

Harvey R. Klein (1922-2003)
H. Randolph Klein
Fred N. Roberts, Jr.
Lawrence C. Callaway, III

KLEIN & KLEIN, LLC

Attorneys at Law
40 SE 11th Avenue
Ocala, Florida 34471

Phone (352) 732-7750
Fax (352) 732-7754

June 2, 2022

**VIA HAND DELIVERY AND
ELECTRONIC MAIL**

Honorable Kent Guinn, Mayor
City of Ocala
110 SE Watula Avenue
Ocala, FL 34471

***Re: Petition for Relief under the Florida Land Use Environmental Dispute
Resolution Act***

Dear Mayor Guinn:

Enclosed please find a copy (original transmitted via hand delivery) of a Request for Relief under the Florida Land Use and Environmental Dispute Resolution Act relating to City of Ocala zoning case ZON22-44645. This is being served upon you as the elected head of the City of Ocala pursuant to Section 70.51(4), Florida Statutes.

Very truly yours,

KLEIN AND KLEIN, LLC

Fred N. Roberts, Jr.

FNR/mt
Enclosure

CC: Robert Batsel, Jr., Esq.
City Attorney
VIA EMAIL ONLY - rbatsel@lawyersocala.com
(w/ encl.)

Peter Lee
City Manager
VIA EMAIL ONLY – pleee@ocalafl.org
(w/ encl.)

PETITION FOR RELIEF PURSUANT TO SECTION 70.51, FLA. STAT.
TO THE CITY OF OCALA, FLORIDA

200 CLUB OF OCALA, LLC, a Florida limited liability company (“200 Club”) and CATALYST DEVELOPMENT PARTNERS II, LLC, a Georgia limited liability company (“Catalyst”), by and through its undersigned counsel, hereby petitions the City of Ocala, Florida (the “City”) for relief pursuant to Section 70.51, Florida Statutes, the Florida Land Use and Environmental Dispute Resolution Act (the “Act”), and states:

1. 200 Club is the property owner of approximately 15 acres of real property located within the City of Ocala, Florida more particularly described and depicted on **Exhibit A** attached hereto (the “Property”). Catalyst is the contract purchaser of the Property. 200 Club and Catalyst (collectively, “Petitioner”) both qualify as an “owner” of the Property, as defined in the Act, with standing for relief. The City is a “governmental entity” as defined in the Act.
2. The Parent Tract (as hereinafter defined) was annexed into the City in 2005 without zoning or future land use designation being assigned by the City. The Property currently has a future land use designation of Medium Intensity/Special District (“Medium Intensity”) on the City’s Future Land Use Map, which was assigned to the Parent Tract in 2013 as part of the 2035 Comprehensive Plan. The Property has never been assigned a zoning classification by the City.
3. Petitioner filed a Rezoning Request application (the “Rezoning Request”) to have the Property assigned a zoning classification of R-3 (Multi-family Residential District) with the intent to develop the Property as a multi-family apartment complex (the “Proposed Development”). A copy of the Rezoning Request application and related attachments is attached hereto as **Exhibit B**. The Rezoning Request was subsequently assigned by City Staff Case Number ZON22-44645.
4. After meetings with City staff, concerns were raised regarding certain elements of the Proposed Developments 2022-0322 predominantly relating to (i) the maximum number of units available under the Medium Intensity Future Land Use Designation, (ii) concerns regarding buffering of the Sonoma neighborhood, the single-family residential neighborhood to the north of the Parent Tract (as herein defined), and (iii) traffic considerations.
5. Based upon concerns raised by City staff, Petitioner submitted for simultaneous consideration with its Rezoning Request a Development Agreement Pursuant to Chapter 163, Florida Statutes, a copy of which is attached hereto as **Exhibit C** (the “Development Agreement”). The Development Agreement related not only to the Property, but included limitations and conditions of development for the entire 26.63 +/- acre parcel owned by Owner which is identified under Marion County Parcel Identification Number 23816-000-00 (the “Parent Tract”). The Development Agreement was subsequently assigned by City staff Case Number.
6. The Development Agreement contained specific limitations which were significantly more stringent than those provided by Code of Ordinances of the City (“City Code”) including: (i) limited the uses of the Property to residential uses only, (ii) limited the maximum number of

multi-family residential units to 320, significantly less than the 450 units that would be permitted under the Medium Intensity Future Land Use Designation if the Property were assigned an R-3 zoning or 798 units if the entire Parent Tract were assigned an R-3 zoning, (iii) required buffering in excess of what is required by City Code, and (iv) other screening and set back requirements.

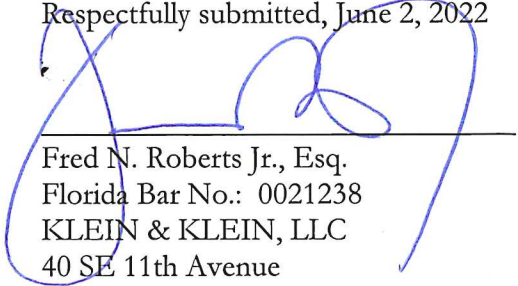
7. The Development Agreement also addressed traffic consideration in requiring a traffic study (a “Traffic Study”) to be completed prior to development of the Property, regardless of whether City Code would require one for the any alternative proposed developments to the Proposed Development, and further required the Developer, or any party developing the Property, to construct such traffic improvements and/or make such proportionate share payments as determined to be appropriate by the Traffic Study.
8. Of significant note relating to traffic, the Property is bounded to the west by SW 43rd Court (“SW 4rd”). SW 43rd currently dead ends to the north of the Property and would at present require essentially all traffic generated from or to the Proposed Development to access the Property exclusively from the south or southeast. In addition, SW 43rd is currently only two lanes. The City has pending plans and a grant from the Florida Department of Transportation to fund the extension SW 43rd to the north to connect to SW 20th Street. In addition, this is part of a major road expansion project whereby it is intended for SW 43rd to be connected to 44th Avenue to the north and expanded to four lanes (the “Road Expansion Project”). Both Petitioner and City staff agreed that the Road Expansion Project was of significance to the Proposed Development.
9. City staff issued thorough reports relating to the Request for Rezoning, a copy of which is attached hereto as **Exhibit D**, recommending approval of the rezoning, conditioned upon City entering into the Development Agreement with Petitioner.
10. On February 14, 2022, the Rezoning Request was heard before Planning and Zoning Commission of the City. The Rezoning Request received a 5-2 vote recommending approval to the City Council. A copy of the meeting minutes relating to the Rezoning Request as published by the City are attached hereto as **Exhibit E**.
11. On March 1, 2022, the ordinance relating to the Rezoning Request was introduced for adoption.
12. On March 1, 2022, the first of two public hearings required for the Development Agreement was opened.
13. The Rezoning Request and Development Agreement were both scheduled to be heard for final consideration of March 15, 2022. As of that date, the necessary right of way for the Road Expansion Project had not yet been obtained by the City. Petitioner requested a continuance of those hearings to the City Council meeting scheduled April 19, 2022 to correspond to consideration of multiple right of way donation agreements (Case Numbers 2022-0034 and 2022-0035) (the “Right of Way Cases”) which accounted for the remaining right of way needed for the Road Expansion Project. On April 19, 2022, Petitioner again

requested continuance of consideration of the Rezoning Request and Development Agreement to May 3, 2022 as the Right of Way Cases has not been finalized.

14. On May 3, 2022, the City Council considered the Rezoning Request and Development Agreement. In addition to the City staff report, City staff presented evidence relating to both potential traffic impacts and to available traffic impacts. Based on questions from members of City Council, City staff provided testimony that the Development Agreement provided that a traffic study would be required, and the City Engineer specifically provided testimony regarding funding for and timing of the Road Expansion Project. Further, based upon questions of members of City Council, City staff confirmed that there does exist school capacity within the applicable school district, even though school concurrency is not an evidentiary criterion to be considered. Ultimately, City staff reiterated its recommendation of approval for the Rezoning Request and Development Agreement. Petitioner and members of the public then presented testimony.
15. Petitioner, by and through its undersigned counsel, submitted oral testimony in support of the Rezoning Request and Development Agreement addressing, in part, compatibility of the use, substantiation of safeguards relating to traffic contained in both the Development Agreement and City Code, and evidence regarding the prejudicial affect of no zoning being assigned to the Property.
16. Upon conclusion of Petitioner presentation and public comment, City Council members commenced discussion amongst themselves and made further inquiry of City staff. During such discussion, the only evidence referenced by members of City Council apparently related to traffic concerns, however, members of City Council did not make apparent their consideration for the requirements relating to the Traffic Study and related improvements requirement by both the Development Agreement and City Code. There was particular discussion by City Council regarding the appropriateness of the area for multi-family residential uses even though the Parent Tract is adjacent to multi-family apartments to the east and property across SW 43rd to the west has vested entitlement for multi-family residential uses. No other competent and substantial evidence was referenced by members of City Council and City Council voted 5-0 to deny both the Development Agreement and Rezoning Request. No development order or formal letter of denial has been provided by City, therefore documentation of the action at issue, being a copy of the meeting minutes relating to the Rezoning Request and Development Agreement as published by the City, is attached hereto as **Exhibit F**.
17. City Council's denial of the Rezoning Request unreasonably and unfairly burdens Petitioners use of the Property as it leaves the Property without any zoning classification and thus without any right to make beneficial use thereof. Further, denial of the Rezoning Request leaves the Petitioner with no lesser intensive residential use which would appear to practically satisfy either the technical requirements of, nor certainly the planning intent of the Medium Intensity future land use category. Finally, pursuant to Section 122-134 of City Code, City Council's denial of the Rezoning Request precludes application for assignment of any zoning classification to the entirety of the Parent Tract for a period of one year unless waived by affirmative vote of the City Council.

WHEREFORE, based upon the foregoing, Petitioner requests relief under the Act, including the forwarding of this petition to a special magistrate for proceedings required by the Act, together with any and all relief permitted under the Act.

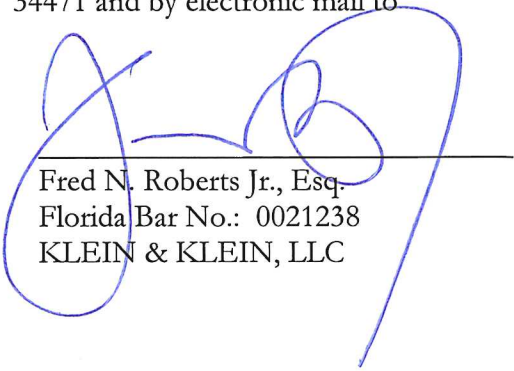
Respectfully submitted, June 2, 2022



Fred N. Roberts Jr., Esq.
Florida Bar No.: 0021238
KLEIN & KLEIN, LLC
40 SE 11th Avenue
Ocala, FL 34471
Phone: (352) 732-7750
Fax: (352) 732-7754
fred@kleinandkleinpa.com
Attorney for Petitioner

CERTIFICATE OF SERVICE AND FILING

I, the undersigned, hereby certify that a true and correct copy of the foregoing Petition has been filed with Hon. Mayor Kent Guinn, Mayor of the City of Ocala, by hand delivery to City of Ocala City Hall, 110 SE Watula Avenue, Ocala, FL 34471 and by electronic mail to kguinn@ocalafl.org.



Fred N. Roberts Jr., Esq.
Florida Bar No.: 0021238
KLEIN & KLEIN, LLC

CC: Robert Batsel, Jr., Esq.
City Attorney
VIA EMAIL ONLY - rbatsel@lawyersocala.com
(w/ encl.)

Peter Lee
City Manager
VIA EMAIL ONLY - plee@ocalafl.org
(w/ encl.)

Exhibit A
Property

A portion of the Southeast Quarter of Section 27, Township 15 South, Range 21 East, lying in Marion County, Florida and being more particularly described as follows:

Commence at the Southwest Corner of the Southeast Quarter of Section 27, Township 15 South, Range 21 East, Marion County, Florida; thence South 89°55'19" East, a distance of 50.67 feet along the South line of said Southeast Quarter to the East Right of Way line of SW 44th Avenue as described in Official Records Book 5118, Page 1991 of the Public Records of Marion County (also known as SW 43rd Court), for a POINT OF BEGINNING; thence North 00°24'23" East, a distance of 1047.10 feet along said East Right of Way line; thence departing said East Right of Way line, South 89°55'19" East, a distance of 623.83 feet; thence South 00°23'19" West, a distance of 1047.10 feet to the aforesaid South line of the Southeast Quarter; thence North 89°55'19" West, a distance of 624.16 feet along said South line to the POINT OF BEGINNING.

