CITY OF APOPKA

Minutes of the regular City Council meeting held on March 21, 2018, at 7:00 p.m., in the City of Apopka Council Chambers.

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

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

INVOCATION: - Mayor Kilsheimer introduced Reverend Jeri Bankson of Victory Church who gave the invocation.

PLEDGE OF ALLEGIANCE: Mayor Kilsheimer said on this day in 1965, the Reverend Martin Luther King, Jr. and nearly 3,200 Civil Rights demonstrators began their march from Selma to Montgomery, Alabama. Beaten and turned back twice before, Reverend King and the marchers were escorted by a Federalized Alabama National Guardsman and the FBI. Upon arrival in Montgomery, Reverend King addressed a crowd of 25,000 and live television cameras advocating for equal voting rights for African-Americans. He asked everyone to reflect on the bravery and sacrifice of Reverend King and those who gave their lives in the fight for equal voting rights as he led in the Pledge of Allegiance.

AGENDA REVIEW: Glenn Irby, City Administrator, advised that item one under Public Hearings/Ordinances/Resolutions, Ordinance 2605 was the second reading.

PUBLIC COMMENT/STAFF RECOGNITION AND ACKNOWLEDGEMENT
Public Comment:
Ray Shackelford asked for clarification of the status of the grant for Alonzo Williams Park. He said there have been a lot of rumors floating around and he would like to have clarification.

Mr. Irby advised this went out to bid and the City received three bids. He said the City had a grant for $750,000. The bids came back with the lowest being over $400,000 more than the $750,000 grant. He stated staff was trying to determine why. He stated we still have the grant, but the project needs to be under construction by the end of the year, or we stand the chance of losing the grant. He said the City was trying to value engineer it to get the price lower and if that fails there are a couple of options. One option is to let the grant go, and a second option would be to go into the budget session and try to come up with the additional funds, or a third option of taking the additional funds from reserves.

CONSENT
1. Ratify the certificate of the official election results.
2. KaBOOM! Grant acceptance of the letter of intent and funding.

3. Authorize a Traffic Enforcement Agreement with Clear Lake Landings Homeowner's Association.
4. Approve an Inmate Work Squad Contract with the Department of Corrections.
5. Approve funding for Martin's Pond Aeration Fountains.
6. Approve a School Capacity Enhancement Agreement concerning Lake Marshall Subdivision, Phases 1 & 2.

MOTION by Commissioner Becker, and seconded by Commissioner Bankson, to approve six items on the Consent Agenda. Motion carried unanimously with Mayor Kilsheimer, and Commissioners Dean, Velazquez, Becker and Bankson voting aye.

BUSINESS (Action Item)

1. **Final Development Plan/Plat – Lake Gem Commerce Park – Project: Property Industrial Enterprises, LLC, c/o Michael Cooper - Located at 511 & 611 Marshall Lake Road**

   Jean Sanchez, Planner, said this is a request to approve the Lake Gem Commerce Park Final Development Plan and Plat. She reviewed the location of the project and surrounding land-uses. This is a PUD and follows site design requirements of the I-1 restricted industrial zoning district and allows up to 50 feet in building height. The plan includes 12 lots of industrial park with no individual lot less than 32,000 square feet. The DRC and Planning Commission recommend approval.

   MOTION by Commissioner Bankson, and seconded by Commissioner Dean to approve the Lake Gem Commerce Park Final Development Plan/Plat as presented. Motion carried unanimously with Mayor Kilsheimer, and Commissioners Dean, Velazquez, Becker, and Bankson voting aye.

PUBLIC HEARINGS/ORDINANCES/RESOLUTION

1. **Ordinance No. 2605 – Second Reading – Comprehensive Plan Text Amendment – Project: Amendment to the Future Land Use Element, Policy 20.10 and Table 20.10.** The City Clerk read the title as follows:

   ORDINANCE NO. 2605

   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 POLICY 20.10 AND TABLE 20.10; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

   Mr. Moon advised there have been no changes since the first reading.

