CITY OF APOPKA

Minutes of the City Council regular meeting held on October 6, 2021 at 1:30 p.m., in the City of Apopka Council Chambers.

PRESENT: Mayor Bryan Nelson
Commissioner Doug Bankson
Commissioner Kyle Becker
Commissioner Alexander Smith
Commissioner Diane Velazquez
City Administrator Edward Bass
City Attorney Michael Rodriguez

PRESS PRESENT: John Peery – The Apopka Chief

INVOCATION/PLEDGE – Commissioner Bankson provided the invocation, led in the Pledge of Allegiance and provided the fact of the day as follows: Babe Ruth sets a World Series record on October 6, 1926. He said Yankee slugger Babe Ruth hits a record three homers against the St. Louis Cardinals in the fourth game of the World Series. The Yankees won the game 10-5, but despite Ruth's unprecedented performance, they lost the championship in the seventh game. In 1928, in the fourth game of another Yankees-Cardinals World Series, Ruth tied his own record, knocking three more pitches out of the same park.

APPROVAL OF MINUTES

1. Regular Council Meeting Minutes of September 8, 2021
2. First Budget Hearing Meeting Minutes of September 8, 2021
3. Final Budget Hearing Meeting Minutes of September 15, 2021

   Mayor Nelson said everyone should have a copy of the revised minutes and asked if anyone had any other changes or questions regarding. Hearing none, he asked for a motion to approve the three (3) sets of minutes, as read.

   MOTION by Commissioner Velazquez and seconded by Commissioner Bankson, to approve the three (3) sets of minutes, as read. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith and Velazquez voting aye.

PROCLAMATION

1. West Orange Trail Stakeholder Task Force
   Presented by: Mayor Nelson

Mayor Nelson said he's been working with Joe Dunn on this for about 6 years and said we've even done a couple of rides along Lake Apopka. He said what a passion he has for Lake Apopka and the trails around Apopka. He said we have a proclamation that we'd like to read and then we'll have him come up and say a few words and get a picture. He read the proclamation highlighting the West Orange Trail, which is the Crown Jewel of Orange County and is essential to the well being of our community and critical to the physical health and mental well being of our community.

Joe Dunn, President of Friends of Lake Apopka, said as the Mayor said, we've been working closely with the City of Apopka for the last 6 years of so. He said the West Orange Trail is an incredibly important trail not only because it's a backbone within West Orange County and said as a stand-alone, it is incredibly important but it's also constantly ranked in the top 10 trails in the State of Florida and is a key element in the Coast to Coast connector that goes from Titusville to Pinellas and will be a key element in the forthcoming Lake Apopka Loop Trail. He said Orange County Parks and Rec is in the process of connecting the West Orange Trail to Magnolia Park and Mayor Nelson helped initiate that when he was Commissioner Nelson. He said last year on the West side, there's a road section from Green Mountain Scenic Bypass to the Hancock Road Trail and we were able to get the State Legislature to put up $2 million dollars for Lake County to start connecting that. He said when that happens, there'll be a 40-mile loop around Lake Apopka and said the cyclists from all over the Country will come here to ride this 40-mile loop, especially as part of the Coast to Coast connector. He said as he's been riding the WOT for the last 26 years, it went from NIMBY (not in my back yard) to everyone wanting to live along the trail. He said around every corner, there seems to be a new development and he noticed that the developments are getting right up on the trail and we were losing the canopy and rural character. He said we developed a three-step task force. He said first, we partnered with Orange County Parks and Rec as they own the trail; with the business community including the Apopka Area Chamber; West Orange Chamber; and with the municipal entities that all abut the trail and said let's agree to protect the rural character, which is what we're doing here now. He said next we get the Planners in a room and discuss standards when a developer wants to build on the trail. He said the last step is to plant new tress through local nurseries and man power. He thanked Council for their support and said the bottom line is that we protect this Crown Jewell and do it in a formal way by collaborating with municipalities and the business community as well as social organizations.

Mayor Nelson said he had a meeting last week with Leslie Campione from Lake County and Commissioner Moore from Orange County and said that Lake County put up the money to finish the Lake County side of the West Orange Trail to get it to the Orange County line. He said once that's complete, we'll have the trail from Oakland all the way to Neighborhood Lakes in Lake County and said this is an exciting time.

AGENDA REVIEW

Edward Bass said there are no changes to the Agenda.

PUBLIC COMMENT PERIOD

Bill Worthington, 717 Trailwood Drive, Apopka, FL., said he didn't plan on speaking but said he has a big concern about the road situation at Wekiva Springs Road and 436. He said a few weeks ago he read in the Apopka Chief, that there were plans to open the recently built median strip that runs North from 436 along Wekiva Springs Road and add a traffic light. He said that median strip was put in by the County, a year and a half ago to help alleviate traffic problems there. He said it helped some but we still have backups at peak traffic times. He said he's been here for 48 years and travels this road frequently and said at peak traffic times heading southbound, you'll back up in the left turn lane for two traffic cycles. He said the same thing applies to the northbound side at Piedmont Wekiva. He said we have tremendous traffic problems around here and said to open the median and put a traffic light in for 1 business, will lead to monumental traffic problems in the future.

Pam Richmond, Transportation Planner, said Orange County decided to close this a few years ago and said she agrees there is a problem there but said the new traffic signal will function in an unusual way and said it's very innovative. She explained that this will turn this into a right-in, right-out, left-out. She said the signal at 436 and Piedmont Wekiva is 190 seconds and said during that 190 seconds, the new signal will cycle 15 seconds twice and is coordinated well with the 190 second signal at the corner of 436 and Piedmont Wekiva. She said what you need to understand is that signal belongs to DOT and is in Orange County's maintenance and DOT dictates what the timing is. She said they've become more flexible and said what we need to do is to let the signal get installed and at that time, if we need to tweak the cycle, we can do that to one or both signals. She said she's hoping that this will alleviate some of the problems that your describing. She said Orange County put a qualifier in there and if this doesn't work, for some reason, at the developer's expense, they will remove the signal and go back to having it closed off. She said this is an attempt to get access for the people that come south and want to go back up north and should not affect anything at the 436 and Piedmont Wekiva intersection.

Gary McSweeney, 1629 Spinfisher Drive, Apopka, FL., said his comment is from the presentation the Mayor put on with Dennis Armstrong and said he was very informative and went through chronologically, the 2-year process it took them to get through the golf course. He said this was fascinating and said that those of us at RSR can relate to the process. He said there's was a little different than ours in that they went through foreclosure, bankruptcy and then a purchase. He said the two take a ways he provided at the end, was 1) choose the best attorneys you can and said the attorney for RSR is Kurt Ardaman and has helped us orchestrate this process; and 2) own the land and said if you don't own the land, you can 't control the land and you're subject to whatever is done with the land. He thanked the Mayor for putting this together who said the video and the notes are on the City website. He said he also wanted to provide the status of the RSR HOA vote, which many of you have heard by now. He said this vote was put together pursuant to the Florida Statutes and a quorum of the residents was represented. He said this vote was to propose to sell the Kelly Park land for the acquisition of the golf course lands. He said 30 days ago we established a membership vote by Statute and on October 4th, the 31st day, we set the meeting up and we met at the Amphitheater to hold our vote and the vote concluded with a quorum of 694 people from the community voting and of those 571 were for the sale and 123 no votes in opposition with a percentage of 82% for and 18% against.

