotiation with Harbert is ended, then consider whether to put the property out for another solicitation or to hold it.
- 3) Provide framework for either a new solicitation or actions staff would need to take regarding the existing property if it's decided that it be held indefinitely.

alternatives / other considerations

fiscal impact



City Commission **agenda item**

item type Public Hearings: Quasi-Judicial Matters (Public participation and comment on these matters must be in-person.)	meeting date February 8, 2023
prepared by Jeffrey Briggs	approved by Michelle del Valle, Randy Knight
board approval Completed	
strategic objective	

subject

Ordinance - vacating and abandoning that portion of Aragon Avenue lying east of Nicolet Avenue. (1st Reading.)

motion / recommendation

Staff recommendation is for Approval.

background

The City owns two properties on at 808 and 796 Nicolet Avenue that are used for stormwater retention and planned for expansion of the same such use. In between these two city owned properties, is the vacant but platted right-of-way for a street (Aragon Avenue) that was never built. That portion of Aragon Avenue dead-ends into the Winter Park Business Center property which was built in 1983 and prior to that, was the location of the old Winter Park drive-in movie theatre in the 1950's-1970's.

The City staff wants to vacate that unused platted right-of-way which then becomes city property so that the parcels can be combined and used by the city as deemed desirable. Attached is a map and aerial showing the location.

alternatives / other considerations

fiscal impact

ATTACHMENTS:

[Vacate Aragon Avenue.doc](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA VACATING AND ABANDONING THAT PORTION OF ARAGON AVENUE LYING EAST OF NICOLET AVENUE A DISTANCE OF 140.3 FEET, MORE PARTICULARLY DESCRIBED HEREIN BUT RETAINING AND RESERVING TO THE CITY A UTILITY EASEMENT OVER THE ENTIRE AREA THEREOF.

NOW, THEREFORE, BE IT ENACTED as follows:

Section 1. The City Commission of the City of Winter Park hereby vacates and abandons that portion of Aragon Avenue lying east of the Nicolet Avenue right-of-way lying between Lot 9, Block "C" (796 Nicolet Avenue) and Lot 1, Block "F" (808 Nicolet Avenue) of Lawndale, Third Addition as recorded in Plat Book "L", Page 95 of the Public records of Orange County, Florida but reserving and retaining a utility easement to the city over the entire area thereof.

Section 2. This ordinance shall become effective immediately upon its final passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, on the _____ day of _____, 2023.

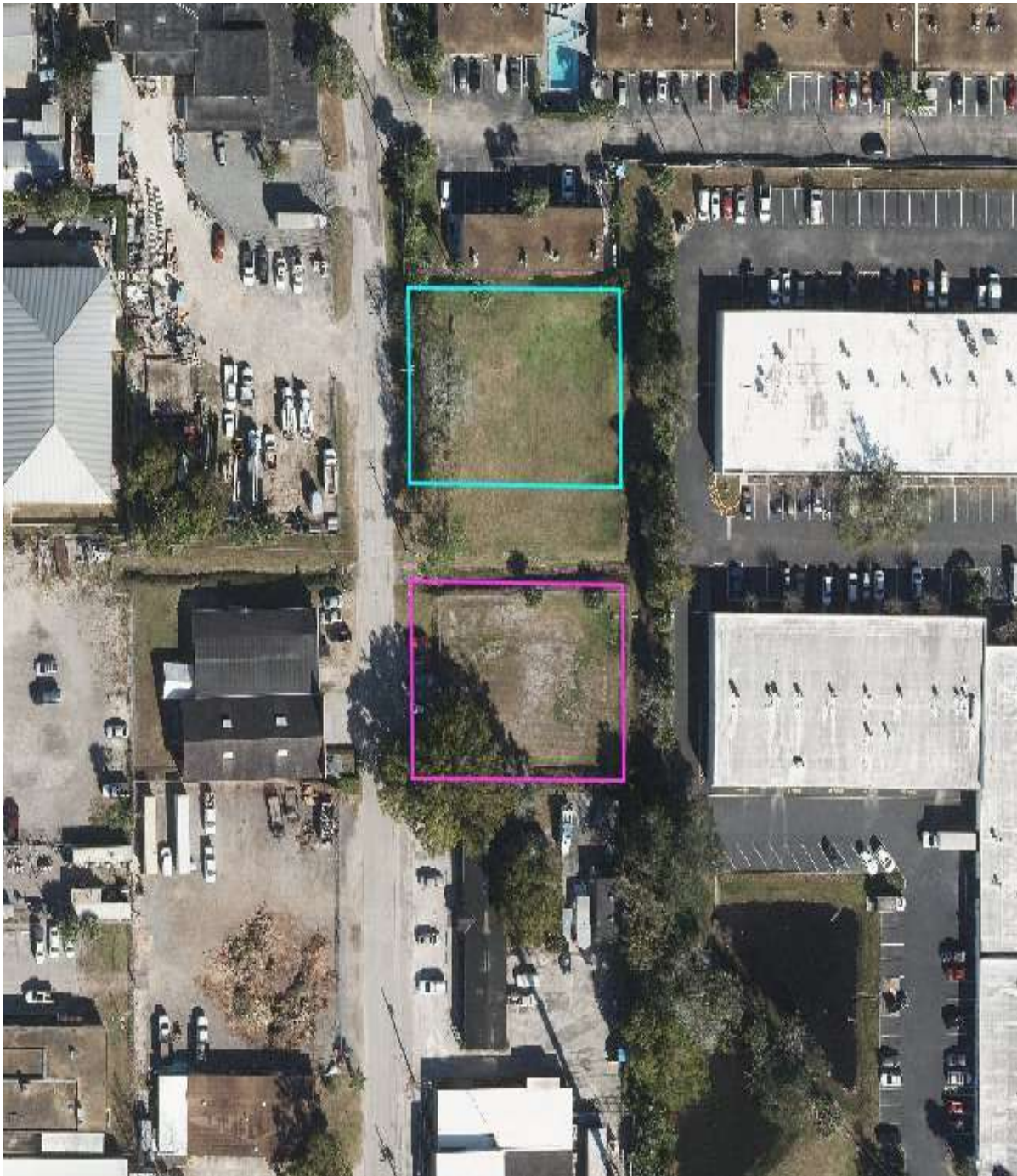
Mayor

ATTEST:

City Clerk



Vacate portion shown between the two City of Winter Park parcels.



City owned properties shown in green and purple outlines;
vacated portion of Aragon Avenue lying between those two.



City Commission **agenda item**

item type Public Hearings: Quasi-Judicial Matters (Public participation and comment on these matters must be in-person.)	meeting date February 8, 2023
prepared by Allison McGillis	approved by Jeffrey Briggs, Michelle del Valle, Randy Knight
board approval Completed	
strategic objective	

subject

Request of Villa Tuscany Holdings LLC for approval of a subdivision wall and landscaping for the four lot Via Veneto subdivision at 1292-1298 Howell Branch Road.

motion / recommendation

Recommendation is to approve the request.

background

In June of 2019, Villa Tuscany Holdings LLC (property owner) received subdivision approval from the City Commission to divide the property located at 1298 Howell Branch Road into four lots, each to be developed with single-family homes following the R-1A code even though the zoning of the property is R-3. That property has now been platted into the four lot Via Veneto subdivision. Since 2019, the owner has been working on the infrastructure needs for the lots to get them ready for development.

As part of the plat for these four lots, there was approval for an easement to be set aside for a privacy wall and landscape buffer in order to provide visual and sound separation from the traffic on Howell Branch Road. At the time of the subdivision approval, the applicant did not have any plans for the wall and agreed to come back to the City Commission for approval of the wall once the design and location was determined, which is the reason for this request.

In order to provide a visual and sound buffer to these homes from Howell Branch, they are proposing a six-foot-tall concrete wall with another twelve inches of height of "knotwood" aluminum planks in combination with eight-foot-tall columns spaced every twenty feet. The twelve-inch knotwood portion of the wall that extends over the six-foot concrete portion will need a variance since the maximum wall height in the code is six feet. Staff feels that this is an acceptable variance since it provides a more attractive look

to the wall and will not be a solid twelve inches since the knotwood portion are planks, as shown in the attached. The wall will have jogs in it so it is not a continuous straight line of wall along the street frontage, with landscaping at the entrance and a hedge along the inside of the wall. The applicant has provided the attached images of the wall, materials proposed, and the landscaping proposed.

[alternatives / other considerations](#)

[fiscal impact](#)

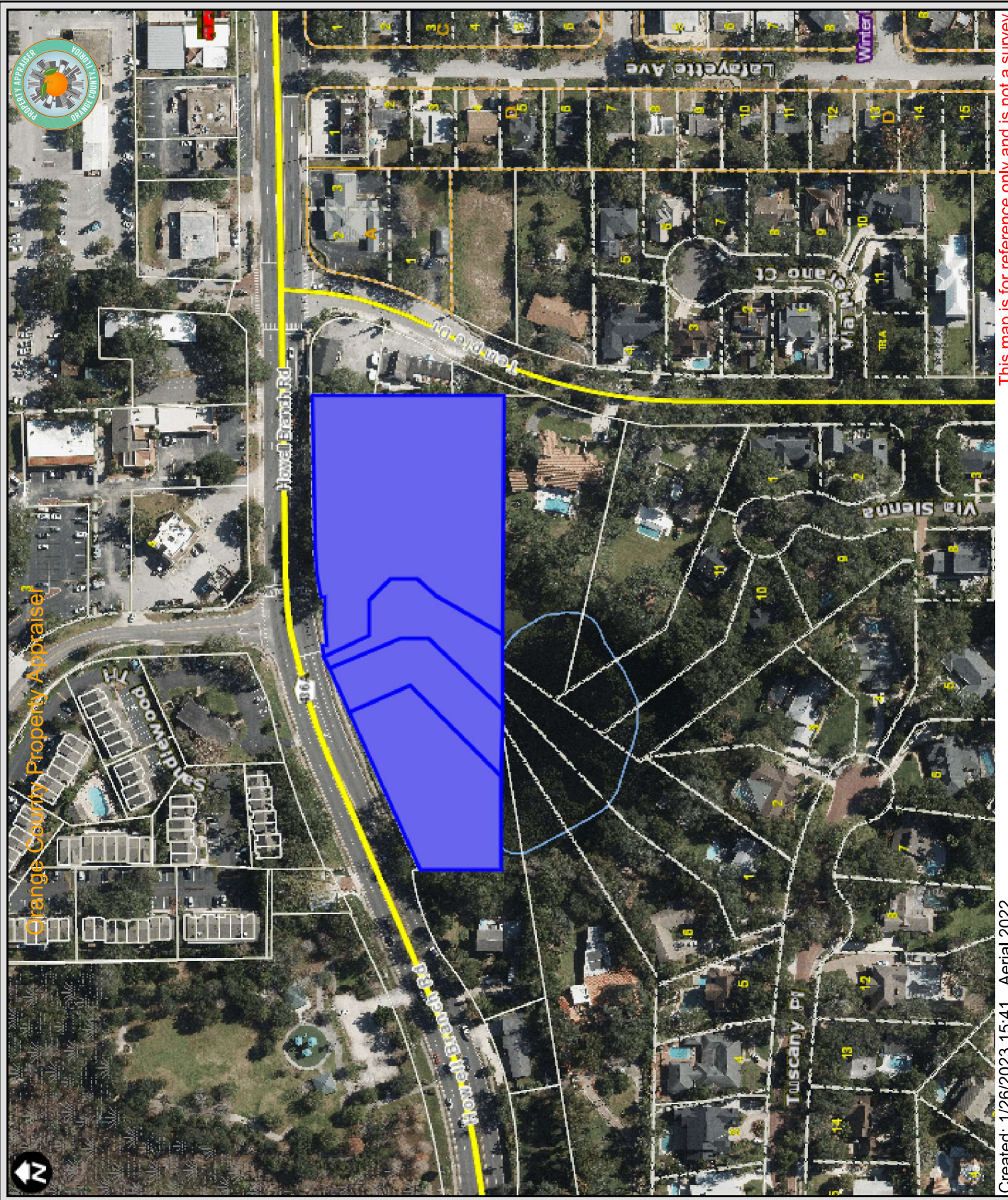
ATTACHMENTS:

[Via Veneto Subdivision Map.pdf](#)

ATTACHMENTS:

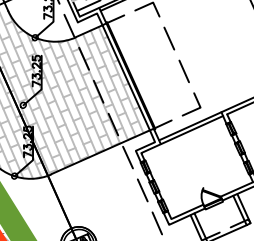
[VIA VENETO SUBDIVISION WALL.pdf](#)

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| | Florida turnpike | | Interstate 4 | | Toll Road | | Major Roads | | Public Roads | | Gated Roads | | Road Under Construction | | Proposed Road | | US Road | | State Road | | County Road | | Toll Ramp | | Interstate Ramp | | One Way | | Brick Road | | Rail Road | | Proposed SunRail | | Block Line | | Lot Line | | Residential | | Agriculture | | Commercial/Institutional | | Governmental/Institutional/Misc | | Commercial/Industrial/Vacant Land | | Hydro | | Waste Land | | Agricultural Curtilage | | County Boundary | | Parks | | Golf Course | | Lakes and Rivers | | Building | | Power Plant |
|--|------------------|--|--------------|--|-----------|--|-------------|--|--------------|--|-------------|--|-------------------------|--|---------------|--|---------|--|------------|--|-------------|--|-----------|--|-----------------|--|---------|--|------------|--|-----------|--|------------------|--|------------|--|----------|--|-------------|--|-------------|--|--------------------------|--|---------------------------------|--|-----------------------------------|--|-------|--|------------|--|------------------------|--|-----------------|--|-------|--|-------------|--|------------------|--|----------|--|-------------|



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This map is for reference only and is not a survey



VIA VENETO SUBDIVISION ENTRANCE



SUBDIVISION WALL OVERVIEW AND ARTICULATION



SUBDIVISION WALL TRAVELING EAST ON HOWELL BRANCH RD.



SUBDIVISION WALL TRAVELING WEST ON HOWELL BRANCH RD.