   Commissioner Bankson inquired if the developers were requesting the change or was this on the foresight of the city's part.

   Mr. Moon advised that during the preparation of the Form-Based Code there were a number of property owners or developers whose consultants brought attention to staff of some inconsistencies within the Form-Based Code. This was addressed at that point and brought up

again during the proposed Publix development at the corner of Plymouth Sorrento and Kelly Park Roads that the project would not be feasible with the proposed FAR requiring construction of the parking garage. Staff understood the hardship and supported the change in the Floor Area Ratio to 0.15. He stated we have a horizon date on that with a number of residential units that would develop over time in the area.

Commissioner Becker said with the threshold of the horizon of residential units, and if the commercial moves in at a pace that does not require that threshold to be met, what is the process to revise back to the 3.0 minimum.

Mr. Moon advised it would be considered a large scale amendment to the Comprehensive Plan, go back to the state agencies and coordinated with Orange County.

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

MOTION by Commissioner Velazquez, and seconded by Commissioner Becker to adopt Ordinance No. 2605. Motion carried unanimously with Mayor Kilsheimer, and Commissioners Dean, Velazquez, Becker, and Bankson voting aye.

2. **Ordinance No. 2635 – First Reading - Comprehensive Plan Amendment – Small Scale – Project: Kenney Harry Charles McAllister, Located on the Northwest corner of North Hermit Smith Road, U.S. 441 intersection.** The City Clerk read the title as follows:

ORDINANCE 2635

AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, AMENDING THE FUTURE LAND USE ELEMENT OF THE APOPKA COMPREHENSIVE PLAN OF THE CITY OF APOPKA; CHANGING THE FUTURE LAND USE DESIGNATION FROM "COUNTY" RURAL TO "CITY" COMMERCIAL FOR CERTAIN REAL PROPERTY GENERALLY LOCATED WEST OF HERMIT SMITH ROAD AND NORTH OF ORANGE BLOSSOM TRAIL, COMPRISING 0.04 ACRES, MORE OR LESS AND OWNED BY KENNEY HARRY CHARLES MCALLISTER; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Phil Martinez, Planner, reviewed the project advising the applicant is proposing a small scale future land use change from "County" Rural to "City" Commercial for 0.04 acres at 3591 West Orange Blossom Trail. He reviewed the surrounding land-uses and advised the intent for this PUD was for a RaceTrac Service Station. The Planning Commissioner found the project to be consistent with the Comprehensive Plan and compatible with the character of the surrounding areas and recommended approval.

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

MOTION by Commissioner Dean, and seconded by Commissioner Becker to approve Ordinance No. 2635 at First Reading and carry it over for a Second Reading. Motion

carried unanimously with Mayor Kilsheimer, and Commissioners Dean, Velazquez, Becker, and Bankson voting aye.

3. **Ordinance No. 2636 – First Reading - Change of Zoning – Project: Kenney Harry Charles McAllister - Located on the Northwest corner of North Hermit Smith Road, U.S. 441 intersection.** The City Clerk read the title as follows:

ORDINANCE 2636

AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, CHANGING THE ZONING FROM "COUNTY" A-1 AGRICULTURE TO "CITY" PLANNED UNIT DEVEOLOPMENT FOR CERTAIN REAL PROPERTY GENERALLY LOCATED WEST OF HERMIT SMITH ROAD AND NORTH OF ORANGE BLOSSOM TRAIL, COMPRISING 0.04 ACRES MORE OR LESS, AND OWNED BY KENNEY HARRY CHARLES MCALLISTER; PROVIDING FOR DIRECTIONS TO THE COMMUNITY DEVELOPMENT DIRECTOR, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

Mayor Kilsheimer announced this was a quasi-judicial hearing. Witnesses were sworn in by the clerk.

Mr. Martinez said this was in conjunction with the previously heard agenda item. This request is to change the zoning from "County" A-1 to "City" PUD for 3591 West Orange Blossom Trail. He reinstated the conditions for approval of this PUD are for open space and landscape buffer for what is intended to be a RaceTrac Service Station. On March 13, 2018 the Planning Commission unanimously recommended approval.