Containing 15.00 acres, more or less.

Exhibit B
Request for Rezoning Application
(7 Pages Attached)



City of Ocala
GROWTH MANAGEMENT DEPARTMENT
DEVELOPMENT SERVICES
201 SE 3rd Street, Second Floor, Ocala, FL 34471
Phone: (352) 629-8404 Fax: (352) 629-8242
Email: gmd@ocalafl.org Website: www.ocalafl.org

Case No. _____

REZONING REQUEST
(\$1,250)

Due Date: First Monday of each month, 5 p.m., for the meeting on the second Monday of the following month.

1. Name of Petitioner(s): CATALYST DEVELOPMENT PARTNERS II, LLC, a Georgia limited liability company

Address of Petitioner(s): 880 Glenwood Avenue, Suite H

City Atlanta State GA Zip Code 30316 Phone # 352-732-5255

Fax # 678-666-1237 Email address robm@catalystdp.com

2. a. Parcel account number(s) [from tax roll]: 2390-000-000

b. Section 27 Township 15S Range 21E Size of Property 15 Acres subject to rezoning
(Total Parent Property is 26.63 Acres +/-)

c. Legal Description: (Please attach)

NOTE: It shall be the applicant's responsibility to provide the correct legal description for the subject property. The application will not be processed until a correct legal description is provided. An electronic file of the legal description in Word format must be submitted with the application.

3. Street address of the property (if the property has no street address the Planning & Zoning Division will complete this section):

Vacant (None Assigned)

4. a. Present Land Use designation: Medium Intensity

b. Present Zoning District: Pending

c. Requested Zoning District: R-3

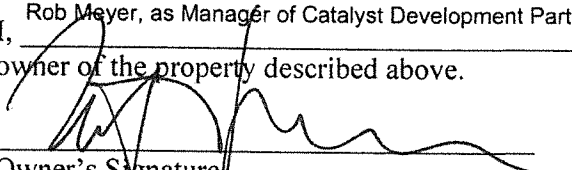
Case No. _____

5. Description of the request: Petitioners request that the above described
lands be rezoned to R-3 to allow multi-family development.

6. The following items are required (The application will not be processed if these items do not accompany the application.):

- a. Deed or other proof of ownership
- b. Notarized signature of the current property owner(s) & the agent's signature, if applicable
- c. The appropriate fee in cash or check (Payable to the City of Ocala)
- d. Electronic file of legal description in Word format

I, Rob Meyer, as Manager of Catalyst Development Partners II, LLC, being first duly sworn, affirm and say that I am the owner of the property described above.


Owner's Signature

678-666-1237

Phone Number

880 Glenwood Avenue, Suite H

Address (Street)

Atlanta, GA 30316

City, State, Zip Code

State of Georgia

County of Fulton

The foregoing instrument was acknowledged before me this 29th, day of December, 2021,

by Rob Meyer, as Manager of Catalyst Development Partners II, LLC, who is personally known to me or has produced

GA Driver's License

as identification and who did / did not take an oath.

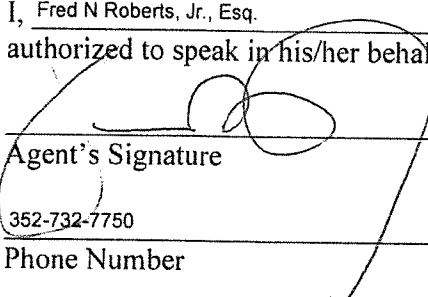
NOTARY PUBLIC

Commission No.: _____

Commission Expires: _____

Case No. _____

I, Fred N Roberts, Jr., Esq., am the legal representative of the owner and I am authorized to speak in his/her behalf for the subject matter.


Agent's Signature

352-732-7750

Phone Number

Fred@kleinandkleinpa.com

Email Address

40 SE 11TH AVE

Address (Street)

Ocala, FL, 34471

City, State, Zip Code

ATTENDANCE at the public hearing by the applicant
or agent (as designated in writing) **IS MANDATORY**

STAFF USE ONLY:

a. Date received: _____

b. Petition contains all required information:

Y N

c. Petition is consistent with the zoning code:

Y N

d. Petition is consistent with the comprehensive plan:

Y N

e. Site lies within an historic district:

Y N

If yes, what district: _____

f. Petition rejected:

Y N

(see attached reason)

g. Petition accepted:

Y N

Case #: _____

h. Land use:

Case #: _____

Prepared by and return to:
Sean V. Donnelly, Esq.
3708 W. Euclid Avenue
Tampa, FL 33629
813-832-9790
File Number: 24-1104

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY
DATE: 12/14/2004 02:41:57 PM
FILE #: 2004182471 OR BK 03895 PGS 1904-1905

RECORDING FEES 18.50

DEED DOC TAX 7,223.30

[Space Above This Line For Recording Data]

Warranty Deed

This Warranty Deed made this 8th day of December, 2004 between Ocala Open Air, a limited liability company A/K/A Ocala Open Air, Limited Company A/K/A Ocala Open Air, LLC, a Florida limited liability company whose post office address is 918 W. 1st Street, Sanford, FL 32771, grantor, and 200 Club of Ocala, LLC, a Florida limited liability company whose post office address is 1716 Southwest 82nd Drive, Gainesville, FL 32607, grantee:

(Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

Witnesseth, that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Marion County Florida to-wit:

*** SEE ATTACHED LEGAL DESCRIPTION ****

Parcel Identification Number: R23816-000-00

xxx SW 43rd Court, Ocala, FL 34475

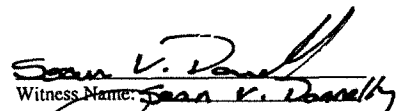
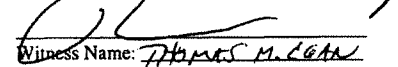
Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

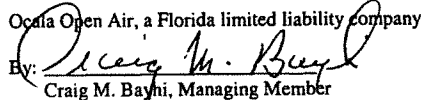
To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2003.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:


Witness Name: Sean V. Donnelly

Witness Name: Thomas M. Cahan

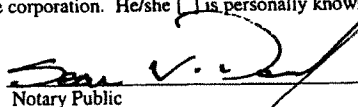
Ocala Open Air, a Florida limited liability company
By: 
Craig M. Bayhi, Managing Member

(Corporate Seal)

State of Florida
County of Marion

The foregoing instrument was acknowledged before me this 8th day of December, 2004 by Craig M. Bayhi of Ocala Open Air, a Florida limited liability company, on behalf of the corporation. He/she ☒ is personally known to me or [X] has produced a driver's license as identification.

[Notary Seal]


Notary Public

Printed Name: Sean V. Donnelly

My Commission Expires: _____



Sean V. Donnelly
My Commission 00054188
Expires October 24, 2008

DoubleTime

EXHIBIT 'A'

Parcel 1

Commence at the Southeast corner of the West 1/2 of the Southeast 1/4 of SECTION 27, TOWNSHIP 15 SOUTH, RANGE 21 EAST, Marion County, Florida, proceed thence South 89° 41' 33" West along the South boundary of said Section 649.57 feet to the Point of Beginning; thence continue South 89° 41' 33" West 549.16 feet; thence departing said South boundary North 00° 00' 37" East 661.62 feet; thence North 89° 17' 56" East 5.03 feet; thence North 00° 00' 03" East 993.99 feet; thence North 89° 44' 14" East 1193.96 feet; thence South 00° 05' 18" West 171.77 feet; thence South 89° 42' 55" West 649.62 feet; thence South 00° 00' 12" West 1483.20 feet to the Point of Beginning.

Parcel 2

Together with that certain non-exclusive agreement for ingress and egress and sign easement as created in the Construction, Operation and Easement Agreement recorded October 30, 1996 in Official Records Book 2302, Page 118, Public Records of Marion County, Florida.

J67361; W110479

SAM'S CLUB OCALA

DESCRIPTION (By This Surveyor):

A portion of the Southeast Quarter of Section 27, Township 15 South, Range 21 East, lying in Marion County, Florida and being more particularly described as follows:

Commence at the Southwest Corner of the Southeast Quarter of Section 27, Township 15 South, Range 21 East, Marion County, Florida; thence South $89^{\circ}55'19''$ East, a distance of 50.67 feet along the South line of said Southeast Quarter to the East Right of Way line of SW 44th Avenue as described in Official Records Book 5118, Page 1991 of the Public Records of Marion County (also known as SW 43rd Court), for a POINT OF BEGINNING; thence North $00^{\circ}24'23''$ East, a distance of 1047.10 feet along said East Right of Way line; thence departing said East Right of Way line, South $89^{\circ}55'19''$ East, a distance of 623.83 feet; thence South $00^{\circ}23'19''$ West, a distance of 1047.10 feet to the aforesaid South line of the Southeast Quarter; thence North $89^{\circ}55'19''$ West, a distance of 624.16 feet along said South line to the POINT OF BEGINNING.

Containing 15.00 acres, more or less.

Exhibit C
Proposed Development Agreement
(13 Pages Attached)

This Instrument Prepared by and Return To:
Fred N. Roberts, Jr., Esq.
Klein & Klein, LLC
40 SE 11th Avenue
Ocala, FL 34471

**DEVELOPMENT AGREEMENT PURSUANT
TO CHAPTER 163, FLORIDA STATUTES**

THIS DEVELOPMENT AGREEMENT ("Agreement"), executed by the Parties as of the ___ day of _____, 2022 and having the Effective Date specified below, is entered into by and between:

- **CITY OF OCALA**, a Florida municipal corporation ("City"); and
- **200 CLUB OF OCALA, LLC**, a Florida limited liability company ("Owner").

RECITALS:

- A. Owner owns a parcel of real property located in Marion County, Florida, also located within the jurisdictional boundaries of the City, being more particularly described in **Exhibit A** attached hereto and incorporated herein (the "Property").
- B. Upon annexation into the City of Ocala, the Property was assigned a land use classification of Medium Intensity under the City's Comprehensive Plans but was not assigned a zoning classification.
- C. Owner intends to develop the Property for residential uses, which will include at least a portion of the Property being developed for multi-family residential units.
- D. Application has been made to City to have the southerly 15 acres of the Property being more particularly described on **Exhibit B** attached hereto (the "Multi-Family Parcel") assigned the zoning classification of R-3 (Multi-Family Residential District).
- E. As the entirety of the Property is not currently subject to rezoning or a master development plan, City and Owner desire to subject the Property to those restrictions and limitations set forth herein.
- F. City has provided its Notice of Intent to consider entering in this Development Agreement by advertisements published in the Ocala Star-Banner, a newspaper of general circulation and readership in Marion County, Florida, on February 18, 2022, and March 4, 2022, and by mailing a copy of the Notice of Intent to Owner, and to the persons and entities shown on the most recent Marion County Tax Roll to be the owners of property lying within three hundred feet (300') of the boundaries of the Property which is the subject-matter of this Agreement, and by announcing the date, time, and place of the second hearing during the first hearing.
- G. The City Council of the City has held public hearings on March 1, 2022, and April 19, 2022 to consider this Agreement, has found and determined that its execution of this Agreement will further the objectives of the Local Government Comprehensive Planning and Land Development Regulation Act.

NOW, THEREFORE, in consideration of the foregoing recitals (which are incorporated herein by reference), the mutual covenants contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows, which terms shall be binding upon the parties and their respective successors and assigns, as may be applicable:

1. **Definitions.** In addition to any other terms which may be specifically defined elsewhere in this Agreement, for the purposes of this Agreement the following terms shall have the following meanings:

- 1.1 ***“Agreement”***— This Concurrency Development Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3220 through 163.3243, inclusive, of the Florida Statutes.
- 1.2 ***“City”***— City of Ocala, a Florida municipal corporation.
- 1.3 ***“Concurrency Management System”***— Concurrency Management System of the City, as codified in Chapter 86 of the City Code.
- 1.4 ***“City Code”***—Code of Ordinances of the City of Ocala, Florida.
- 1.5 ***“Effective Date”*** —The date the terms of this Agreement become effective, as set forth in Section 12.16.
- 1.6 ***“Multi-Family Parcel”*** - That portion of the Property intended to be developed for multi-family residential dwelling units, being more particularly described on attached **Exhibit B**.
- 1.7 ***“Party” or “Parties”***— As applicable, either Owner or City or both Owner and City.
- 1.8 ***“Property”*** — that certain parcel of real property owned by Owner and located in Marion County, Florida, also located within the jurisdictional boundaries of the City, being more particularly described on attached **Exhibit A**.
- 1.9 ***“Project”***— The development of the Property for up to 320 multi-family residential units or such number of single-family residential units which do not exceed the PM the PM peak hour trip equivalent of 320 multi-family residential units) on the Multi-Family Parcel.