SIGNAGE AREA



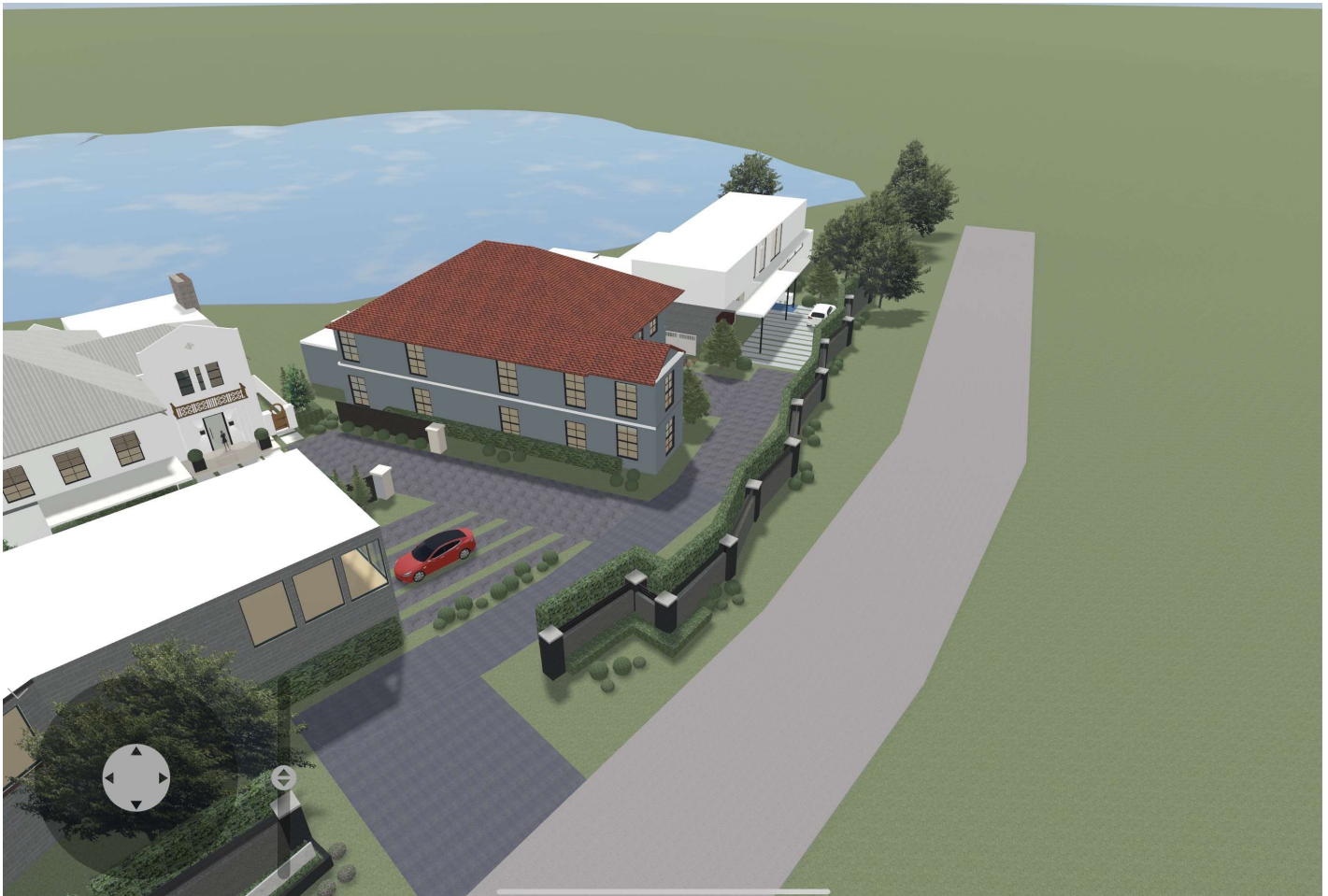
OTHER PERSPECTIVE



OTHER PERSPECTIVE



OTHER PERSPECTIVE



WALL PANEL MEASUREMENT

SAMPLE OF WALL TEXT NOT COLOR



CLUSIA HEDGE





City Commission **agenda item**

item type Public Hearings: Quasi-Judicial Matters (Public participation and comment on these matters must be in-person.)	meeting date February 8, 2023
prepared by Rene Cranis	approved by
board approval	
strategic objective	

subject

Ordinance 3262-23 - Vacating and abandoning portion of Elvin Avenue right-of-way. (2nd reading)

motion / recommendation

Approve motion to vacate portion of Elvin Ave right-of-way. Staff agrees this right-of-way section is appropriate to vacate. All pertinent utility signoff's have been reviewed.

background

The city received a request from the developer of Ravaudage to vacate the portion of Elvin Ave adjacent to 1451 Elvin. As the portion of Elvin as already been vacated as well as Loren Avenue, the city is supportive of this request.

alternatives / other considerations

Not approve Request to Vacate

fiscal impact

No direct financial impact as part of this action.

ATTACHMENTS:

[Ordinance 3262-23 Elvin_Avenue_Partial_Vacation_Ordinance_12-28-2022.doc](#)

ATTACHMENTS:

[Exhibit A to Elvin Ave Vacation Ordinance.pdf](#)

ATTACHMENTS:

[Letter to Don Marcotte, PE](#)

ATTACHMENTS:

[WP electric sign off Elvin 09.10.2022.pdf](#)

ATTACHMENTS:

[Spectrum Elvin Ave.08.17.2022.pdf](#)

ATTACHMENTS:

[WP waste water and water Elvin Ave Vacation Request.Elvin.pdf](#)

ATTACHMENTS:

[TECO sign off 2nd Elvin ave 09.10.2022.pdf](#)

After Recording Return To:
City of Winter Park, City Clerk's Office
401 Park Avenue South
Winter Park, Florida 32789

ORDINANCE 3262-23

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA VACATING AND ABANDONING A PORTION OF THE ELVIN AVENUE RIGHT-OF-WAY, DEDICATED BY HOME ACRES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "M", PAGE 97, OF THE PUBLIC RECORDS OF ORANGE COUNTY, MORE PARTICULARLY DESCRIBED IN EXHIBIT A; PROVIDING FOR CONFLICTS, RECORDING AND AN EFFECTIVE DATE.

WHEREAS, the City of Winter Park has authority to adopt this Ordinance by virtue of its home rule powers and Charter with respect to abandoning and vacating rights of way no longer needed for public purposes, and the City Commission has made such a determination; and

WHEREAS, the adjacent property owner has requested the right-of-way vacation and abandonment set forth herein and the City has determined that portion of Elvin Avenue right-of-way being vacated and abandoned by this Ordinance is no longer needed by the City of Winter Park.

BE IT ENACTED by the People of the City of Winter Park, Florida as follows:

Section 1. The City Commission of the City of Winter Park, Florida hereby vacates and abandons that certain portion of the Elvin Avenue right-of-way legally described in that certain legal description and sketch of description attached hereto as **Exhibit "A"**.

Section 2. In the event of any conflict between this Ordinance and any other ordinance or portions of ordinances, this Ordinance controls.

Section 3. After adoption, this Ordinance shall be recorded in the public records of Orange County, Florida.

Section 4. This Ordinance shall take effect immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida, on the 8th day of February, 2023.

Phillip M. Anderson, Mayor

ATTEST:

Rene Cranis, City Clerk

SKETCH OF DESCRIPTION (THIS IS NOT A SURVEY)

EXHIBIT "A"

DESCRIPTION:

A PORTION OF ELVIN AVENUE, HOME ACRES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK M, PAGE 97, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST; THENCE, ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 36, TOWNSHIP 21 SOUTH, RANGE 29 EAST, N89°23'36"E, A DISTANCE OF 314.04 FEET; THENCE, DEPARTING SAID SOUTH LINE, S00°36'24"E, A DISTANCE OF 425.25 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF ELVIN AVENUE; SAID POINT BEING THE POINT OF BEGINNING. THENCE, ALONG SAID NORTH RIGHT-OF-WAY LINE, S89°27'45"E, A DISTANCE OF 118.13 FEET; THENCE, DEPARTING SAID NORTH RIGHT-OF-WAY LINE, S00°32'15"W, A DISTANCE OF 50.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF ELVIN AVENUE; THENCE, ALONG SAID SOUTH RIGHT-OF-WAY LINE, N89°27'45"W, A DISTANCE OF 117.70 FEET; THENCE, DEPARTING SAID SOUTH RIGHT-OF-WAY LINE, N00°02'30"E, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING APPROXIMATELY 5,896 SQUARE FEET, MORE OR LESS.

SURVEYOR'S NOTES:

1. The lands as shown hereon lie within Section 1, Township 22 S., Range 29 E., Orange County, Florida.
2. Bearings shown hereon are assumed relative to south right-of-way line of Elvin Avenue, bearing N89°27'45"W assumed.
3. This is not a survey.

\\SERVER\Projects\Ravaudage - Phase 3\dwg\ELVIN.dwg

SHEET 1 OF 2

HLSM, LLC

Henrich-Luke-Swaggerty-Menard
Professional Surveyors & Mappers
Licensed Business No. 7276

302 Live Oaks Boulevard
Casselberry, Florida 32707
P. (407) 647-7346

Survey@HLSM.US

Job No: M-287
Date: 8/18/22
Drawn By: JJR
Scale: 1"=30'

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. 55625


William F. Menard
Professional Surveyor & Mapper
Florida Registration #5625

SKETCH OF DESCRIPTION (THIS IS NOT A SURVEY)

EXHIBIT "A"

LEGEND:

POB POINT OF BEGINNING
POC POINT OF COMMENCEMENT
R/W RIGHT-OF-WAY

POC

NW CORNER OF THE
NW 1/4 OF THE NE 1/4 OF
SECTION 1-22-29

N89°23'36"E 314.04'

SOUTH LINE

SOUTHEAST 1/4

SECTION 36-21-29

MONROE AVENUE
(RIGHT-OF-WAY VARIES)

S00°36'24"E 425.25'

HOME ACRES
PLAT BOOK M, PAGE 97

LOT 1
BLOCK P

LOT 16
BLOCK P

POB

S89°27'45"E 118.13'

NORTH R/W LINE

N00°02'30"E 50.00'

ELVIN AVENUE

(50' RIGHT-OF-WAY)

5,896 ± SQUARE FEET

SOUTH R/W LINE

S00°32'15"W 50.00'

N89°27'45"W 117.70'

HOME ACRES
PLAT BOOK M, PAGE 97

LOT 10
BLOCK L

LOT 11
BLOCK L

SHEET 2 OF 2

\\SERVER\Projects\Ravadauge - Phase 3\dwg\ELVIN.dwg



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SURVEYOR AND MAPPER.

SEE SHEET 1 OF 2
FOR SIGNATURE & SEAL

August 22, 2022

Don Marcotte, P.E.
City of Winter Park
1409 Howell Branch Rd.
Winter Park, FL 32789

Dear Don,

I would like to request the city vacate the portion of Elvin Avenue adjacent to 1451 Elvin consistent with our development plan and Annexation Agreement with the City. Letters of "No Objection" are currently being received from the affected public utilities and will be forwarded to you prior to public hearing. This requested right-of-way vacation has no negative impact on access or traffic as the road is currently a dead end (resulting from previous right-of-way vacations of Elvin and Loren Avenues). Please find attached an area map, Sketch and Description of the area requested to be vacated. I appreciate your review of this request and placement on an upcoming public hearing agenda as required by law.

Sincerely,



Daniel B. Bellows



SKETCH OF DESCRIPTION

(THIS IS NOT A SURVEY)

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A PORTION OF ELVIN AVENUE, HOME ACRES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK M, PAGE 97, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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SURVEYOR'S NOTES:

1. The lands as shown hereon lie within Section 1, Township 22 S., Range 29 E., Orange County, Florida.
2. Bearings shown hereon are assumed relative to south right-of-way line of Elvin Avenue, bearing N89°27'45"W assumed.
3. This is not a survey.

\\SERVER\Projects\Ravaudage - Phase 3\dwg\ELVIN.dwg

HLSM, LLC

Henrich—Luke—Swaggerty—Menard
Professional Surveyors & Mappers

Licensed Business No. 7276

302 Live Oaks Boulevard
Casselberry, Florida 32707
P. (407) 647-7346

Survey@HLSM.US

Job No: M-287
Date: 8/18/22
Drawn By: JJR
Scale: 1"=30'

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. 55625

STATE OF FLORIDA
William E. Menard
Professional Surveyor & Mapper
Florida Registration #5625

SHEET 1 OF 2

SKETCH OF DESCRIPTION (THIS IS NOT A SURVEY)

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POB POINT OF BEGINNING
POC POINT OF COMMENCEMENT
R/W RIGHT-OF-WAY

POC

NW CORNER OF THE
NW 1/4 OF THE NE 1/4 OF
SECTION 1-22-29

N89°23'36"E 314.04'

SOUTH LINE

SOUTHEAST 1/4

SECTION 36-21-29

MONROE AVENUE
(RIGHT-OF-WAY VARIES)

S00°36'24"E 425.25'

HOME ACRES
PLAT BOOK M, PAGE 97

LOT 1
BLOCK P

LOT 16
BLOCK P

POB

S89°27'45"E 118.13'

NORTH R/W LINE

N00°02'30"E 50.00'

ELVIN AVENUE

(50' RIGHT-OF-WAY)

5,896 ± SQUARE FEET

SOUTH R/W LINE

S00°32'15"W 50.00'

N89°27'45"W 117.70'

HOME ACRES
PLAT BOOK M, PAGE 97

LOT 10
BLOCK L

LOT 11
BLOCK L

SHEET 2 OF 2

HLSM, LLC

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SURVEYOR AND MAPPER.

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FOR SIGNATURE & SEAL

\\SERVER\Projects\Ravaudage - Phase 3\dwg\ELVIN.dwg



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City of Winter Park
 401 Park Avenue South
 Winter Park, FL 32789
 407-691-7801
 Attn: Mourad Belfakih

July 21, 2022

Dear Mo,

I am in the process of requesting that the City of Winter Park vacate a portion of ELVIN AVENUE between Lewis Drive and Bennett ave, as shown on the copy of the enclosed tax map highlighted in RED.

The site address is 1451 ELVIN AVENUE and lies within a subdivision found in Plat Book M, Page 97 on the Home Acres Subdivision. In order to have this action heard, I must provide letters of no objection from utility companies who may have utilities within this Rights of way. Please note the remainder of Elvin Avenue to the west has been previously vacated.

Please review your records, complete the form below, and return this letter to me. If you have any questions, please contact DAN BELLOWS at (407) 644-3151.