Kurt Ardamon, Fishback, Dominick Law Firm, 1947 Lee Road, Winter Park, FL., said he's here to represent the RSR HOA and said as you all know, this has been a long process and said there's ongoing negotiations with how this is going to work. He said he does not represent the golf group and said the golf group is represented by an attorney named, Chad Barton. He said the golf group and the HOA are finalizing a 3-way agreement between the HOA, the golf group and the City for the City Council to consider. He said the RSR HOA will pay the City, approximately $2.5 million dollars for the roughly 32-acre Harmon Road property. He said the City would then convey the Harmon Road property to the golf group and said simultaneously, the golf group would convey the 319 acre defunked golf course to the HOA. He said that is the essence and said its 2 real estate transactions; one between the City and the golf group and one between the golf group and the HOA. He said this is a pretty simplistic process. He said your City Attorney has not yet seen this as we haven't provided this to him or to you and said he has been in communications with the golf groups attorney as recently as yesterday and this morning and said that agreement will be forthcoming for your consideration. He said you may not agree with it and expects that the City Attorney and you all will have some suggested changes and said you may say you don't like it but said we will get it to you. He said it's important that you all know where we're at in this process as so that you don't have misinformation. He said Gary McSweeney just mentioned the 82% + vote by the residents that were there, and by proxy for the sale of the 51 acre Kelly Park Road property to a third developer. He said that also will be a contingency for the overall swap worth but I didn't want to confuse you as that sale will be used to pay the City. He said other item is the communications tower and said that Chad Barton sent Gary McSweeney an email proposing this use and the City's consideration and we'll provide you with a copy of this. He read an excerpt from the email as follows: "as the new owner for the Harmon Road property", the golf group is willing to allow the City, continued use to the Communications Tower…he went on to read the email and said he has a copy of that email to hand out to the Commissioners.

Commissioner Becker said what you just described, doesn't reconcile with what Mr. McSweeney just said. He said in your comments, you didn't mention the Kelly Park Road property. He said this is conveniently the same that was presented at the Amphitheater on April 27th. He said there seem to be new deals being brought up to the conversation and said this is unfair to this Council to have these things presented in this manner. He said he's receiving emails stating that "the majority of the people who returned their proxy's support the acquisition of this deal that the decisions and actions that you make do have consequences". He said this has a threatening tone and said he's curious as to how we keep getting to this phase yet we have no information.

Kurt said that's why the HOA asked him to come and said the golf group and the HOA are crafting the 3 party agreement.

Commissioner Velazquez said we've been going around and around on this three way deal yet the Mayor has said he's not involved in the three way deal. She said this has never been brought to us in a discussion or a workshop but has only been discussed in the Mayors report. She said in this email, Chad Barton is saying that "as the new owner of Harmon Road property", and said that he has already made himself the Owner of the Harmon Road property so she's going to defer to the City Attorney on this and does not want to continue this discussion.

Michael said there is no official offer for the purchase of the Harmon property that is being brought before this Council. He said as Mr. Ardamon stated, the City has NOT been a party to the three way agreement that the golf group and the HOA have been drafting. He said we have not seen this agreement and said he does not like the sound of hearing a tri-party agreement where the third party (the City) has not been involved in the drafting, or review of such a document. He said if there was an offer to purchase the property at Harmon Road, this Council could then weigh the information and discuss and bring to a vote. He said there is no official action to be taken at this meeting and there has been nothing presented for any action to be taken at the next meeting.

Discussion ensued as to past land swap discussions and this proposed tri-party agreement.

Commissioner Becker went on the record as saying that both times he was asked to participate in a workshop, he has agreed.

Mayor Nelson said we will do the will of the Council. He said we can schedule a workshop to further discuss this item. He said we can also bring a motion at the next meeting that we're NOT going to sell Harmon Road property to the HOA.

Rob Hippler said he prepared a brief overview of the costs that are involved in moving the tower to which Commissioner Becker said he'd rather get the data first and have him come back and do a presentation at an upcoming meeting to which Rob said he will send the presentation to each of the Commissioners.

CONSENT (Action Item)

1. Authorize the Chief of Police to accept the FDOT funding grants for traffic safety and enforcement efforts.
2. Authorize the Police Department to expense funds from the State Law Enforcement Fund for the purchase of two Police K9s.
3. Authorize the issuance of evaluated and sole source memos.

   Mayor Nelson asked if anyone needed to pull any of the items or had any questions. Hearing none, he asked for a motion to approve the three (3) items on consent.

   MOTION by Commissioner Bankson and seconded by Commissioner Smith, to approve the three (3) items on consent. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

BUSINESS (Action Item)

1. Community Emergency Response Team (CERT) Grant: Acceptance & Agreement
   Presented by: Chief Wylam

   Sean Wylam, Fire Chief said today he's presenting to you a grant opportunity we received from Volunteer Florida. The City of Apopka was awarded a $5,000 Community Emergency Response Team (CERT) grant from Volunteer Florida. CERT is a training program that prepares volunteer residents to help their family and neighbors in the event of a disaster in their community. Through CERT, citizens learn disaster preparedness and receive training in basic disaster response skills such as fire safety, light search and rescue, and disaster medical operations. With this training residents can provide critical support in their local communities by giving immediate assistance to victims before emergency first responders arrive on scene. He said CERT volunteers also support the community year-round by participating in community preparedness outreach activities and distributing materials on disaster preparedness and education. The grant requires a 1:1 match requirement and can be achieved through volunteer hours and staff time.

   Commissioner Velazquez asked how we select our volunteers to which Chief Wylam said this is a FEMA sponsored grant so we're going to work with HR to begin the application process and vet the candidates.

   Mayor Nelson asked for a motion to Accept Volunteer Florida Community Emergency Response Team (CERT) Grant.

   MOTION by Commissioner Bankson and seconded by Commissioner Velazquez to Accept Volunteer Florida Community Emergency Response Team (CERT) Grant. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

2. Small Cities Community Development Block Grant: Acceptance & Agreement
   Presented by: Dr. Shakenya Harris-Jackson

   Gladymir Ortega, Finance Director presented on behalf of Dr. Shakenya Harris-Jackson and said the City of Apopka was awarded a $750,000 CDBG Housing Assistance grant from the State of Florida Department of Economic Opportunity. The City match requirement is $50,000. The total project budget is $800,000, and said the grant covers 14A Housing, including Rehab/Demolition & Replacement; Temporary Relocation. She provided the graphic as well as the priority matrix outlining the parameters.

   She said the funds will help rehabilitate owner-occupied homes in need of repair. Priority will be given to applicants in the following order:

   1. Very low-income households (30% of Area Median Income or less) will be given priority over low income households (30.01% to 50% of Area Median Income) and moderate-income households (50.01% to 80% of Area Median Income).