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

MOTION by Commissioner Bankson, and seconded by Commissioner Dean to approve Ordinance No. 2636 at First Reading and carry it over for a Second Reading. Motion carried unanimously with Mayor Kilsheimer, and Commissioners Dean, Velazquez, Becker, and Bankson voting aye.

4. **Ordinance No. 2637 – First Reading - Change of PUD Master Plan/Preliminary Development Plan - Project: City of Apopka, James D. & Deborah M. Lyda, & Citizens Bank of Florida - Located on Johns Road, west of S.R. 451.** The City Clerk read the title as follows:

ORDINANCE NO. 2637

AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, CHANGING THE ZONING FROM PUD(PLANNED UNIT DEVELOPMENT), MIXED-EC (MIXED EMPLOYMENT CENTER), AND I-1 (RESTRICTED INDUSTRIAL) TO PLANNED UNIT DEVELOPMENT/RESIDENTIAL (PUD) FOR CERTAIN REAL PROPERTY GENERALLY LOCATED SOUTH OF MARSHALL LAKE AND WEST OF SR 451, COMPRISING

154.18 ACRES MORE OR LESS, AND OWNED BY THE CITY OF APOPKA, JAMES D & DEBORAH M. LYDA, AND CITIZENS BANK OF FLORIDA; PROVIDING FOR DIRECTIONS TO THE COMMUNITY DEVELOPMENT DIRECTOR, SEVERABILITY,CONFLICTS,AND AN EFFECTIVE DATE.

Mayor Kilsheimer announced this was a quasi-judicial hearing. Witnesses were sworn in by the clerk.

Mr. Moon said this is a request to rezone property from PUD Mixed EC and I-1 to PUD and a Master Plan. This case appeared before City Council on March 7, 2018, at which time the applicant requested to continue this hearing to March 21, 2018, so they would have an opportunity to meet with affected property owners on the north and west side of Marshall Lake. This meeting occurred on March 14, 2018, at the Community Center. The applicant and future owner met with residents and listened to their concerns. Luke Classon with Appian Engineering will likely present an amendment to address some of the residents' concerns. He reviewed the location on a map and pointed out 15 acres that will be assigned to conservation and open space with no development. Lake Doe is to the north and Breckenridge to the west, then to the east is the state toll roadway and to the south is commercially zoned property. The applicant is requesting a Preliminary Development Plan that will include 301 single family homes. He pointed out a 50 foot wide landscape buffer within the plats recorded by Breckenridge that is already established. He advised the Master Plan proposes a gated residential community with private roads and infrastructure. The development profile is a mix of lots that are 55 foot, 60 foot, and 75 foot wide lots with the larger lots located along the lake. There is an inclusion of parks and open space, including preservation of wetlands at the northeast and northwest corners. A dock is proposed as an access point that will be addressed in Mr. Classon's presentation. There is a community center with a pool house located on the east side of the property. He advised there is not a wall proposed adjacent to S.R. 451, but stated there was a 20 foot buffer. The lot sizes range from 7,425 square feet up to 10,825 square feet. He reviewed the setbacks stating this was typical for residential communities. The minimum living area is 1,600 square feet for the smaller lots and for the 75 foot wide lots a minimum of 1,800 square feet for the minimum living area. He advised the Planning Commission and DRC recommended approval with deviations. The recommendation is to accept at first reading and hold over for a second reading and adoption.

In response to Commissioner Becker inquiring about the driveways, Mr. Moon advised there were established guidelines of garage setback of 30 feet to allow for two cars to stack park in the driveway.