Sincerely yours,



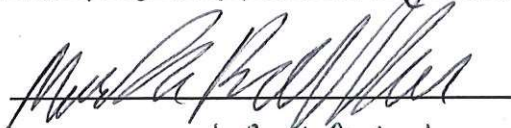
Daniel B. Bellows
 Sydgan Corporation
 P.O. Box 350
 Winter Park, FL 32790

☒ The subject parcel is not within our jurisdiction. (Electric only)

☐ The subject parcel is within our jurisdiction. We **do/do not** (circle one) have any facilities within the easement/right of way. We have no objection to the vacation.

Additional Comments: No Electrical Facilities, Please check with other Winter Park utilities (water/sewer/water)

Signature:



Print Name:

Mourad Belfakih

Title:

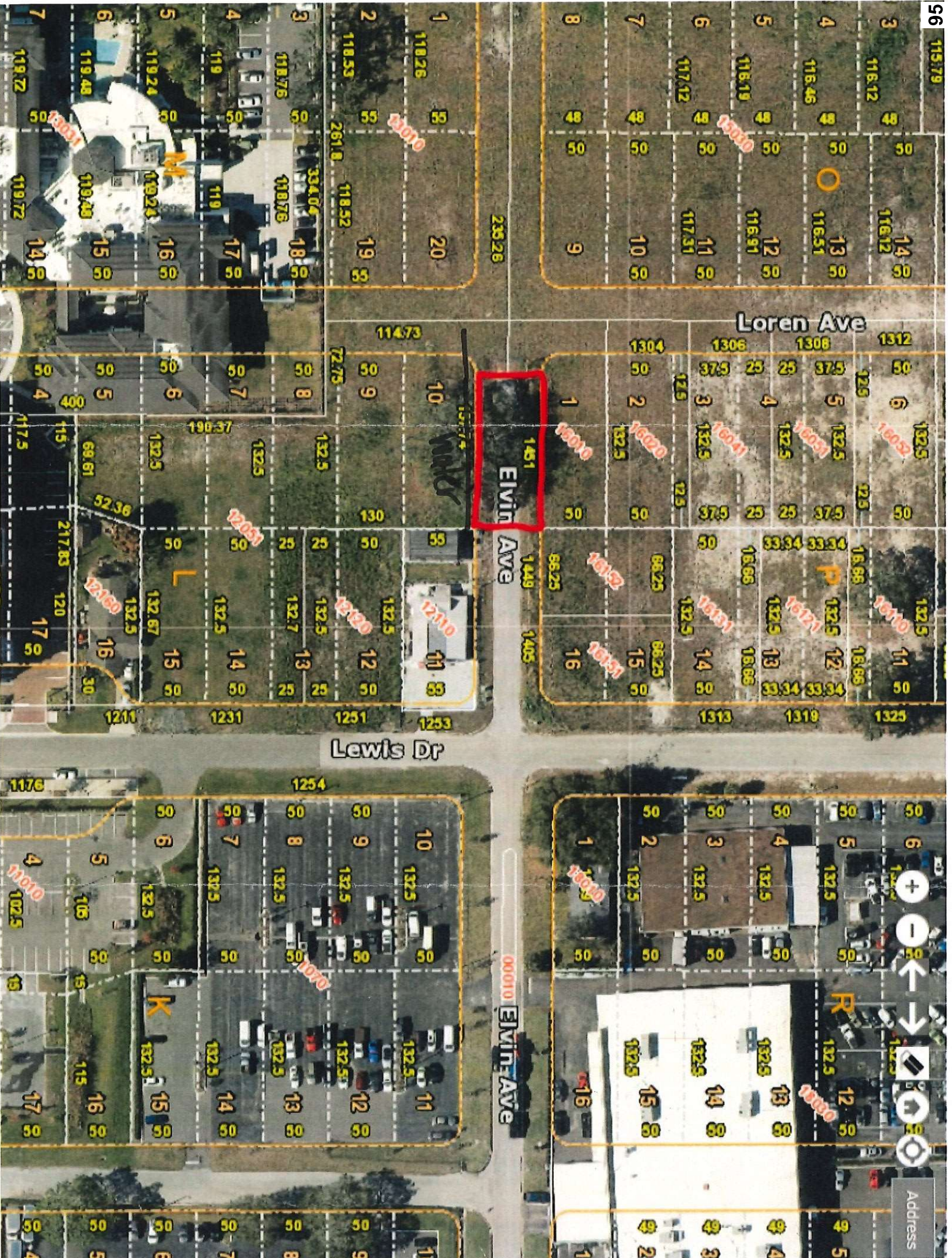
Senior Electrical Engineer

Date:

8-31-2022

Phone Number:

407-691-7801



56

113.79

116.12

116.46

116.19

117.12

117.31

118.51

118.52

118.76

119.24

119.48

119.72

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119.72

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119.72

Loren Ave

Elvin Ave

Lewis Dr

00010 Elvin Ave

+

-

←

→

⊞

⊞

Address

Construction Department
3767 All American Blvd
Orlando Fl. 32810



August 17, 2022

Dan Bellows
Sydgan Corparation
P.O. Box 350
Winter Park, Fl. 32790

Re: Request for a Vacate of a portion Elvin Ave Right of Way
1451 Elvin Avenue

Dear Mr. Bellows:

Charter Spectrum has reviewed your request to vacate this portion of right of way and have no objection to the vacation as shown in this highlight drawing below.



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

Sincerely,
Tracey Domostoy
Tracey Domostoy
Construction Supervisor
Charter- Spectrum

Cc: w1454@aol.com

City of Winter Park
401 Park Avenue South
Winter Park, FL 32789
407-599-3355
Attn: Jason Reigler

July 21, 2022

Dear Mr. Reigler,

I am in the process of requesting that the City of Winter Park vacate a portion of ELVIN AVENUE between Lewis Drive and Bennett ave, as shown on the copy of the enclosed tax map highlighted in RED.

The site address is 1451 ELVIN AVENUE and lies within a subdivision found in Plat Book M, Page 97 on the Home Acres Subdivision. In order to have this action heard, I must provide letters of no objection from utility companies who may have utilities within this Rights of way. Please note the remainder of Elvin Avenue to the west has been previously vacated.

Please review your records, complete the form below, and return this letter to me. If you have any questions, please contact DAN BELLOWS at (407) 644-3151.

Sincerely yours,


Daniel B. Bellows
Sydgan Corporation
P.O. Box 350
Winter Park, FL 32790

☐ The subject parcel is not within our jurisdiction.

☒ The subject parcel is within our jurisdiction. We do ~~do not~~ (circle one) have ~~any~~ facilities within the easement/right of way. We have no objection to the vacation.

Additional Comments:

City has an existing 2" steel water main within the proposed ROW vacation area. Conditional approval of this request is granted based on the following:

1. City will cut and cap existing water main at the east side of the vacation request area and abandon water main within the vacation request area.
2. Owner is responsible for removal of abandoned water main.

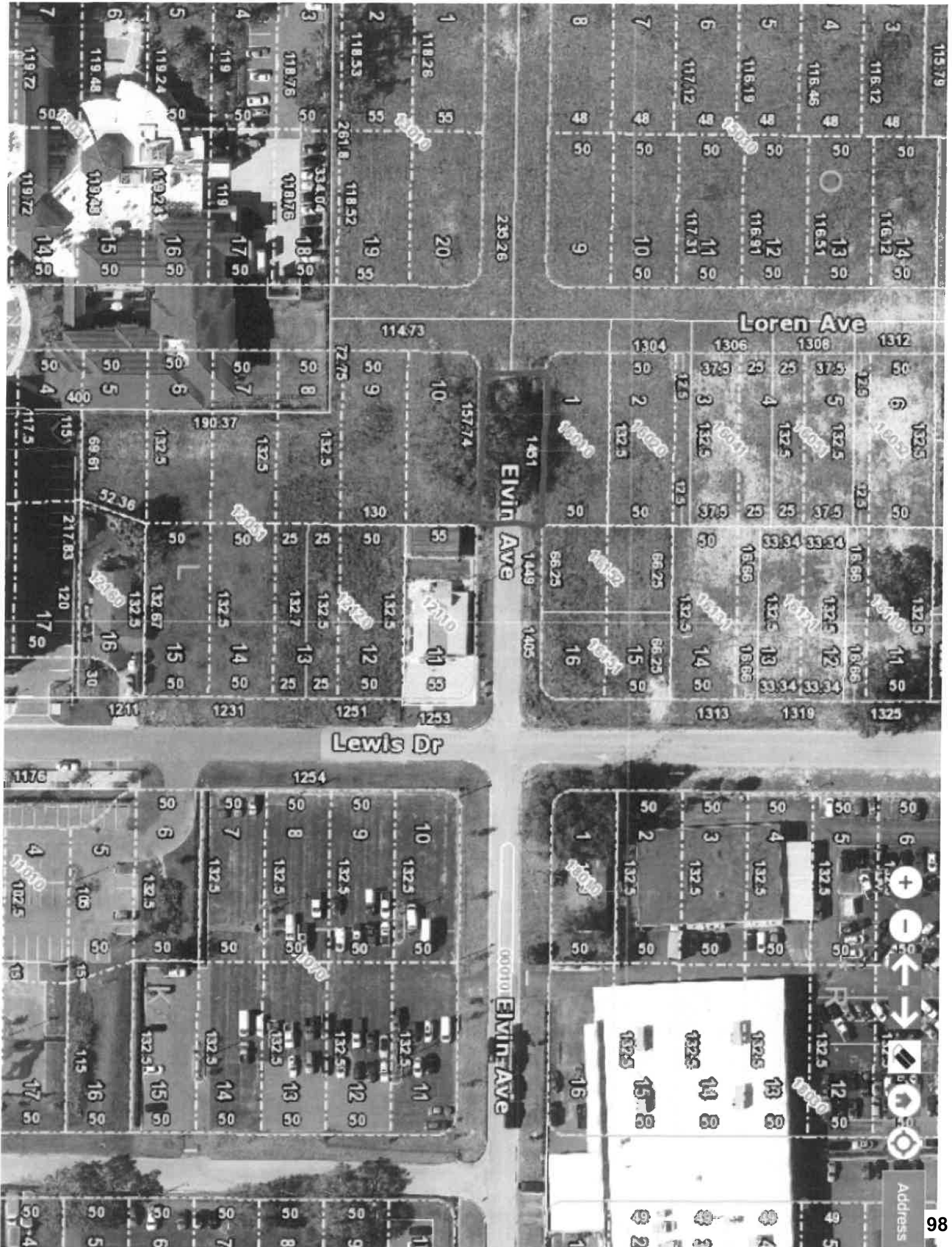
Signature: 

Print Name: Jason Riegler, P.E.

Title: Assistant Director
Water and Wastewater Department

Date: August 29, 2022

Phone Number: 407-599-3355



TECO/Peoples Gas
600 w Robinson
PO Box 2433
Orlando, FL 32802
407-420-6663
Attn: Shawn Winsor

July 21, 2022

Dear Mr/Ms. Winsor,

I am in the process of requesting that the City of Winter Park vacate a portion of ELVIN AVENUE between Lewis Drive and Bennett ave, as shown on the copy of the enclosed tax map highlighted in RED

The site address is 1451 ELVIN AVENUE and lies within a subdivision found in Plat Book M, Page 97 on the Home Acres Subdivision. In order to have this action heard, I must provide letters of no objection from utility companies who may have utilities within this Rights of way. Please note the remainder of Elvin Avenue to the west has been previously vacated.

Please review your records, complete the form below, and return this letter to me. If you have any questions, please contact DAN BELLOWS at (407) 644-3151.

Sincerely yours,


Daniel B. Bellows
Sydgan Corporation
P.O. Box 350
Winter Park, FL 32790

☐ The subject parcel is not within our jurisdiction.

☒ The subject parcel is within our jurisdiction. We do/do not (circle one) have any facilities within the easement/right of way. We have no objection to the vacation.

Additional Comments: Existing 1 1/4" Coated Steel (6m) 22ft
within vacate parcel area (ELVIN Ave)

Signature: 

Print Name: Shawn Winsor

Title: Gas Design Project Manager

Date: 8-24-2022

Phone Number: 407-420-6663



City Commission agenda item

item type Public Hearings: Non-Quasi Judicial Matters (Public participation and comment on these matters may be virtual or in-person.)	meeting date February 8, 2023
prepared by Jeffrey Briggs	approved by Michelle del Valle, Randy Knight
board approval Completed	
strategic objective	

subject

Ordinance 3261-23: Updating Section 58-87, lakefront and waterfront zoning regulations and amending Chapter 114, Lakes and Waterways to incorporate regulations concerning docks and boathouses. (2nd Reading) **(Tabled from January 25, 2023) Request from staff to table to February 22, 2023.**

motion / recommendation

The P&Z Board and Staff recommend approval.

background

The City's history with regard to the review of waterfront (lakes/canals/streams) construction including boathouses/docks began in 1975 when the Zoning Code was amended to require the Planning and Zoning Commission to approve all new construction and substantial redevelopment on waterfront properties including homes, boathouses/docks etc. Over the ensuing years, the Zoning Code was amended from time to time to address issues with the implementation of those waterfront plan reviews but there has not been a major update in 15+ years.

In 1985, the authority for the review and approval of any waterfront seawalls or retaining walls was transferred to the Lakes and Waterways Board. In 2000, the authority for the review and approval of boathouses and docks on waterfront properties was transferred to the Lakes and Waterways Board. That change was very beneficial since both the Lakes Division staff and the Lakes Board are the experts on all things being done in the water.

It also helped significantly for the Lakes Division staff to be aware of all of the boathouse/dock permits, and conditions of approval for such, as the Lakes staff was frequently watching the progress of construction of boathouse/docks and seawalls while doing their normal responsibilities on the lakes.

Updates to the Responsibilities for Boathouse/Dock Approvals:

One major change proposed in the Ordinance is to transfer the development regulations for waterfront boathouses/docks /gazebos from the Chapter 58 “Zoning” to Chapter 118 “Waterways” in order to give the Lakes and Waterways Board and the Lake Killarney Advisory Board complete authority over those structures. The complication is that since the boathouse regulations are codified within the Zoning Chapter, it is the Board of Adjustment that must grant variances. Today an applicant for a variance must receive an approval from the Lakes Board and then they need the variance from the Board of Adjustment. The reality (in practice) is that the Board of Adjustment always trusts the judgment of the Lakes Board in making their decision. If the Lakes Board denies the request due to the variance, then the Board of Adjustment can’t over-ride that decision.