2. Low income households (30.01% to 50.00% of Area Median Income) will be given priority over moderate income households (50.01 to 80% of Area Median Income).
3. Disabled and/or handicapped head of household.
4. Head of Household is over 62 years of age.
5. Households with large families (five or more).
6. Households with small families (four or less).

The established Housing Assistance Plan will be used as a guide for the Citizen Advisory Task Force.

Commissioner Velazquez asked how many homes we have in the CRA District to which Edward said he will confirm and get back to her.

Commissioner Smith asked how this will be publicized so that individuals can know whether they are eligible to which Edward said there are advertising requirements that are handed down with the Grant funding and we will be following those requirements.

Mayor Nelson asked for a motion to Accept the Small Cities Community Block Grant (CDBG) Acceptance and Agreement.

MOTION by Commissioner Smith and seconded by Commissioner Velazquez to Accept the Small Cities Community Block Grant (CDBG) Acceptance and Agreement. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

3. Major Development Plan - EPG 700 Hermit Smith Road
Owner: Chris Haase - Environmental Products Group
Applicant: Gerdom Engineering c/o Andrew Gerdom
Location: 700 Hermit Smith Road
Project Size: 7.37 +/- acres
Project Manager: Allyson Wiliams

Allyson Williams said the subject property is located w at 700 Hermit Smith Road and said the Major Development Plan details and development of infrastructure totaling up to 42,111 square feet on 7.37 acres. She said the , EPG 700 Hermit Smith Road – Major Development Plan (MDP) proposes the development of an industrial warehouse and office space on approximately 7 acres. The building consists of 25,450 square feet of warehouse storage area and 16,661 of office area. The required parking spaces for the site is 80 while the applicant proposes 83 spaces with 4 accessible spaces and the minimum setbacks applicable to this project are 10’ on the front; 10’ on the rear; and 10’ on the side and provided an overview of their landscape plan.

Mayor Nelson asked for a motion to approve the Major Development Plan - EPG 700 Hermit Smith Road

MOTION by Commissioner Bankson and seconded by Commissioner Becker to approve the Major Development Plan - EPG 700 Hermit Smith Road. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

4. Major Development Plan - Apex Apopka
   Owner: Binion Road, LLC
   Applicant: Chris Leppert, P.E., Kimley Horn and Associates
   Location: North of Harmon Road and east of S. Binion Road
   Project: 18.98 acres +/- (284 multifamily units)
   Project Manager: Phil Martinez

   Phil Martinez, Planner II said the applicant has submitted a Major Development Plan for the Apex Apopka project, which consists of 284 multifamily units and is located north of Harmon Road and east of S. Binion Road. The future land use designation is Mixed Use, which allows up to 15 dwelling units per acre, and the zoning is MU-ES-GT (Mixed-Use East Shore-Gateway Subdistrict). The applicant is proposing a density of 15 dwelling units per acre. Pursuant to Land Development Code Section 2.5.5 – Relief. B. Administrative Adjustment, a maximum adjustment of 10 percent of the maximum allowable height of the building may be issued. The applicant requested an administrative adjustment to construct four-story apartments, where the four-story buildings require a lesser building footprint than three-story apartments, thus creating more open space. An administrative adjustment was issued to the subject properties to allow a maximum building height of 49 feet and 5 inches. A minimum living area of 750 square feet is required in the MU-ES-GT zoning district. The Major Development Plan proposes a maximum building height of 49 feet and 5 inches and a minimum living area of 750 square feet.

   Commissioner Smith said you stated that there are right and left turn lanes proposed to which Phil confirmed. He then asked about all of the development taking place on Binion Road and asked if there will be right of ways available.

   Pam Richmond said Commissioner, Binion Road is a County Road and is not planned or programmed for improvements. She said as you know we're taking our $20-$30 million dollars of resources and putting them into Ocoee-Apopka Road. what we're doing is making sure we have good access and access management in the form of turn lanes and said she's optimistic that what we're doing with Ocoee-Apopka Road will help with any issues that may come up on Binion. She said we've done a study and said we've been negotiating with Orange County to have the speed limit reduced so that as the developments come in, people are already used to driving slower.

   Commissioner Becker asked if she would put more emphasis North of the 429 overpass for Binion anyhow as we're going to be limited to the amount of development that goes South. He said we need to focus on the area North of Boy Scout road and smoothing out some of those dangerous curves.

Mayor Nelson asked for a motion to approve the Major Development Plan - Apex Apopka.

MOTION by Commissioner Becker and seconded by Commissioner Smith to approve the Major Development Plan - Apex Apopka. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

5. Major Development Plan – Floridian Town Center Phase I
Owner: Collier Benge Land Joint Venture LLC
Applicant: John Townsend, P.E., Donald W. MacIntosh Associates, Inc.
Location: North of W. Orange Blossom Trail and west of SR 429
Project: 43.6 +/- acres (Phase I acreage – 300 multifamily units)
Project Manager: Phil Martinez

Phil Martinez, Planner II, said the applicant is requesting the development of a multi-family complex comprising of 300 dwelling units and infrastructure servicing a proposed mixed- use development, consisting of an estimated 73.93 acres. The subject area is located north of US 441 and west of State Route 429. Development is subject to the standards and conditions set forth in PD Ordinance No. 2840 and the Floridian Town Center Master Development Agreement, Transportation Impact Fee Credit Agreement, and Utility Impact Fee Credit Agreement, which were adopted on August 18, 2021. The Major Development Plan is consistent with Ordinance No. 2840 that was approved by the City Council on August 18, 2021. and proposes mass grading the entire site, developing apartments on Parcel 4, constructing associated utilities, and developing portions of the public rights-of-way, with associated utility improvements. Future developments on the other parcels will require a separate development plan review.

Mayor Nelson asked if anyone had any questions or if anyone from the public wants to speak on this item. Hearing none, he asked for a motion to approve the Major Development Plan – Floridian Town Center Phase I.

MOTION by Commissioner Bankson and seconded by Commissioner Velazquez to approve the Major Development Plan for the Floridian Town Center, Phase I. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

6. Major Development Plan – Northstar Logistics Center
Owner: CLPF Cadence Northstar, LLC
Applicant: Florida Engineering Group, Inc., Sam Sebaali, P.E.
Location: North of Ocoee Apopka Road and East of S.R. 451
Project: 55.19 +/- acres (761,240 sq. ft. Warehousing)
Project Manager: Phil Martinez

Phil Martinez said the applicant has submitted a Major Development Plan for an industrial warehouse complex, proposed to be constructed in two phases, with 5 warehouse buildings. The 5 warehouse buildings total 761,240 square feet in area. The subject properties are located north of Ocoee Apopka Road and east of S.R. 451 and are approximately 55.19 acres in size. The site is designed in accordance with the requirements of the Land Development Code.

