

CITY OF APOPKA MINUTES

Minutes of the City Council Meeting held on January 4, 2023 at 1:30 PM, in the City of Apopka Council Chambers.

Present:

- Mayor Bryan Nelson
- Commissioner Kyle Becker
- Commissioner Nick Nesta
- Commissioner Alexander Smith
- Commissioner Diane Velazquez
- City Administrator, Edward Bass
- City Attorney, Michael Rodriguez

Press Present – Megan Garcia, The Apopka Voice

INVOCATION & PLEDGE OF ALLEGIANCE:

Commissioner Smith provided the Invocation and led in the Pledge of Allegiance. He then read the fact of the day as follows: On January 3, 1938, President Franklin Roosevelt founded the National Foundation for Infantile Paralysis to combat polio. It was later renamed the March of Dimes Foundation, a term coined by singer Eddie Cantor during one of the foundation's fundraisers where he asked Americans to send in their dimes to raise money. After funding Jonas Salk's vaccine which essentially eradicated polio, the organization turned its focus to the prevention of birth defects and infant mortality. Today, the March of Dimes works to improve the health of mothers and babies across America.

EMPLOYEE RECOGNITION

1. Service Pin Awards – City Employees

Joe Patton, Human Resources Director, stated that every quarter we will acknowledge our employees for the years of dedicated service. He continued to call the employee's names, read short bios of them and had their photo taken.

APPROVAL OF MINUTES

1. Regular Council Meeting Minutes of December 21, 2022.

Mayor Nelson pointed out scrivener's errors that were made when transcribing minutes, that he had the clerk's office go back and fix, before the minutes were posted.

- a. **Mayor Nelson** asked if everyone has had a chance to review and whether anyone had any changes or additions.
- b. Hearing no additional questions, he asked for a motion to approve the regular council meeting minutes of December 21, 2022.
- c. **Motion by Commissioner Becker** and seconded by **Commissioner Smith** to approve the regular council meeting minutes of December 21, 2022.
- d. **Motion carried unanimously**, with Mayor Nelson, and Commissioners Becker, Nesta, Smith, & Velazquez voting aye.

PRESENTATION

1. Best Foot Forward Program Annual Update
Presented by: Emily Hanna, Executive Director

Emily Hanna, Executive Director of Bike Walk Central Florida, stated that Best Foot Forward is a region wide program that focuses on a 6E approach, but today we will only focus on four: Engineering at cross walks making sure that they stand out in place, Education at our cross walks, Ensuring that residents are educated on the driver yield law and how to be safe pedestrians, cyclist, and drivers, and lastly conducting regional enforcement operations throughout the year. This presentation last fiscal year, so it'll be from October 2021 to September 2022. *A copy of this PowerPoint is available upon request.*

AGENDA REVIEW

Edward Bass, City Administrator, stated that there are no changes to the agenda.

PUBLIC COMMENT PERIOD

Dennis New, 105 W. Magnolia Street, Apopka, FL 32703 stated that in accordance with Resolution 2016-16, he would like to ask for leeway on the 4-minute mark, today, due to health issues. He first addressed a comment, by the City Attorney, a couple meetings ago, that some had suggested a permanent building moratorium. He stated that no one is suggesting a permanent moratorium. He also stated that by appearance, that the City Attorney believes that he works for the mayor and the developers; however, he thought he was an employee that worked for and reported to the City Council. His interference with the Fire Department's Safety Committee was met with deflection and distraction, maybe it's time for a new attorney who realizes that his place is to give advice to the City and not try to run it. What was suggested was a temporary moratorium until things like the traffic and infrastructure plans can be updated and the work

begun. By the City's own admission both the traffic and infrastructure plans are years out of date. Why can't there be a hold on the plans, until these things are readdressed? He went on to state that several months ago, he asked for the Mayor to be censored on items related to zoning, planning, and density changes, because of his appearance to be overly involved in the Rock Springs Ridge Land Exchange; however, a meeting, that was not posted in accordance to the Sunshine Laws, was held. I understand that there is a possibility of monetary or property incentives that could be used to entice the golf group, but when Sheeler Oaks flooded the people were left on their own due to design and engineering flaws. When Clear Lake flooded, and it is getting deeper every day, the people were left to pay for it for themselves. So, I call again for the Mayor to be censored on property issues, zoning changes, density changes and any item involving City funds, for property or City assets. In closing Mr. Wylam and the City Attorney stopped the safety Committee that the tax payers fought so hard to get back in to place, for the firefighter's death. Whether it was directed by the Mayor or not is the question; the purpose of the Safety Committee is to review and suggest changes in any accident or safety issue. Mr. Wylam and the City Attorney's job is to facilitate it. The State Fire Marshall has been done, NIOSH is in the works; the safety report should have been completed a long time ago. It is time to be transparent and stop distractions.

Todd Bengtson, 1444 Stormway Ct Apopka, FL 32712 stated in a statement from the Mayor, during council meetings and the recent press conference, on the resignation of Firefighter Pablo Echevarria the safety committee, the Mayor would only state that there was going to be an added task that would take more time away from my family. For some reason the Mayor only mentioned or recalled the one line; however, there were several reasons and Paul gave them, in his full resignation letter that I read in the Apopka Voice. He went on to give excerpts from the letter, as follows:

- '...I was informed that a copy of the letter, the one that Wylam wrote and was read by Maynard, was not provided to the safety committee members. The letter was mentioned in the minutes, but was not written in its totality in those minutes of the meeting. This is concerning.'
- '...I already felt uneasy and was troubled by the unannounced meeting with the City Attorney, where he suggested that it may not be a good idea to have a critique by the safety committee, due to the potential cost to the City, with the pending litigation filed by Austin's Family.'
- '...now even more troubling to me is how the rest of the story has unfolded and this ad hoc committee has now been formed. The fact that two organizations and a legal team, that have absolutely no idea how we function as a fire department, and are going to critique a line of duty death, of one of our own, and exclude the safety committee that was formed, in the name of Austin, just does not seem...'