If the Lakes Board approves with the variance then the Board of Adjustment never second guesses the Lake Board. The applicants can’t understand why if they go to the Lakes Board and are granted an approval, inclusive of a variance, why it needs to be approved a second time by the Board of Adjustment. Both actions are quasi-judicial in nature.

Other changes to the Waterfront Development Regulations:

The P&Z Board and Planning staff have also updated the waterfront regulations for the following topics:

1. Improving storm water grading regulations to prevent issues with drainage onto adjacent properties.
2. Clarifies the lakefront setbacks for fences and walls.
3. Clarifies the permitted pools/patios deck heights above natural grade on the lakefront lots and the location of pool cabanas
4. Clarifies the location of pools/patios decks on lakefront lots with walk-out basements.

With respect to improving storm water grading regulations, these code modifications strengthen language to ensure that storm water runoff does not runoff onto adjacent properties. This includes a requirement for homes to construct stem walls in order to maintain existing grades within side setback areas and allows for the requirement for inlets and pipes to convey runoff down to the waterfront and to require retaining walls, if necessary, to keep drainage on the property.

With respect to clarifying lakefront setbacks for walls and fences, the new text insures that open privacy fences on side lot lines are setback of 75-feet from the high-water line before a solid fence or wall can be built and that fences within 75-feet of the high-water line must be substantially open.

With respect to clarifying permitted heights of pools/patios decks on lakefront lots and regulations for accessory structures such as pool cabanas, the Code is keeping 3-foot maximum for pool decks above existing natural grade. On properties with significant

grade drops that require more than the 3-feet, a new home may request up to 5-feet above existing grade so long as a minimum of 2-feet of step-downs are within the principal structure or from the finished floor elevation down to the swimming pool/deck.

This provision would not be allowed to have any exception or variance, so that negotiations with P&Z do not are not occur creating different decisions on one property versus another. Also, accessory structures (such as pool cabanas) that are permitted when utilizing this exception, must conform to the setbacks of the principal structure.

With respect to clarifying floor level location of pools/patios decks, the Code still will permit walkout basements, however, swimming pools and decks must be located only on the lowest living area level, in line with the existing natural grade. This limits the possibility for large stem/retaining walls for swimming pools/decks by avoiding placement of the pool/deck on a second floor level with a three story home on the lakefront (two floors plus walkout basement) far above the natural grade.

[alternatives / other considerations](#)

[fiscal impact](#)

ATTACHMENTS:

[Ordinance 3261-23 Updating Lakefront Zoning Regs FINAL.docx](#)

ORDINANCE 3261-23

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING CHAPTER 58, "LAND DEVELOPMENT CODE", ARTICLE III, "ZONING REGULATIONS" SECTION 58-87 "LAKEFRONT LOTS, CANALFRONT LOTS, STREAMFRONT LOTS, BOATHOUSES AND DOCKS" PROVIDING FOR UPDATES AND MODERNIZATION TO THE CURRENT REGULATIONS, AND AMENDING CHAPTER 114 "WATERWAYS" TO INCORPORATE THE REGULATIONS CONCERNING DOCKS AND BOATHOUSES, PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Winter Park deems it necessary for the purpose of providing environmental protections for the City in the management of construction on waterfront properties on lakes, canals and streams and to update and modernize the waterfront zoning regulations and to clarify the authority of the appointed boards having jurisdiction in the review of waterfront construction and of docks, boathouses and gazebos and in furtherance of the protection of due process and the general welfare of the City as set forth in this Ordinance.

WHEREAS, the City Commission hereby finds that this Ordinance serves a legitimate government purpose and is in the best interests of the public health, safety, and welfare of the citizens of Winter Park, Florida and is intended to promote, enable and facilitate economic competition;

NOW THEREFORE, BE IT ENACTED by the City Commission of the City of Winter Park, Florida, after due notice and public hearing, that:

SECTION 1. That Chapter 58 "Land Development Code", Article III "Zoning Regulations, Section 58-87 "Lakefront lots, canalfront lots, streamfront lots, boathouses and docks" of the City of Winter Park Land Development Code is hereby amended as shown below (underlined language are additions; ~~stricken through~~ language are deletions; subsections not included are not being modified):

- **ARTICLE III ZONING REGULATIONS.**

- **Sec. 58-87. - Lakefront lots, canalfront lots, streamfront lots, boathouses and docks other waterfront properties.**

(a) *Purpose and intent.* It is the intent of this section to insure that buildings and structures on waterfront properties including canalfront lots, lakefront lots and streamfront lots are ~~not~~ constructed or placed such that no boating hazards will be created, that construction shall be compatible with the natural grade of the property; precluding large stem walls, large swimming pool/patio walls, terraces or retaining walls on the waterfront, facing the water that are significantly above existing grade; that water pollution from stormwater runoff and other sources will be minimized by

providing adequate stormwater retention and conveyance; that views of water from adjoining waterfront properties will not be unduly impaired; that existing trees shall be preserved to the degree reasonably possible and that the appearance of the property and the shore when viewed from the water will be kept as natural as reasonably possible. The city's lakes, canals and streams are among the city's greatest assets, and it is in the public interest to require that their aesthetic appeal and water quality be maintained and enhanced when possible.

(b) *Building plans.*

(1) A building permit shall not be issued for any new structure or building, addition over five hundred (500) square feet to any existing structure or building, ~~fence or wall~~ or significant change to an existing property on a lakefront, canalfront or streamfront lot until satisfactory building plans are reviewed and approved by the Planning and Zoning Board that are deemed in compliance with the objectives established in the aforementioned purpose and intent and the specific requirements of this section. The ~~p~~Planning ~~d~~Deartment shall review all such plans and provide a recommendation to the ~~P~~Planning and ~~Z~~Zoning ~~B~~Board. A decision by the Planning and Zoning Board shall be done at a public hearing after review of comments from city staff and notification of the adjacent waterfront property owners.

(2) In cases involving the construction of swimming pools (without screen pool enclosures), or patios, or hardscape additions of under one thousand (1,000) square feet, the ~~p~~Planning ~~d~~Deartment shall provide an administrative review which will result in approval, approval with conditions or denial of the permit. In such cases, the owner may appeal the ~~p~~Planning ~~d~~Deartment's determinations to the ~~P~~Planning and ~~Z~~Zoning ~~B~~Board.

(3) In all other cases, the ~~P~~Planning and ~~Z~~Zoning ~~B~~Board shall review and approve construction upon lakefront lots, canalfront lots and streamfront lots when deemed in compliance with the objectives established in the aforementioned purpose and intent.

~~(4) The lakes and waterways board shall review and approve construction of boathouses, docks, gazebos over the lakes or other water bodies. However, review and approval by the lakes and waterways board of boathouses, docks and gazebos shall not be required if the structure is replacing an existing boathouse, dock or gazebo and is in the same location and is meeting the code requirements set forth in this section. The review and approval by the lakes and waterways board is only required when variances are requested or when there is not an existing boathouse, dock or gazebo on the property/water or when the location of the boathouse, dock or gazebo is being changed by more than five feet from the current location.~~

~~(4)(5) The requirements of this section are minimum requirements, and the Planning and Zoning Board or the lakes and waterways board may impose more restrictive requirements and conditions on the height, bulk, location and any other aspect of the proposed development where necessary in order to accomplish the purpose and intent of this section. Review by the planning and zoning board or the lakes and waterways board shall be at a public hearing following notification of adjacent waterfront property owners.~~

~~(c) Docks and boathouses. The following minimum or maximum standards shall apply to all construction or renovation of docks and boathouses:~~

~~(1) Before a building permit is issued, the plans for docks and boathouses shall be approved by the lakes and waterways board after review of comments from city staff and notification of the adjacent lakefront property owners.~~

~~(2) The total area of docks and boathouses built at the water's edge over land and water shall not exceed 600 square feet. In the case of canalfront lots (other than boathouse lots on canals as set forth in subsection (f) hereafter), the maximum total area of docks, boathouses, decks, stairs and any other attachments shall be based on the length of the canal frontage as follows:~~

~~a. Seventy-five feet or less of frontage, 450 sq. ft.~~

~~b. Seventy-six feet to 100 feet of frontage, 500 sq. ft.~~

~~c. Over 100 feet of frontage, 550 sq. ft.~~

~~d. The maximum width of canal boathouses shall be 20 feet.~~

~~(3) All new docks and boathouses shall be constructed ten feet from a side lot line. This side setback can be reduced to five feet if written approval is presented from the adjacent property owners.~~

~~(4) All new docks and boathouses shall not extend over 30 feet into the water from the elevations specified in this section. However, on Lake Killarney the maximum distance may be 50 feet.~~

~~(5) The highest point of a boathouse or gazebo roof or any railing shall not exceed 11 feet and the roofs must be pitched so as to eliminate flat roofs and use of such areas as sundecks. The height shall be measured from the surface of the dock or floor to the highest point of the roof or railing. In addition, the surface of any dock, sundeck or floor of any boathouse, gazebo, etc., shall not be more than two feet above the elevations specified in this subsection.~~

~~(6) In order that all docks or boathouses be utilized only for boating and other recreational activities and not as living space, there shall be no bathrooms or cooking facilities permitted in them, nor as an improvement to any existing boathouse. There also shall not be any enclosed rooms over water except for storage rooms limited in size to a maximum of 80 square feet.~~

~~(7) Only one boathouse shall be permitted for each lakefront property owner. In the case of common ownership of lakefront property such as in a condominium arrangement or property owned by a subdivision, there shall only be one boathouse permitted.~~

~~(8) The sale or lease of a portion of lakefront after January 1, 1980, shall be construed as a subdivision and shall not enable the owners to make application for a dock and boathouse unless that subdivision has received the approval of the city commission.~~

~~(9) Canal boathouses shall be located so as not to interfere with navigation and to result in the minimum loss of existing large oak, pine or cypress trees. Electric service shall be provided via underground wiring. On lots that are divided by a public street, landscape buffering shall be required to substantially cover 50 percent of the structure as viewed from the street. Boathouses shall only be painted or have exterior covering of a color that blends in with and does not detract from the natural surroundings. Off-street parking areas shall remain without asphalt, concrete, brick, gravel, grass paver or other improved surface.~~

~~(10) As a condition for a permit to build or repair any lakefront dock or boathouse, the lakefront water area along shorelines that do not meet the vegetation standards of subsection [114-6\(a\)](#) of this Code shall be required to be planted so that no more than 50 feet, or 50 percent (whichever is less) of the shoreline remains clear of vegetation.~~

(c) Submission requirements. Applications shall require the following submissions:

(1) Existing conditions survey including the existing contours or spot elevations at the side property lines and as otherwise occur regularly on the property. The survey shall also include the location of existing trees having a diameter of six (6) inches or greater measured two (2) feet from the ground and the approximate locations of the adjacent building corners and swimming pool deck corners closest to the lake.

(2) Site plan showing the location of all existing or proposed buildings, structures, pool decks, retaining or terrace walls, hardscape and paved areas, drives and curb cuts. The site plan shall include indications of the trees proposed to be removed. The site plan shall also indicate the proposed first floor elevation and the elevation of all exterior patio/lanai/pool decks, retaining walls, etc. The site plan shall include the proposed front, side, and waterfront setbacks measured from the ordinary high-water elevation to the principal structure and to the furthest edge of any patio/lanai/pool deck.

(3) Statistical table to indicate the square footage of the property as measured to the ordinary high water elevation, square footage of the building elements and square footage of the combined impervious surfaces.

(4) Building elevations of the proposed principal and accessory structures including pool cabanas. The elevations shall include the existing ground level to indicate extent of retaining or stem walls proposed.

(5) Drainage plan (which may also be included on the site plan) showing the method of conveyance of storm water drainage and the areas designed for storm water retention including any curbs or walls necessary to contain drainage on-site or swales, inlets and pipes necessary for conveyance.

(d) ~~Other~~ *sStructures on lakefront, canalfront or streamfront lots.* The following standards shall apply to all construction on lakefront, canalfront or streamfront lots:

(1) *Stormwater retention.* Lakefront, canalfront and streamfront lots shall be developed to maximize the amount of natural rainfall which is percolated into the soil via retention systems and to prevent minimize-direct overland runoff into the water or onto adjoining properties. With the exception of boathouses, docks or other over-water construction, storm water runoff from structures and other impervious surfaces shall be directed into swales or terraces on the lot or restrained by berms so as to provide for the on-site retention and percolation of the first one inch of runoff. Properties being developed or redeveloped shall eliminate any direct piped discharges of storm water into the water, so that this runoff is directed to the on-site retention and percolation areas. The ~~P~~lanning and ~~Z~~oning ~~B~~oard may require, as conditions necessitate, the submission of soil and water table information, topographic detail, drainage calculations and professionally designed plans so as to insure these requirements are met. All storm water retention compliance shall prioritize the preservation of existing trees and the impacts of fill or excavation on tree root systems shall be minimized and the ~~P~~lanning and ~~Z~~oning ~~B~~oard shall have the authority to require berm or alternative retention methods and volumes including waiving the need for such storm water retention where deemed advisable to protect the root systems and survivability of existing oak and cypress trees. Storm water retention/swales shall be setback from existing trees based on the same separation distances as required for tree barriers during demolition/construction. In addition, the City may require for proper conveyance of storm water, the implementation of inlet and pipe drainage systems incorporated into the property so that runoff is properly conveyed down the side setback areas.

(2) No lakefront, canalfront or streamfront lot owner shall grade the lot in such a way as to interfere with the natural drainage of adjoining lots or in a way that diverts drainage from their lot onto adjoining lots. In order to prevent stormwater runoff onto adjacent properties, new construction on sloping sites shall require stemwall construction in order to maintain the existing grades within the side setback areas. The ~~P~~lanning and ~~Z~~oning ~~B~~oard ~~commission~~ may also require, as conditions necessitate, the construction of physical features, such as curbs, walls or

inlets grading, swaling and piping of roof gutters so as to ensure that runoff on a lot does not negatively impact adjoining lots.

(3) Views of Neighbors. Structures on lakefront, canalfront or streamfront lots shall, to the extent reasonably possible, be designed and located to minimize their obstruction or degradation of traditional views to and through the property to the water from adjoining waterfront properties. ~~Structures in this context shall also include fences and walls. Structures shall also be located so that existing trees shall be preserved to the degree reasonably possible.~~ The ~~P~~planning and ~~Z~~zoning ~~B~~board, may as conditions necessitate, reduce the height of structures, alter their location, size and design so as to accomplish these objectives. The ~~P~~planning and ~~Z~~zoning ~~B~~board shall also have limited authority to grant exceptions to the front and side setback standards when deemed necessary to accomplish these objectives.