Pam Richmond said she would like to talk about the Transportation Impact Fee Credit Agreement. She said a Traffic Impact Analysis (TIA) was completed on this project which assessed the impacts on the transportation facilities within one mile of the site. The project is anticipated to generate 1,066 daily trips, and of those trips, 76 are projected to occur during the PM Peak Hour. The following roadway segments were analyzed for capacity in the study: Ocoee Apopka Road: from Keene Road to Boy Scout Road, from Boy Scout Road to Bradshaw Road, from Bradshaw Road to Central Avenue, Boy Scout Road: from Binion Road to Ocoee Apopka Road, and Marden Road: from Ocoee Apopka Road to Keene Road. The roadway segments analysis demonstrates that the roadway segments are operating within their adopted capacities under the existing and buildout conditions.

Commissioner Becker asked on the design, prior to the 4-laning, the turn lanes will be incorporated into the initial design to which Pam stated that they need the signal in place before they open. He then asked Michael a question about the transportation improvements and asked for clarification.

Commissioner Smith asked if they're already started clearing the land for this project.

Mayor Nelson asked if anyone had any questions or if anyone from the Public wants to speak on this item. Hearing none, he asked for a motion to approve Major Development Plan – Northstar Logistics Center.

MOTION by Commissioner Bankson and seconded by Commissioner Smith to approve the Major Development Plan Northstar Logistics Center. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

7. Approve the CLPF Cadence Northstar LLC Transportation Impact Fee Credit Agreement
   Presented by: Pam Richmond

Mayor Nelson then asked if anyone had any questions or if anyone from the Public wants to speak on this item. Hearing none, he asked for a motion to approve the CLPF Cadence Northstar LLC Transportation Impact Fee Credit Agreement.

MOTION by Commissioner Bankson and seconded by Commissioner Velazquez to approve the CLPF Cadence Northstar LLC Transportation Impact Fee Credit Agreement. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

PUBLIC HEARINGS/ORDINANCES/RESOLUTION (Action Item)

1. Ordinance No. 2818 – Second Reading – Comprehensive Plan – Large Scale Future Land Use Amendment
   From: High Density Residential-15 (Max. 15DU/AC)
   To: High Density Residential-25 (Max. 25 DU/AC)
   Owner: Francis X. Heidrich, Jr. and Cathy Tolbert Campbell
   Applicant: First Team Commercial, LLC
   Location: 2302 Ocoee-Apopka Road
   Project: 21.56 +/- acres (14.08 +/- developable acres)
   Project Manager: Bobby Howell

   Mayor Nelson asked if there have been any changes since the first reading to which Bobby Howell advised there were none. He then asked if anyone had any questions or if anyone from the public wished to speak on this item. Hearing none, he asked for a motion to adopt Ordinance No. 2818.

   MOTION by Commissioner Bankson and seconded by Commissioner Smith to adopt Ordinance No. 2818. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker & Velazquez voting aye.

2. Ordinance No. 2872 – First Reading – Change of Zoning and approval of PD Master Plan/Major Development Plan – 2302 Ocoee Apopka Road
   From: (T) Transitional
   To: PD (Planned Development)
   Owner: Francis X Heidrich, Jr. and Cathy Tolbert Campbell
   Applicant: First Team Commercial, LLC
   Location: 2302 Ocoee Apopka Road
   Project: 21.56 +/- acres (14.08 +/- developable acres)
   Presented by: Bobby Howell & Pam Richmond

   Bobby Howell, Planning Manager, said the subject property is approximately 21.56 acres in size and is zoned Transitional (T) and currently has a future land use designation of HDR-15, which permits a maximum of 15 dwelling units per acre. He said a large-scale future land use amendment will come before City Council and if adopted, will change the future land use designation of the property to HDR-25, which permits a maximum density of 25 dwelling units per acre. He stated that permitted uses in the PD are limited to Multi-Family Residential uses and prohibited uses are all uses other than Multi-Family Residential uses. He said the subject property is located on the northwest corner of the intersection of Keene Road and Ocoee-Apopka Road, specifically at 2302 Ocoee- Apopka Road. He said a total of eight apartment buildings with four, three story, and 4 four story buildings are provided. Access to the site is proposed via full access located on Ocoee-Apopka Road. He said the proposed change of zoning to PD (Planned Development) I s being requested by the prospective developer, who proposes to construct a 304-unit apartment complex in a total of eight buildings. Permitted uses in the PD is limited to Multi-Family Residential uses. Prohibited uses are all uses other than Multi-Family Residential uses. The applicant is requesting a rezoning of the property to PD instead of a conventional zoning district to implement the HDR-25 Future Land Use Designation on the property, which is not compatible with any standard zoning districts in the City and requires a Planned Development (PD) to be implemented.

Pam Richmond said this is the second Transportation Impact Fee agreement and said she's not asking for you to approve this today as it will be back before you on the second reading of this Ordinance. She said what this developer has proposed was to design the segment of Ocoee-Apopka Road just south of Keene Road to where the Ocoee-Apopka Road is already 4-laned. She said they propose to donate 30' of ROW and will install a signal at the intersection of Keene and Ocoee-Apopka Road.

Commissioner Becker said he met with the team and said for this project, the max was 304 and said it's gone down and said the roadway needs help and this developer is working on this and said appreciates this.

Commissioner Smith said we appreciate what the developer is doing and said this road is one of his pet peeves and said we've come a long way to which Pam stated yes, we're getting the better part of this deal.

Commissioner Velazquez congratulated Pam and said she drives a hard bargain and said she pushes to make sure that the impact of their products impacts our overall infrastructure.

Commissioner Bankson he echoes that and said full disclosure, he spoke with him as well and appreciates the quality of the product.

Mayor Nelson asked if anyone had any questions or if anyone from the Public wants to speak on this item. Hearing none, he asked for a motion to approve Ordinance No. 2872 at first reading and hold over for second reading and adoption.

MOTION by Commissioner Bankson and seconded by Commissioner Smith to approve Ordinance No. 2872 at first reading and hold over for second reading and adoption. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

3. Ordinance No. 2849 – Second Reading – Change of Zoning – Marden Road
   From: Residential Multi Family (RMF), Community Commercial (C-C) and Transitional (T)
   To: Planned Development (PD)
   Owner: Emerson Point Phase II, LLC, c/o Mary L. Demetree
   Applicant: M/I Homes of Florida c/o Ricardo Diaz and Appian Engineering c/o Luke M. Classon, P.E.

Location: 1801 Marden Road, 1890 and 1900 S Hawthorne Avenue
Project: 69.65 +/- acres, 225 SFR and townhomes
Project Manager: Allyson Williams

Staff and the Applicant are requesting continuance of the second reading and adoption of Ordinance No. 2849 to a date certain of November 3, 2021 to allow for additional time to draft the Planned Development Agreement.

Mayor Nelson asked if anyone had any questions or if anyone from the public wished to speak on this item. Hearing none, he asked for a motion to approve a continuance of the second reading and adoption of Ordinance No. 2849 to a date certain of November 3, 2021.

MOTION by Commissioner Velazquez and seconded by Commissioner Smith to approve the continuance of the second reading and adoption of Ordinance No. 2849 to a date certain of November 3, 2021. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker & Velazquez voting aye.