Mr. Bengtson went on to address another public statement, given by the Mayor, as follows: 'the last two verified users of that trailer was Chief Carnesale and District Chief Bengtson, so we ought to ask them, why they did not ask to take that trailer out of service.' Mr. Bengtson asked why is the Mayor trying to deflect responsibility towards two private citizens, who were home at the time of this accident. Sure, I used that trailer, that was my job and I was scared to death when using it. In the thirty-five years of my employment I've used it multiple times, as have many others, and I've witnessed it flip multiple times; I did the best I could with what I was given. Also, if the City or the Fire Administration is truly interested in my account of that sand trailer, why have they not questioned me or reached out? The Mayor has known that fact, that he stated for months now. To some that truly cared to ask, I would have explained the entire history to them, I was here from the beginning. I would have told them that I also asked Chief Carnesale, years

back, if we could stop using it, because of the danger and he said yes. I would have told them, if I were questioned, that it was emptied of sand and put across the street in moth balls, in the Butler Building, on the other side of 5th Street. The crew working the night before was not happy with the sand trailer going back in service told the new kids at the kitchen table 'do not use that trailer no matter who calls for it, unless there is a senior person around to help. That trailer can kill you.' Mayor Nelson implying that my involvement of using a piece of equipment, years ago, in the performance of my job, contributed to Austin's Death is disgusting. He stated that he and Chief Carnesale were not the last two verified users of that sand trailer; Austin and another rookie Firefighter were. So here I am, if anyone wants to ask questions about my use of that sand trailer, as the Mayor implied, I will answer anything that any one has, no deflections. Lastly, he stated that retired firefighter Ace Whitham is feeling very under the weather and in the hospital and he wishes him a speedy recovery.

Sydney Guerard, 3624 Simonton Place Lake Mary, FL 32746 stated that she was Austin Duran's girlfriend and she is here today to implore that the necessary steps are taken to ensure that event, such as the one that occurred on June 30th, which caused the life of the person I was supposed to spend forever with, never occurs again. While I realize that being a firefighter is a dangerous job, Austin did not lose his life, due to a heroic act, such as running into a burning building, to save the life of a little girl or boy. He lost his life due to a piece of equipment that had slipped through the cracks regarding safety practices. I stand here today and beg that the necessary changes be made, so that another wife, girlfriend, mother, father, sister, brother, or child never have to face the reality we have all been faced with; sacrificing a much-loved member of our community, to a painful, unnecessary, and preventable death. This tragedy took Austin's life and has left us with the grief we now have to bare for the remainder of ours. A future I have lost: our wedding day, our children we were planning to have, that will now never be born, and the incredible lifetime that we envisioned before us. Again, our suffering was preventable and it is your responsibility to ensure such tragic loss never happens again, especially due to something that slipped through the cracks. Let's not forget the other survivors of this tragic event, his co-workers and colleges. Those that were with him, as Austin's life hung in the balance, that fought heroically in exceptionally trying circumstances to save the life of their brother. Their lives have been irreparable altered, in a manner that brings no peace, each on thinking 'what if this had been me' and 'why did this have to happen.' Austin was dedicated to giving his dream career everything he had to offer. I remember the countless hours I spent in the car with him, driving around Apopka to the hospitals, each of the fire stations, and through back roads so he had the confidence that his lacking sense of direction would never hinder him in performing his duties, because he knew the magnitude of the responsibility he had accepted in being a first responder for the City of Apopka. He faced everything he committed to with the same drive, commitment, determination and effort. He always wanted to be as close to perfect as possible and when he made a mistake he would beat himself up, then investigation, evaluate, consult, review, and relearn whatever strategies, steps, and principles that he had missed, to ensure that he was always improving and becoming the best firefighter that he could possibly be. Does the Apopka Fire Department, the City Commissioners, the Mayor, and all other involved parties and administrators not owe the same to Austin? How can you hold Austin and his firefighter family to a higher standard than you are willing to hold yourselves? A tragedy has occurred and a mistake was made, we all know that and we have all had to accept that; however, it is incumbent on you to do as Austin would do: investigate, evaluate, consult, review, and relearn new strategies, steps, and principles to make sure this senseless tragedy will not and cannot be repeated. On June 30th when I walked into the emergency room to see him, after he had been stabilized the first he said to me

was 'I'm sorry.' With tears coming out of his eyes, swollen shut by the trauma his body had endured, I knew he was saying sorry because he felt bad. He felt bad because in his mind, he was the reason that the lives of everyone present had frozen in time, scared of the intensity and severity of his injuries, and faced with the uncertainty of the situation with all the pain, fear, doubt, and apprehension that came with it. Even in the moment when he was in more physical pain than you and I could ever imagine, he was still worried about other; that was Austin. Always putting others before himself, concerned most with the impact of his actions and how the affected those he cared about. Another of Austin's characteristics is he was the least confrontational you would ever meet and hated being the center of attention. I find it very unsettling that his death is requiring those of use that loved him most, to stand up to draw attention to the tragedy Austin and all of us have experienced. To ensure that this preventable death and the suffering that came with it, never happens to another Apopka firefighter. To insist that the root problem that caused Austin to sacrifice his life is identified, resolved, and eliminated, so this senseless tragedy becomes a lesson in organizational improvements, not mistakes being swept under the rug. This is your most critical responsibility to the citizens, the firefighters, and especially to Austin. He made the ultimate sacrifice, which shed light on the flaws of the current system. Work has been done, but as I understand there are still roughly twenty safety concerns that have not been addressed. Please don't let your responsibilities, regarding these matters slip through the cracks.