(4) Tree Preservation. Structures on lakefront, canalfront or streamfront lots shall be developed and landscaped so that when viewed from the water, those structures are as unobtrusive as is reasonably possible. Structures shall also be located so that existing trees shall be preserved to the degree reasonably possible. When a lot is being redeveloped, or a lot's structure is being extended or altered, the ~~P~~planning and ~~Z~~zoning ~~B~~board ~~commission~~ may require the planting of new trees and other landscaping in order to achieve this objective. The Planning and Zoning Board shall also require the preservation of shade trees whenever possible in order to keep the lakefront environment as natural as reasonably possible.

(5) Views from the lake. To the extent practical, vehicles shall not be visible from the lake, canal or stream. To achieve this objective, the parking of vehicles in any area between the rear of the principal building and the water shall be prohibited. Driveways and other parking surfaces for vehicles shall not be when located on the waterfront side of lots closer to the water than the first one third of the length of the home and driveways on the side of homes leading to basement parking garage areas shall not be permitted. ~~shall be screened by walls or fences (not including wood fences) or landscaping at least four feet in height that can effectively screen the view of the vehicles from the lake.~~ This shall not apply to driveways and parking areas in the front of the lot that may be situated such that vehicles are visible from the water lake.

(6)(5) Structures on lakefront lots require the approval of the ~~P~~planning and ~~Z~~zoning ~~B~~board prior to the issuance of a building permit. As conditions necessitate, the ~~P~~planning and ~~Z~~zoning ~~B~~board ~~or city commission~~ may impose increased setbacks in concert with their waterfront review ~~or conditional use~~ authority as necessary to accomplish the objectives in this section. Structures in this context shall also include parking lots, driveways, swimming pools, cabanas, gazebos, screen enclosures, tennis

courts and other outdoor recreational facilities, and other accessory buildings and structures.

a. *Setbacks - Single family/duplex.* The setback from the water's ordinary high-water elevation for single family and duplex buildings and any other accessory structures on those properties (other than boathouses, docks, over the water gazebos or retaining walls) shall be the average water front setback to the principal structure established by the adjacent water front properties within 200 feet of the subject property, or fifty (50) feet, whichever is greater. That average lakefront setback determination shall be the point at which construction is permitted. The ~~P~~lanning and ~~Z~~oning ~~B~~oard shall have the authority to approve water front setbacks less than the average determined above to a minimum of fifty (50) feet in accordance with their water front review authority based upon the determination by the Planning and Zoning Board that such construction does not unduly impair the views of water of adjoining waterfront properties.

b. *Setbacks - Multi-family/non-residential/mixed use.* The water front setback from the ordinary high-water elevation for multi-family (three or more units) or non-residential or mixed-use buildings and any other accessory structures on those properties (other than boathouses, docks, over the water gazebos or retaining walls) shall correspond to the height of the proposed structure. For buildings and structures thirty-five (35) feet in height or less, the water front setback shall be a minimum of seventy-five (75) feet. As the height of the building or structure increases, for each one-foot increase in height over thirty-five (35) feet in height, the water front setback shall increase by two and one-half (2½) feet. Parking lots, driveways, swimming pools or other accessory structures shall be—half setback a minimum of fifty (50) feet from the ordinary high-water elevations below. The Planning and Zoning Board shall also have limited authority to grant exceptions to the water front setback standards when new construction replaces an existing structure(s) that are nonconforming to the current required lakefront setbacks but may not increase that nonconformity.

c. *Ordinary high-water elevations.* For convenience, the ordinary high-water elevations of the city's principal lakes are listed below. These elevations have been determined by the Florida Department of Environmental Protection (FDEP) Bureau of Survey and Mapping. All elevations reference NGVD (88 datum). For the canal and stream front locations, the ordinary high-water elevations are to be provided by the ~~p~~Public ~~w~~orks ~~d~~epartment.

1. Lake Berry69.4 feet
2. Lake Killarney82.0 feet.
3. Lake Maitland65.7 feet.
4. Lake Mizell65.7 feet.
5. Lake Osceola65.7 feet.

6. Lake Sue70.7 feet7.
7. Lake Sylvan71.2 feet.
8. Lake Virginia65.7 feet.
9. Lake Bell88.6 feet.
10. Lake Spier89.7 feet.
11. Lake Forrest100.0 feet.
12. Lake Grace100.8 feet.
13. Lake Rose87.8 feet.
14. Lake Tuscany69.1 feet.
15. Lake Baldwin90.7 feet.
16. Lake Temple66.6 feet

~~(7)(6)~~ Structures on canalfront or streamfront lots require the approval of the ~~P~~lanning and ~~Z~~oning ~~B~~oard prior to the issuance of a building permit. Other than boathouses, the waterfront setback shall be at least fifty (50) feet from the canal bulkhead or stream. Structures in this context shall also include driveways, parking lots, swimming pools and pool decks, screen enclosures, tennis courts and other outdoor recreational facilities, cabanas and other accessory buildings and structures. A structure shall be interpreted as any object higher than three (3) feet above grade whether permanently affixed to the ground or not and shall include poles, flags, play equipment, etc. which are not permitted in the fifty (50) foot lakefront setback except as permitted below for canalfront or streamfront locations. Swimming pools and decks on canalfront or streamfront lots may be permitted a minimum of twenty-five (25) feet from the canal bulkhead or stream ordinary high-water elevation, provided the swimming pool has an elevation of no more than two (2) feet above the existing grade on the side closest to the canal or stream. The ~~P~~lanning and ~~Z~~oning ~~B~~oard may require, as conditions necessitate, the imposition of increased setbacks to accomplish the objectives in this section.

~~(8)(7)~~ Fences or walls on lakefront, canalfront, or streamfront lots.

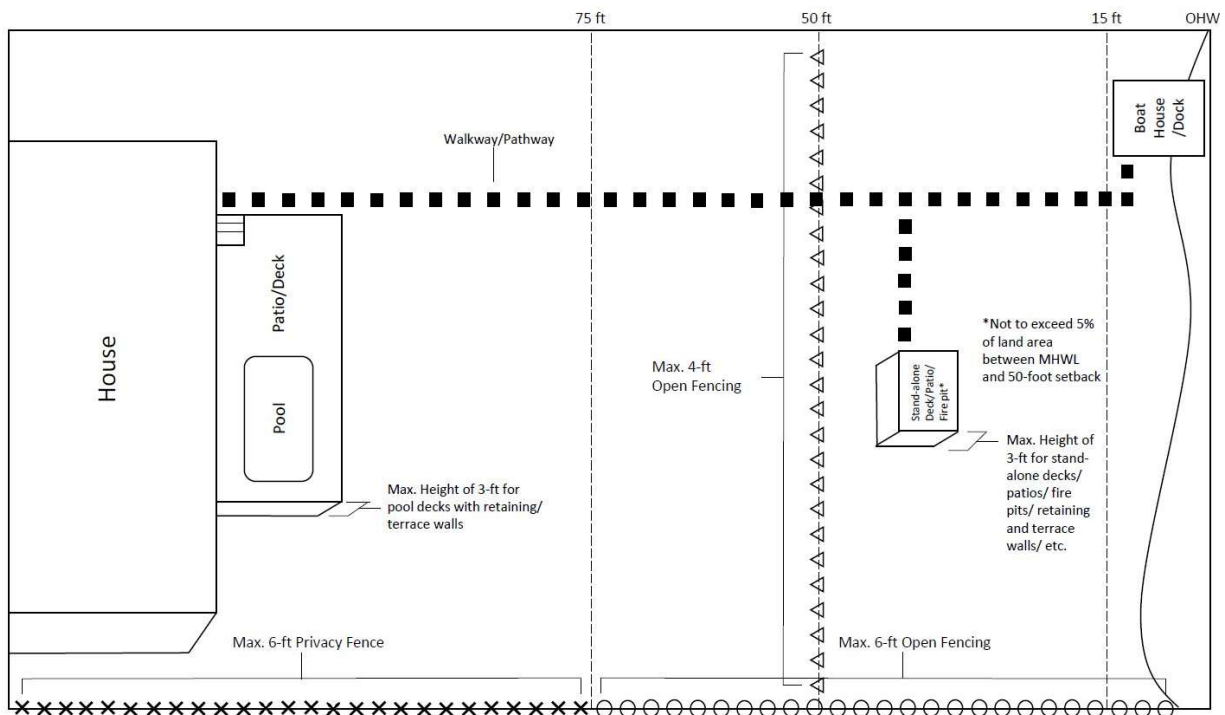
a. Fences or walls on lakefront, canalfront, or streamfront lots shall not be permitted to extend into the water beyond the ordinary high-water elevation or into a canal beyond the bulkhead. Fences and walls shall not be permitted which run parallel to or across the lakefront, canalfront or streamfront property anywhere within the fifty (50) foot setback from the ordinary high-water elevation.

b. Fences that are seventy-five percent (75%) open, such as aluminum picket, wrought iron, or green or black clad vinyl chain link, but not walls or nonopaque any fences, of solid materials such as wood or vinyl may be permitted which run parallel to or across the lakefront, canalfront or streamfront on only that portion of the land between the rear of the main structure and the

fifty (50) foot setback provided such fence does not exceed four (4) feet in height above existing grade.

c. Retaining walls, terrace walls, standalone decks and patios, railings or other structures higher than three (3) feet above existing grade shall not be permitted within the fifty (50) foot setback. Other accessory structures or improvements, that do not exceed three (3) feet in height within the fifty (50)-foot setback such as walkways, railings, standalone patios and, decks, fire pits, etc., shall not cover more than five percent (5%) ten percent of the land area within that fifty (50)-foot setback. Standalone patios, decks and fire pits shall have a minimum setback of fifteen (15) feet from the ordinary high-water elevation.

d. In order to maintain water views across properties, Fences running down the sides of properties up to seventy-five (75) feet setback from the ordinary high-water line, shall be permitted a height of up to six (6) feet. within the 50-foot setback or parallel to or across the waterfront Fences within the seventy-five (75) foot setback, shall be seventy-five percent (75%) substantially open, fences limited to the materials such as aluminum picket, wrought iron, or green or black clad vinyl chain link, which allow visibility across property lines and to the water. Wood shadow box fences shall not qualify as open fencing. The pPlanning and zZoning bBoard may permit fences closer than the fifty (50) feet but only on canalfront or streamfront lots as necessary to enclose swimming pools. The following figure provides a summarized example of the overall requirements provided in the subsections above.



(e)(8) *Conformance to grades.* Many waterfront lots have existing grade slopes down to the water that are otherwise uncommon in the region. The typical home design with a finished first floor level and the swimming pool and patios decks at the same level cannot be accomplished on these sloping sites.

(1) The design of the floor levels and swimming pool or patio decks must conform to the terrain and natural slope of the property.

(2) Swimming pool and spa decks, patios and terraces shall not be constructed more than ~~three~~ (3) feet in height above the average existing grade elevation on the lakeside edge of the deck, patio, or terrace. The height shall be measured from the existing natural grade and not the finished grade; and shall be measured from the average or midpoint of existing grade when a property slopes from side to side across the width of the pool deck, patio or terrace. The three (3) feet height limit shall be measured to the level of the predominant swimming pool deck elevation, patio or terrace elevation and cannot be mitigated with the construction of retaining walls or negative/infinity edge water collection areas or landscape terrace walls in front of the predominant pool/patio elevation.

(3) The facade of ~~exposed~~ retaining walls taller than three (3) feet above grade facing the lake shall be screened with landscape ~~plantings~~ materials across the length of the retaining wall except for any sections involving ~~steps~~ stairs down to the lakefront.

(4) On lots with severe grade drops of over seven (7) feet throughout the length of the house, as measured by the contours starting at the front of the main structure to the end of the proposed structure, the ~~P~~planning and ~~z~~Zoning ~~B~~oard may approve swimming pool and spa decks, patios and terraces higher than three (3) feet above existing grade on the water side to a maximum of five (5) feet above existing grade. This approval is subject to the project design including step-downs within the principal structure and/or from the first-floor elevation down to the swimming pool, patio, or terrace deck, that at a minimum shall be equal to the number of feet requested above the three (3) foot allowance. ~~if approved by four members of the planning board.~~ For example, a swimming pool deck, patio or terrace deck height requested at five (5) feet above existing grade, shall have a minimum of two (2) feet of step-downs within the principal structure and/or from the finished floor elevation down to the swimming pool deck, patio or terrace deck or a combination of both. This restriction or limitation on the maximum height above existing grade shall not be provided any exception or variance.

(5) Walk-out basement levels on waterfront homes that create three floors of living area, or usable basement areas for garage/storage, etc. on the waterfront side of the home shall be permitted where grades permit. However, swimming pools and associated decks and patios, shall be located only on the lowest living area level, and shall be in accordance with the height requirements as set forth in this section.

(6) The height of accessory structures on waterfront homes is measured to existing grade; this shall be inclusive of any elevation decks/patios, etc.

(f)(10) Any property that requests and is permitted a swimming pool, patio or terrace deck elevation in excess of three (3) feet above existing grade on the waterfront side, shall not be permitted to construct an accessory structure on that elevated swimming pool, patio or terrace deck unless such accessory structure meets the required lakefront and side setbacks of the principal residence. This restriction shall not be provided any exception or variance.

(g)(e) Retaining walls or seawalls. Retaining walls shall not exceed a maximum width of thirty-six (36) inches. The construction of retaining walls or seawalls shall be done in accordance with the Lakeshore Protection regulations within this Code of Ordinances.