2. **Representations and Warranties.** As a material inducement to the other Parties to enter into this Agreement, each Party makes the following representations and warranties to the other Parties to this Agreement:

2.1 **Owner’s Representations and Warranties.** Owner represents and warrants to City that:

- 2.1.1 Owner is a validly organized and existing Florida limited liability company.
- 2.1.2 Owner has taken all actions prerequisite necessary for the execution and delivery of this Agreement, and upon the execution and delivery of this Agreement by Owner the obligations of Owner hereunder shall be valid and binding obligations of Owner. The entities or individuals executing this Agreement on behalf of Owner are duly authorized representatives for Owner,

authorized to execute this Agreement in their respective capacities as set forth below.

2.1.3 The Owner is the legal and equitable owner of the Property.

2.1.4 The execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of any agreement, covenant, Court Order, Judgment, or the governing documents of Owner.

2.2 City Representations and Warranties. City represents and warrants to Owner that:

2.2.1 The actions by City hereunder are consistent with, and not in contradiction of, the terms and provisions of the City's Comprehensive Plan.

2.2.2 City has taken all necessary actions prerequisite to the execution and delivery of this Agreement, including but not limited to the necessary public hearings, providing proper notice of the public hearings, and the conducting of public hearings related thereto.

2.2.3 Upon the execution and delivery of this Agreement by City, the obligations of City shall be valid and binding obligations of City.

2.2.4 Execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of the City's Charter, the City Code or by the terms and provisions of any agreement, covenant, Court Order or Judgment to which City is a party.

3. Development Standards. The future land use designation of the Property is Medium Intensity. The zoning of the Multi-Family Parcel is R-3. Development of the Property shall be consistent with the City Comprehensive Plan and, except as modified and/or limited herein, the applicable zoning district(s) and other applicable sections of the City Code.

3.1 Permitted Uses. Allowable uses on the Property include single-family residential and multi-family residential and related accessory uses, including, without limitation, recreation uses and facilities.

3.2 Maximum Density. The density of the Multi-Family Parcel shall not exceed a maximum of 320 multi-family residential dwelling units, or any combination of single-family and multi-family residential dwelling units such that the traffic impact of such combination of single-family and multi-family residential units does not exceed the number of PM peak hour trips that would be generated by 320 multi-family residential dwelling units.

3.3 Architectural. Multi-family development on the Property shall be subject to the City's architectural review requirements as set forth in Section 122-216(t) of the City Code and may be (but is not required to be) age-restricted and/or gated.

3.4 Buffers. Buffers shall comply with Section 122-260 of the City Code, except that a minimum 25'-wide landscape buffer shall apply along the north boundary of the Property that may consist of existing trees and additional plantings to supplement where needed.

3.5 Setbacks. Setbacks shall be in accordance with the applicable provisions of the City Code.

3.6 Building Service Areas; Mechanical Equipment. Delivery and loading operations, HVAC equipment, dumpsters, backflow preventers and other utility and service functions shall be substantially screened from view of SW 43rd Court and not located nearer than 25-feet of the current boundary lines of the Property, except as may be otherwise approved by the City during the site plan review process. Where possible, such screening shall be incorporated into the overall design of the buildings and landscaping.

3.7 Parking. Parking shall be pursuant to Article VI of the City Code.

4. Traffic Facilities; Traffic Concurrency; Proportionate Share Payment

4.1 Traffic Study. Prior to final development approval of the Multi-Family Parcel, Owner, or it's successor in interest to the Multi-Family Parcel (the "Multi-Family Developer"), shall cause for a traffic study (a "Traffic Study") to be conducted as required by and in accordance with the City's Traffic Study Guidelines and the Concurrency Management System.

4.2 Obligations Regarding Traffic Improvements. The Multi-Family Developer shall be required to provide for such traffic improvements established by the Traffic Study as being necessary to satisfy concurrency requirements as permitted by the Concurrency Management System by either constructing such improvements or making required proportionate share contribution payments.

4.3 Proportionate Share Payment Credits. City acknowledges that, pursuant to Section 163.3180(5)(h)2.e., Florida Statutes, Multi-Family Developer would be entitled to a dollar-for-dollar basis for impact fees, mobility fees, or other transportation concurrency requirements paid or payable in the future with respect to the Project. Because the County is not a party to this Agreement, Owner shall make appropriate notification and application to County with respect to Owner's rights to such dollar-for-dollar credit (this same procedure would be applicable in the event the County attempts to adopt or impose any mobility or other transportation concurrency mitigation requirements that are payable with respect to the Project).

5. Development Permits Required.

5.1 Local Development Permits. The local development permits approved or needed to be approved for development of the Project in accordance with the provisions of this Agreement, and the status of each such permit or approval, are as follows:

PERMITS/APPROVALS	STATUS
City Rezoning Approval to R-3	Approved
- For New Single-Family Residential Only: City Preliminary Plat (aka, Conceptual Plan), Final Plat, and Improvement Plans Approval - For All Other New Development: City Site Plan Approval	To Be Obtained
City Building Permits	To Be Obtained
Off-Site Improvements Plan Approvals (for off-site transportation improvements to SW 43 rd Court and SW 40 th Street)	To Be Obtained
Water Management District Environmental Resources (Stormwater) Permit	To Be Obtained

PERMITS/APPROVALS	STATUS
FDOT Permits, as may be applicable	To Be Obtained (if applicable)

Nothing in this Agreement shall be deemed to obviate the Owner's compliance with the terms and provisions of each such identified Permit, nor obligate the City to grant any of the permits, actions, or approvals enumerated above.

5.2 Additional Permits, Etc. The failure of this Agreement to address any particular permit, condition, term, or restriction on development shall not relieve the developer, City or County of the necessity of complying with the law governing said permitting requirement, conditions, terms or restrictions with respect to the contemplated development of the Property, as applicable.

6. Consistency. Development of the Property as contemplated herein is consistent with the City Comprehensive Plan and Land Development Regulations.

7. Local Laws and Policies. To the extent permitted by law and in accordance with Section 163.3233, Florida Statutes, the City's laws and policies (including, without limitation, the City Comprehensive Plan and City Code) governing the development of the Property as of the Effective Date shall continue to govern the development of the Property for the duration of this Agreement and no law or policy or change in law or policy adopted by the City after the Effective Date shall apply to the Property, except as authorized in accordance with Section 163.3233(2), Florida Statutes, or except as specifically authorized in writing by Owner.

8. General Provisions.

8.1 Notices. With respect to any Notices required to be given under the terms of this Agreement, such Notices shall be deemed given and effective:

8.1.1 Three (3) calendar days after the date they are deposited in the United States Mail, postage prepaid, return receipt requested, addressed to the parties at the following respective addresses or such other address as provided by a party pursuant to this paragraph; or

8.1.2 The date of actual delivery by hand or by a recognized national overnight delivery service such as Federal Express, UPS, or Express Mail, addressed to the parties at the following respective addresses or such other address as provided by a party pursuant to this paragraph:

(a) **Owner:** 200 Club of Ocala, LLC., Attn: _____;
 _____; Email: _____; Facsimile:
 _____.

(b) **City:** City of Ocala, Florida, Attn: Planning Director; 201 SE 3rd Street,
 2nd Floor; Ocala, FL 34471

8.1.3 Any party may modify the address for notices set forth above by providing notice of the change of address to all parties to this Agreement, which notice is to be provided in accordance with the requirements of this paragraph.

8.2 **Negation of Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership by or among the Parties, nor shall it cause them to be considered joint venturers or members of any joint enterprises. Each Party shall be considered a separate Party, no Party shall have the right to act as an agent for another Party and no Party shall the right to act as an agent for another Party unless expressly authorized to do so in this Agreement.

8.3 **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided no right, privileges of immunities of any Party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

8.4 **Default Provisions.**

8.4.1 Except as otherwise provided in paragraph 8.4.5, the terms of this Agreement shall not entitle any Party to cancel, rescind, or otherwise terminate this Agreement. However, such limitations shall not affect in any manner any other rights or remedies which a Party may have hereunder or under applicable law by reason of any such breach.

8.4.2 All rights and covenants contained herein shall be enforceable by suit for specific performance and mandatory injunctive relief, in addition to any other remedy provided by law or equity.

8.4.3 No Party shall be entitled to pursue any action for specific performance, injunctive relief, or any other available remedy arising out of a default under this Agreement until the non-defaulting Party has provided to the Party alleged to be in default a written Default Notice specifying the specific nature of the default, and the alleged defaulting Party has failed to cure the default within thirty (30) days of the effective date of the Default Notice. In the event the cure of a default reasonably requires greater than the thirty (30) day time period specified, the grace period granted herein shall, if the defaulting Party has initiated cure of the default within the thirty (30) day time period and is continuing to pursue completion of the cure with due diligence, extend the reasonable time period required for the cure of the default.

8.4.4 In the event of a material default by Owner with respect to obligations to City under this Agreement, and failure of Owner to cure the default within the grace period set forth above, in addition to any other remedies available to City under the terms of this Agreement, City shall be entitled to withhold issuance of additional development permits or authorizations regarding the Property until the default has been cured. The Parties agree that failure of Owner to timely pay any funds owed under the provisions of this Agreement shall constitute a default with respect to the owner's obligations hereunder, and therefore would permit City to withhold permits for the Property.

8.4.5 If, after an annual review of the Property in accordance with Section 163.3235, Florida Statutes, the City Growth Management Director makes a preliminary finding that there has been an uncured default by Owner under this Agreement, the Agreement may be referred to the City Council who shall conduct two public hearings (and written notice shall be provided to Owner at least 7 days prior to each hearing) to determine whether, based on substantial competent evidence, Owner has complied in good faith with the terms and conditions of this Agreement. If the City Council determines, based on substantial competent evidence, that Owner has not complied in good faith with the terms and conditions of this Agreement, then the City Council may consider revoking or modifying this Agreement.

8.5 Estoppel Statements. Each Party agrees that upon written request from time to time of any other Party it will timely issue at no charge to a current or prospective lender to such Party, or to a current or prospective purchaser or successor party to such other Party, or to another governmental entity requesting or requiring the same, an Estoppel Statement stating:

8.5.1 Whether the Party to whom the request has been directed knows of any default by any Party under this Agreement, and if there are known defaults, specifying the nature thereof.

8.5.2 Whether this Agreement has been assigned, modified or amended in any way by such Party (and if it has, stating the nature thereof).

8.5.3 That to the best of the requested Party's knowledge this Agreement, as of the Estoppel Statement date, is in full force and effect.

8.5.4 That to the best of the requested Party's knowledge there are not any monies currently owed by any Party to another Party under the terms of this Agreement, or if there are monies owed, the amount and details of all monies owed.

8.5.5 That, as to the Property or any specific parcel therein (as applicable, based upon the request) there are no moratoriums or suspensions of the right to procure Development Orders, Building Permits, or Certificates of Occupancy or other development approvals in effect as of the date of the Estoppel Statement.

Such written statement shall act as a waiver of any claim by the Party furnishing it to the extent such claim is based on facts contrary to those asserted against a bona fide mortgagee or purchaser for value without knowledge of facts to the contrary of those contained in the Estoppel Certificate who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Party furnishing it to any liability whatsoever, notwithstanding the negligent or other inadvertent failure of such Party to disclose correct and/or relevant information.

8.6 Litigation. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorneys' fees, and including reimbursement for such reasonable attorneys' fees and costs incurred with respect to any bankruptcy, appellate or post-judgment proceeding related thereto.