Michael Duran, 11504 Almo Ct Clermont, FL stated, it saddens me that we must keep this fire raging due to the actions of the City. From June 30th, the day of Austin's incident, I have asked for answers, facts, accountability, and responsibility. I would like to set the record straight, we have lost two extremely experienced firefighters from the Austin Duran Safety Initiative Safety Committee. The Mayor held a press conference on December 21st to explain the timeline of events and it felt to me that it was held to minimize the death of my son and criticize two highly experienced and trained firefighters, who dared to speak out because they cared. All that press conference did was reinforce the failed culture in this fire department. It was made loud and very clear that if you stand up and speak your mind, you will be minimized and criticized. It was made clear that this city, this administration, and this fire department is ruled under an iron fist. During the last city council meeting, after I spoke about my disappointment in the direction that this city was taking, Commissioner Becker began a discussion as to was the safety committee told to stop their investigation. A yes or no question, directly asked to the City. Commissioner Becker pressed for an answer and the Mayor sat quietly. He finally deflected the question to the City Attorney and the City Attorney deflected to the Fire Chief, and after that it was still not made clear who made the decision and why. It was not until the very end, during the Mayor's report that the mayor spoke on this matter, to an almost empty chamber, at that time. Once again, out may felt it necessary to cherry pick Pablo's resignation. Again, he criticized both firefighters, but if that was not enough, he took an opportunity to call out firefighters from three years ago and a district chief and then asked why they had not taken the trailer out of service. More deflection, more shifting of responsibility and accountability. No employee is safe in Apopka, nor past employees. Of the past fire chief, all sixteen of them, none of them have lost a firefighter in the line of duty, but this administration and this city does not question this administration. He addressed the mayor stated that he bragged about scored out of eight possible violations, the city failed only one, but that is the most important one: training. You minimized it 'just training.' Training of our firefighters for their own safety and the safety of the citizens, but failing only that one made you proud enough to brag during the press conference. I don't care if it was one out of one-hundred, that one that the city failed on, that one that Austin needed the most: training. Training on a piece of equipment that he had never seen before. Lack of training and supervision is what killed my son. He was

Apopka, he was your employee, your firefighter, and my son. How many other employees will the city fail, minimize, criticize, how many other employees are we not trying to keep safe, by removing the involvement of our very own safety committee. How can we trust that the city will protect their firefighters and their citizens; actions speak much louder than words and we are eating our own. When does our family get closure, when do we get to grieve, when can we stop fighting for a safer fire department. Why is my family fighting so hard for the Apopka Fire Department, but the City is not? Reinstate the ability for the Austin Duran Safety Initiative Safety Committee to review this incident, let them do their job freely. I have reviewed the last ten line of duty deaths and all of them have committees made up of their own firefighters, from that organization, why is Apopka different. He asked again, to please allow the committee, named after his son to investigate.

Commissioner Becker stated that after the last meeting, he did ask the question, was their explicit instruction to stop that safety committee and the answer was in the informative. But, when I asked if there were written instruction, as our minutes that we just passed reflect, it was first a 'no' answer. When pressed further it turned into a yes answer. He stated that he made a public records request on December 22nd and he finally got that request satisfied, as of yesterday, a paper copy written, date stamp received December 23rd, from the Clerk's office. He read it verbatim, as follows: *Good Afternoon, understanding the need for an urgent and independent review of Austin Duran's LODD (Line of Duty Death) and accordance with SOG 6200.03.00 I have created and have been working with and ad hoc review board that would be solely responsible for this investigation. Due to the sensitivity and the need to conduct a thorough investigation the review board consist of subject matter experts and includes the National Institute of Occupation Safety and Health as we've consistently referred to as NIOSH, Gannon Emergency Services, and Legal Representation.*

He stated that there was no signing of that letter and it is poorly written on a word document, with that text only; not signed by Chief Wylam or any other individual. He stated when he pressed the question last meeting, he did not know that we were referred to an ad hoc committee, separate from the safety committee, so he questioned when are we going to get a formal report of findings from our internal safety committee, this ad hoc committee from NIOSH, from Gannon, and from Legal Representation.

Chief Sean Wylam, Fire Chief, stated that the ad hoc committee is an advisory group that we're allowed to create to get some of the answers. The biggest thing that I want to separate is the difference between an investigation and a post incident critique. We have had one answer from the investigation, which was the State fire Marshall's report. We have been told by NIOSH that it will be anywhere from ix to eight months. The Gannon services that we are utilizing will be anywhere from one to two months from now. Everything that we have learned thus far, we are making a lot of positive changes. It is hard to know the exact timeline with things like NIOSH and Gannon. Chief Wylam went on to state that he understands how emotional taxing this has been on everyone, including himself, but these things take time. He stated that a formal investigation has taken place, first with the State Fire Marshall, second with NIOSH who is the subject matter expert, and thirdly Gannon is taking a holistic approach to look at our city and our fire department. **Commissioner Becker** asked if the last ten LODD have had committees all staffed by members of their department, why do we not take the same approach. **Chief Wylam** responded that they conduct a post incident critique, firemen do not investigate. If we respond to something the post incident critique is going to look at how we responded to the incident itself. I am also trying to balance the emotional side of things, we have all read the letter that came out yesterday. People are torn in two, I have half of the department that wants this to happen and half that does not. I am trying to do everything we can to balance everything, get the right answers so

that we can move forward and quiet frankly I am tired of being torn apart. All the outside noise. You want to talk about change and culture, we must come together and work together with this. We are working side by side with some of these recommendations. We are going to make several presentations, on a lot of the findings. I want to be here and I want to make these changes.

Commissioner Becker stated that the timing of these things and optics are terrible. He again asked why we are not letting our own people investigate our own policies and procedures. He stated that the fire chief was given the opportunity to speak during the press conference and he chose not to.