4. Ordinance No. 2868 - First Reading - Change of Zoning – Northwest Church
   From: PD (Planned Development District)
   To: RSF-1B (Residential Single Family District – Large Lot)
   Owner/Applicant: Directions Fellowship, Inc.
   Location: South of Schopke Road and east of Plymouth Sorrento Road
   Project: 14.7 +/- acres
   Project Manager: Phil Martinez

Phil Martinez said the applicant is requesting a rezoning from PD to RSF-1B for approximately 14.7 acres. He said the subject property was annexed into the City on September 3, 1997 and December 16, 1998 by Ordinance Numbers 1104 and 1195, respectively. The subject property is approximately 14.7 acres in total and a manufactured home is located on one parcel. He said the proposed RSF-1B zoning is compatible with the property due to the RSF-1B zoning being found in the vicinity, along with subdivisions that are developed in a manner similar to the standards of the RSF-1B zoning and said the applicant has expressed interest in developing a church on the subject property. A church requires a Special Exception in the proposed RSF-1B zoning. Upon approval of the rezoning, the applicant will apply for a Special Exception to permit the church use on the property. The existing PD Ordinance permits 47 single-family homes, and does not permit places of worship. In the event the place of worship use is not developed on the subject property, the RSF-1B zoning designation will permit the development of single-family residential units with a minimum lot width of 75-feet.

Commissioner Becker asked for clarification as to the reason for the zoning change as both zonings will require a special exception for them to use as intended.

Phil said the PD as written does not permit places of worship, which is the reason for the rezone.

Commissioner Bankson said he knows the founder and said it's going to be a great benefit to our community and said they're a great group.

Mayor Nelson asked if anyone had any questions or if anyone from the Public wants to speak on this item. Hearing none, he asked for a motion to approve Ordinance No. 2868 at first reading and hold over for second reading and adoption.

MOTION by Commissioner Bankson and seconded by Commissioner Velazquez to approve Ordinance No. 2868 at first reading and hold over for second reading and adoption. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

5. Ordinance No. 2870 – First Reading - Comprehensive Plan – Small Scale – Future Land Use Amendment – North Orange Animal Hospital
   From: "County" Low Medium Density Residential
   To: "City" Commercial (.25 FAR)
   Owner/Applicant: Lloyd B. Bearden
   Location: South of West Orange Blossom Trail and west of Lake Doe Boulevard
   Project: 2.3 +/- acres
   Project Manager: Allyson Williams

   Allyson Williams, Planner I, said the proposed small scale Future Land Use designation of Commercial is compatible with the surrounding properties due to the parcels with a Future Land Use designation of Commercial being located in the vicinity. This application is being processed simultaneously with an application to rezone the subject property from County A-1 (Citrus Rural) District to C-C (Community Commercial) District.

   Mayor Nelson asked if anyone had any questions or if anyone from the Public wants to speak on this item. Hearing none, he asked for a motion to approve Ordinance No. 2870 at first reading and hold over for second reading and adoption.

   MOTION by Commissioner Velazquez and seconded by Commissioner Becker to approve Ordinance No. 2870 at first reading and hold over for second reading and adoption. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

6. Ordinance No. 2869 – First Reading – Change of Zoning – North Orange Animal Hospital
   From: County A-1 (Citrus Rural) District
   To: C-C (Community Commercial) District
   Owner: Lloyd B. Bearden
   Location: 1424 and 1432 W. Orange Blossom Trail

Project: 2.3 +/- acres
Project Manager: Allyson Williams

Allyson Williams said the subject properties consist of approximately 2.3 acres and contains a veterinary clinic. The proposed C-C (Community Commercial) zoning is compatible with the properties due to the C-C zoning being found in the vicinity. She said the applicant would like to expand his veterinary clinic. The properties are also undergoing a future land use amendment. The proposed C-C zoning district is consistent with the proposed Future Land Use Designation of Commercial (0.25 FAR).

Mayor Nelson asked if anyone had any questions or if anyone from the Public wants to speak on this item. Hearing none, he asked for a motion to approve Ordinance No. 2869 at first reading and hold over for second reading and adoption.

MOTION by Commissioner Smith and seconded by Commissioner Velazquez to approve Ordinance No. 2869 at first reading and hold over for second reading and adoption. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

7. Ordinance No. 2871 – First Reading – Change of Zoning – 1506 Rock Springs Road
From: T (Transitional) District
To: C-COR (Corridor Commercial District)
Owner/Applicant: Mary F. Reid Estate c/o Jonathan Huels
Location: North of E. Welch Road and west of Rock Springs Road
Project: 3.99 +/- acres
Project Manager: Allyson Williams

Allison Williams said the subject property is located at 1506 Rock Springs Road and said was annexed into the City on March 6, 2019 by Ordinance No. 2713. She said the request is to rezone a 3.8-acre property from T to C-COR and said the property is approximately 3.99 acres in total and there is a single-family detached home is currently on the property. The proposed C-COR zoning is compatible with the property as the purpose of this zoning designation is to "provide lands that accommodate a moderate range of primarily commercial uses along commercial corridors, in ways that support infill and redevelopment." The applicant is intending to develop a gas station, medical office and coffee shop on the subject property.

Mayor Nelson said Commissioner Moore is here and said the number he heard was that there was $1 million dollars to move the Duke Power Pole to be moved back the 10' that we've asked the applicant to donate to the City. He said that $1 million-dollar expenditure is an agreement that Duke has with the County and it won't cost the County any money and said thank you County for owning Rock Springs Road from Welch Road going north and said this was interesting.

Jonathan Huels, Lowndes Law Firm, 215 N. Eola Drive, Orlando, FL said today is the first reading of the map change and we'll be submitting a site plan with detail so you have been working with Pam and the Planning staff and said we've participated with calls with County Transportation folks so we can coordinate what our accesses will look like.

He said we'll need to get the driveway permits from the County before this project is developed and as to the dedication of the 12' and that will be coordinated in conjunction with the site plan.

Commissioner Velazquez said for disclosure, she did speak with Johnathan prior to this meeting and said she's happy we're doing something in that corner.

Commissioner Becker said he also had a chance to meet with Mr. Huels and said the site plan will be key for this development. He said this has to be a concerted effort to get this right.

Christine Moore, Orange County Commissioner said that this is great news and said that she and Mayor Nelson sit on the board for MetroPlan and said this area is a big subject of the study, which is more significant than just this intersection and said as you know, this has a years long project in trying to get this intersection improved. She said Orange County staff has been actively in conversation with Johnathan and his developer and said you'll see there will be a lot of improvements in the area.

Mayor Nelson asked if anyone had any questions or if anyone from the Public wants to speak on this item. Hearing none, he asked for a motion to approve Ordinance No. 2871 at first reading and hold over for second reading and adoption.

