

## CITY OF APOPKA

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**Minutes of the special City Council meeting held on April 11, 2018, at 5:30 p.m., at the Apopka Community Center.**

PRESENT: Mayor Joe Kilsheimer  
Commissioner Billie Dean  
Commissioner Diane Velazquez  
Commissioner Kyle Becker  
Commissioner Doug Bankson  
City Attorney Cliff Shepard

PRESS PRESENT: John Perry - The Apopka Chief  
Reggie Connell, The Apopka Voice

**INVOCATION:** - Mayor Kilsheimer introduced Reverend John Fisher, First United Methodist Church, who gave the invocation.

**PLEDGE OF ALLEGIANCE:** Mayor Kilsheimer led in the Pledge of Allegiance.

### **PUBLIC HEARING/ORDINANCES/RESOLUTION**

David Moon, Planning Manager, said the three items for public hearing this evening are the New Errol Future Land Use Amendment, the PUD rezoning and Master Plan, and the Development Agreement. He advised the recommendations from the Development Review Committee (DRC) is to adopt Ordinance No. 2581 for the future land use amendment. The recommendation is to adopt Ordinance No. 2638 for the change of zoning and Master Plan, subject to the effective date of Ordinance No. 2581. The third item is the New Errol Development Agreement which only requires one public hearing. The recommendation is to approve the New Errol Development Agreement and authorize the Mayor to execute the agreement subject to final review by the City Attorney for format and content. He advised over the last few weeks city staff and the applicant's attorney have been ironing out the details of the Development Agreement and there may be some new issues identified to be addressed. He affirmed this condition authorizes the City Attorney to make minor changes to the Development Agreement without coming back to City Council.

Mr. Moon said to summarize the Development Agreement, the first key item is transportation of the spine road, also known as Staghorn Drive where the entire right-of-way must be dedicated by the first residential permit. The developer is responsible for design, planning, and permitting of the spine road. The first phase of the construction from Errol Parkway to Golf Course Drive is required to occur prior to issuance of the first vertical permit and the second phase from Golf Course Drive to Vick Road is to be completed prior to issuance of the thirty-fourth vertical building permit. The developer is also required to place a performance bond for the construction of the road in the event they are unable to complete the road, the City can rely on the bond to finish construction. An updated Traffic Impact Analysis is required at the time of the first Preliminary Development Plan and this analysis is to cover all of the New Errol development project. He said an onsite circulation plan has to be presented to the City to address bike trails, golf cart paths, etc. Dedication of right-of-way on the east side of the New Errol property is necessary to accommodate

future expansion of Vick Road right-of-way. He advised there is a phasing plan for the development.

Mr. Moon advised after the last public hearing, there was new language in terms of the buffers that has been placed in the Development Agreement. He stated at the time of Preliminary Development Plan, there can be adjustments made to the landscaping to accommodate additional screening and buffering adjacent to existing residential areas if it is determined the existing buffers are not sufficient. The location of the perimeter walls within the buffer will be determined at the Preliminary Development Plan and shall provide sufficient setback of the perimeter wall from the property boundary, not to exceed three feet to allow for installation and maintenance of the wall. One master association will be developed for all of New Errol and there is assignment which means the developer cannot transfer the development agreement and master plan over to another entity unless it is approved in writing by the City.

Commissioner Becker inquired regarding assignment concerning transfer of the development agreement subject to council approval and how this would support or affect section three where it discusses the developer will have the right to develop improved market and/or sell phases or portions of the property.

City Attorney Shepard said typically with developments like this they will have different builders, but they are not the developer.

Commissioner Bankson discussed the Traffic Impact Analysis and the Transportation Capacity Study and inquired about transportation mitigation for a signal at Vick Road was required for the future, stating it seems to be represented differently throughout the documents. Mr. Moon said an updated Traffic Impact Analysis will be required at the time of the first development application. He spoke of how close the wall will be to some of the existing homes stating there are two people who have to maintain, both the developer and the homeowner. The homeowners of properties extremely close need to be able to maintain their property stating the four to one rule is a good rule that for every four feet up you go one foot out for placement of a ladder. He stated he discussed this with the attorney and said he would like to see a minimum of five feet setback in to the buffer for these existing structures. He said the purpose of the PUD zoning procedures is to encourage imaginative and innovative design for tracts of land, stating this gives the ability to be creative and change density, which has been done for them. He pointed out that on the other side, the code states the location and arrangement of structures shall be designed to ensure the proposed uses are not detrimental to existing or committed surrounding land uses or neighborhoods and shall include buffers, access controls, setbacks, etc. He said there are some extenuating circumstances for existing structures they have to consider.