Sylvester Hall, 3091 Rolling Hills Lane Apopka, FL 32712 addressed the fire department stating yes, we do need to come together as one, but just hearing that statement that half of the fire department and half does not is very troubling to me. He stated that he is a retired veteran that proudly served to twenty-one years in the United States Navy and at any moment, any one serving can get the phone call that it is time to go to war. The firefighters and police officers do it every day. Every day they wake up, they may get a call that requires them to lose their life and this is the thanks that they get. To the Fire Chief, we had to beg you to take the money to make the upgrades, so when you come to us and try to give us good faith, it just does not sound truthful to me. He went on to state that there are two many good people standing by watching bad things happen, not speaking out. To the Duran Family, he apologized for his role in their son's death. He stated that he is tired of being a coward, he is tired of being a hypocrite. The only reason these things are happening is because we have just turned a blind ear to what is going on in the City. We had thirty-five thousand registered voters and only eight-thousand of them turned out for the Mayoral election, so we get what we select. The mayor won the election with a little over four-thousand votes, out of thirty-five thousand people, so we get what we deserve. That is sad, but it is the hard truth, so I hope that each of us realize that we have a civic depth to this city. To be the best neighbor and to stand up for our neighbors. If you do not understand the big picture, how will you ever understand the consequences of your decisions. Right now

Albert Mckimie, 3603 Golden Gem Rd Apopka, FL stated his concerns with overdevelopment within the City limits of Apopka, using Golden Gem Road as an example. He stated that the roads are narrow with no passing places. The road is full of dips and rises with numerous places of blind spots; if cyclists are forced to use Golden Gem Road, as is, there will be accidents. He stated that the roads, without sidewalks, are not safe for the children in the area, as well.

Commissioner Becker stated that he met with Orange County staff, on December 8th, to talk about the current condition of Golden Gem because the majority of Golden Gem is a county road, and they were going to be doing an assessment of the street. He followed up twice with them after that meeting and have not heard back. He stated that he will continue to be persistent, in terms of the general maintenance of that road, but he will join Mr. Mckimie at a County Commissioners meeting, if he wants to go together and advocate for that. Long term, we need to have a transportation plan. A broad development of a moratorium is a tall task, but a moratorium of my 'no' vote is not as tall. If I do not have assurance that we are set up for success, long-term, then I am certainly committed to that.

Tonia Dejesus, 2023 John Henry Cir Apt 417 Apopka, FL 32703 stated that there is a traffic issue at the exit of the Willow Lake Apartments. There are two lanes that go towards Apopka and the other goes towards Wekiva; traffic makes U-turns there, in both directions and we have children and elderly people going across that section. There is no cross walk, traffic light, or flashing let to make people aware that they are crossing. The residents must walk at least a quarter

of a mile one way, to get to the cross walk that is available, then a quarter of a mile back up to go to the shopping center, across the street. She asked the council to have someone to look at that location to see if anything can be done. **Mayor Nelson** stated that that is a county road, but we will help director Ms. Dejesus to the right people.

Alex Klepper, 894 Stirling Drive Winter Springs, FL 32708 stated that he is representing the Apopka Professional Firefighters. Recently, two of our members resigned from a voluntary committee, due to what they perceived to be disingenuous leadership and intentional misdirection. In the wake of these resignations, instead of the fire chiefs of mayor following up with these employees, the decision was made the call a press conference to disparage both firefighters. He stated that the mayor stated that he was given a script to read to the press, that was written by our own fire chief. You kept referring to the fact that there were claims that nothing had been done and directing the attention towards eighteen out of twenty-three items that were alleged completed, which is categorically false. The two resigned employees are aware of the status of these processes, but what was asserted in that resignation letter is that we have made recommendations, that members of the committee and the fire chief know about, but no other members of this fire department are aware of. That information is in the packet that was given to council. For example, every summer we hold a fire camp, at the end of that week we send unrestrained or improperly restrained children up in tour truck bucket, stories into the air for a Facebook photograph. We have had a catastrophic failure of tour ladder five to six years ago and it can happen again and our city will be sued, where sovereign immunity does not apply. It was written in your press release that this practice has been discontinued, yet the department does not have one single communication to let anyone know. I have asked multiple members that operate the tour truck and work the kids camp, if they are aware, and only one of them was aware. That is what killed Austin Duran. People knew that sand trailer was dangerous, people knew it should not be used and nothing was ever officially communicated or done to eliminate the threat and again, we've been failed. He went on to state that the committee put together a plan and it received a unanimous vote, but then again, they were failed: surprised attorney meetings, disappearing letters, unsigned directives, reinterpreted policies, and a shell game of who is taking responsibility. That is why we left.

CONSENT (Action Item)

1. Execute release of Code Enforcement Lien - 2082 Wentworth Circle, Apopka, Florida
2. Execute release of Code Enforcement Lien - 1825 Needham Road, Apopka, Florida
3. Approve the McVilla Commerce Park Replat
4. Authorize the Mayor to accept and execute the Orange County's Housing and Community Development Subrecipient Agreement for the Community Development Block Grant (CDBG) for Phase I of the City's Community Redevelopment Agency Sidewalk Project.
5. Authorize road closure for South Apopka Ministerial Alliance Martin Luther King, Jr. Parade on January 16, 2023.
 - a. **Mayor Nelson** asked if anyone had any questions about any of the items on Consent.
 - b. Hearing no additional questions, he asked for a motion to approve the five (5) items on Consent.

- c. **Motion by Commissioner Nesta** and seconded by **Commissioner Becker** to approve the five (5) items on Consent.
- d. **Motion carried unanimously**, with Mayor Nelson, and Commissioners Becker, Nesta, Smith, & Velazquez voting aye.

BUSINESS (Action Item)

1. Lo Family Warehouse - Major Development Plan
Owner(s): Lo Family Trust
Applicant: LandDesign, Inc. c/o Brian Forster, P.E.
Project: 19.43 acres
Proposed Use: Industrial Warehouse
Project Manager: Jean Sanchez

Jean Sanchez stated The Lo Family Trust Warehouse is located south of Hogshead Road, east of Conrad Road and west of Hermit Smith Road. The Lo Family Trust Warehouse – Major Development Plan (MDP) proposes the development of an industrial center that includes the proposal to construct one building and five future buildings. The applicant proposes a warehouse and office for storage and distribution uses with 66,000 square feet of area on approximately 19 acres. The current proposed building on the northwest corner of the property will support online retail operations of plant-related merchandise. While 15 parking spaces are required for this building, the applicant is proposing a total of 39 parking spaces with two accessible spaces. The proposed maximum building height is 35 feet. Development of future buildings will undergo separate reviews. The DRC recommends approval, and at its meeting on December 13, 2022, Planning Commission, on a 4-1 vote, recommended approval of the Lo Family Trust Warehouse – Major Development Plan, subject to the findings in the staff report. The recommended motion is to approve.