~~(f) Boathouse lots on canals. The boathouse lots which exist along the canals interconnecting the lakes within the city were platted and accepted by the city under the premise that these lots would serve as lake access for the residents of that subdivision. As such, the purpose and intention of these boathouse lots is to serve as accessory lots to the main residential properties within that subdivision. In accordance with the policies contained within the comprehensive plan, the following regulations shall apply:~~

~~(1) The buildability and use of all canal boathouse lots, which are determined to be accessory lots, shall be restricted to the owners of real property within the subdivision in which these accessory boathouse lots were platted.~~

~~(2) Canal boathouse lots which are held January 1, 1981, by property owners residing outside of the subdivision for which they are platted shall be nonconforming boathouse lots which may still be used for constructing a boathouse and for lake access. However, any canal boathouse lots owned by real property owners on January 1, 1981, in the subdivision for which they were platted, shall only be buildable and used to serve the lake access needs of residents of that subdivision.~~

~~(3) Minimum lot widths shall be 50 feet.~~

~~(4) Canal boathouses shall be constructed a minimum of five feet from side lot line. There shall be no front setback.~~

~~(5) The highest point of a canal boathouse shall be no more than ten feet above the ordinary high-water elevation of the closest lake as detailed in this section.~~

~~(6) Canal boathouses shall not exceed 400 square feet in size for all areas of boathouses, stairs, and decking.~~

~~(7) Canal boathouses shall be located so as not to interfere with navigation and to result in the minimum of loss of existing large oak, pine or cypress trees. Electric service shall be provided via underground wiring. Landscape buffering shall be~~

~~required to substantially cover 50 percent of the structure as viewed from the street. Boathouses shall only be painted or have exterior covering of a color that blends in with and does not detract from the natural surroundings. Off-street parking areas shall remain without asphalt, concrete, brick, gravel, grass paver or other improved surface.~~

~~(h)(g)~~ *Wetlands*. Located adjacent to certain streams, lakes and canals are wetland areas, as defined by the Florida Department of Environmental Protection (FDEP) and St. Johns River Water Management District (SJRWMD) methodology, soil types, hydrological requirements and vegetation types in which no adding of soil or other fill materials shall be permitted. In addition, the use of these wetland areas for any structure shall be permitted only as a conditional use granted only upon the affirmative vote of four members of the City Commission and said structures shall be limited to elevated boardwalks or gazebos. The criteria utilized to evaluate such conditional use requests shall include, but not be limited to: the effect on the wetland's function; environmental impacts on the wetlands from the construction process; the loss of environmentally sensitive areas and the precedent for similar construction in other such wetland areas including conformance to the comprehensive plan. For any other building or structure(s) there shall be a fifty (50) foot minimum setback required from the edge of such designated wetlands.

SECTION 2. That Chapter 114 "Waterways", is hereby amended by establishing a new Section 114-31 in order to transfer the existing regulation of boathouse and docks from the Chapter 58, "Zoning Regulations" to the Chapter 114, "Waterways" Section 114-31 as shown below (underlined language are additions; ~~stricken through~~ language are deletions; subsections not included are not being modified):

Sec. 114-31 – Regulations for boathouses, docks and other waterfront structures.

(a) Boathouses, docks and other waterfront structures. It is the intent of this section to insure that boathouses, docks, gazebos and any other structures on the waterfront of properties including canalfront lots, lakefront lots and streamfront lots are constructed or placed such that no boating hazards will be created, that views of water from adjoining waterfront properties will not be unduly impaired; that existing trees shall be preserved to the degree reasonably possible and that the appearance of the property and the shore when viewed from the water will be kept as natural as reasonably possible. The city's lakes, canals and streams are among the city's greatest assets, and it is in the public interest to require that their aesthetic appeal. The following minimum or maximum standards and procedures shall apply to all construction or renovation of boathouses, docks and other waterfront structures.

(1) Before a building permit is issued, the plans for boathouses, docks and any other waterfront structures shall be approved by either the Lakes and Waterways Advisory Board or Lake Killarney Advisory Board pursuant to their jurisdictions. This shall be done at a public hearing after review of comments from city staff and

notification of the adjacent lakefront property owners. However, review and approval of boathouses, docks and gazebos shall not be required if the structure is replacing an existing boathouse, dock or gazebo and is in the same location and is meeting the code requirements set forth in this section. The review and approval by the Lakes and Waterways Board or Lake Killarney Advisory Board is only required when variances are requested or when there is not an existing boathouse, dock or gazebo on the property/water or when the location of the boathouse, dock or gazebo is being changed by more than five feet from the current location.

(2) The total area of boathouses, docks and any other waterfront structure built over land and/or water shall not exceed six hundred (600) square feet. In the case of canal-front lots (other than the Venetian Canal boathouse lots as set forth in subsection (b) hereafter), the maximum total area of docks, boathouses, decks, stairs and any other attachments shall be based on the length of the canal frontage as follows:

(a) Seventy-five feet or less of frontage, 450 sq. ft.

(b) Seventy-six feet to 100 feet of frontage, 500 sq. ft.

(c) Over 100 feet of frontage, 550 sq. ft.

(d) The maximum width of canal boathouses shall be 20 feet.

(3) All new docks and boathouses shall be constructed no closer than ten (10) feet from a side lot line. This side setback can be reduced to five (5) feet if written approval is presented from the adjacent property owners.

(4) All new docks and boathouses shall not extend over thirty (30) feet into the water from the elevations specified in this article. However, on Lake Killarney the maximum distance may be fifty (50) feet.

(5) The highest point of a boathouse or gazebo roof or any railing shall not exceed eleven (11) feet and the roofs must be pitched with a minimum 2:12 slope on all sides of the peak, so as to eliminate flat roofs and use of such areas as sundecks. The height shall be measured from the surface of the dock or floor to the highest point of the roof or railing. In addition, the surface of any dock, sundeck or floor of any boathouse, gazebo, etc., shall not be more than two (2) feet above the elevations specified in this subsection.

(6) In order that all boathouses or other waterfront structure, be utilized only for boating and other recreational activities and not as living space, there shall be no bathrooms or cooking facilities permitted in them, nor as an improvement to any existing boathouse. There also shall not be any enclosed rooms over water except for storage rooms limited in size to a maximum of eighty (80) square feet.

(7) Only one (1) boathouse shall be permitted for each lakefront or waterfront property owner. In the case of common ownership of lakefront property such as in

a condominium arrangement or property owned by a subdivision, there shall only be one (1) boathouse permitted. However, based upon the relative lake frontage of a multi-family residential the respective board may consider that factor in the consideration of variances.

(8) The sale or lease of any portion of lakefront or waterfront, shall be construed as a subdivision and shall not enable the owners to make application for a dock and boathouse unless that subdivision has received the approval of the City Commission.

(9) Canal boathouses shall be located so as not to interfere with navigation and to result in the minimum loss of existing large oak, pine or cypress trees. Electric service shall be provided via underground wiring. On waterfront lots that are separated by a public street, landscape buffering shall be required to substantially cover fifty (50%) percent of the structure as viewed from the street. Boathouses shall only be painted or have exterior covering of a color that blends in with and does not detract from the natural surroundings. Off-street parking areas shall remain without asphalt, concrete, brick, gravel, grass paver or other improved surface.

(10) As a condition for a permit to build or repair any lakefront dock or boathouse, the lakefront water area along shorelines that do not meet the vegetation standards of subsection [114-6\(a\)](#) of this Code shall be required to be planted so that no more than fifty (50) feet, or fifty (50%) percent (whichever is less) of the shoreline remains clear of vegetation.

(b) *Boathouse lots on the Venetian Canal and Kraft Gardens.* The Kronenberger subdivision boathouse lots which exist along the Venetian Canal interconnecting Lake Osceola and Lake Maitland or that exist on Lake Maitland adjacent to Kraft Gardens were platted and accepted by the city under the premise that these lots would serve as lake access and accessory uses only for the residents of that subdivision. As such, the purpose and intention of these boathouse lots is to serve as accessory lots to the main residential properties within that subdivision. In accordance with the policies contained within the comprehensive plan, the following regulations shall apply to these properties:

(1) The buildability and use of all canal boathouse lots, which are determined to be accessory lots, shall be restricted to the owners of real property within the Kronenberger subdivision in which these accessory boathouse lots were platted.

(2) Such canal or lake boathouse lots which are held January 1, 1981, by property owners residing outside of the subdivision for which they are platted shall be nonconforming boathouse lots which may still be used for constructing a boathouse and for lake access. However, any such canal or lake boathouse lots owned by real property owners on January 1, 1981, in the subdivision for which

they were platted, shall only be buildable and used to serve the lake access needs of residents of that subdivision.

(3) Minimum lot widths shall be fifty (50) feet.

(4) Canal boathouses shall be constructed a minimum of five (5) feet from side lot line. There shall be no front setback.

(5) The highest point of a canal boathouse shall be no more than ten (10) feet above the ordinary high-water elevation of the closest lake as detailed in this section.

(6) Canal boathouses shall not exceed four hundred (400) square feet in size for all areas of boathouses, stairs, and decking. Lake lots shall be permitted the typical lake dimensions.

(7) Canal boathouses shall be located so as not to interfere with navigation and to result in the minimum of loss of existing large oak, pine or cypress trees. Electric service shall be provided via underground wiring. Landscape buffering shall be required to substantially cover fifty (50%) percent of the structure as viewed from the street. Boathouses shall only be painted or have exterior covering of a color that blends in with and does not detract from the natural surroundings. Off-street parking areas shall remain without asphalt, concrete, brick, gravel, pavers, or other improved surface. The remainder of the boathouse lot shall remain composed entirely of landscape materials which shall preclude gravel, fire pits, patios, sheds, storage bins or any other accessory structure or use, other than landscaped area.

(c) *Retaining walls or seawalls.* The construction of retaining walls within fifteen (15) feet of the ordinary high-water elevation or seawalls shall be done in accordance with the Lakeshore Protection regulations within this Code of Ordinances.

SECTION 3. CODIFICATION. Sections 1 of this Ordinance shall be incorporated into the City of Winter Park Code of Ordinances.

SECTION 4. SEVERABILITY. The divisions, sections, subsections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, subsection, section, or division of this Ordinance shall be declared invalid, unconstitutional or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such invalidity, unconstitutionality or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, sections, and divisions of this Ordinance. The City Clerk is given liberal authority to ensure proper codification of this Ordinance, including the right to correct scrivener's errors.

SECTION 5. CONFLICTS. In the event of a conflict between this Ordinance and any other ordinance of the City of Winter Park, this Ordinance shall control to the extent of such conflict.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect on March 1, 2023 upon its passage and in accordance with Florida law. Any project which has received an approval from the Planning and Zoning Board prior to that date or has submitted an application for an approval by the Planning and Zoning Board prior to that date shall be vested under the previous code related to waterfront lots.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida held in City Hall, Winter Park, on this 25th day of January, 2023.

Phillip M. Anderson, Mayor

ATTEST:

Rene Cranis, City Clerk



City Commission **agenda item**

item type Public Hearings: Non-Quasi Judicial Matters (Public participation and comment on these matters may be virtual or in-person.)	meeting date February 8, 2023
prepared by Rene Cranis	approved by Jeffrey Briggs, Michelle del Valle, Randy Knight
board approval Completed	
strategic objective	

subject

Ordinance 3263-23 - Amending Chapter 58, "Land Development Code", Article III, "Zoning", Section 58-94 "Appeals from interpretations and enforcement decisions of the building and zoning official", to modify the process for appeals. (2nd Reading)

motion / recommendation

P&Z recommendation is for approval of the Ordinance as presented.

background

Recently the FAA undertook a survey asking for our code and we discovered it had been accidentally repealed. This will reinstate it into the Code. Staff is proposing a minor edit to Section 58-84 "General provisions for nonresidential zoning districts" to add back a provision into this section of the zoning code that was originally in this section in the 1990s and was unintentionally removed. This provision states that, "To ensure no air traffic hazards will be created, no structure, antenna, tower or appendage to a building may exceed the heights detailed in the Orlando/Orange County Airport Zoning Regulations text and map."

alternatives / other considerations

fiscal impact

ATTACHMENTS:

[Ordinance 3263-23 - Appeals_Ordinance \(2\).docx](#)

ORDINANCE 3263-23

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING CHAPTER 58, "LAND DEVELOPMENT CODE", ARTICLE III, "ZONING" SECTION 58-94 "APPEALS FROM INTERPRETATIONS AND ENFORCEMENT DECISIONS OF THE BUILDING AND ZONING OFFICIAL", TO MODIFY THE PROCESS FOR APPEALS, PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Winter Park deems it necessary for the general welfare of the City to amend the City of Winter Park Land Development Code as set forth in this Ordinance;

WHEREAS, the City Commission hereby finds that this Ordinance serves a legitimate government purpose and is in the best interests of the public health, safety, and welfare of the citizens of Winter Park, Florida;

WHEREAS, the City Commission hereby finds that the land development regulations adopted herein are consistent with the Comprehensive Plan;

NOW THEREFORE, BE IT ENACTED by the City Commission of the City of Winter Park, Florida, after due notice and public hearing, that:

SECTION 1. That Chapter 58 "Land Development Code", Article III, "Zoning" of the Code of Ordinances, Section 58-94 "Appeals from interpretations and enforcement decisions of the building and zoning official." is hereby amended as shown below (underlined language are additions; ~~stricken through~~ language are deletions; subsections not included are not being modified):

Sec. 58-94. - Appeals from interpretations and enforcement decisions of the building and zoning official.

- (a) A property owner may request a written decision from the building and zoning official setting forth the interpretation rendered in the application or enforcement of the code to that property owner's property in the event that (i) the property owner is unsure of his/her/its rights under this article and wants an interpretation of this article as applied to that property owner's property; or (ii) property owner desires to challenge an interpretation, application or enforcement of this article as applied to that property owner's property. The property owner's request for a written decision under this section should explain the circumstances and the applicable code provisions at issue in sufficient detail to give the building and zoning official adequate information to issue a written decision. Upon the receipt of a sufficient request for a written decision on the interpretation, application or enforcement of this article, the building and zoning official must issue a written decision within ten (10) days and send the same to the requesting property owner and to the owners of the properties adjacent to the requesting property owner's property. This section does not apply to final decisions on or the issuance of development orders or

~~building permits. Appeals concerning interpretation or enforcement of this article may be taken to the planning and zoning commission by any person aggrieved by any decision of the building and zoning official enforcing or interpreting this article. Such appeals shall be taken within 30 days of rendition in writing of that decision by the building and zoning official. Upon written request of a person aggrieved, the building and zoning official shall forthwith render in writing any previously unwritten decision. Appeals shall be commenced by filing with the building and zoning official a notice of appeal specifying the ground thereof. The building and zoning official shall within seven days of such an appeal being filed transmit to the planning and zoning commission all papers constituting the record upon which the decision appealed from was made by him.~~

- (b) A written decision issued by the building and zoning official under this section may be appealed by the property owner that sought the written decision or by any person aggrieved by the written decision by filing a written notice of appeal with the building and zoning official within fifteen (15) days from the rendition of the written decision. The written notice of appeal must state the grounds of the appeal and articulate in detail why the building and zoning official's written decision (or a portion thereof) is incorrect. The appeal will be transmitted to the planning and zoning board for a hearing.
- (b) The planning and zoning board ~~commission~~ shall hear the appeal at their first regular meeting next that is scheduled in the period between 20 days and 45 days after the filing of the appeal providing sufficient time for notice of such hearing to be distributed in the same manner as for variances to this article. Such notice shall reflect that the decision of the planning and zoning board ~~commission~~ is subject to appeal by the city commission. The appellant shall pay to the city a fee prescribed by the city commission to cover the administrative costs of such an appeal. At the hearing the aggrieved person and parties in interest may appear in person or by agent or attorney. The building and zoning official may be represented by the city attorney or by such city official as he may designate.
- (c) Review of the decision of the planning and zoning board ~~commission~~ may be taken in the manner described below to the city commission.
- (d) On written application by the person aggrieved, the building and zoning official, the city manager or any member of the city commission, the city commission shall schedule a public hearing to review in such manner as the city commission may choose the decision of the planning and zoning board ~~commission~~ on such an appeal.
- (e) Such application shall be filed in writing with the building and zoning official within 15 days of the rendition of the planning and zoning board ~~commission~~'s decision on the original appeal. Notice of the hearing shall be mailed to the person aggrieved and to all owners of property within 200 feet of the property affected.