MOTION by Commissioner Bankson and seconded by Commissioner Velazquez to approve Ordinance No. 2871 at first reading and hold over for second reading and adoption. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

8. Ordinance No. 2873 - First Reading - Authorize transmittal to the Florida Department of Economic Opportunity the new Property Rights Element into the Comprehensive Plan in accordance with Chapter 2021-195 Laws of Florida - Florida Statutes. Required by F.S. to protect private property rights in local decision-making.
   Presented by: Bobby Howell

   Bobby Howell said this is a mandated requirement for our Comprehensive Plan, from the State Legislature to adopt a Property Rights Element and said without it we can no longer adopt Large Scale Future Land Use Amendments. After recommendation from the Planning Commission, the City Council votes to transmit the amendment to the Florida Department of Economic Opportunity and other State agencies for a determination of consistency with State planning policies. Following this, the amendment is subsequently scheduled for an adoption hearing before the City Commission. In the recent session, the Florida Legislature passed legislation which requires all local governments adopt a "Property Rights Element" into their respective Comprehensive Plans. The purpose of the Property Rights Element is to require the City of Apopka to consider certain private property rights in its decision-making process. He said new law amends various sections of the Florida Statutes related to local government regulation of land requiring each local government to adopt a Property Rights Element into their comprehensive plan. Inclusion of the Property Rights Element is intended to protect private property rights and to ensure they are considered in local decision-making.

Mayor Nelson asked if anyone had any questions or if anyone from the Public wants to speak on this item. Hearing none, he asked for a motion to approve Ordinance No. 2873 at first reading and hold over for second reading and adoption following transmission to the Florida Department of Economic Opportunity.

MOTION by Commissioner Smith and seconded by Commissioner Becker to approve Ordinance No. 2873 at first reading and hold over for second reading and adoption following transmission to the Florida State DEO. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

9. Ordinance No. 2881 - First Reading - Amend the strict restriction of domesticated animals in City Parks
Presented by: Brian Forman

Brian Forman, Recreation Director said this is a request to amend Chapter 46-8 of the Code of Ordinances, regarding the strict restriction of domesticated animals in parks, and adjusting the specific terminology to accurately depict the Parks and Recreation Department where appropriate.

Mayor Nelson asked if anyone had any questions or if anyone from the Public wants to speak on this item. Hearing none, he asked for a motion to approve Ordinance No. 2881 at first reading and hold over for second reading and adoption.

MOTION by Commissioner Velazquez and seconded by Commissioner Smith to approve Ordinance No. 2881 at first reading and hold over for second reading and adoption. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

10. Ordinance No. 2883 - First Reading - Amend Alcohol approval procedures for events on City property.
Presented by: Brian Forman

Brian Forman, Recreation Director said this is a request to amend Chapter 6 of the Code of Ordinances to amend Alcohol approval procedures for events on City property.

Mayor Nelson asked if anyone had any questions or if anyone from the Public wants to speak on this item. Hearing none, he asked for a motion to approve Ordinance No. 2883 at first reading and hold over for second reading and adoption.

MOTION by Commissioner Becker and seconded by Commissioner Velazquez to approve Ordinance No. 2883 at first reading and hold over for second reading and adoption. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith & Velazquez voting aye.

*****COUNCIL TOOK A 5 MINUTE RECESS*****

11. Resolution No. 2021-34 - Approve extending the territorial boundaries of the Oaks at Kelly Park Street Lighting Special Assessment District.
Presented by: Chuck Vavrek

Chuck Vavrek, said this this particular resolution deals with adding an additional phase to the Oaks at Kelly Park Street Lighting District., which was created last year. He said if anyone has any questions, he'll be more than happy to respond to them.

Mayor Nelson asked if anyone had any questions or if anyone from the public wished to speak on this item. Hearing none, he asked for a motion to adopt Resolution No. 2021-34.

MOTION by Commissioner Velazquez and seconded by Commissioner Bankson to approve Resolution No. 2021-34. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker & Velazquez voting aye.

12. Resolution No. 2021-35 - Creating the Winding Meadows Street Lighting Special Assessment District.
Presented by: Chuck Vavrek

Chuck Vavrek, said this resolution is to create the Winding Meadows Street Lighting Special Assessment District. He said to make this simple, the only difference in item numbers 12-18 is the name of the new development and said he'll be more than happy to answer any questions you may have as the resolutions are read.

Mayor Nelson asked if anyone had any questions or if anyone from the public wished to speak on this item. Hearing none, he asked for a motion to adopt Resolution No. 2021-35.

MOTION by Commissioner Smith and seconded by Commissioner Becker to approve Resolution No. 2021-35. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker & Velazquez voting aye.

13. Resolution No. 2021-36 - Creating the Ponkan Reserve Street Lighting Special Assessment District.
Presented by: Chuck Vavrek

Chuck Vavrek, said this resolution is to create the Ponkan Reserve Street Lighting Special Assessment District and said he'll be more than happy to answer any questions you may have.

Mayor Nelson asked if anyone had any questions or if anyone from the public wished to speak on this item. Hearing none, he asked for a motion to adopt Resolution No. 2021-36.

MOTION by Commissioner Bankson and seconded by Commissioner Smith to approve Resolution No. 2021-36. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker & Velazquez voting aye.

14. Resolution No. 2021-37 - Creating the Hammock at Rock Springs Street Lighting Special Assessment District.
    Presented by: Chuck Vavrek

    Chuck Vavrek, said this resolution is to create the Hammock at Rock Springs Street Lighting Special Assessment District and said he'll be more than happy to answer any questions you may have.

Mayor Nelson asked if anyone had any questions or if anyone from the public wished to speak on this item. Hearing none, he asked for a motion to adopt Resolution No. 2021-37.

MOTION by Commissioner Velazquez and seconded by Commissioner Bankson to approve Resolution No. 2021-37. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker & Velazquez voting aye.

15. Resolution No. 2021-38 - Creating the Nottingham Street Lighting Special Assessment District.
    Presented by: Chuck Vavrek

    Chuck Vavrek, said this resolution is to create the Nottingham Street Lighting Special Assessment District and said he'll be more than happy to answer any questions you may have.

Mayor Nelson asked if anyone had any questions or if anyone from the public wished to speak on this item. Hearing none, he asked for a motion to adopt Resolution No. 2021-38.

MOTION by Commissioner Smith and seconded by Commissioner Becker to approve Resolution No. 2021-38. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker & Velazquez voting aye.

16. Resolution No. 2021-39 - Creating the Wind Rose Street Lighting Special Assessment District.
    Presented by: Chuck Vavrek

    Chuck Vavrek, said this resolution is to create the Wind Rose Street Lighting Special Assessment District and said he'll be more than happy to answer any questions you may have.

Mayor Nelson asked if anyone had any questions or if anyone from the public wished to speak on this item. Hearing none, he asked for a motion to adopt Resolution No. 2021-39.

MOTION by Commissioner Bankson and seconded by Commissioner Velazquez to approve Resolution No. 2021-39. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker & Velazquez voting aye.

17.Resolution No. 2021-40 - Creating the Coke Property Street Lighting Special Assessment District.
Presented by: Chuck Vavrek

Chuck Vavrek, said this resolution is to create the Coke Property Street Lighting Special Assessment District and said he'll be more than happy to answer any questions you may have.