Commissioner Velazquez asked why the one dissenting vote from the Planning Commissioner and **Jean Sanchez** stated that there was a request to move the accessible parking spaces, closer to the entrance. She believes that is something that the applicant will explore at the construction site plan, but by the review of the building division and engineering, it meets the accessibility requirements, at this time. **Commissioner Smith** asked if we know what they plan on storing in the building and **Jean Sanchez** stated that right now they are operating an online retail sales of plant materials.

- a. **Mayor Nelson** asked if anyone had any questions about any of the item.
- b. Hearing no additional questions, he asked for a motion to approve the Major Development Plan for the Lo Family Warehouse.
- c. **Motion by Commissioner Smith** and seconded by **Commissioner Nesta** to approve the Major Development Plan for the Lo Family Warehouse.
- d. **Motion carried unanimously**, with Mayor Nelson, and Commissioners Becker, Nesta, Smith, & Velazquez voting aye.

2. Approve the First Amendment to the Development Agreement for Alterna Property
Presented by: Pam Richmond

Pam Richmond stated that when the original agreement was approved the cost of the intersection improvement had not yet been calculated. When we got the final cost, we negotiated impact fee credits in the amount of \$860,404.00 and the full cost is in excess of \$1.5 million dollars. Recommendation is that the impact fee credit agreement is approved.

Commissioner Nesta asked if this development going on the north side of 441 and **Pam Richmond** stated that this is at the intersection of the entrance of the airport.

- a. **Mayor Nelson** asked if anyone had any questions about any of the item.
- b. Hearing no additional questions, he asked for a motion to approve the First Amendment to the DA for Alterna Property.
- c. **Motion by Commissioner Nesta** and seconded by **Commissioner Velazquez** to approve First Amendment to the DA for the Alterna Property.
- d. **Motion carried unanimously**, with Mayor Nelson, and Commissioners Becker, Nesta, Smith, & Velazquez voting aye.

The meeting took a short recess at 3:31pm.

The meeting was called back to order at 3:34pm.

PUBLIC HEARINGS/ORDINANCES/RESOLUTION (Action Item)

1. Ordinance No. 2988 - Second Reading - Establishing and Regulating Noise Standards
Presented by: Michael Rodriguez

There were no changes, from the first reading.

Commissioner Becker stated that based off the feedback from public comment at the last meeting, Section 38220 and Section C2, he did not know if it was worth while to bump the 30-day requirement to 45-days because it is not a month worth of time and if it is a management property, there may be a lag period.

Lt. Steve Brick, Code Enforcement, stated that the 30-days is to be consistent.

Michael Rodriguez, City Attorney, stated that it is not 30-days from the date of the violation, it's 30-days from the receipt, so this is consistent and almost identical to the State statute for red light cameras. In that statute, the owner of the vehicle has thirty days to submit the affidavit, so the timelines are the same. The violation time clock starts on the date that the property owner, receives notification of violation. **Lt. Steve Brick** stated that even if we mailed a uniform traffic citation, they only have thirty days from the date of citation. If the tenant refuses to come to the door, and we have run into this incident recently where they did not want to answer the door. In that situation but we are still going to do our noise measurements and fill out our paper work. Then, we are going to issue a violation and mail it in accordance to statute and ordinance. I think thirty days is a reasonable amount of time for anyone to respond. Again, it is just being consistent.

Commissioner Nesta stated that he thinks thirty days is fine, if there are specifications on

issuance or receipt. There is some lag time there, that could be a problem. He would prefer it to be changed from 'issuance' to the date of receipt. **Lt. Steve Brick** asked how do we prove receipt. He stated that he had an issue with 'date of receipt' because most people will not go pick up certified mail and now you no longer can prove receipt. If we follow State statute and do our due diligence in notifying, from a law enforcement standpoint, we stick with 'date of issuance.' **Michael Rodriguez, City Attorney**, stated that under Florida Law, Florida follows the Mailbox Rule, which says that once the item is put in the mailbox to be sent, it is deemed as being delivered. **Commissioner Nesta** said that that is concerning to him as well. **Michael Rodriguez, City Attorney**, stated that if council wants to change it to forty-five days, that is not a problem; however, it will have to remain from 'date of issuance' and not from 'date of receipt.' However, the State of Florida has deemed thirty-days a reasonable timeframe, when it comes to issuance of citations for violation of red-light cameras, so we are being consistent with the State.

Todd Bengtson, 1444 Stormway Ct Apopka, FL 32712 asked if fireworks falls into this category. **Michael Rodriguez, City Attorney**, stated that they may fall under the impactful noise; however, last year State Legislature legalized the sale and use of fireworks on the Fourth of July, New Year's Eve, and New Year's Day. So, it'll fall in that grey area. In theory, if it reaches that impulsive sound, like construction or a jack hammer the question would then be to the Chief of Police on enforcement and finding who the offending party is. That is a difficult one and I think that because of the State Legislature we are stuck with three days where residents are going to have to tolerate fireworks, when they are not permissible to be sold or launched on other days of the year.

Mayor Nelson stated that there is a nag exemption and **Michael Rodriguez, City Attorney** stated that there is a nag exemption for the use of fireworks for agriculture, which is the old loop hole that people use to use to be fireworks, in the State of Florida.

Brenda Barfield stated that in regards to the noise that occurred on December 31st, she has been in her home for twenty-four years and she would like to know what is the statute of decibels, because this was an unusual situation. There was a lot of gun shooting.

Michael Rodriguez, City Attorney stated that the code provides for time averaged sound, so that would be music or other types of ambient noises, from 7:00am to 10:00pm the receiving property, the sound level limit is sixty decibels. Fireworks would fall under impulsive, so from 10:01pm to 6:59am, they are not allowed. But now we have a State Statute that permits people to have fireworks on those three specific days. Firearms and gunshots fall into another grey area, because local government are prohibited from enforcing anything relating to firearms. There are other avenues to enforcing that area.