- (f) At the conclusion of the public hearing, the city commission may affirm the decision of the planning and zoning board ~~commission~~ or override that decision and either reinstate the original decision of the building and zoning official or substitute its own decision for that of both the planning and zoning board ~~commission~~ and the building and zoning official.
- (g) An appeal to the planning and zoning board ~~commission~~ and an application for review before the city commission shall stay all proceedings in furtherance of the decision appealed from or from which review is sought, unless the building and zoning official certifies to the city manager after the notice of appeal or application for review is filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property.

SECTION 2. CODIFICATION. Section 1 of this Ordinance shall be incorporated into the City of Winter Park Code of Ordinances.

SECTION 3. SEVERABILITY. The divisions, sections, subsections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, subsection, section, or division of this Ordinance shall be declared invalid, unconstitutional or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such invalidity, unconstitutionality or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, sections, and divisions of this Ordinance. The City Clerk is given liberal authority to ensure proper codification of this Ordinance, including the right to correct scrivener's errors.

SECTION 4. CONFLICTS. In the event of a conflict between this Ordinance and any other ordinance of the City of Winter Park, this Ordinance shall control to the extent of such conflict.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and in accordance with Florida law.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida held in City Hall, Winter Park, on this 8th day of February, 2023.

By: _____
Mayor Phil Anderson

ATTEST:

By: _____
Rene Cranis, City Clerk



City Commission **agenda item**

item type Public Hearings: Non-Quasi Judicial Matters (Public participation and comment on these matters may be virtual or in-person.)	meeting date February 8, 2023
prepared by Rene Cranis	approved by Jeffrey Briggs, Michelle del Valle, Randy Knight
board approval Completed	
strategic objective	

subject

Ordinance 3264-23 - Amending Chapter 58, "Land Development Code", Article III, "Zoning" Section 58-84 "General provisions for nonresidential zoning districts", to ensure that no air traffic hazards will be created by structures and other appendages by following the heights detailed in the Orlando/Orange County Airport Zoning Regulations text and map. (2nd Reading)

motion / recommendation

P&Z recommendation is for approval of the Ordinance as presented.

background

The city attorney has recommended the attached changes to the section of the land development code regarding appeals from interpretations and enforcement decisions of the building and zoning official. Currently, any person may appeal a decision by the building or zoning official that is "aggrieved by any decision". These changes set up the process for obtaining such a decision, and clarifies the process for an appeal. In particular, the ordinance proposes criteria for who has standing to appeal and the timing for such appeals. The city attorney will discuss in more detail at the meeting.

alternatives / other considerations

fiscal impact

ATTACHMENTS:

[Ordinance 3264-23 Non-Res._Air_Traffic_Ordinance \(3\).docx](#)

ORDINANCE 3264-23

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING CHAPTER 58, "LAND DEVELOPMENT CODE", ARTICLE III, "ZONING" SECTION 58-84 "GENERAL PROVISIONS FOR NONRESIDENTIAL ZONING DISTRICTS", TO ENSURE THAT NO AIR TRAFFIC HAZARDS WILL BE CREATED BY STRUCTURES AND OTHER APPENDAGES BY FOLLOWING THE HEIGHTS DETAILED IN THE ORLANDO/ORANGE COUNTY AIRPORT ZONING REGULATIONS TEXT AND MAP, PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Winter Park deems it necessary for the general welfare of the City to amend the City of Winter Park Land Development Code as set forth in this Ordinance;

WHEREAS, the City Commission hereby finds that this Ordinance serves a legitimate government purpose and is in the best interests of the public health, safety, and welfare of the citizens of Winter Park, Florida;

WHEREAS, the City Commission hereby finds that the land development regulations adopted herein are consistent with the Comprehensive Plan;

NOW THEREFORE, BE IT ENACTED by the City Commission of the City of Winter Park, Florida, after due notice and public hearing, that:

SECTION 1. That Chapter 58 "Land Development Code", Article III, "Zoning" of the Code of Ordinances, Section 58-84 "General Provisions for Nonresidential Zoning Districts" is hereby amended as shown below (underlined language are additions; ~~stricken through~~ language are deletions; subsections not included are not being modified):

Sec. 58-84. General provisions for nonresidential zoning districts.

(c) *Architectural towers, spires, chimneys, or other architectural appendages, etc.*

- (1) Any architectural tower, spire, chimney, flag pole or other architectural appendage to a building shall conform to that districts height limit. However, when necessary to meet the building code requirements, chimneys may exceed the height by that minimum required distance.
- (2) If provided for within the respective nonresidential zoning district, architectural appendages, embellishments and other architectural features may be permitted to exceed the roof heights specified in that section, on a limited basis encompassing no more than 30 percent of the building roof length and area, up to eight feet of additional height upon approval of the city

commission, based on a finding that said features are compatible with adjacent projects. For any such approval not part of a conditional use request, the planning and zoning commission will review the plans at a public hearing after notification of such request is mailed to all owners of property within 500 feet. The planning and zoning commission will make a recommendation to the city commission for their final decision.

- (3) See subsection 58-427(b)(7) for the regulations for alternative cell tower structures.

- (4) To ensure no air traffic hazards will be created, no structure, antenna, tower or appendage to a building may exceed the heights detailed in the Orlando/Orange County Airport Zoning Regulations text and map.

- (g) *Corner lot setbacks.*

- (1) *Front of lot.* For corner lots, each side with street frontage shall be considered a street front for setback purposes. On such lots with two street frontages, the lot shall have two front setbacks and two side setbacks on the interior property lines. On lots with three street frontages, the lot shall have three front setbacks and one side setback on the interior property line.
- (2) *Through-lots.* In case of through-lots, front yards shall be provided on all street frontages.
- (3) *Lots of unusual shape.* For any lots of unusual shape, not forming part of a general rectangular lot pattern, the zoning official ~~building director~~ shall prescribe front, side and rear yard setbacks as applicable.

SECTION 2. CODIFICATION. Section 1 of this Ordinance shall be incorporated into the City of Winter Park Code of Ordinances.

SECTION 3. SEVERABILITY. The divisions, sections, subsections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, subsection, section, or division of this Ordinance shall be declared invalid, unconstitutional or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such invalidity, unconstitutionality or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, sections, and divisions of this Ordinance. The City Clerk is given liberal authority to ensure proper codification of this Ordinance, including the right to correct scrivener's errors.

SECTION 4. CONFLICTS. In the event of a conflict between this Ordinance and any other ordinance of the City of Winter Park, this Ordinance shall control to the extent of such conflict.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and in accordance with Florida law.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida held in City Hall, Winter Park, on this 8th day of February, 2023.

Mayor Phillip M. Anderson

ATTEST:

Rene Cranis, City Clerk



City Commission agenda item

item type Public Hearings: Non-Quasi Judicial Matters (Public participation and comment on these matters may be virtual or in-person.)	meeting date February 8, 2023
prepared by Rene Cranis	approved by Jeffrey Briggs, Michelle del Valle, Randy Knight
board approval Completed	
strategic objective	

subject

Ordinance 3265-23- Amending Chapter 58, "Land Development Code", Article III, "Zoning" Section 58-72 "Office (O-1) district", to add a new permitted use for state licensed establishments involved in the rendering of a personal or business service limited to barber shops and hair salons, day spas, and cosmetic treatments subject to certain conditions. (2nd Reading)

motion / recommendation

P&Z recommendation is for approval of the Ordinance as presented.

background

Staff is proposing to add a new permitted use to the Office (O-1) zoning district to allow State licensed establishments involved in the rendering of a personal or business service, with certain restrictions/limitations. There has been a recent increase, especially post pandemic, in these types of cosmetology establishments requesting to locate within small-sized suites within, one-two story, office buildings with O-1 zoning. Primarily, the landlords of these smaller office buildings with small suites plead their case to staff and state that they cannot lease their building to any other office-type user other than a beauty care business. The majority of the smaller office users have switched to a work-from-home business model, and in return leaves the smaller office tenant spaces vacant.

In response to this interest from several small businesses and landlords of smaller office buildings, staff is proposing that the permitted use be defined as the following: "State licensed establishments involved in the rendering of a personal or business service limited to barber shops and hair salons, day spas, and cosmetic treatments. There shall be no sale of merchandise unless it is ancillary to the main use. Nail salons and tattoo shops/body art are prohibited (unless the only service provided is permanent makeup). These licensed establishments are further limited to one- and two-story buildings only,

and must occupy a space less than 1,000 square-feet in size."

The limitations proposed are intended to be geared towards small businesses (not chains like Hair Cuttery, Great Clips, etc.) and prohibit business that have a strong odor that could be disruptive to other offices in the same building. The businesses also have the same parking requirements as office spaces, and oftentimes have similar business hours to a regular office user.

alternatives / other considerations

fiscal impact

ATTACHMENTS:

[Ordinance 3265-23 Salons_in_O-1_Ordinance \(2\).docx](#)

ORDINANCE 3265-23

**AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA
AMENDING CHAPTER 58, "LAND DEVELOPMENT CODE", ARTICLE
III, "ZONING" SECTION 58-72 "OFFICE (O-1) DISTRICT", TO ADD A
NEW PERMITTED USE FOR STATE LICENSED ESTABLISHMENTS
INVOLVED IN THE RENDERING OF A PERSONAL OR BUSINESS
SERVICE LIMITED TO BARBER SHOPS AND HAIR SALONS, DAY
SPAS, AND COSMETIC TREATMENTS SUBJECT TO CERTAIN
CONDITIONS, PROVIDING FOR CODIFICATION, SEVERABILITY,
CONFLICTS AND AN EFFECTIVE DATE.**

WHEREAS, the City Commission of the City of Winter Park deems it necessary for the general welfare of the City to amend the City of Winter Park Land Development Code as set forth in this Ordinance;

WHEREAS, the City Commission hereby finds that this Ordinance serves a legitimate government purpose and is in the best interests of the public health, safety, and welfare of the citizens of Winter Park, Florida;

WHEREAS, the City Commission hereby finds that the land development regulations adopted herein are consistent with the Comprehensive Plan;

NOW THEREFORE, BE IT ENACTED by the City Commission of the City of Winter Park, Florida, after due notice and public hearing, that:

SECTION 1. That Chapter 58 "Land Development Code", Article III, "Zoning" of the Code of Ordinances, Section 58-72 "Office (O-1)" is hereby amended as shown below (underlined language are additions; ~~stricken through~~ language are deletions; subsections not included are not being modified):

Sec. 58-72. Office (O-1) district.

(a) *Purpose and intent.*

- (1) The purpose and intent of this office district is to provide areas in the city to accommodate business and professional offices as well as residential development if the residential components are predominately located above the ground floor. Areas zoned for office use shall be appropriately located throughout the city to serve the general public and not create an adverse effect on adjacent residential areas. A mix of uses within buildings is permitted subject to the criteria specified in this district.
- (2) The city encourages the location of office structures in appropriate locations so that business and professional services can adequately and conveniently serve the city's residents.

(b) *Permitted uses.*

- (1) Hospitals (but not animal hospitals);
- (2) Professional offices, such as those of architects, medical doctors, interior designers, physical therapists, state-licensed massage therapists, dentists, engineers, attorneys, public accountants, stockbroker's offices, real estate offices, executive or administrative offices for business, insurance offices, travel agencies, and post offices;
- (3) Medical and dental laboratories;
- (4) Financial institutions, including banks, savings and loan associations and credit unions;
- (5) Off-street parking lots except those parking lots may not be used for the parking of construction equipment, trucks, drill rigs or by car/truck/van rental companies;
- (6) Professional services of photographic studios and photographic production when done in conjunction with photographic studios for their exclusive use;
- (7) Fine arts museums and fine arts instruction including: Art instruction limited to painting, sculpture, pottery and photography; dance instruction limited to ballet, tap, jazz and modern dance; music instruction limited to piano, symphony instruments, acoustic guitar but not electric guitar or other amplified instruments.
- (8) Churches, nonprofit organizations' offices, and schools less than 5,000 square feet in size. (see parking requirements for limitations).
- (9) Veterinary clinics (but not 24-hour veterinary hospitals) provided that they are located in single-tenant buildings and located at least 200 feet from the nearest residential building measured building to building. In addition, there shall be no overnight or weekend boarding of animals and no outdoor kennels, runs or cages.
- (10) State licensed establishments involved in the rendering of a personal or business service limited to barber shops and hair salons, day spas, and cosmetic treatments. There shall be no sale of merchandise unless it is ancillary to the main use. Nail salons and tattoo shops/body art are prohibited (unless the only service provided is permanent makeup). These licensed establishments are further limited to one- and two-story buildings only, and must occupy a space less than 1,000 square-feet in size.

- (c) *Accessory uses permitted.* ~~The city commission~~ City Commission, following a public hearing, may approve the location of the following accessory and ancillary uses

within structures permitted in this district. These uses must be located within the primary office structure (not within a separate structure) and must be primarily for the use and convenience of occupants of the building. These uses shall not have separate public entrances to the outdoors nor separate outdoor advertising signs or any other advertising signs which encourage use by the general public. The ~~city commission~~ City Commission may recommend other restrictions or requirements including a maximum floor area, which would allow these accessory commercial uses to be in harmony with the otherwise office environment and which would prevent these accessory uses from having an adverse effect on the surrounding area.