- 8.7 Binding Effect.** The Parties to this Agreement represent to each other that each Party fully understands the facts surrounding this Agreement and each is signing this Agreement fully and voluntarily, intending to be bound by it. There are no representations or warranties other than those set forth herein.
- 8.8 Headings.** The headings contained within this Agreement are for identification purposes only, and shall not be construed to amend, modify, or alter the terms of the Agreement.
- 8.9 Severability.** Except as otherwise set forth herein, in the event any provision or section of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.
- 8.10 Survival of Representations and Warranties.** All representations and warranties contained herein are made in writing by the Parties in connection herewith shall survive the execution and delivery of this Agreement.
- 8.11 Successors and Assigns.**
- 8.11.1** Pursuant to the provisions of Section 163.3239, Florida Statutes, the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, the Parties hereto and their respective successors and assigns. This Agreement shall run with title to the Property.
- 8.11.2** Upon written assignment of this Agreement to a successor owner of all of the Property (less any portions conveyed to the City or other governmental authority), Owner shall be relieved of all of its obligations under this Agreement.
- 8.12 Applicable Law.** This Agreement is being delivered in the State of Florida, and shall be construed and enforced in accordance with the laws of the State of Florida. The venue for any legal proceeding arising out of this Agreement shall be Marion County, Florida.
- 8.13 Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.
- 8.14 Amendment of Agreement.** This Agreement cannot be changed, modified or released orally, but only by an agreement in writing signed by the parties against whom enforcement of said change, modification or discharge is sought.
- 8.15 Gender.** As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.
- 8.16 Effective Date.** This Agreement shall become effective upon the occurrence of execution of this Agreement by all Parties, and the recordation of the Agreement in the Public Records of Marion County, Florida within fourteen (14) days after execution of this Agreement by all parties.

8.17 Duration. The term of this Agreement shall be for a period of thirty (30) years commencing on the Effective Date, unless it is extended by mutual consent of the Parties in accordance with Section 163.3229, Florida Statutes.

[SIGNATURES CONTAINED ON FOLLOWING PAGES]

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates set forth below.

“Owner”

Signed, sealed and delivered in
the presence of:

Print Name: Fred N. Roberts, Jr.

Print Name: Sarah Roberts

200 CLUB OF OCALA, LLC, a Florida limited
liability company

By:

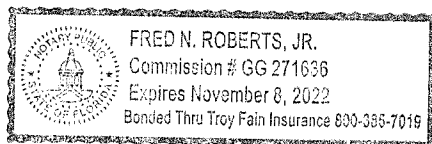
Print: Rekha Rohatgi, Manager

Date: 05-03, 2022

STATE OF FLORIDA

COUNTY OF Marion

This instrument was acknowledged before me by means of ☒ physical presence or ☐ online
notarization this 3 day of May, 2022, by Rekha Rohatgi, as Manager 200
CLUB OF OCALA, LLC, a Florida limited liability company, who ☒ is personally known to me OR ☐ has
produced _____ as identification.



Signature of Notary Public – State of Florida

Print Name FRED N. ROBERTS, JR.

Commission Number _____

My Commission Expires _____

“City”

CITY OF OCALA, FLORIDA, a Florida
municipal corporation

ATTEST

Angel B. Jacobs, City Clerk

By: _____

Name: _____

Title: _____

Date: _____, 2022

*APPROVED AS TO FORM
AND LEGALITY:*

Robert W. Batsel, Jr., City Attorney

Exhibit A

The Property

Parcel 1

Commence at the Southeast corner of the West 1/2 of the Southeast 1/4 of SECTION 27, TOWNSHIP 15 SOUTH, RANGE 21 EAST, Marion County, Florida, proceed thence South 89° 41' 33" West along the South boundary of said Section 649.57 feet to the Point of Beginning; thence continue South 89° 41' 33" West 549.16 feet; thence departing said South boundary North 00° 00' 37" East 661.62 feet; thence North 89° 17' 56" East 5.03 feet; thence North 00° 00' 03" East 993.99 feet; thence North 89° 44' 14" East 1193.96 feet; thence South 00° 05' 18" West 171.77 feet; thence South 89° 42' 55" West 649.62 feet; thence South 00° 00' 12" West 1483.20 feet to the Point of Beginning.

Parcel 2

Together with that certain non-exclusive agreement for ingress and egress and sign easement as created in the Construction, Operation and Easement Agreement recorded October 30, 1996 in Official Records Book 2302, Page 118, Public Records of Marion County, Florida.

Exhibit "B"

Multi-Family Parcel

A portion of the Southeast Quarter of Section 27, Township 15 South, Range 21 East, lying in Marion County, Florida and being more particularly described as follows:

Commence at the Southwest Corner of the Southeast Quarter of Section 27, Township 15 South, Range 21 East, Marion County, Florida; thence South $89^{\circ}55'19''$ East, a distance of 50.67 feet along the South line of said Southeast Quarter to the East Right of Way line of SW 44th Avenue as described in Official Records Book 5118, Page 1991 of the Public Records of Marion County (also known as SW 43rd Court), for a POINT OF BEGINNING; thence North $00^{\circ}24'23''$ East, a distance of 1047.10 feet along said East Right of Way line; thence departing said East Right of Way line, South $89^{\circ}55'19''$ East, a distance of 623.83 feet; thence South $00^{\circ}23'19''$ West, a distance of 1047.10 feet to the aforesaid South line of the Southeast Quarter; thence North $89^{\circ}55'19''$ West, a distance of 624.16 feet along said South line to the POINT OF BEGINNING.

Containing 15.00 acres, more or less.

**Exhibit D
City Staff Report
(6 Pages Attached)**



Planning & Zoning Commission

February 14, 2022

Case No. ZON22-44645

Staff Report

Petitioner: Catalyst Development Partners II, LLC

Property Owner: 200 Club of Ocala, LLC

Project Planner: Patricia Hitchcock, AICP

Zoning Change Request: from: No zoning
to: R-3, Multi-Family Residential

Parcel Information

Acres: ~15 (total property is ~26.63 acres)

Parcel(s)#: Portion of #23816-000-00

Location: On the east side of SW 43rd Court, approximately 630 feet north of the intersection of SW 40th Street and SW 43rd Court

Existing use: Undeveloped

Future Land Use: Medium Intensity/Special District

Adjacent Land

<u>Direction</u>	<u>Future Land Use</u>	<u>Zone</u>	<u>Current Use</u>
North	Neighborhood	R-1A	Single-Family Neighborhood
East	Medium Intensity/Special District	R-3 OP	Multi-Family Undeveloped
South	Medium Intensity/Special District	B-2 B-2	Multi-family Special Exception approved Undeveloped
West	High Residential (county)	M-2	Undeveloped
	Medium Residential (county)	M-1	Undeveloped
	Public (county)		Elementary School

Background

The subject property is located on the east side of SW 43rd Court, approximately 630 feet north of the intersection of SW 40th Street and SW 43rd Court. The southern 15 acres of the property is under contract for sale and proposed to be zoned R-3. The remaining 11.63 acres is not included in the sale contract and will require zoning in the future.

The property was annexed by the City of Ocala in 2005 pursuant to a request from the property owner at that time. No City land use designation or zoning was requested. The Marion County land use designation of Commercial (23.2 acres) and High Density Residential (3.9 acres) with associated zoning of B-2 and R-3 remained in effect until adoption of the 2035 Comprehensive Plan in January 2013.

The Ocala 2035 Vision Plan identified this area as appropriate for Medium Intensity development. In January 2013, adoption of the Comprehensive Plan Future Land Use Element designated the subject property and much of the area south and north of the Sonoma development as Medium Intensity/Special District. The intent of this category is to identify neighborhood and community-serving activity centers. Permitted uses include residential, office, commercial, public, recreation, educational facilities, and institutional. Medium Intensity/Special District has a minimum density and intensity of 5 dwelling units per acre or 0.15 FAR. Maximum density and intensity are 30 dwelling units per acre and 4.0 FAR, respectively.

An analysis of residential market potential conducted by Zimmerman/Volk Associates, Inc., in August 2017 identified a need for additional housing units. Growth in the warehouse distribution and logistics sector has driven the need as much of the workforce commutes from outside the City and outside of Marion County. The requested R-3, Multi-family Residential, zoning is eligible to implement the Medium Intensity/Special District is appropriate on arterials.

The Medium Intensity/Special District land use designation is reflective of the long-held plan to construct a road within the SW 43rd Court right-of-way that will circumnavigate the western and southern areas of the City. As is the local practice, the road frequently changes names from NW 44th Avenue to NW/SW 46th Avenue to SW 44th Avenue to SW 43rd Court to SW 43rd Street Road, to SW 42nd Street to SW/SE 32nd Street to SE 31st Street. The simple explanation is that the road will connect from County Road 326 southerly across State Road 200 with a fly-over I-75 and then easterly to Maricamp Road.

The City is in negotiations to obtain the last portion of right-of-way needed for construction of the roadway north of the subject property. Much of the funding is in place with the remainder contained in proposals before the state legislature this session. SW 43rd Court that serves the subject property is classified by the Florida Department of Transportation (FDOT) as a Minor Collector Urban. Once construction of the network is complete, it will likely be classified by FDOT as a Minor Arterial Urban.

Staff has discussed concerns about congestion in the area with the applicant's representative. The transportation infrastructure is not currently in place to accommodate the potential level of development. The applicant's representative suggested using a Chapter 163 Concurrency Development Agreement to address future development of the property, requiring a traffic study as part of any development review, and tying development to roadway and intersection improvements, including signalization. The agreement will be presented to City Council concurrent with this rezoning request.

Staff Recommendation: Approval of ZON22-44645
--

Basis for Approval

The R-3 zoning district is eligible for implementing Medium Intensity/Special District land use classification.

Factual Support

1. Consistent with the following Objective and Policies of the City of Ocala Future Land Use Element:
 - a. Objective 12: The Future Land Use Element shall require efficient use of existing services, facilities and infrastructure to discourage urban sprawl and promote a clustered urban development pattern.
 - b. Policy 12.1: The City shall require that all development have adequate services and facilities including water, roads, sewage collection and treatment, stormwater drainage, recreation and solid waste disposal, to the extent required by state law, other provisions of this Comprehensive Plan, or the City's Land Development Code.
2. The requested zoning designation of R-3, Multifamily, is eligible to implement the land use

designation of Medium Intensity/Special District.

3. Approval of this request will not adversely affect the health, safety, convenience, prosperity or general welfare of the community.

Level of Service Impact Analysis

Transportation: Development that creates 100 or more new PM peak hour trips will trigger the requirement that a traffic study be conducted.

Electric: The property is in the Ocala Electric Utility service territory.

Potable Water: Service is available within 1/4 mile of the parcel and connections will be determined during the site plan or subdivision review and approval process.

Sanitary Sewer: Service is available within 1/8 mile of the parcel and connections will be determined during the site plan or subdivision review and approval process.

Stormwater: For any future development, runoff must be retained on-site to match pre-development conditions. Facilities must be designed to provide flood protection for a 100 year, 24-hour storm event.¹

Solid Waste: Service is available.

Fire Service: Service is available.

Schools: This property is served by Saddlewood Elementary, Liberty Middle School, Westport High School.

Adequate capacity exists for this project from a districtwide perspective, however, all three schools serving this proposed development are experiencing persistent localized overcrowding. The extent of the project's adverse impacts to already overcrowded schools is subject to specifics (e.g. age-restricted or all ages, market rate, project timing, phasing, absorption rate, and extent of build out).

CASE # >>>	Feb. 14, 2022 PZ [REZONING]						
PROJ NAME or Parcel #>	23816-000-00 [15 ac]					PROPOSED	ALLOWED
					DWELLING TYPE	PROJECT DWELLING UNITS	
		DISTRICT WIDE		SY 21-22	MFR	0	450
	SCHOOL LEVEL	UTILIZATION	SCHOOL NAME	80th Day Utilization	MFR STU GEN RATE	ESTIMATED STUDENTS	
	E	92%	Saddlewood	100.8%	0.097	0	43
	M	83%	Liberty	108.7%	0.040	0	18
	H	88%	West Port	113.2%	0.043	0	19
* District Wide Utilization - annual calculation uses most recent 120th Day membership counts for a School Year (SY).							
^^ XXth Day Utilization - from most recent 20 day interval of membership counts for a School Year (SY).							