Commissioner Becker stated that here is a table within Section 38215 that talks about impulsive and impulsive is defined, one of which, is explosives. Anytime after 10:00pm until 7:00am ours says not allowed. So, to the attorney's point, State pre-emption may time our hands, in terms of July Fourth, New Year's Eve, and New Year's Day, but all the other dates, it should be enforceable. **Michael Rodriguez, City Attorney**, stated yes. He is not discouraging law enforcement from enforcing, he is just making everyone aware that it will be difficult to prosecute. **Commissioner Nesta** asked if this can be an anonymous submission and **Michael Rodriguez, City Attorney** stated that the State has prohibited any anonymous tips. On a noise ordinance, because you are dealing with the receiving property, the citation will site 'this is the property that is receiving the noise.'

Sylvester Hall, 3091 Rolling Hills Lane Apopka, FL 32712 stated that he agrees with having some type of ordinance for the noise, but it should be enforced consistently.

- a. **Mayor Nelson** asked if anyone had any questions about any of the item.
 - b. Hearing no additional questions, he asked for a motion to adopt Ordinance No. 2988.
 - c. **Motion by Commissioner Smith** and seconded by **Commissioner Velazquez** to adopt Ordinance No. 2988.
 - d. **Motion carried unanimously**, with Mayor Nelson, and Commissioners Becker, Nesta, Smith, & Velazquez voting aye.
2. Ordinance No. 2980 - First Reading – Small Scale Future Land Use Amendment - 3405 West Ponkan Road
Owner: Phillip and Patricia Simmons
Applicant: P&P Buildcon, LLC
Location: 3405 West Ponkan Road
Project: 9.95 +/- acres
Project Manager: Roxann Read

Roxann Read, Project Manager, stated that both the Development Review Committee and the Planning Commission unanimously recommended approved. The recommendation is to approve it at first reading and hold it over the second reading and adoption on January 18, 2023. **Commissioner Nesta** asked if these will be custom homes and **Ryan with LPG** stated that they will custom homes.

Albert Mckimie, 3603 Golden Gem Rd Apopka, FL asked for clarification on if at any point DR Horton will be involved in any sales of this property. **Ryan with LPG** stated that they are in talks with DR Horton for the purchase for part of their pond, to get a twentieth unit onsite, because we are .05 acres short of that threshold, which is the maximum density of two dwelling units per acre. The property owner adjacent to us sold it to DR Horton and it just closed at the end of December, so we are in talks with them, but as far as DR Horton building homes, that is not the status.

- a. **Mayor Nelson** asked if anyone had any questions about any of the item.
- b. Hearing no additional questions, he asked for a motion to approve Ordinance No. 2980 at first reading and hold it over for second reading and adoption.
- c. **Motion by Commissioner Nesta** and seconded by **Commissioner Smith** to approve Ordinance No. 2980 at first reading and hold it over for second reading and adoption.
- d. **Motion carried unanimously**, with Mayor Nelson, and Commissioners Becker, Nesta, Smith, & Velazquez voting aye.

3. Ordinance No. 2981 - First Reading – Change of Zoning - 3405 West Ponkan Road
Owner: Phillip and Patricia Simmons
Applicant: P&P Buildcon, LLC
Location: 3405 West Ponkan Road
Project: 9.95 +/- acres
Project Manager: Roxann Read

Roxann Read stated that this is the companion rezoning to the case that was just heard, asking for a zoning change from County A1 to City RSF-1B. Both the Development Review Committee and the Planning Commission unanimously recommended approved. The recommendation is to approve it at first reading and hold it over the second reading and adoption on January 18, 2023.

- a. **Mayor Nelson** asked if anyone had any questions about any of the item.
 - b. Hearing no additional questions, he asked for a motion to approve Ordinance No. 2981 at first reading and hold it over for second reading and adoption.
 - c. **Motion by Commissioner Nesta** and seconded by **Commissioner Becker** to approve Ordinance No. 2981 at first reading and hold it over for second reading and adoption.
 - d. **Motion carried unanimously**, with Mayor Nelson, and Commissioners Becker, Nesta, Smith, & Velazquez voting aye.
4. Ordinance No. 2982 - First Reading – Change of Zoning - Strickland Properties
Owner: Timothy Lee Strickland Revocable Trust
Applicant: Hear This Capital, LLC
Location: 310 Conrad Road
Project: 20.7 +/- acres
Project Manager: Roxann Read

Roxann Read stated that that both the Development Review Committee and the Planning Commission unanimously recommended approved. The recommendation is to approve it at first reading and hold it over the second reading and adoption on January 18, 2023.

Commissioner Nesta asked what are the plans for this one and **Roxann Read** stated some type of industrial development is what they were informed up at the Planning Commissioner Meeting. **Alex M., representing the applicant**, stated that they are currently evaluating various options for the site plans, for the property. They do not have an existing site plan yet. Commissioner Nesta asked if this will be owner/user or tenant occupied and **Alex M.** stated that it could be a build to suit; not set plans, but it will be industrial in some capacity. Commissioner Nesta asked if there are wetlands on this property and **Alex M.** stated that there is a small impact on the wetlands to the west. We would deal with those through the water management district.

- a. **Mayor Nelson** asked if anyone had any questions about any of the item.
- b. Hearing no additional questions, he asked for a motion to approve Ordinance No. 2982 at first reading and hold it over for second reading and adoption.

- c. **Motion by Commissioner Smith** and seconded by **Commissioner Nesta** to approve Ordinance No. 2982 at first reading and hold it over for second reading and adoption.
 - d. **Motion carried unanimously**, with Mayor Nelson, and Commissioners Becker, Nesta, Smith, & Velazquez voting aye.
5. Ordinance No. 2983 - First Reading – Change of Zoning - Ward Family Partners
Owner: Ward Family Partners, LLLP
Applicant: Benge Development Corporation Location: 3951 West Kelly Park Road
Project: 17.6 +/- acres
Project Manager: Roxann Read

Roxann Read stated that is proposed zoning is only for the southern part of the parcel. Both the Development Review Committee and the Planning Commission unanimously recommended approved. The recommendation is to approve it at first reading and hold it over the second reading and adoption on January 18, 2023.