- (1) Restaurant or cafeteria;
 - (2) Newspaper, card and gift shop, florist, fitness center or health club.
 - (3) Pharmacy store within a medical office building which sells prescription and nonprescription drugs, medicines and medically related equipment only.
- (d) *Conditional uses.* The following uses may be permitted after review by the ~~planning and zoning board~~ Planning and Zoning Board and approval by the ~~city commission~~ City Commission in accordance with the provisions of this article. See section 58-90, conditional uses.
- (1) Drive-in/drive-thru components of any business.
 - (2) Buildings over 10,000 square feet or any addition over 500 square feet to an existing building over 10,000 square feet or additions over 500 square feet to existing buildings that result in a building over 10,000 square feet in size.
 - (3) Any conditional use provided in the R-3 or R-4 districts utilizing and limited to the site and improvement regulations of this district for those conditional uses.
 - (4) Fitness facility, exercise or health club.
 - (5) Any building with residential units as a component of the building. However, time shares are not permitted.
 - (6) Churches, nonprofit organizations' offices, and schools 5,000 square feet or larger in size. (See parking requirements for limitations).
 - (7) Buildings within the Central Business District with a third floor up to 40 feet in height provided that such conditional use approvals require two public hearing approvals by the ~~city commission~~ City Commission.
 - (8) Restaurants (as defined in the definitions section of the LDC), cafes, coffee shops and other food and beverage establishments (but not including bars, taverns and lounges), provided the following criteria are met:

- a. Limited to adaptive reuse of existing O-1 properties with existing parking in excess of code requirements.
 - b. Such establishment may only be located on the ground floor within buildings of a minimum of three stories in height and having greater than 20,000 square feet of building. Such establishment may not occupy more than 25 percent of the floor area of the entire office building.
 - c. Proposed restaurants must include a compliant commercial kitchen.
 - d. The doors or any outdoor (covered or open) area that serves customers and the associated parking shall be located at least 300 feet from any single-family residential use.
 - e. A parking plan shall be submitted, which shows how parking will be accommodated on the site, including hours of operation.
 - f. No outdoor speakers, music or televisions shall be allowed.
 - g. Drive-thru or pickup windows shall not be allowed.
 - h. Delivery areas shall not be located within 300 feet of any single-family residential properties.
 - i. Dumpsters shall not be located within 300 feet of any single-family residential use and shall be screened, using materials to match the building.
 - j. Any restaurant signage shall be approved as part of the conditional use.
- (e) *Minimum building site.* There shall be no minimum building site size except that each site shall have a minimum frontage of 50 feet on a publicly dedicated right-of-way.
- (f) *Development standards.*
- (1) Any building constructed within this district shall adhere to the following minimum or required setbacks for front, rear and side yards. The front setback from all streets shall be a minimum of ten feet from the property line and a minimum of 15 feet on Orlando Avenue. For properties along Orange Avenue, the front setback may be reduced to the average front setback of the existing buildings within that block if approved by the ~~city commission~~ City Commission. Side yard setbacks shall be a minimum of five feet from each property line unless the parcel shares a common line with a residentially-zoned parcel, then a 15-foot setback shall be observed. The rear setback shall be a minimum of 30 feet from the property line. The rear setback may be reduced to ten feet from the property line if the rear yard does not abut a residentially zoned property, and if the building is oriented towards the front of the

property. However, within the Hannibal Square Neighborhood Commercial District area, as set forth in this section, new buildings shall have a required ten-foot front setback and may be permitted zero-foot side setbacks unless the parcel shares a common line with a residentially-zoned parcel, then a 15-foot side setback shall be observed. For any required front setback, the distance may be increased upon the determination by the public works director and police chief that a traffic sight distance safety problem may exist, to the extent required to remedy the problem.

- (2) Reserved.
- (3) The maximum floor area ratio and building lot coverage shall be 45 percent. The floor area ratio shall include the floor area of any attached or detached above-grade private parking garage. The 45 percent floor area ratio and building lot coverage may be increased by an additional five percent if the parking for the increased five percent floor area ratio is located entirely underground beneath the building's footprint or if the building's upper floor(s) are cantilevered over such parking. The city may allow an increase in floor area ratio (FAR), not to exceed 0.98 percent including parking garage, for the redevelopment of the property at 2005 Mizell Avenue, in order to encourage the redevelopment of a community asset that provides health and wellness related uses. Such additional FAR will only be considered by ~~city commission~~ City Commission if said development improves the road network, provides enhancements to the city parks and additional parking options in the sub-area. The additional FAR may only be granted through a conditional use permit and shall be limited to the floor area of the parking garage.
- (4) Exclusively residential buildings are not permitted. Residential units are not permitted on the first or ground floor. When residential units are included on the second floor or above, the floor area ratio of the project may be up to 60 percent FAR, but the maximum floor space that can be devoted to nonresidential (office) uses is 45 percent floor area ratio. Limited residential use of the first or ground floor of such buildings may be permitted when such space is limited to the functions of entrance lobby/elevator/stair access, leasing or management office, or residential amenity spaces, such as health/fitness, meeting/activity room or storage. However, in no case shall more than 15 percent of the first or ground floor be devoted to these ancillary residential uses (not counting the area of parking garages).
- (5) The maximum floor area ratios outlined above are not an entitlement and are not achievable in all situations. Many factors may limit the achievable floor area ratio including limitations imposed by the maximum height map, concurrency management/level of service standards, physical limitations imposed by

property dimensions and natural features as well as compliance with applicable code requirements such as, but not limited to, parking and internal circulation, setbacks, landscaping requirements, impervious lot coverage, design standards and on-site and off-site improvements and design amenities required to achieve land use compatibility. Land located across a street and/or separated from the building site shall not be included in the floor area ratio calculations.

- (6) The maximum residential density shall not exceed 17 units per acre.
- (7) Building heights shall not exceed the height limits imposed by the maximum height map. For those properties shown with a two-story maximum, the maximum building height shall be 30 feet; for those properties shown with a three-story maximum height, the maximum building height shall be 42.5 feet unless the property is located within the central business district, where the maximum height for three stories shall be 40 feet. Variances for more than three stories in the central business district are prohibited. For those properties shown with a four-story maximum height, the maximum building height shall be 55 feet; for those properties shown with a five-story maximum height, the maximum building height shall be 65 feet, and for the properties shown permitting up to eight stories, the maximum height shall be 95 feet. Unless specifically approved by the ~~city commission~~ City Commission as a conditional use, buildings developed with less than the maximum building stories shall conform to the height for the applicable stories. For example, if a two-story building is developed within an area permitting a four-story building, the two-story building shall conform to the 30-foot height limit. Parking garage levels shall be counted as stories for each level except for any basement level or the open roof level.
- (8) Parapet walls, or mansard roofs functioning as parapet walls, may be added to the permitted building height but in no case shall extend more than five feet above the height limits in this subsection. Mechanical penthouses, mechanical and air-conditioning equipment, elevator/stair towers and related nonoccupied structures may be permitted to extend up to ten feet above the height limits in this subsection. Upon approval of the City Commission, Architectural appendages, embellishments and other architectural features may be permitted to exceed the roof heights specified in this section, on a limited basis, encompassing no more than 30 percent of the building roof length and area, for up to eight feet of additional height, upon approval of the city ~~commission~~, based on a finding that said features are compatible with adjacent projects.
- (9) For properties not shown on the maximum height map located adjacent to four-lane roadways, the maximum height shall not exceed 55 feet, and the

maximum height shall not exceed 42.5 feet for properties located adjacent to two-lane roadways. For corner properties adjacent to both four-lane and two-lane roadways, the maximum height shall be 55 feet.

- (10) Terracing and articulation providing additional setbacks are required to create relief to the overall massing of the building facades. Such design features of building facade articulation are required at least every 60 feet, on average, along the primary building facades facing streets, or along the building frontage where the building fronts the primary parking lot area. For any building over two stories in height and over 200 feet in length, there shall be a 35-foot break on at least the first floor, the design of which shall be a component of the architectural review process required for conditional use. For any building over two stories or 30 feet in height, a significant portion comprising at least 75 percent of the top floor shall be terraced and stepped back from the exterior face of the next lower floor by at an average of at least five feet. Parking structures are exempt from this terracing requirement.
- (11) Development shall not exceed 85 percent impervious coverage in this district.
- (12) Whenever the rear or side property lines within this district share a common property line with parcels zoned residential, either a solid wall or fence (other than wood) shall be provided along the entire common line. The wall or fence shall be six feet in height; except that such wall or fence shall be only three feet in height from the front setback line of the adjoining parcel to the front property line of the adjoining parcel.
- (13) Other code sections related to development that should be referenced include, but are not limited to, off-street parking regulations, maximum height map, general provisions, definitions, sign regulations, (article IV), environmental protection, (article V) (this section includes division 1, stormwater; division 6, tree preservation; division 8, landscape regulations; division 9, irrigation regulations; and division 10, exterior lighting), subdivision regulations (article VI), historic preservation (article VIII) and concurrency management regulations (article II).

(g) *Hannibal Square Neighborhood Commercial District.*

- (1) The Hannibal Square Neighborhood Commercial District (HSNCD) area in this context shall be restricted to the following areas:
 - a. Properties abutting Morse Boulevard between Capen Avenue and Virginia Avenue;
 - b. Properties abutting New England Avenue between Pennsylvania and New York Avenues;

- c. Properties abutting Pennsylvania Avenue between Lyman and Garfield Avenues, including those existing commercial properties just north of Garfield Avenue; and
 - d. Properties abutting Hannibal Square East.
- (2) In order to implement the comprehensive plan and the community redevelopment area (CRA) plan, there are established special provisions for the development of buildings and other improvements in this area which shall take precedence over other provisions of this article as henceforth specified.
 - (3) In this HSNCD area, third floors shall be restricted and limited to residential use only, and a deed restriction to that effect, enforceable by the city, shall be required to be recorded as a condition of obtaining a building permit for the construction of a third floor.
 - (4) Building heights on the north end of Pennsylvania Avenue shall be two stories maximum when transitioning to residential.
 - (5) Development approvals must ensure that compatible land use relationships occur, particularly between land uses within perimeter areas of the HSNCD and areas 500 feet outside this area so as to protect the surrounding residential areas and institutional uses.
 - (6) In this HSNCD area, all new buildings and building additions over 500 square feet shall require site and building plan approval by the ~~city commission~~ City Commission at a public hearing. Prior to that hearing, the ~~planning and zoning board~~ Planning and Zoning Board shall also review such site and building plans at a public hearing and shall provide their recommendation.
 - (7) Notwithstanding the limitations otherwise imposed by this O-1 district, for any lots fronting on New England Avenue from Virginia to New York Avenues, development may be permitted with enhanced density and intensity up to a maximum 100 percent floor area ratio (FAR) provided the following development standards are complied with:
 - a. No parking garages would be permitted.
 - b. The street front building setback shall be ten feet.
 - c. The redevelopment plans would require rear alley access out to Virginia Drive or provisions shall be made for that rear alley access to be phased in over time as the properties individually redevelop.
 - d. The maximum building width along New England Avenue shall be 125 feet before a 15-foot separation is required to break up the mass and create a separate building.

- e. The redevelopment plans on the north and south side of New England Avenue require a 50-foot rear setback from the center lot line of the block as a buffer protection to adjacent residential properties. The 50 feet also provides room for parking along the alley as outlined above.
 - f. There shall be a one-foot setback for each one foot of floor height for any third floor and building corner visibility setbacks as deemed necessary.
- (h) *Morse Boulevard design guidelines.*
- (1) The Morse Boulevard designated area is defined as those properties fronting Morse Boulevard between New York Avenue and Denning Drive and additionally the properties in the blocks bounded by Morse Boulevard, Denning Drive, Canton Avenue and Harper Street.
 - (2) In addition to the other requirements and regulations of the O-1 zoning district and prior to the issuance of a building permit for the construction, renovation or remodeling of any building or building exterior facade fronting on a street within the Morse Boulevard designated area, an applicant is required to obtain approval of the plans by the planning department.
 - (3) For purposes of this subsection, replacements, renovations or changes to canopies or awnings and to signage on walls, canopies or awnings shall be considered remodeling of the building facade.
 - (4) Building elevation drawings and other plans shall be submitted with sufficient detail to indicate the building materials, composition, color, etc., so that the visual appearance of the resultant work is readily apparent.
 - (5) The planning department shall render a decision on all applications for building permits for building facade construction, renovation or remodeling. The decision of the planning department shall be made within ten working days, excluding holidays, of the receipt of a complete set of plans and application materials, unless referred to the ~~planning and zoning commission~~ Planning and Zoning Board for review as outlined below.
 - (6) The planning department's decision shall be either an approval, an approval with conditions or denial. Any applicant for building facade approval may elect to appeal a decision of the planning department to the ~~planning and zoning commission~~ Planning and Zoning Board for their consideration.
 - (7) Decisions by the planning department and/or the ~~planning and zoning commission~~ Planning and Zoning Board shall be made based on the conformance of plans and application materials to the Morse Boulevard design guidelines and criteria adopted by the ~~city commission~~ City Commission.

- (8) The decision of the ~~planning and zoning commission~~ Planning and Zoning Board shall be the final decision of the city, except where a building project also requires conditional use or other land development approval by the ~~city commission~~ City Commission. In that case, the decision of the ~~planning and zoning commission~~ Planning and Zoning Board shall be a recommendation with the final decision made by the ~~city commission~~ City Commission.

SECTION 2. CODIFICATION. Section 1 of this Ordinance shall be incorporated into the City of Winter Park Code of Ordinances.

SECTION 3. SEVERABILITY. The divisions, sections, subsections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, subsection, section, or division of this Ordinance shall be declared invalid, unconstitutional or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such invalidity, unconstitutionality or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, sections, and divisions of this Ordinance. The City Clerk is given liberal authority to ensure proper codification of this Ordinance, including the right to correct scrivener's errors.

SECTION 4. CONFLICTS. In the event of a conflict between this Ordinance and any other ordinance of the City of Winter Park, this Ordinance shall control to the extent of such conflict.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and in accordance with Florida law.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida held in City Hall, Winter Park, on this 8th day of February, 2023.

By: _____
Mayor Phillip M. Anderson

ATTEST:

By: _____
Rene Cranis, City Clerk