Luke Classon, Appian Engineering, said since the last meeting they have worked out details and concerns through a community meeting. He advised the property west of S.R. 451 and south of Marshall Lake Road has a 50 foot buffer. He said they were not proposing the removal of any trees and all trees will remain. He reviewed a future land-use map and pointed out the three parcels that make up this project and reviewed the proposed zoning. He said the previous PUD was in 2006 and has expired requiring this to be rezoned. They are proposing full access off of Johns Road and the bridge will be built to City standards. He spoke of preservation of the wetlands. Mr. Classon reviewed the access points advising this is a gated community. The

third access point is an emergency access only through Breckenridge and this development. He reported the community meeting was attended by 25 members of the adjacent neighborhoods with questions about density, environmental/wetland impacts, and lake access. They are proposing 301 homes on the entire development and reserved right of 5 dwelling units per acre on property to the south, less than the allowable density of 414 lots. He advised they had an environmental study conducted that listed endangered species.

Mark Ausley, Bio-Tech Consulting, reviewed the environmental study and permitting on the Marshall Lake project. He advised this was approved by the St. Johns River Water Management District and the Army Corps of Engineers. He stated as part of this plan, an area of wetlands will be converted into compensated storage to help the flood plain concerns and used as mitigation to restore the impact area recreating what was historically there. They noted bald eagles utilizing the lake, but no nests are on their property or vicinity and as such there is no regulatory action required. There were no sand skinks located on the property. He stated the potential presence of Florida panther came up during the community meeting and said this area was clearly outside of the area where Florida panthers are provided protection. He reviewed the verified sightings of a panther in Central Florida since 2000. He pointed out on a graphic the consultation area where coordination with the U.S. Fish and Wildlife would be required for land development as it pertains to Florida panthers and Central Florida was not included in this area of active managed population. He said there were gopher tortoises observed and they will be relocated prior to site development and construction.

Mr. Classon said to reiterate, a question from the community meeting was inquiring what the environmental benefits were with this development. He stated they would be cleaning up the property that was zoned agriculture. He spoke of conservation preservation and stated the only wetlands they are impacting was the previously impacted wetland area of the northwest corner of the site where some unauthorized fill had been placed there. This area will be taken more to the natural state. They area also preserving roughly 12 acres more of conservation area between the south side of Phase 2 and the northeast and northwest areas of the site. He said the most important point to those who attended the community meeting was the lakefront lots and lake access. He showed the 17 lake front lots on an aerial map stating the existing dock will be rebuilt and the existing boat ramp will be extended down to the lake. The developer is proposing a compromise that the interior homes only be allowed non-motorized vessels and language will be added to the HOA documents. He advised the lake front lots will have a wall designed on the topography of the site to prevent run-off into the lake.

Commissioner Becker asked about property ownership of the lake inquiring where the ownership stops, the ground or is it above in terms of the water.

City Attorney Shepard said in some situations the property line extends out beneath the water. He said people still have the right to navigate on top of the water as long as it is not a private lake or manmade barrow pit. The deeds need to be reviewed of each individual lot owner to determine this.

In response to Commissioner Becker inquiring how the enforcement of the boat ramp would be handled, Mr. Classon said they will provide this within the HOA documents as well as the PUD ordinance to limit to only the 17 lake front lot owners.

City Attorney Shepard added that if this is a condition of the PUD ordinance, which is a condition of zoning and subject to Code Enforcement.

City Council recessed at 8:32 p.m. and reconvened at 8:40 p.m.

Mayor Kilsheimer opened the meeting to a public hearing.

Michael Rowe said he had a meeting at his home with other HOA's and they discussed mediations at all the past meetings and came up with a list they felt to be most important. These included lake access, size of lots in Phase 1 and size of lots, tree line, and the wall on the lake side. He stated after discussions with Mr. Classon today, the lake access and the wall are the main issues they would like to focus on.

Mayor Kilsheimer inquired what they desired regarding lake access to which Mr. Rowe said access to the dock was fine, but they didn't want access with boats to the lake except for people who live on the lake. He said within his neighborhood people who live on the lake are the only ones that have access to the lake.