Land Use (existing)

Medium Intensity/Special District category facilitates developments with two (2) or more uses. Permitted uses include residential, office, commercial, public, recreation, education facilities and institutional. Light industrial shall only be allowable in designated locations as specified in the Land Development code and must meet the intent of the Medium Intensity/Special District category, including form and design guidelines as applicable. This mix is intended to promote a walkable urban form. The minimum density and intensity before any incentives in this future land use category is 5 dwelling units per gross acre or 0.15 FAR. The maximum density and intensity before any incentives is 30 dwelling units per acre or 4.0 FAR. The location and application of incentives shall be set forth in the Land Development Code.²

Zoning

Requested

R-3, Multi-Family Residential: The multi-family residential (R-3) district is intended to be a multi-family area, including higher residential densities in accordance with the comprehensive plan. This district shall allow single-family, two-family and multi-family dwellings, residence-offices and residence-galleries. Professional and business offices that are of compatible scale and intensity may be allowed as special exceptions by the board of adjustment.³

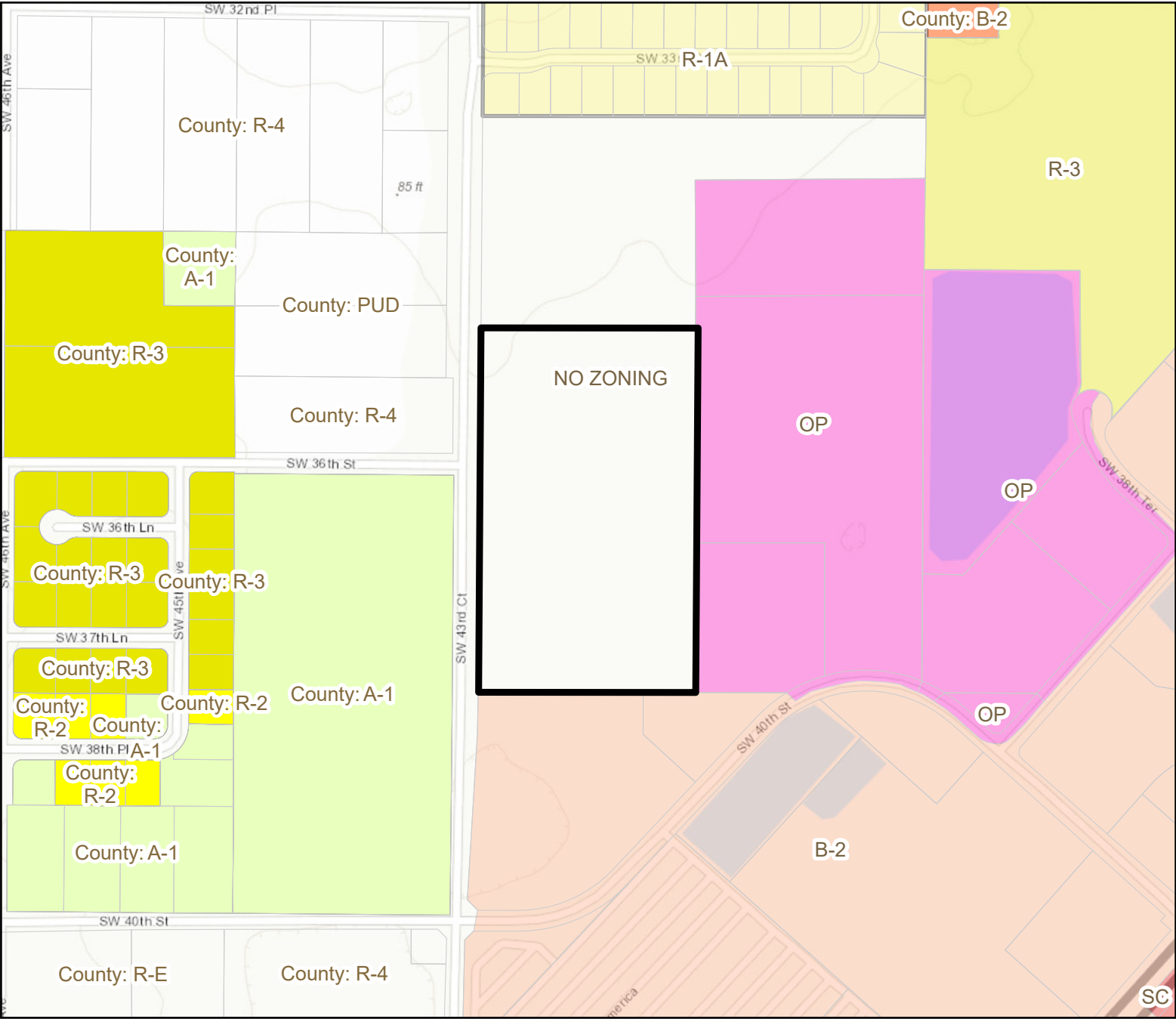
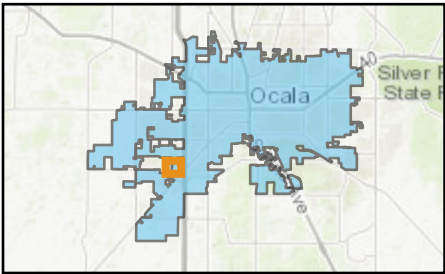
¹ City of Ocala Comprehensive Plan, Stormwater Sub-Element, Policy 3.1.

² Ocala Comprehensive Plan Future Land Use Element, Policy 6.2, Medium Intensity/Special District

³ City of Ocala Land Development Code, Section 122-351, Intent and purpose.

ZONING CASE MAP

Case Number: ZON22-44645
Parcel Number: 23816-000-00
Property Size: Approximately 15 acres
Land Use Designation: MI-SD, Medium Intensity/Special District (City)
Zoning: No Zoning
Proposal: Request to change zoning to R-3, Multi-family Residential, for property located on the east side of SW 43rd Court in the 3600 block (across from Saddlewood Elementary).



Legend

- Property
- Parcels

Zoning Districts

- B-2:Community Business
- OP:Office Park
- Ordinance Pending
- R-1A:Single Family Residential
- R-3:Multi-Family Residential
- SC:Shopping Center

County Zoning District

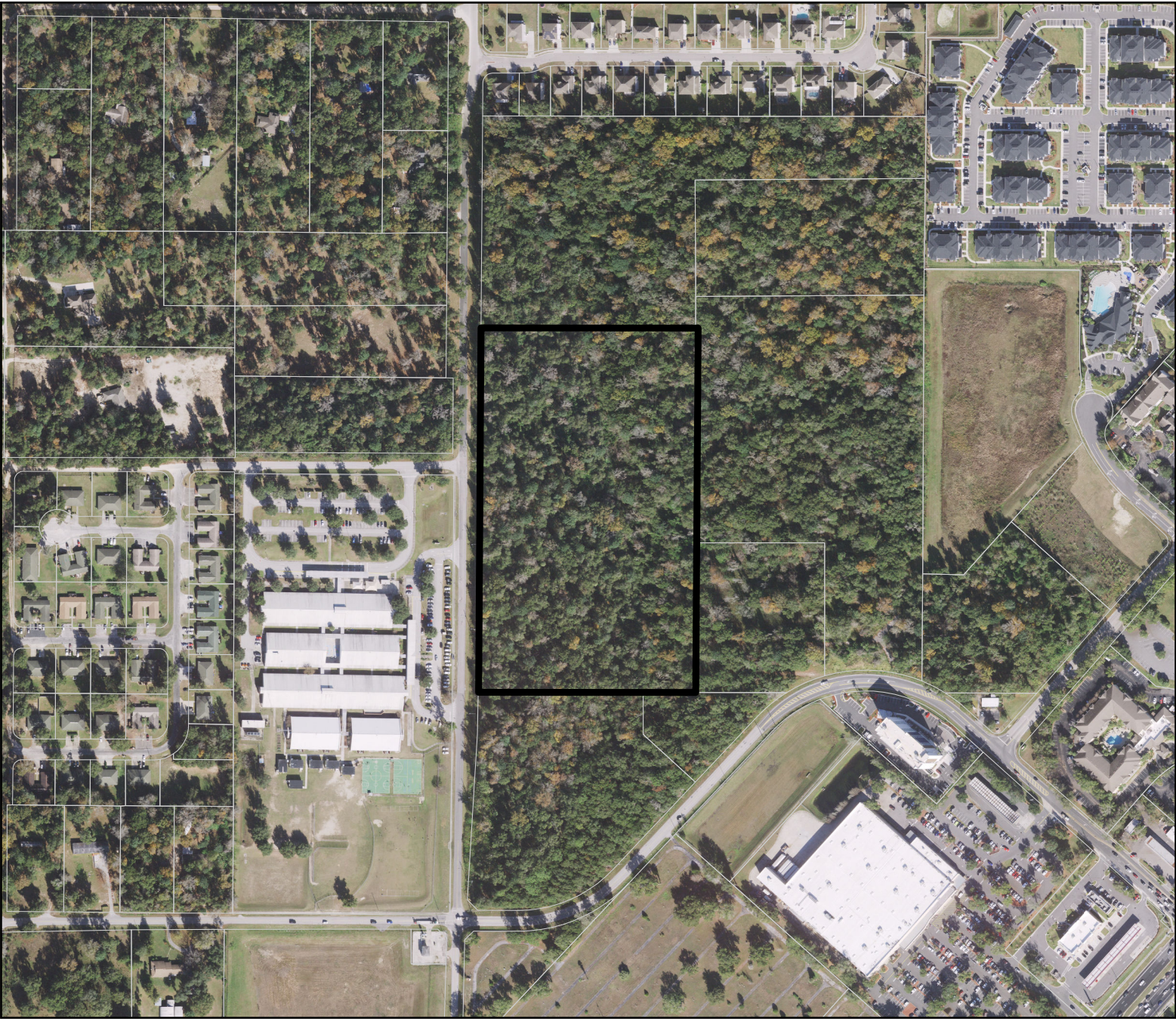
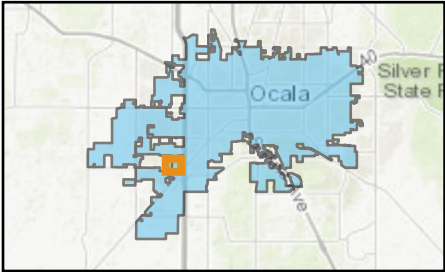
- A-1:Agricultural
- B-2:Community Business
- R-2:Two-Family Residential
- R-3:Multi-Family Residential

0 295 590 Feet

Prepared by the City of Ocala
Growth Management Department

AERIAL MAP

Case Number: ZON22-44645
Parcel Number: 23816-000-00
Property Size: Approximately 15 acres
Land Use Designation: MI-SD, Medium Intensity/Special District (City)
Zoning: No Zoning
Proposal: Request to change zoning to R-3, Multi-family Residential, for property located on the east side of SW 43rd Court in the 3600 block (across from Saddlewood Elementary).



Legend

 Property

 Parcels

0 295 590 Feet 



Exhibit E
Planning & Zoning Commission Meeting Minutes
(3 Pages Attached)

b. ZON22-44645

Petitioner: Catalyst Development Partners II, LLC

Agent: Fred N. Roberts, Jr

Planner: Patricia Hitchcock (352-629-8304)

phitchcock@ocalafl.org

A request to change zoning to R-3, Multi-family Residential, for property located on the east side of SW 43rd Court in the 3600 block (across from Saddlewood Elementary), approximately 15 acres.

Discussion:

Fred Roberts, 40 SE 11th Avenue, commented the rezoning request to R-3 is very typical for a multi-family project. The City staff raised numerous concerns regarding the proposed project. The project will utilize a Chapter 163 Developers Agreement, which requires a traffic study and improvements. He explained the site will not be developed until other surrounding projects start. He anticipates the project will start when SW 43rd begins their project.

The medium intensity land use will allow 30-units per acre. To note, the agreement established a unit limit of 320-units. The developer plans on building single-family residential homes in the northern boundary, with a 25-foot buffer. Furthermore, the accessibility concerns will be addressed during the site plan process.