Commissioner Nesta stated that this will line up with Golden Gem and asked if this is being joined with another project. **Roxann Read** stated that this project is only for the southern part of the parcel. (map/site plan documentation is available upon request).

Commissioner Nesta asked or clarification of the project in its totality.

Tony Benge, President of Benge Development, gave a brief description of what they are doing using a slideshow presentation (available upon request).

Commissioner Nesta asked about the plans for the road and **Tony Benge** stated that there is a group of major land owners, in the corridor that have been working with a group of engineers at Kenley Horn, to do a master transportation analysis of what is needed.

Commissioner Nesta asked for timelines and **Tony Benge** stated that he believes in 2023 you will see a lot of things being done. Right now, is the behind the scenes things, such as permitting. **Pam Richmond** stated that Kelly Park Rd and the signals on Kelly Park Rd are all under design, right now. She would imagine that it'll take a year to complete.

Tony's project will design the extension north of Golden Gem and the Rochelle Holdings piece will design the extension of Sadler and Effie Rd on the southside. **Commissioner**

Nesta stated that Orange County needs to get involved in a much higher capacity and

Tony Benge stated that Orange County has had a lot of turnover, of key positions, due to retirement and other things, so that is the possible reason for the lack of communication.

Albert Mckimie, 3603 Golden Gem Rd Apopka, FL stated that Jim Hitt stated that there was a maximum number of houses per year, between five and six-hundred homes projected, but looking at this master plans, it looks like a potential development for major one-thousand homes.

Commissioner Becker stated that he should clarify the numbers: Certificates of Occupancy or Approvals. **James Hitt, Community Development Director**, stated that this area is designated for approximately 8,000 homes total, in the KPI. The number of CO's with single-family homes was 382 for all of 2022, townhomes was 96, and we did not have any multi-families for 2022. Commissioner Becker asked how many Co's can we turnout with current staff numbers. James Hitt stated that he could not tell you exactly what that would be, but we are looking at hiring another inspector, because of the influx of the multi-family that is coming online. We have a few inspectors that have different traits and certifications; the regular residential is one of the easier ones to get, then there is the

electrical, plumbing, and mechanical which are a little harder to get. Some of that is more specific to certain types of jobs. **Commissioner Becker** stated that historically speaking, we have come nowhere close to doing 70 or 800 a year and **James Hitt** confirmed no. **Commissioner Becker** then asked if we were to try to get to that number, we would have to increase staff and **James Hitt** confirmed yes. **Commissioner Nesta** stated that he believes Mr. Mckimie is speaking of actual living units, whether it is single-family homes, townhomes, etc. So, there may not be too much from 2022, but if you add it all up there will be a lot in 2023. **Commissioner Becker** stated that he agrees that the backlog is significant and it continues to grow; however, the governor on that is our capacity and the number of housing starts are declining, going into 2023, so market forces will dictate that number, as well. **James Hitt** stated that they have mentioned doing a workshop on the KPI area. He has already started a map that will outline what development has already been approved, how many units there are, etc. That's valuable, because if we have a capacity at a little over 8,000 units, we are already sitting at about 3,500 right now. That is the backlog number. **Commissioner Nesta** asked if we were hiring a building fire inspector. **Mayor Nelson** stated that we have one, we made a switch in roles. **Fire Chief Wylam** stated that this year, the budget only has one, but with the growth, we will be asking for another. **Mayor Nelson** stated that we will also be looking having the fire inspector be a multi-discipline inspector, as well. **James Hitt** stated that according to the Florida Statute, builders can hire their own certified inspectors, to do their own inspections. Some of the larger apartment complexes have already done that. **Commissioner Nesta** asked if we can require that the developers do that and **James Hitt** stated that we suggest it to them, but we still have the final approval. **Commissioner Velazquez** asked for confirmation that multi-dwelling units are required to have a fire inspection done yearly and the confirmation was given: yes. **Albert Mckimie** stated that his question is how many homes do we desire to put through, per year; not how many we can manage. **Commissioner Becker** stated that he is using past trend as a guide and trend would say that we are factoring an output of CO's of around five-hundred. He has no opinion on if that is our desired state, but he would rely on staff to provide that level of insight. **Sylvester Hall** suggested that there be a consultant present when dealing with issues, as such and **James Hitt** stated that they have one.

- a. **Mayor Nelson** asked if anyone had any questions about any of the item.
 - b. Hearing no additional questions, he asked for a motion to approve Ordinance No. 2983 at first reading and hold it over for second reading and adoption.
 - c. **Motion by Commissioner Smith** and seconded by **Commissioner Velazquez** to approve Ordinance No. 2983 at first reading and hold it over for second reading and adoption.
 - d. **Motion carried unanimously**, with Mayor Nelson, and Commissioners Becker, Nesta, Smith, & Velazquez voting aye.
6. Resolution No. 2023-01 - FY22/23 Budget Amendment
Presented by: Blanche Sherman

Blanche Sherman, Finance Director, stated that this is budget amendment number seven in the amount of \$20, 427,101.57. The budget amendment consists of four items:

1. transportation impact fee reserve fund amendment, in the amount of \$975,897.00. This is related to an agreement that was bought to council on November 17th; transportation impact fee credit agreement between the City of Apopka and Errol Rock GE Apopka LLC, PMDW Ventures to upgrade and resurface King Street and Peterson Rd.
2. A sub-recipient agreement that was approved tonight under the consent agenda, for the CRA area. The sidewalk installation improvement project, phase one. The grant is in the amount of \$249,950.00 from Orange County.
3. Additional expenses and repair work that is necessary, as a result of Hurricane Ian. We are estimating that cost to be about \$240,000.00 and we do plan to seek reimbursement from FEMA for those repairs
4. Closing out the physical year end and at this time we need to bring forward, those dollars that related to projects that started in FY '22 continuing into FY '23 in the amount of \$18,961,255.00.