City Attorney Shepard with regards to the request that a fence being placed further into the property or buffer of the developer would create a taking, in his opinion, if that were the case, anytime you were asked to setback your home from a property line, you would have a taking. He declared we all know there are reasons for setbacks and certain zoning categories and a PUD is a negotiated zoning category. He said the developer may have legitimate concerns such as once the wall or perimeter buffer is up, it makes it more difficult for the developer to maintain the other side of the wall and it also creates a liability hazard. He stated the issue here is one for both parties to have an ability to maintain their structure, stating some existing structures will have difficulty in

maintaining their property. He suggested, as a possible solution, an easement for maintenance purposes or a cross access easement where the developer would grant additional space. He said this could be worked into the development agreement.

Helmut Wyzisk, III of Signature H property Group, said it was brought to their attention yesterday that certain unverified information collected from the internet was distributed to City Council concerning Jonathan Leinwand, an attorney with Greenspoon Marder Law Firm that previously assisted Signature H with legal representation on a business deal for the New Errol project. He advised Mr. Leinwand's involvement with New Errol was strictly as an attorney at the very early stages of the project. He is not a partner, principal or participant in Signature H. They do not believe the truth or veracity of the information provided to Council, or believe it has any relevancy to the decisions before Council tonight, they would like to state on the record for affirmative steps they will immediately take to prevent this issue from potentially serving as a distraction from the evaluation of the merits of this project. Mr. Leinwand will no longer be involved in any capacity with New Errol. To that end, any future legal work on the project will be handled from different attorneys from a different law firm. Additionally, the registered agent designated for Signature H will be immediately transferred to the Lowndes Law Firm. It is their hope these actions will be met with Council's approval and remove this issue from further discussion at this public forum.

Mr. Wyzisk said at the last hearing they had an opportunity to introduce their team and tonight they are here to specifically address the Development Agreement, the phasing plan, and provide more information on assurances they have in place. He advised they have incorporated some items in the development agreement that were requested at the last meeting, as well as specifications requested. He reviewed the timeline from the introduction of this project. He advised they held meetings with the Villas HOA Board and worked with them, stating he felt very confident in their relationship with the Villas. He advised they have expedited the beginning of removal of debris and fallen trees around the golf course.

Jonathan Huels, representing Signature H, said this was the second reading from the March 27, 2018, meeting and they will have a much shorter presentation. He said they will be focusing on the Master Development Agreement and if approved by City Council, this is a legal binding contract between Signature H and the City of Apopka that assures this project will be developed in a manner as presented to the community and the City with contractual obligations. He said as they move forward, with each phase in this project a Preliminary Development Plan will be put together with much more detail that will be reviewed by City Staff, DRC, and then by City Council for final review and decision. He reviewed the development standards and the phasing plan with conditions and the development timeline. He advised other transportation obligations include dedication of land adjacent to Vick Road for future road widening, construction of a northbound left turn lane from Vick Road on to the spine road, and he stated internal streets will be privately owned and maintained. He advised the spine road will serve as the primary construction access into the project. The perimeter walls will be setback sufficient distance from the property boundary, and the location of the perimeter wall will be determined during the Preliminary Development Plan. He spoke of requests from the Errol Estate Property Owners Association (EEPOA) and most of these concerns being addressed. He spoke of Commissioner Bankson's comments concerning the perimeter wall and said they can work on a compromise by adding a condition to setback the perimeter wall a minimum of five feet from any adjacent structure on a third parties private property. He said they recognize those issues and they want to work through

them. He said they would require it be subject to a mutually agreeable access easement with full indemnification to their property owner and feel it would make most sense to have an easement with the EEPOA or a sub-association rather than negotiating with each property owner. He advised their recommendation is to approve the Comprehensive Plan Amendment, PUD Rezoning and Master Development Agreement consistent with recommendations of the Planning Commission and City Staff.