Mayor Nelson asked if anyone had any questions or if anyone from the public wished to speak on this item. Hearing none, he asked for a motion to adopt Resolution No. 2021-40.

MOTION by Commissioner Smith and seconded by Commissioner Becker to approve Resolution No. 2021-40. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker & Velazquez voting aye.

18. Resolution No. 2021-41 - Creating the Faircloth Lakes Street Lighting Special Assessment District.
Presented by: Chuck Vavrek

Chuck Vavrek, said this resolution is to create the Faircloth Lakes Street Lighting Special Assessment District and said he'll be more than happy to answer any questions you may have.

Mayor Nelson asked if anyone had any questions or if anyone from the public wished to speak on this item. Hearing none, he asked for a motion to adopt Resolution No. 2021-41.

MOTION by Commissioner Bankson and seconded by Commissioner Velazquez to approve Resolution No. 2021-41. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker & Velazquez voting aye.

19. Appeal of Planning Commission Granting Special Exception to "The Smoke Exchange - Naram Global" for "Tobacco Shop" in MU-D (Mixed-Use Downtown) Zoning District.
Presented by: Michael Rodriguez

Michael Rodriguez, City Attorney, said prior to have the applicant make their presentation, he wanted to set the parameters for this hearing. He said this is an Appeal of a Final

Decision by the Planning Commission of an application for a Special Exception for the use that is explained above. He said the Special Exception was for the use of a Tobacco Shop in an MU-D Zoning District. He said an appeal under the Code, the City Council has jurisdiction to hear appeals of final decisions of the Planning Commission in regards to Special Excptions. He said an appeal before the City Council is limited to the record presented before the Planning Commission. He said what that means is that the applicant cannot make new arguments that were not presented or reviewed by the Planning Commission in its determination in regards to the Special Exception. He said your standard of review is was the Planning Commission's decision, which in this case, was to approve the Special Exception for a Tobacco Shop in the MU-D Zoning District with conditions and whether that decision was based upon competent substantial evidence. He said competent substantial evidence is defined as that evidence that a reasonable mind would accept to support a conclusion. He said you'll hear the arguments that the applicant is making in order to claim that the decision of the Planning Commission to grant the Special Exception of a Tobacco Shop with conditions, was NOT based on competent substantial evidence and according to the code, that there was clear and demonstrative error in their decision or interpretation of the Code. He said this is the equivalent of an Appellate Court and this is a Quasi-Judicial Hearing so before we go further, are there any ex-parte communications with the applicants. Commissioner Bankson said he has and however Mayor Nelson and Commissioner's Becker, Smith, and Velazquez said they had not.

Brent Spain, Spain Law Firm, 1809 Edgewater Drive, Orlando, FL., said he appreciates the opportunity to appear on behalf of the applicant, Karem Global and the Principal, Chris Sajarin. He said with him today is Heather Earlwiler and said what was handed out to each of you is a packet that will assist as he walks through the Powerpoint and said these are all documents he's introduced and are all public documents. He said as the City Attorney indicated this is an Appeal of the Special Exception and said that this was actually approved so the appeal is actually that of the two conditions that were imposed on the Special Exception. He briefly reviewed how we got here and said this process began in May of 2021 when the applicant applied for a CRA Grant and said that grant was approved. He said a building permit was subsequently issued by the City for interior renovations on the property in June of 2021 and in July, the applicant was issued a temporary CO. He said at the end of July, they applied for their business tax receipt which at that time, the applicant was notified of the Special Exception for the smoke shop. He said of importance, the grant application, permit and temporary CO, all referenced the use as a "smoke shop". He said in light of staff advising of the Special Exception application, the applicant filed this on July 27, 2021. He said the emails and advertisements referred to this as a smoke shop and said the Staff Report was issued for the Special Exception on or around August 6, 2021 and recommended approval of the Special Exception. He said the staff report did not reference any conditions on the approval. He said the Planning Commission heard the matter on August 10, 2021 and recommended approval for a tobacco shop. He proceeded to go through his presentation and said his client has since received a final CO from the City and the grant reimbursement. He said in late August the final business tax receipt was issued which is where the conditions showed up in writing. He said the business tax receipt shows a condition stating that Sales of Tobacco substitutes such as Cratem; E-cig and Vape are not permitted. He said Ms. Earlwiler then requested a copy of the Planning Commissioners final decision and said that was received on September 2, 2021 and is the document we're basing our appeal on. He said in addition to being contrary to the City's LDC, this new Statute as of October 1st, pre-empts a local government from regulating the sale of vape products. He said the condition that's imposed on the Special Exception, does that. He said also, condition 1 has language that said it prohibits the sale of cratem, etc. and said the product cratem in his knowledge, wasn't discussed at the Planning Commission and said a Special Exception is not required under our LDC and said it's not illegal in the State of Florida. He said on those grounds, he respectfully submits that condition 1 be stricken.

Commissioner Velazquez asked what cratem was to which Mr. Spain advised that it's herbal and made from a Southeast Asian pine leaf. He said you can either ingest it or smoke it.

Mr. Spain said condition 2 speaks to no on site consumption of cigars or tobacco substitute products are permitted and said the Special Exception didn't request any on site consumption. He said the applicant's business entails the retail sale of tobacco and tobacco related products. He said he feels that condition 2 is completely unnecessary and we ask that this be stricken. He said based on these arguments and the materials submitted, and respectfully requests that this Council grant our Administrative Appeal and the Planning Commission decision of August 10, 2021 be modified by removing conditions 1 & 2 from the approval.

Commissioner Becker said he watched the testimony of the Planning Commission when they contemplated this piece of business and said he saw where they approved the Special Exception. He said what he didn't hear was how this constraint is listed and asked if this was a call out that the Planning Commission used when they rendered his decision and what was the formal motion when they approved they made the decision to approve this Special Exception as a tobacco shop to which Mr. Spain said his recollection was as you stated.

Mr. Spain said we received the written decision the first week of September which gave us 30 days to appeal and we filed the appeal on the 29th day to preserve our rights.

Commissioner Bankson said from the beginning there's a confusion and difference of terms and definitions and vape and e-cigs are smokeless and said it's an assumption at that point and said once that came to light, staff didn't add this, it simply stated our code as how its written.

Michael said that the City Council does have the authority to under the LDC to remand this matter back to the Planning Commission with specific instructions just as an appellate court has the ability to remand a matter back to the trial court. He said the Council doesn't have the ability to go back and state that these items fall under something out and said he has to rely on the language of the Code which defines, under tobacco shop, tobacco and tobacco related. He said so the question becomes, are these items tobacco related or not. He said they fell more along with the definition of tobacco substitute.

Commissioner Smith said in listening to the evidence he has is to remove condition 2 to which Michael said he's in favor of removing condition 2 also as it's a moot point.

Michael said your decision is either to affirm the decision of the Planning Commission, granting the Special Exception with conditions; OR; grant the Special Exception but modify the condition; OR; reverse the decision which would be essentially to deny the Special Exception. He said we can also remand the decision back to the Planning Commission.