Commissioner Nesta asked if we had a total expenditure that we spent on clean up, in regards to the FEMA funds. **Edward Bass, City Administrator** stated that we do not have it right now, but we will bring it back to you. We are hoping that this is our last budget amendment to cover those cost. As soon as we have that, we will bring it back to council, because that is what we will apply to FEMA for reimbursement.

- a. **Mayor Nelson** asked if anyone had any questions about any of the item.
- b. Hearing no additional questions, he asked for a motion to approve Resolution No. 2023-01.
- c. **Motion by Commissioner Nesta** and seconded by **Commissioner Velazquez** to approve Resolution No. 2023-01.
- d. **Motion carried unanimously**, with Mayor Nelson, and Commissioners Becker, Nesta, Smith, & Velazquez voting aye.

CITY COUNCIL REPORTS

Commissioner Velazquez wished everyone a Happy New Year and commented on the public comment period over the last few months, of City Council Meetings. We keep getting the same issues and concerns and it regards the Fire Department. She would like to have to a goal in which we can bring some resolution to that. She would also like to see the safety committee working again. She would like to start 2023 where we can come and work together. The death of Austin Duran has really brought to the surface, a lot that we must address and fix. We realize that we will not close the chapter as quickly as some would like, but I have a concern that at every City Council meeting I'm getting the same message repeatedly and I'd like to see that come to some conclusion.

Commissioner Becker stated that he agrees with Commissioner Velazquez's comments. If we do not spin the wheel, we will continue to have the same dialogue every meeting and it is not healthy for either party involved. He went on to state that Mr. Hall made a comment earlier and he is right, there are times where there are pieces of business where we need to be held accountable in out decision-making process. I see that as a value add. He would encourage people to come up and challenge us, ask their questions, etc. He encourages the community to come to the Council

Meetings and make their voices known. It makes us a better City and better people for it. Lastly, he stated that he looks forward to honoring Dr. Martin Luther King, Jr in the parade on the 16th and he hopes to see everyone there.

Commissioner Smith stated that he has the same concerns and sentiments in reference to the death of Austin. He stated that it was really a gut feel to hear his girlfriend/fiancé to come and voice her sentiments. We do need to come to some resolve. He stated that during the last Council Meeting, he asked the City Attorney if he agreed with the Fire Chief and his decision, in reference to asking the committee to stand down, but he is not sure he got an answer; however, we need to do whatever is necessary in order to bring this to a close, so that everyone is satisfied with our response and that they feel we are being responsive and listening to their concerns. He went on to ask about an update on the Diversity, Equity, and Inclusion Committee. Lastly, we did set a date on the next annexation meeting. The departments did their homework, as far as data and what it would cost for everything to take place, so I am hoping that at the next meeting we are not focusing on the cost, but more so on the process and how we are going to make it happen.

Commissioner Nesta asked for the name of the company or person who is our consultant on construction projects and how they consult us. **James Hitt** stated Scott Moore is an individual that owns his own company. Mr. Hitt will send him the background information on the larger projects and ask for a synopsis and then they will speak via phone on details of the development.

Commissioner Nesta asked how often do we use him and **James Hitt** stated that he has used him three times, he was just put under contract about a year ago. Commissioner Nesta stated that he had a meeting today in regards to the recycling and Adopt A Road program; he is going to try revamp that program and get it going. We went on to state that the Clear Water later meeting is tomorrow at 3:00pm. In reference to the Fire Department, he had a meeting with them last week and in regards to trailer safety and the training program will be specific to each type of trailer. They also spoke about the Station 4 improvements and discussed having a monthly meeting with the Safety and Training Officers. **Commissioner Smith** stated that he preferred if they came to the Council Meeting so that each Council Member is hearing the same information, at the same time. **Commissioner Nesta** stated that he is okay with that. He also stated that he believes it would be beneficial for a resident that is not an employee of the City be added to the safety committee, to have another point of view. He went on to discuss the importance of infrastructure and having safe roads throughout the City. He is also looking forward to the Dr. Martin Luther King, Jr parade on the 16th, as well. Lastly, he stated that we need the cyclist and pedestrian safety again. We have had two car/bicycle accidents in the last weeks, so clearly there is a need. Commissioner Smith stated that last week there was an accident at the intersection of Keen Rd and Apopka Clarcona where an individual ran through the traffic light and there were two individuals that were pinned in an automobile. He had the opportunity to see the Fire Department use the Jaws of Life to release those two individuals from the vehicle and to watch their professionalism was very rewarding. The Police Department was on board as well, blocking off and directing traffic under the accident was clear.

CITY ADMINISTRATOR'S REPORT

Edward Bass had nothing additional to report.

CITY ATTORNEY'S REPORT

Michael Rodriguez had nothing additional to report.

MAYOR'S REPORT

Mayor Nelson had six items to discuss:

1. Clear Lake Public Meeting – January 5, 2023 at 3:00pm in the Council Chambers
2. Apopka Youth Council Meeting at the Apopka Museum in regards to Black History Month – January 5, 2023 at 5:00pm at the Apopka Museum
3. South Apopka Annexation Community Meeting – Tuesday, January 24, 2023 at 4:00pm – 6:00pm at the John Bridges Center. **Commissioner Nesta** asked if flyers can be created to hand out at the parade on the 16th to let everyone know what there will be a meeting at the John Bridges Center.
4. Diversity, Equity, and Inclusion Committee – We are partnering with the Apopka Chamber for a joint DEI Committees, it will be January 31, 2023 at 1:00pm at the VFW. We will go back and look at several processes and go over the diversity and minority contracting business.
5. Federal Appropriation HR 2617 – the Consolidated Appropriations Act was signed into law on 12/29/2022. Congresswoman Demings got us to \$2.5 million dollars and President Biden signed it into law.
6. The OSCP Technically Training Center, across from Wheatley, will be named the Shirley Sharp-Terrell Building.

ADJOURNMENT

With there being no further business, to discuss, the meeting adjourned at 5:01 p.m.

Bryan Nelson, Mayor

Attest: _____

Victoria Parks, Deputy City Clerk