Commissioner Kesselring asked if the applicant owns the adjacent property. Mr. Roberts responded he represents the developer; the 200 Club of Ocala owns the 11-acres to the north, which is subject to the Chapter 163 Developers Agreement. He noted they are not applying to rezone the remainder of the property (only the 15-acres to the south).

Commissioner Kesselring requested clarification regarding the property to the east. Mr. Roberts responded the property has been listed for sale on the real estate market. To note, the property owner fully supports the proposed development project.

Sheryl Calverley, 4400 SW 32nd Place, expressed concern regarding traffic, public safety and emergency vehicles. She noted the area lacks street lighting and public sidewalks. She explained the community sold 23 properties to the City for the expansion project. She requested the Commission thoroughly review the proposal and make the needed improvements to protect the public.

David Herlihy, Marion County School District, discussed increased school capacity due to community development. He noted the street needs to be expanded to four lanes, to mitigate school traffic. The School Districts capacity is currently 9/10, which is considered the maximum. He explained how several schools have reached the maximum capacity limits. Furthermore, the School District acquired a 20-acre property from the City; however, the School District does not have the funds (20 million to 30 million project expense) available to build another school to remedy the capacity issues.

Claire Heller, 3400 SW 43rd Court, expressed concern regarding traffic and school impacts. The properties access road has no access to 38th and is only able to access SW 43rd Court. Furthermore,

the development project will increase density in the community and the surrounding schools have reached their maximum capacity limit.

Dennis McFatten, 1517 SE 30th Avenue, expressed concern regarding traffic and pedestrian safety. He noted the drone footage will show the existing traffic/pedestrian safety problems. The School District has utilized law enforcement for assistance mitigating traffic, which costs \$50 an hour, for a minimum of 3-hours. He requested the Commission address the traffic/pedestrian safety concerns first, before approving development projects in the area.

Tambor Jenkins, President of Sonoma HOA, expressed concern regarding traffic, pedestrian safety and home values. He anticipates the development will increase traffic/pedestrian safety issues in the community. He noted vehicles wait 30-minutes to pass traffic stop signs. Furthermore, the proposed development will negatively impact home values in the community. He requested the Commission oppose the proposed development project.

Sheryl Calverley, 4400 SW 32nd Place, expressed concern the development will impact people traveling in the community. Currently, traffic is so horrendous, people get stuck waiting on the road. She requested the traffic problems be included in the plan.

Mr. Roberts commented the R-3 zoning is very appropriate for the development project. The appropriate safeguard will be established to ensure concerns are addressed. The Chapter 163 Developers Agreement requires a traffic study be performed. The traffic study will provide a list of recommended traffic improvements. If the level of service does not improve, the applicant must complete the traffic improvements.

The School Districts capacity is 85.5% districtwide, which is below the State capacity of 87.5%. To note, the School District is responsible for addressing localized overcrowding. The development will add 31 additional elementary students to the community. He anticipates the students will be walking to school; since the development is located in close proximity to the school, which will alleviate traffic impacts. Furthermore, the plan is to have infrastructure in place to support future development. He explained how multi-family projects do not adversely impact property values.

Ms. Campbell commented Liberty Middle School and Westport High School, have a high capacity of 115%. She noted the additional students will need bus transportation, because there are no sidewalks, which is the State law. Furthermore, the State will not fund their school construction project due to the localized overcrowding. She requested the Commission take traffic issues and overcrowded schools into consideration when evaluating development projects for the southern area.

Commissioner Clere asked if the Chapter 163 Developers Agreement will come back to the Commission for a second review. Ms. Hitchcock responded the R-3 zoning will go through the site plan approval process and will not come back to the Commission. The City will schedule two public hearings for City Council to review the Development Management Agreement.

Commissioner Lopez asked if the Commission could table the case for sufficient traffic/remediation purposes. Ms. Hitchcock responded the City will receive the traffic study during the site plan process. To note, the Chapter 163 Developers Agreement ensures the City will receive the traffic study. A

development proposal is required for the City to receive the traffic study and methodology.

Commissioner Lopez asked how the City will remedy the traffic concerns. 01:02:37 Unidentified Speaker responded the traffic issue will be addressed by City Council. The Commission is only responsible for evaluating the cases by utilizing the Zoning Code. Furthermore, the Commission submits a recommendation to City Council; however, City Council makes the final decision.

Ms. Hitchcock commented the City adopted the 2035 Vision Plan. The plan shows the area is appropriate for Medium Intensity Special District, which allows 30-units per acre. Furthermore, the R-3 multi-family zoning is consistent with the medium intensity land use. The City has acquired right-of-way and funding over the years, to help aide development. The Chapter 163 Developers Agreement requires the developers to have the infrastructure in place.

Chairman Gilchrist noted traffic is horrendous in the area; however, the zoning change request is appropriate for the proposed plan. Furthermore, he favors the Chapter 163 Developers Agreement, which ensures the City will receive the traffic study and necessary infrastructure improvements.

Ms. Hitchcock noted the R-3 zoning is appropriate for the location.

Commissioner Kesselring expressed concern the Commission is shortcutting the planning responsibilities. The Commission should ensure the resources are adequate to sustain the development. To note, the traffic in the area is horrendous.

Chairman Gilchrist requested the Commission make a motion.

Commissioner Rudnianyn commented he agrees multi-family residential is an appropriate use; however, the traffic issues will continue to exist. To note, City Council will be reviewing the Chapter 163 Developers Agreement.

Vice-Chairman Adams asked when the road construction will complete. Mr. Hale responded the construction will complete in 18-months. The City is working on securing additional funding from the Legislator. (01:09:38-01:10:30 inaudible).

Vice-Chairman Adams requested the Commission make a decision regarding the zoning request. The property owners have the right to develop their property in the City of Ocala.

RESULT:	APPROVED ZON22-44645
MOVER:	Rus Adams
SECONDER:	Owen Boone
AYES:	Boone, Clere, Rudnianyn, Adams, Gilchrist
NAYS:	Kesselring, Lopez

Exhibit F
City Council Meeting Minutes
(21 Pages Attached)



110 SE Watula Avenue

Ocala, FL 34471

www.ocalafl.org

Ocala

City Council

Minutes

Tuesday, May 3, 2022

4:00 PM

1. Call to Order

- a. Opening Ceremony
 - 1. Invocation - Chaplain Sydney Hart
 - 2. Pledge of Allegiance
- b. Welcome and Roll Call

Present: Mayor Reuben Kent Guinn
Pro Tem James P. Hilty Sr.
Council Member Kristen M. Dreyer
Council Member Barry Mansfield
Council Member Jay A. Musleh
Council President Ire J. Bethea Sr.

Municipal Officers/Others Present: The meeting was also attended by Interim City Manager Pete Lee, Assistant City Attorney Jimmy Gooding, Assistant City Manager Ken Whitehead, City Clerk Angel Jacobs, Deputy City Clerk Pamela Omichinski, Fire Chief Clint Welborn, Police Chief Michael Balken, Internal Auditor Randall Bridgeman, Growth Management Director Tye Chighizola, Civil Engineer III Noel Cooper, Marketing & Communication Manager Ashley Dobbs, Director of Airport Matthew Grow, Urban Design Coordinator Aubrey Hale, Budget Director Tammi Haslam, Director Community Services James Haynes, Contracting Officer Tiffany Kimball, City Engineer & Director of Water Resources Sean Lanier, Director Public Works Darren Park, Director of Telecommunications Mel Poole, Director of Parks & Recreation Preston Pooser, Strategic & Legislative Affairs Adm Jeannine Robbins, Director of HR/Risk Management Chris Watt, Senior Contract Specialist Daphne Robinson and other interested parties.

2. Public Notice

Public Notice for the May 3, 2022 City Council Regular Meeting was posted on April 7, 2022

3. Proclamations & Awards

- a.** Motorcycle Safety Awareness Month Proclamation presented to John Melin, President of Forest Chapter, and Vice President Bridgette Pace.

Mayor Guinn presented a proclamation for Motorcycle Safety Awareness Month. He discussed motorcycle safety and training. The City proclaims the month of May 2022, as Motorcycle Safety Awareness Month.

John Melin thanked Mayor Guinn for the proclamation. He explained the importance of the Motorcycle Safety Awareness Program and school partnerships. He encouraged the public to attend the program.

Bridgette Pace encouraged businesses to partner with the Motorcycle Safety Awareness Program. She explained how the public can eliminate driving blind spots, such as removing handicap placards from the rearview mirror while driving.

4. Presentations

5. Public Comments

City Attorney Batsel explained the protocol for public hearings and public comments

City Attorney Batsel explained the protocol for public hearings and public comment. He summarized tonight's discussion items and key terms. City Council makes legislative and zoning decisions, based on competent substantial evidence. The public will have three minutes to speak.

Glenn Fiorello, 838 SE 3rd Street, expressed concern regarding the City budget

Glenn Fiorello, 838 SE 3rd Street, expressed concern regarding the City budget. He encouraged the City to cross train staff and eliminate "C" level employees. He noted property appraisals should be released by the Property Appraisers Office in June and warned not to base the City budget on the current overpriced market. Furthermore, he shared his experience riding his Harley-Davidson motorcycle.

Whitfield Jenkins, 2200 NW 24th Road, expressed concern regarding the termination of City Manager Sandra Wilson

Whitfield Jenkins, 2200 NW 24th Road, expressed concern regarding the termination of City Manager Sandra Wilson. He noted City Council made a huge decision without allowing public comment. He discussed how Ms. Wilson was the first African American female City Manager in the history of Ocala.

Rock Gibboney, 597 NE 45th Terrace, commented on the termination of City Manager Sandra Wilson

Rock Gibboney, 597 NE 45th Terrace, commented on the termination of City Manager Sandra Wilson. He shared his wonderful experience working with Ms. Wilson. He encouraged the public to move forward to the future.

Brian Creekbaum, 103 NE 31st Terrace, commented on public participation during meetings

Brian Creekbaum, 103 NE 31st Terrace, commented on public participation during meetings. He read the rules of order for public participation at City Council meetings. He noted City Council violated Florida Statutes by not allowing public comment regarding the termination of the City Manager. He expressed disappointment regarding three City Council Members who ignored the recommendation of another Council member to make the City Manager termination an agenda item, and failing to ask for public comment.

6. Public Hearings

- 6c.** Approve a "Second Amendment to Concurrency Agreement and Contribution Agreement" to be entered into pursuant to Sections 163.3220 through 163.3243, inclusive, Florida Statutes, between the City of Ocala (City) and KAS OCALA, LLC, project CDA22-44744. This is the second of two public hearings. The first public hearing was held on Tuesday, April 19, 2022.

Presentation By: Tye Chighizola

Assistant City Attorney Jimmy Gooding provided a history on the property. This item is in regards to the road easement/donation/right of way agreement, and the contract extends concurrency from the original agreement to match the Carll agreement that was approved at the April 19, 2022 City Council meeting.

There being no further discussion the motion carried by roll call vote.

RESULT: APPROVED

MOVER: Kristen M. Dreyer

SECONDER: James P. Hilty Sr.

AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

- 6a.** Adopt a Chapter 163 Development Agreement for approximately 26.63 acres of property located on the east side of SW 43rd Court in the 3600 block (across from Saddlewood Elementary) (DMA22-44686). This is the second of two public hearings. The first public hearing was held on March 1, 2022. Postponed from the March 15, 2022 and April 19, 2022 City Council Meetings.

Presentation By: Tye Chighizola

Council President Bethea opened a public hearing for both items 6a & 6b at 4:38 pm.

Growth Management Director Tye Chighizola commented items 6a & 6b are related. He explained 6c was moved ahead of these items to ensure there was a commitment to build the roadway before discussion of these items. The property was annexed into the City in 2013, but no zoning was applied. Staff feels R-3 is the best zoning to addresses issues such as compatibility and traffic. He noted there is currently no traffic study or site plan yet, as that would be required after the zoning step. He provided an overview of the 16 development projects in the area, which could be up to 8,600 units, and highlighted the new 4-lane roadway that will be constructed that will tie into the flyover through Heathbrook, across SR-200 and to US-27 and eventually SR-326. He commented the

multi-family generates less trips on average than single family.

Council President Pro Tem Hilty questioned how multifamily creates less trips than single family. Mr. Chighizola explained traffic studies have shown single family homes generate about 10 trips per day versus 6.5 trips per day for multi-family, noting single family homes on average have more people in each dwelling and are likely to own more vehicles.