Commissioner Becker said his comments are in line with Ordinance 2581 regarding the Comprehensive Plan Amendment. He stated the biggest gap in his opinion is the idea of finances. He reviewed the timeline starting on August 3<sup>rd</sup> when he met with Signature H Group and his questioning the funding and being told it would be through equity financing. At the August 22<sup>nd</sup> public meeting he was told they had selected a finance partner investor and it would be made public within two weeks. He affirmed that was never made public. He declared he had a meeting on February 19<sup>th</sup> with Signature H and members from Developer Capital at City Hall where he asked for two outputs; any sort of referenceable projects or material Developer Capital had done previously; and if they had letter of intents, what are some of the terms within those letters. He said there was pause regarding wanting to divulge company information and he was fine with that if they wanted to redact that information. He stated to this date he has not seen anything in terms of any letter of intent of any investor that wants to invest in this project. He stated at the last meeting on March 27<sup>th</sup>, Mr. Carmichael highlighted some past projects he has done with Developer Capital and Mr. Wyzisk said they had multiple letter of intents. He had a scheduled meeting this past Monday at 8:00 a.m. at City Hall with them and he was not met with any financial information. He affirmed that five different times he asked for financial detail of how they would go through with this project and to date he does not have any information. He spoke of comments made previously regarding Mr. Leinwand and replacing him as the registered agent for Signature H and asked if they had done projects with him previously and why this would happen this late in the process.

Mr. Huels said he wanted on the record that this was a private development project and this line of questioning is outside the scope of the criteria before them of how they should be looking at a Comprehensive Plan Amendment, a rezoning, and development agreement. He stated if this was a joint venture with the City, if the City was contributing land, or if they were going to be a partner, then they could ask those questions. He stated Signature H was not asking for any funding from the City to do this project, and they were not asking for impact fee credits. He declared if this were denied on this basis, and had to go to appeal, it would not survive through the judicial process.

Bob Carmichael, Developer Capital, said as it relates to the project financing, this is a project with multiple phases and it will be financed under multiple phases. He declared they had letters of intent for each phase of the project. He advised that once there was a project, then full underwriting will occur and they will be seeing commitment letters and a closing. He said they have a letter of intent for \$20 million for all infrastructure; they have a letter of intent for \$15-17.5 million for outside project equity and advised they were looking at 50% of the equity coming from the developer based on what has been done and land contribution; he stated they have a \$14 million construction revolver and he has worked with the lenders on a five year program; there is a \$20 million construction mini-permanent on the clubhouse area; and a \$20 million letter of intent for the building of the first phase of the assisted living facility. He advised they are also in discussion with one of their hedge funds wanting to fund all aspects of the project, but he stated he was not sure

that would be best for their client. He said he envisions specialty lenders in the various aspects of this project. He declared confidentiality was very critical to lenders and investors and they do not want their names divulged. He stated it will be announced at the right time and right place.

Commissioner Becker said he wants this to happen for the residents of Errol Estates and he does support it, however, he feels he has an obligation to ask these questions and protect the residents. He stated Signature H has not done this before and he was trying to vet this to the best ability he can to make sure it is fiscally sound to come to fruition and property values go up. He said they need to be accountable for what they say they are going to do.

Commissioner Bankson said in the staff report the future land-use map shows the golf course green space as PUD and felt this was in error since the golf course is not subject to the PUD.

Commissioner Velazquez said she met with Mr. Hitt and Mr. Moon to review the Development Agreement and said she was satisfied with this after meeting with staff.

In response to Commissioner Becker asking if the City was comfortable with the language in section three regarding amenities, City Attorney Shepard advised he was satisfied with the language in terms of protecting the resident. He declared that he represents the City and said that nothing Commissioner Becker said was unfair or unusual. He stated this agreement does not stop ill intent on either side, but the goal is to express the intentions of the parties. He said in terms of the task to provide the most protection he could in a contract form to get the citizens in Errol Estates what they are promised and to commit the developer on the path to do that, with incentives and the path for the developer to make a profit. He stated regardless of what they think of the questions being asked here, they are being asked to benefit the residents.

Commissioner Becker said to better qualify his questions, the waterpark is to consist of a splash pad, water slides, lazy river, and swimming lanes. As written the language states "at minimum, but not limited to uses" and stating if they are talking the same language, he will have more comfort. He spoke of discrepancies in the Master Plan and the Development Agreement.