Scott Hill said he has had communications with several commissioners regarding his concerns, the biggest concern being lake access. He spoke of safety hazards and asked for regulations of non-motorized vessels. He said this is a small lake and stated he has seen how the water level changes on this lake. He also expressed concerns regarding environmental issues and the wildlife in the area. He requested a swale be utilized rather than a wall.

Mayor Kilsheimer reiterated the wall was being required by St. Johns River Water Management District.

Nina Rowe said if other residents are allowed to access the lake, it will become a party lake. She stated she had no problem with the lakefront properties having access.

Theresa Grubbs said she has lived on this lake for 29 years and expressed concerns regarding noise levels. She stated if 300 homes are allowed access on this small lake she had great concerns regarding noise, trash, and injuries that could occur. She asked the Council to please listen to their concerns and only allow access to the lakefront homes.

George Weavy suggested a berm rather than a wall along the lake. She requested an independent opinion before all minds are made up regarding this matter.

Patricia Blackwell said she has lived there for 30 years and has seen this lake go up and down. She stated every time something is built the lake goes down. She said there should not be any kind of motorized vessels allowed on the lake due to the size of the lake. She said a more natural way should be used to retain the water rather than building a wall.

Carrie Wierioch spoke of the water levels of the lake being up and down and said the retention ponds have dried the lake. She said the hurricane brought the lake back up. She expressed concerns of losing her well and septic due to where they are located.

Curtis Poe said he had submitted a letter from his brother who is an environmental professional and suggests a way this could be reconfigured so not to require a wall. He said motorized vessels will create noise and pollution.

Judy Pepper said she has lived there for 10 years and enjoys living in this areas. She expressed concerns about runoff and how the water will be treated, stating it is a healthy lake now. She said that boat traffic was a disaster waiting to happen.

Sandra Martinez said she lives in Breckenridge and supports those being affected by this development. She asked for a provision regarding the emergency access never be opened to a public access.

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

Mr. Classon explained the reason for the wall requirement, stating that this process actually would help to hydrate the lake. He said that direct runoff was no longer allowed. He stated they were in agreement with the emergency access provision.

Discussion ensued regarding the lake access and only allowing the 17 lakefront homes access and how to regulate this.

Mr. Classon said they would provide a gate limiting access only to the 17 lakefront homes. He explained they needed the boat ramp to be able to service the wall.

Mayor Kilsheimer asked the developer if they were willing to agree to no lake access by the internal homeowners.

Matt Young said they believe their proposal is a reasonable agreement and do not believe it to be a safety issue. He stated if the Council desires to restrict the future residents this access, then they can abide by that restriction, but would rather not having this restriction.

Mr. Classon said they will have an enhanced dock for access by all residents without the ability to launch.

In response to the emergency access, City Attorney Shepard said this was being provided for City emergency access and if it was abandoned, the property would go back to the owners.

MOTION by Commissioner Becker, and seconded by Commissioner Bankson to approve Ordinance No. 2637 at First Reading and carry it over for a Second Reading, subject to the condition of the use of watercraft be permitted only by the owners and occupants of direct lake front lots and any boat launch area located within the common area shall be restricted by a separate locking gate that only lake front owners shall have access. Further the retaining wall shall be acceptable as permitted per the site plan, and the emergency access easement to be granted by Breckinridge HOA will be limited only to the use of the city for emergency access and shall revert back to the property owners on either side of the access point should it ever cease to be used for emergency access.

Motion carried unanimously with Mayor Kilsheimer, and Commissioners Dean, Velazquez, Becker, and Bankson voting aye.

CITY COUNCIL REPORTS – No reports.

MAYOR'S REPORT – Mayor Kilsheimer reported he has had several conversations with Mayor-Elect Nelson and will do his best to keep him up to date and pledge cooperation for a smooth transition.

Commissioner Velazquez reminded everyone there is a Run-off Election on April 10, 2018, for City Council Seat 2.

ADJOURNMENT – There being no further business the meeting adjourned at 9:45 p.m.

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Joseph E. Kilsheimer, Mayor

ATTEST:

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Linda F. Goff, City Clerk