Council Member Mansfield questioned how school overcrowding will be addressed and traffic studies for the area. Mr. Chighizola explained the redistricting process to address overcrowding in the southwest corridor and City. The School Board must follow State requirements when proposing school developments. Many of the development projects require traffic studies. The four-lane roadway development will have a 35,000 vehicle capacity, which will be enough. The School Board is facing great challenges with individual school capacity.

Council Member Dreyer commented the School Board is working hard to address the overcrowding at schools; but the Board has not sought City Council assistance with concurrency.

Interim City Manager Pete Lee explained how school concurrency is not within the City's jurisdiction. The Marion County School Board must abide by State rules, and the State looks at overall capacity within the County versus individual schools.

Council Member Dreyer stated she and Mr. Chighizola meet with the School board twice a month.

Mr. Chighizola noted there are 4,000 vacancies in schools, mainly in the northeast and southeast of the County, which hinders the School Board from seeking State funding.

Fred Roberts, 40 SE 11th Avenue, shared a power point presentation. The property is 26.63 acres and the land use is zoned as Medium Intensity. The property has a maximum density of 30-units per acre and minimum density of 5-units per acre. He provided an overview of the Catalyst Ocala design concept. He explained it is a transitional location, surrounded by residential and a school. The requested land use is in line with the surrounding property.

The Chapter 163 Development Agreement was included to address future development of the property, requiring a traffic study as part of any development review. He noted, in theory, 798 units could fit on the site under R-3 zoning; the Chapter 163 agreement will limit the total amount to 320 units, as well as includes limitations on height, requirements of enhanced buffering a screening, and addresses parking concerns. The developer has developed multiple properties in Florida and Georgia and the intention is to build a luxury product with a clubhouse and other amenities. He reiterated R-3 zoning will require an architectural review and traffic study. He provided an overview of the zoning map and aerial view. The developer intends to develop multi-family on the southern portion only, leaving a 700-foot tree buffer between the development and the single-family homes to the north.

Mr. Roberts explained the postponements for this agreement were to ensure the new right of way was approved. It is currently fully funded as a 2-lane road, to begin construction by the end of this year. There is a grant application to have it as a 4-lane road that is currently on Governor DeSantis' desk. Construction of this property won't start until well after the road construction starts, noting there is a safeguard within the agreement that if the road isn't built, the apartments can't be built. The applicant will be conducting a traffic study and install necessary improvements. To note, Amber Gardner with Kimley-Horn, is the traffic engineer for the project. The project generates 158 peak hour trips (2.6 cars per minute) and the traffic calculations can be verified by the City Engineer. Furthermore, single-family residential generates .158 child per residential unit and multi-family generates .097. He explained the student capacity data for the development project.

Brigitte Smith, 4275 SW 85th Avenue, expressed concern regarding traffic at Saddlewood Elementary. She questioned the presented student data and requested the City build access roads to remedy traffic impacts.

Council Member Dreyer commented SW 38th is a County road. She asked if the City has control over the road. Interim City Manager Pete Lee explained the City does not have control over County roads.

Sarah Williams, 4238 SW 50th Court, expressed concern regarding rapid growth, traffic, declining property values, increased crime and school overcrowding. She encouraged the City to thoroughly review the request and protect the residents of Ocala.

PG Schafer, 2015 SW 43rd Place, expressed concern regarding rapid growth, traffic and infrastructure. She requested Council take into consideration the public's feedback. She suggested the City allow controlled/smart growth.

Jason Schnelle, 8555 SW 152nd Place, Dunnellon, expressed concern regarding rapid growth. He questioned what Council considers "smart growth".

Allison Campbell, 1821 SE 34th Lane, stated she is a Member of the School Board. She explained the overcapacity data and new developments in the area. She noted the interlocal agreement has not been utilized/revised for several years. The next School Board work session is scheduled on May 19, 2022. Currently, the City is approving projects at a rapid pace and the School Board is struggling to catch-up.

Cynthia Gennaro, 4585 SW 44th Street, requested Council stop construction until infrastructure can catch-up. She expressed concern regarding school overcrowding and

irresponsible growth management. She questioned why the City does not consider the representation of developers by City Attorneys as a conflict of interest; and why the City does not charge developers impact fees.

Mayor Guinn requested the public not clap.

Kimberly Sindy, 4572 SW 44th Court, expressed concern regarding traffic impacts,

school overcrowding, scarce employment opportunities and the City Attorney's conflict of interest.

Justin Savino, 4560 SW 44th Street, expressed concern regarding roadways, school overcrowding, limited transportation, infrastructure, law enforcement and rezoning. He discussed how his children alternatively attend a local, private school, that is not overcrowded. He added the City is not following smart growth, and suggested Council enforce impact fees.

Diane Erwin, 4490 SW 44th Street, stated the charter school has a long waiting list. She suggested the School Board request concurrency to remedy overcrowding.

Debbie Williams, 3740 SW 56th Court, expressed concern regarding roadways. She requested Council build roads and schools first, prior to development. She questioned the student data mentioned by Mr. Roberts; and encouraged Council to vote no.

Cathy Wyckoff, 2101 SW 42nd Court, expressed concern regarding safety, transportation and school overcrowding. The City needs better infrastructure to support the rapid growth.

Ronna Goldbach, 4550 SW 44th Court, explained the climate change effects due to construction and loss of trees. Trees help remove CO2 from the air and release oxygen into the atmosphere. Development projects results in a loss of trees/vegetation, which can cause the release of greenhouse gases into the atmosphere, increased electricity use and increased garbage. To note, the proposed development area is home to endangered species and wildlife. The area has no sidewalks, which is a safety concern for the students who attend the neighboring school. She encouraged Council to implement smart growth.

Laura Savino, 4560 SW 44th Street, stated rapid growth does not benefit the City of Ocala. She requested Council follow a more responsible growth approach and take into consideration the Ocala culture. Furthermore, she requested more information regarding the roadway construction project.

Mr. Roberts stated there are only twelve medium intensity special districts in the City of Ocala. He explained how the intensity use for the site is very low, considering what is being contemplated for the area. The area is unable to meet the R-1 requirements; however, the area is meant to be developed as medium intensity. The goal is to construct a four-lane major roadway to alleviate traffic impacts on neighboring roadways. He discussed the high demand in Ocala and need for development.

Council President Bethea thanked the public for their feedback. The City is working hard to involve all government entities in growth/development discussions. He shared his growth experience where he resides.

Council Member Dreyer stated conversations are happening with the School Board. She encouraged the public to attend the next School Board meeting scheduled on May 9, 2022. Furthermore, she agrees the City does not have the proper infrastructure in place to support new development. She suggested Council evaluate ways to improve traffic

impacts in the area.

Council Member Musleh asked if the City has funding available to build a four-lane road? Interim City Manager Pete Lee responded the City does not have the funding available; however, the City is waiting for the Governor to sign a bill for an \$8 million appropriation.

Council Member Musleh expressed concern regarding the traffic impacts. He suggested Council delay the vote until the roadway is completed.

Mr. Roberts stated the City Engineer assured the City will be receiving funding from FDOT to construct a two-lane roadway. He noted the traffic study will dictate if the development can continue with a two-lane roadway.

Council Member Dreyer expressed concern a two-lane roadway will not resolve the traffic impacts. Mr. Roberts responded the methodology for the traffic study was approved by the City. The City will have funding once the Governor signs the bill to appropriate \$8 million to the City, which they can request FDOT modify the agreement to construct a four-lane roadway.

City Engineer Sean Lanier explained there is an agreement coming next Council meeting for a \$1 million appropriation. The two-lane roadway is budgeted for this fiscal year. The appropriation with the State will provide an additional \$8 million to four-lane the entire stretch and is just waiting on the Governor's signature.

Council Member Musleh stated the two-lane roadway will not remedy traffic impacts. Mr. Lanier explained how the two-lane roadway will provide an outlet to alleviate traffic impacts.

Council Member Musleh commented the infrastructure should be paid for before proceeding with development.

Council Member Hilty stated he is confident the \$8 million will be appropriated to the City. He explained how development is not considered smart growth. Furthermore, he suggested the roadway be completed before development starts.

There being no further discussion the motion was denied by roll call vote.

RESULT: DENIED

MOVER: Kristen M. Dreyer

SECONDER: Barry Mansfield

NAY: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

- 6b.** Adopt Ordinance 2022-25 for a zoning change to R-3, Multi-family Residential, for approximately 15 acres of property located on the east side of SW 43rd Court in the 3600 block (across from Saddlewood Elementary) (Case ZON22-44645) (Quasi-Judicial). Postponed from the March 15, 2022 and April 19, 2022 City Council Meetings.

Presentation By: Tye Chighizola

Introduced By: Barry Mansfield

There being no further discussion the motion was denied by roll call vote.

RESULT: DENIED

MOVER: Barry Mansfield

SECONDER: James P. Hilty Sr.

NAY: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

- 6d.** Open a Public Hearing for a Concurrency Development Agreement between the City of Ocala and Cradle Holdings, Inc. concerning the approximately 1,008 acres located on SR 200 between SW 66th Street and SW 60th Avenue. This is the first of two public hearings. The second public hearing on the proposed Concurrency Development Agreement will be held on Tuesday, May 17, 2022.

Presentation By: Tye Chighizola

Council President Bethea opened a public hearing at 6:08 pm.

Growth Management Director Tye Chighizola commented the request is a Concurrency Development Agreement for the Winding Oaks development. It will be approximately 3,000 residential units, plus commercial and office space. Part of the Concurrency Development agreement is to pay their “fair share” to address the deficiencies. There was a Chapter 163 agreement for a portion of the property a few years ago, and this will update it to address the entire property so it isn’t done in phases. He noted no vote is needed.

There were no public comment.

Council President Bethea closed the public hearing at 6:10 pm.

RESULT: OPENED A PUBLIC HEARING

- 6e.** Approve the College Park Townhomes Major Site plan for approximately 1.72 acres located in the College Park 2nd Addition on SW 34th Avenue Circle (Case SPL21-44519)

Presentation By: Tye Chighizola

Growth Management Director Tye Chighizola commented the small development is considered an infill project and they finished the platting process. He noted staff recommends approval.

Austin Daley, 40 SE 11th Avenue, Ocala, FL 34471, stated he is representing the applicant. He thanked staff for their hard work. He noted they had held a community meeting where two residents attended; one property owner requested a hedge be planted on their property across the street, to which the developer agreed. He requested Council approval of their proposed site plan.

Council Member Dreyer disclosed she has a personal relationship with the engineer on record for the project, which will not affect her decision regarding the request. To note, she has no financial interest regarding the property.

There being no further discussion the motion carried by roll call vote.

RESULT: APPROVED

MOVER: James P. Hilty Sr.

SECONDER: Barry Mansfield

AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

7. Second and Final Reading of Ordinances

(All are Public Hearings)

- 7a.** Adopt Ordinance 2022-39 concerning a zoning change from M-3, Heavy Industrial, to M-2, Medium Industrial, for approximately 3.2 acres of property located approximately 450 feet east of NW Martin Luther King Jr. Avenue in the 1700 block (Case ZON22-44673) (Quasi-Judicial)

Presentation By: Tye Chighizola

Introduced By: Barry Mansfield

Growth Management Director Tye Chighizola commented the request is a zoning change from M-3, Heavy Industrial, to M-2, Medium Industrial, for approximately 3.2 acres of property, located approximately 450 feet east of NW Martin Luther King Jr. Avenue. The goal is to bring the zoning in consistency with the land use and staff recommends approval.

There being no further discussion the motion carried by roll call vote.

RESULT: ADOPTED

MOVER: Barry Mansfield

SECONDER: Kristen M. Dreyer

AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

- 7b.** Adopt Ordinance 2022-40 approving a future land use policy for approximately 88.73 acres of property located northeast of the intersection of Southwest Seventh Avenue and Southwest 32nd Street near Lake Louise (Case FLUP21-44568)

Presentation By: Tye Chighizola

Introduced By: Kristen M. Dreyer

Council President Bethea noted items 7a and 7b are related.