City Attorney Shepard said the Master Plan was drafted looking at the big picture and the Development Agreement is drilled down to specifics. He advised there is a statement that in a conflict, the Development Agreement controls.

Mr. Huels based on the meeting on Monday, he worked with the City Attorney to put in a clause that states if there is a conflict between the two documents, the Development Agreement controls. He stated with regards to Commissioner Becker's question regarding the waterpark, those are the minimums and they have obligated themselves contractually that the waterpark will contain those elements.

Commissioner Becker said he understands no preliminary or final design required for the golf course of the Highlands section, but why is there no final required for the section of the course that will materially change.

Mr. Hitt said when the golf course comes in for review, any of the water courses do have to be reviewed by SJWMD and the City Engineer. He advised they would get something to City Council.

Commissioner Becker spoke of concerns regarding soil contamination and asked if the level one study will be applicable to the golf course as well as the residential area.

Mr. Hitt responded in the affirmative.

In response to Commissioner Becker, Mr. Huels advised the construction access will be part of the Final Development Plan for each phase of construction.

Commissioner Becker said he agreed with Commissioner Bankson's concern regarding the buffer and he supported expansion of that.

1. Ordinance No. 2581 – Second Reading - Comprehensive Plan Amendment – Large Scale – Project: New Errol - Apopka - Signature H Group LLC – Located north of Old Dixie Highway, south of Lester Road, west of Vick Road. The City Clerk read the title as follows:

**ORDINANCE NO. 2581**

**AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, AMENDING THE FUTURE LAND USE ELEMENT OF THE APOPKA COMPREHENSIVE PLAN OF THE CITY OF APOPKA; CHANGING THE FUTURE LAND USE DESIGNATION FROM PARKS AND RECREATION TO RESIDENTIAL MEDIUM LOW (0-7.5 DU/AC), RESIDENTIAL LOW (0-5 DU/AC), RESIDENTIAL LOW SUBURBAN (0-3.5 DU/AC), COMMERCIAL (MAXIMUM 0.25 FAR) FOR CERTAIN REAL PROPERTY GENERALLY LOCATED WEST OF VICK ROAD, SOUTH OF WEST LESTER ROAD, AND NORTH OF OLD DIXIE HIGHWAY, COMPRISING APPROXIMATELY 75.06 +/- ACRES, MORE OR LESS AND OWNED BY 5<sup>TH</sup> HOLE INVESTMENTS LLC; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE**

Mayor Kilsheimer opened the meeting to a public hearing. He advised this public hearing would be for all three items on the agenda. The title of Ordinance No. 2638 was also read into the record.

Eric Wynot, Esquire, representing the EEPOA, said the EEPOA as a fiduciary obligation to its members to protect and preserve the welfare and property values of the residents. He said the tough questions are for the benefit of the residents, as previously pointed out by Attorney Shepard. As stated at previous presentations, the EEPOA does not disagree with the view of this beautiful project that Signature H has proffered. What they do disagree with is certain items they feel should be included in the Development Agreement. He stated the EEPOA has had one request, that City Council mitigate the negative impacts of this project on the current Errol residents. He declared a number of those issues have been handled, but they do have two items that remain. First is to limit construction traffic on public streets where there is a high risk to pedestrian safety and property damage. The second is to ensure sufficient setback of the buffer walls in order to allow the New Errol owner, as well as the subsequent HOA to properly maintain the buffer walls and to allow the neighboring residents to maintain their own property. He stated there are two particular issues they have been hitting on with regards to the construction traffic. First is the use of Errol Parkway and