Commissioner Smith made a motion to affirm the decision of the Planning Commission.

Commissioner Becker asked if the evidence shows from the Planning Commission that they used the word cratem.

Mr. Spain said for the record, there's an individual that came here to speak and said the Notice said this is a Public Hearing.

Michael said his position is that any evidence that such a person would present is not to be considered by this Council as that is restricted to the record before the Planning Commission.

Commissioner Velazquez said that because this is a public hearing, we can let him speak providing he knows we cannot consider any of his testimony.

Young Kim, 60 E. 5th Street, Apopka, FL., said thank you for the opportunity to speak and said his family owns the property across the street so he's an interested party. He said he's here today as he believes in Chris and said this is the American Dream and said it would be a shame for Chris not to be able wo conduct his business. He said his family has been in this community for over 30 years and he considers himself a part of this community and is very proud to be an Apopkan. He said that plaza wasn't always so pretty but we've cleaned it up and said we have a brewery; a coffee shop and possibly Chris conducting his business as a smoke shop.

Mayor Nelson asked if anyone else had any questions or if anyone from the public wished to speak on this item. He then asked for a Motion on this item.

MOTION by Commissioner Smith and seconded by Commissioner Bankson to uphold the decision of the Planning Commission. Motion passed 3-2 with Mayor

Nelson, and Commissioners Bankson and Smith voting aye and Commissioners Becker & Velazquez voting nay.

CITY COUNCIL REPORTS

Commissioner Velazquez said we're still in Hispanic Heritage month and said she'd like to recognize those that have made positive contributions to which the Mayor said the Proclamation for that will be at the next Commission meeting. She said she attended the Amphitheater festivals we had out there. She said on Saturday, September 18th we had the Latin Jazz concert which was excellent; we had the Jonnie B concert and just this week we had the Food Truck Wars and said she wanted to thank staff and said all of the festivals were well attended. She announced that we were supposed to have the Miss Apopka scholarship competition on October 16th and said it has been rescheduled for Saturday, February 12th. She said she attended the swearing in yesterday of two new Apopka Police Officers and said she wanted to welcome them. She said we attended the Emerson Community night out and said it was fantastic. She gave a special thank you to the Apopka Police Department and the Fire Department. She said a special thank you to Edward Bass for taking care of the sidewalk for the elderly couple.

Commissioner Bankson said he just got back in to town and missed a lot of those wonderful events but said it's exciting that we would celebrate our community like this.

Commissioner Smith said this is Breast Cancer Awareness month and said anything we can do to support any endeavors to assist couples or families going through Breast Cancer at this time would be much appreciated. He said our prayers go out to the Dean from Wheatly Elementary and our prayers go out to that family. He said also this is Domestic Violence month as well as Pastor appreciation month. He said he wants the Council to look aggressively at affordable housing for the City and also to look at annexation of South Apopka.

CITY ADMINISTRATOR REPORT

Edward said you have before you the financial report for the final month so we have a full 12 months now of our Fiscal Year ending 2021. He said a couple of things he wanted to point out on this report is that if you look at FY2020 and FY 2021, they almost mirror each other. He said he also wanted to call to your attention on the right of this report that the variance overall is about $359,000 and said we will fall $359,000 on this revenue line for this current FY2021 year. He said another thing is that we went back to FY2019 to see where we are today and said we were about $1.5 million less than we were in FY2019, prior to the Pandemic.

He said if you recall at the last meeting, there was some mold issues discussed at Fire Station #4 and said he wanted to report that we jumped on that right away and said we had an analysis done and the report showed a little bit in the A/C and said the Facilities Department worked on this and said we're monitoring this.

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He said that lastly, he has on his report about the meeting on October 13, 2021 and would like to get a consensus publicly that we're moving that meeting. He said also, the Special Assessments are now on line and if you go to the Finance tab, you'll see all of the assessments that we levy and as we adopt them the new ones will be added. He said the final thing is that he wanted to give kudos to the IT Department and said that Rob and his group have worked on this and the Agendas and the Staff Reports are all ADA Compliant and they're up on the websites. He said the City Clerk will be happy to provide any attachments if anyone wants to see those.

CITY ATTORNEY'S REPORT

Michael provided some clarity to the article that came out last week on the Apopka City Center and the Apartment Complex and said the potential applicant is here to clarify as well. He said the decision that was rendered by the County was that they awarded to 5 developers, part of their affordable housing grant, each being graded on a certain score and ranked based upon the scores. He said the developer in question was ranked 4th and was awarded money and said its financial assistance from the County to aid in the cost of construction for what is to be workforce housing. He said the County did not approve the use on City property and said there's a lot of misinformation out there. He said the City did not approve the use of this property and said there have been no application submittals for review and nothing has been approved by the County or the City. He said this is just the first step and the City has the opportunity to review an application and a site plan and discuss the matter to see how compatible this is with the LDC and the City Center. He said when that occurs, the submittals will go through the proper channels for review and stressed that the County did not approve a residential product in the City.

MAYOR'S REPORT

Mayor Nelson said he'll go through this as quick as I can and Stoneybrook Golf Course is on the website now and said if you want to take a look at the video as well as the talking points.

He said one of the Commissioners had brought up that some of the things that needed to be looked at and said we went through the items and most of them and addressed these items. He said we were talking about whether we wanted to put the thermal plastic down stripe on the road at Cleveland Street and said that will cost about $15,000. He said the roads survey is completed and will be implemented in next-years workplan and said Cleveland will be one of the top roads and said we can put a stripe down now and spend the $15,000 if that's what staff wants to do. He showed slides with the improvements and reviewed everything that was done on the various areas to complete the work. He said the digital signs are going out at Northwest as well as Kit Land Nelson Park and said we'll landscape around those when they're installed. He said we cleaned up and updated the signage as needed. He said just to remind everyone that due to Covid, we lost our inmate crews and said in the new budget we just passed, we've added 3 full time employees with benefits to replace those 2 inmate crews. He said we received an estimate for repainting the building on Lust Road and said the first estimate came in at $129,000.

Mayor Nelson said he had the great privilege of going to AIF Water Forum and said he went to represent the City of Apopka and said he sat with some folks from DEP and the SJRWMD and said another group from Lake Jessup doing some pretty innovative things and said he was proud to represent the City to talk about OnSyte and how we were able to reduce the nitrogen going into Wekiva Springs area.

Mayor Nelson said lastly, we had a great event at Camp Wewa last Saturday and said the Friends of Camp Wewa came. He said there were about 20 of us out there all day on Saturday, putting deck sealer on and said they paid for that and said we had a great program that night and a videographer out there and said they shared some of the chants and things they do so as we get into next Summer we'll have some of these to share. He said they also took palm frons and removed the stick and drilled a hole in the top and put a candle in them and said they light the candle and put it in the pool and make a wish. He said they're raising money to build us a playground out there and said that they're going to be a great asset going forward.

ADJOURNMENT - There being no further business the meeting adjourned at 6:54 p.m.

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Bryan Nelson, Mayor

ATTEST: ____________________________

Susan M. Bone, City Clerk