second is the use of Lexington Parkway. Errol Parkway is an island divided roadway that contains no sidewalks and there are significant safety concerns of its use as a primary construction entrance. However, it is going to be unavoidable, so a portion of Errol Parkway will need to be used for the development of Phase 1 of this project. The performance bond offered is great for the City, but there is no protection for the pedestrians that share the road or property damage that is likely to occur and gave examples of waterlines and irrigation in the median that will be at the expense of the EEPOA and Errol residents. The EEPOA asks that an alternative baseline construction entrance be provided for Phase I so that use of Errol Parkway from 441 not be utilized and that this be contained in the Development Agreement. He said Lexington Parkway was a bigger concern, stating Signature H will be using Lexington Parkway for access to and development of Neighborhood F. He declared this posed more safety concerns than Errol Parkway with Lexington Parkway being a two way in and out road to the existing neighborhoods, particularly The Courtyards. The EEPOA requests that the Development Agreement specifically provide alternatives at a minimum be considered or that Lexington Parkway be specifically excluded from use that would force the developer to explore alternatives. With regards to the buffers, the proposed Development Agreement does provide that the Preliminary Development Plan shall provide for sufficient setback of the perimeter wall, but as written now, limits it to three feet. He stated there were representations made today by Signature H similar to representations made in the past, that they will agree to a five foot setback, which is appreciated by the EEPOA. He stated if this gets added to the Development Agreement, the EEPOA considers that a win, but it needs to be added to the Development Agreement which, explained by Mr. Huels, controls all the other documents. He affirmed that Commissioner Bankson touched on Section 2.0218, subsection D(5) of the Apopka Land Development Code that states “ the location and arrangement of structures shall be designed to ensure that the proposed uses are not detrimental to existing neighborhoods”. He stated this is a detriment and the setbacks need to be expanded beyond the three feet and this needs to be added into the Development Agreement. He stated these mitigation actions can only be implemented by the City Council since they are not necessarily required by the City Code or Florida Statutes. He said this can be done as the Development Agreement is a negotiable document between two parties that, one is negotiating for the protection of residents and the other is negotiating for the protection of themselves to make money. He stated these requests will not negatively affect the success of the project and stated that they urge Council amend the proposed Development Agreement to include these two mitigation actions.

The following people spoke in favor of the project and requested approval:

Victoria Davies  
Tom Watson  
Christina Angott  
Joyce Clark

Jean Swette  
Barbara McLeod  
Greg Zbylet  
Clarence Hodges

The following people spoke not against the project, but requested conditions such as requesting the perimeter wall be setback five feet into the buffer to allow for ongoing access for maintenance and repair, alternative routes be utilized for the construction.

Dale Fenwick  
Robert Goff  
Frank Maxwell

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

Mr. Huels clarified the condition being proposed to be added to the Development Agreement is that would modify the Agreement would further advise the setback of the perimeter wall to be a setback up to three feet for maintenance of the wall or up to five feet from a structure on an adjacent property, whichever is greater.

City Attorney Shepard said he has the suggested language and he would like the opportunity to wordsmith this language.

Commissioner Becker said they do not know how many homes come into play with this condition, but from the public comments there seems to be three main areas of concern expressed. Along the Villas on the west side of hole number nine seems to be problematic where the berm is being proposed, the south side of Neighborhood E and the north side of Neighborhood F.

Mr. Huels said this is a perimeter wall and when it is setback it creates issues with liability, control, and security. He said they cannot agree to a one size fits all, but they hear the issues and are willing to, when appropriate, accommodate in order to allow room for existing homeowners to be able to move around their property to conduct necessary maintenance without a wall up against their current structure.

Commissioner Becker said when this comes before Council during Preliminary Development Plan there will be an opportunity for vetting of the placement to make sure this condition is adhered to.

Mayor Kilsheimer said the watchword of the night has been in terms of safeguards. He stated all of the questions have been appropriate and have been with an eye toward safeguarding the existing residents of Errol. He said this is a redevelopment project of a golf course and there are very few successful models of redevelopment of golf courses across the United States. He said this is a very unique project with the existing homes in a historic community for the City of Apopka.

**MOTION by Commissioner Bankson, and seconded by Commissioner Dean to adopt Ordinance No. 2581 for the Comprehensive Plan Amendment for the New Errol project. Motion carried 4-1 with Mayor Kilsheimer, and Commissioners Dean, Velazquez, and Bankson voting aye, and Commissioner Becker voting nay.**

2. Ordinance No. 2638 – Second Reading - Change of Zoning & Master Plan – Project: New Errol - Apopka - Signature H Group LLC – Located north of Old Dixie Highway, south of Lester Road, west of Vick Road. The City Clerk read the title as follows prior to the public hearing:

#### **ORDINANCE NO. 2638**

**AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, CHANGING THE ZONING FROM PARKS AND RECREATION AND PLANNED UNIT DEVELOPMENT TO PLANNED UNIT DEVELOPMENT (NEW ERROL); FOR CERTAIN REAL PROPERTY GENERALLY LOCATED WEST OF VICK ROAD, SOUTH OF WEST LESTER ROAD, AND NORTH OF OLD**