City Attorney Batsel addressed the public's expressed concerns regarding conflict of interest. The law firm has done business with the applicant in the past. He explained the

clause included in client contracts regarding legal matters with the City. The firm is able to represent their clients in legal matters that do not involve the City. Furthermore, he has never violated the Florida Bar Rules of Ethics. He disclosed he has represented the applicant in other matters and is not involved in the presented land use matter.

Growth Management Director Tye Chighizola commented the City performed the annexation in the beginning of the year and negotiations were handled by staff. He noted items 7a and 7b were previously transmitted to the State, and now they are back before Council for adoption. The policy states a PD (Planned Development) zoning for the future use and there is a limitation on the number of units. Council will have the ability to lower the number of units and the traffic study will be performed during the PD process. The requested Future Land Use Designation of Low Intensity is consistent with the Comprehensive Plan. The City sought advice from City Attorney Batsel regarding the annexation consistency with State Statutes.

Fred Roberts, 40 SE 11th Avenue, stated he is representing the applicant. The land use designation allows a higher density of units than the developer needs. The land use policy includes a dwelling unit cap and requires a PD. He noted any contemplated use will be presented to Council as a planned development. A portion of the property is under staff review; however, a PD master plan will be presented for the entire property in the future. He reiterated the annexed property meets the land use designation and limits industrial/manufacturing/distribution/warehouse uses.

City Attorney Batsel noted the annexation was completed.

Charles Bianculli, 965 SW 33rd Place, expressed concern regarding traffic impacts, safety and school overcrowding. He suggested Council take time to plan responsible growth/development.

Kimberly Davis, 1220 SW 26th Street, expressed concern regarding school overcrowding and traffic impacts. She recommends Council maintain single family residential uses until the City remedies existing traffic impacts and overcrowding.

Laurie Yonge, 600 SE 48th Avenue, expressed concern regarding the attorney conflict matter, traffic impacts, imposed commercial uses and safety. He questioned why the public was not informed of the annexation. He submitted a letter to Council regarding the attorney conflict of interest matter. He requested Council not approve the proposal and postpone the matter for further discussion. Furthermore, residents in the area will engage independent counsel if the request is approved.

Mr. Roberts explained how the land use policy establishes density caps at very low levels. The land use policy establishes safeguards and requires a PD plan. He noted a traffic study was completed for a multi-family development. He explained the annexation of the property into the City. The request before Council is to establish the land use of a property that was annexed into the City.

Mayor Guinn discussed remedying traffic impacts in the area.

Council Member Musleh stated he supports the development project and use of a PD

plan. Furthermore, he supports the Ocala City Attorney's involvement.

There being no further discussion the motion carried by roll call vote.

RESULT: ADOPTED

MOVER: Kristen M. Dreyer

SECONDER: Jay A. Musleh

AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

- 7c. Adopt Ordinance 2022-41 amending the Future Land Use Designation from Medium Residential (County) to Low Intensity for approximately 88.73 acres of property located northeast of the intersection of Southwest 7th Avenue and Southwest 32nd Street near Lake Louise (Case LUC21-0003)

Presentation By: Tye Chighizola

Introduced By: James P. Hilty Sr.

There being no further discussion the motion carried by roll call vote.

RESULT: ADOPTED

MOVER: James P. Hilty Sr.

SECONDER: Kristen M. Dreyer

AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

8. General Business

- 8a. Approve Employment Agreement for Interim City Manager

Presentation By: Chris Watt

Brian Creekbaum, 103 NE 31st Terrace, shared his experience with the School Board. He expressed concern appointing Interim City Managers on a permanent basis. He questioned if the City will be performing a search for a City Manager.

There being no further discussion the motion carried by roll call vote.

RESULT: APPROVED

MOVER: Jay A. Musleh

SECONDER: Kristen M. Dreyer

AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

- 8b. Approve payout terms of employment agreement between the City and Sandra Wilson

Presentation By: Chris Watt

Whitfield Jenkins, 2200 NW 24th Road, asked if the City Manager was terminated with cause or without cause. Council President Bethea responded the City Manager was terminated without cause.

Council Member Musleh stated Ms. Wilson is receiving a payout within the terms of the contract. To note, the contract includes a general release of any claims against the City.

Council Pro Tem Hilty noted the reasoning for Ms. Wilson's termination was disclosed in

the motion at the previous City Council meeting.

There being no further discussion the motion carried by roll call vote.

RESULT: APPROVED

MOVER: Kristen M. Dreyer

SECONDER: Jay A. Musleh

AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

- 8c.** Approve recommendation of Colin Baenziger & Associates as executive search recruiter for in house city attorney services

Presentation By: Chris Watt

Council President Pro Tem Hilty motioned for approval. Council Member Musleh asked who the motion was for. Council President Pro Tem Hilty withdrew his motion to further discussion.

Council Member Musleh recommended Colin Baenziger & Associates as executive search recruiter for in house city attorney services.

Mayor Guinn stated Council is making a mistake choosing the inside counsel route. He expressed concern Council is making their decision based on conflict of interest newspaper articles supplied by City Manager Sandra Wilson. Furthermore, he supports the current City Attorney.

City Attorney Batsel stated they will not be reapplying and thanked Mayor Guinn for his support.

Council Member Musleh made a motion to hire Colin Baenziger & Associates at a cost of \$42,500.

There being no further discussion the motion carried by roll call vote.

RESULT: APPROVED

MOVER: Jay A. Musleh

SECONDER: Kristen M. Dreyer

AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

- 8d.** Approve the scope of work and associated cost of a Fiscal Year 2022-2023 update to the Fire Assessment Study conducted by Benesch totaling \$59,590

Presentation By: Tammi Haslam

There being no discussion the motion carried by roll call vote.

RESULT: APPROVED

MOVER: Kristen M. Dreyer

SECONDER: James P. Hilty Sr.

AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

- 8e.** Approve agreement with Marion County accepting Emergency Solutions Grant-Coronavirus grant funding as the lead agency for the Marion County Continuum of Care totaling \$133,539

Presentation By: James Haynes

Mayor Guinn asked what the point in time count is. Director Community Development Services James Haynes responded the point in time count is similar to last year's number. He explained how the point in time count is based on unsheltered individuals. The City will be tracking the average number of people housed on a monthly basis.

Council Pro Tem Hilty asked if an individual living in their car is counted. Mr. Haynes responded the individual is not counted under the HUD definition. He explained the various data they collect.

Council Member Dreyer asked what the total population number is. Mr. Haynes responded he will send her the information.

There being no further discussion the motion carried by roll call vote.

RESULT: APPROVED

MOVER: Jay A. Musleh

SECONDER: James P. Hilty Sr.

AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

- 8f.** Approve three-year agreement with WellSky Corporation to purchase Homeless Management Information System software in the amount of \$127,839

Presentation By: James Haynes

Glen Fiorello, 838 SE 3rd Street, asked what the purpose of the software is. Council President Pro Tem Hilty explained how software is used to track the homeless population and helps the City retrieve grant funding from the Federal Government.

Director Community Development Services James Haynes commented the new software is superior to the current software and will result in cost savings for the City.

There being no further discussion the motion carried by roll call vote.

RESULT: APPROVED

MOVER: James P. Hilty Sr.

SECONDER: Barry Mansfield

AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

- 8g.** Approve U.S. Department of Housing and Urban Development grant amendment to properly assign Continuum of Care Program grant funds to the City of Ocala totaling \$83,491

Presentation By: James Haynes

There being no discussion the motion carried by roll call vote.

RESULT: APPROVED

MOVER: James P. Hilty Sr.

SECONDER: Barry Mansfield

AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

- 8h.** Approve a one-year contract renewal with C.W. Roberts Contracting, Inc. for Transportation Rehabilitation Improvement Program with a value not to exceed \$3,000,000

Presentation By: Sean Lanier

Mayor Guinn stated the area is in great need of improvements. He noted South Magnolia is also in great need of improvements.

City Engineer/Director of Water Resources Sean Lanier noted the City will be performing a condition assessment on the roadways.

There being no further discussion the motion carried by roll call vote.

RESULT: APPROVED

MOVER: Jay A. Musleh

SECONDER: Kristen M. Dreyer

AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

- 8i.** Approve a franchise license to SafeParc, LLC to provide valet service from the Downtown Hilton to the parking garage.

Presentation By: Tye Chighizola

There being no discussion the motion carried by roll call vote.

RESULT: APPROVED

MOVER: Kristen M. Dreyer

SECONDER: James P. Hilty Sr.

AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

- 8j.** Approve Conceptual Subdivision Plan for West Oak Phase 2 Residential

Presentation By: Aubrey Hale

Chris Roper, 420 S. Orange Avenue, Orlando, FL 32801, stated he is an Attorney with the Ackerman Law Firm, representing Trademark Metals & Recycling. He presented findings into evidence. He noted their client expressed concern they will be inundated

with noise complaints in the future, explaining his client has permission to work their metal shredder starting at 6am on weekdays. He provided an overview of the comprehensive plan, pointing to a lack of noise mitigation or buffer in the plan. He requested Council approve the plan with proposed conditions to address noise. The phase plan is inconsistent with Developer's Agreement for the proposed plan. Furthermore, he requested phase four be changed to phase one.

David Mackay, 2801 SW College Road, stated he is representing the applicant. He explained the project is compliant with the approved timelines. He would be happy to discuss the noise concerns. The applicant is requesting Council approve a conceptual plan, not a final plan. Furthermore, the development is not in any sound contour mentioned by Mr. Roper. The mentioned items will be taken into consideration when reviewing the project. The traffic study was performed, and a proposed concurrency document was submitted to the City.

Council Member Dreyer disclosed her personal relationship with the project's engineer, noting she has no financial interest in the project.

Council President Pro Tem Hilty asked if the development contributes to affordable housing. Urban Design Coordinator Aubrey Hale responded the proposed project is a single-family housing development and the affordable housing element will be incorporated into the Developers Agreement. He explained how the changes reduced the size of the phase. Furthermore, a PD amendment will be presented to Council in the future.

Council President Bethea asked how long Trademark Metals & Recycling has been operating in the community. Mr. Roper responded the facility received a special use permit in 2006, so it's been over 16 years.

Council President questioned why a shredder was placed near the golf course.

There being no further discussion the motion carried by roll call vote.

RESULT: APPROVED
MOVER: James P. Hilty Sr.
SECONDER: Jay A. Musleh
AYE: Hilty Sr., Dreyer, Mansfield, Musleh, and Bethea

9. Consent Agenda

Consent Agenda items are considered to be routine and will be enacted by one roll call vote. There will be no separate discussion of these items unless members of Council or the public request specific items to be removed for separate discussion and action.

There being no further discussion the motion carried by roll call vote.

RESULT: APPROVED THE CONSENT AGENDA

MOVER: Barry Mansfield

SECONDER: Kristen M. Dreyer

AYE: Hilty Sr, Dreyer, Mansfield, Musleh, and Bethea

- 9a.** Adopt Budget Resolution 2022-151 amending the Fiscal Year 2021-2022 budget to accept and appropriate funding from the US Department of Housing and Urban Development for the Marion County's Continuum of Care Homeless Information System program grant in the amount of \$83,491

Presentation By: Tammi Haslam

- 9b.** Adopt Budget Resolution 2022-152 amending the Fiscal Year 2021-2022 budget to appropriate supplemental funding for a fire assessment update totaling \$19,590

Presentation By: Tammi Haslam

- 9c.** Adopt Budget Resolution 2022-153 amending the Fiscal Year 2021-2022 budget to appropriate Emergency Solutions Grant-Coronavirus funding for the Marion County Continuum of Care (CoC) totaling \$133,539

Presentation By: Tammi Haslam

- 9d.** Approve the First Amendment to City Redevelopment Agreement for Brick City Residences & Shops, LLC.

Presentation By: Aubrey Hale

- 9e.** Approve Conceptual Subdivision plan for Circle Fore at SW 48th Avenue

Presentation By: Aubrey Hale

- 9f.** Approve Ocala Community Redevelopment Agency (CRA) FY 2021 Annual Report

Presentation By: Tye Chighizola

- 9g.** Approve new East Ocala CRA Historic Building Grant Program

Presentation By: Tye Chighizola

- 9h.** Approve the donation of a 2008 Ford F150 surplus city vehicle to Wear Gloves Inc. with an estimated residual auction value of \$4,100

Presentation By: Liza Warmuth

- 9i.** Approve one-year contract renewals with Tetra Tech, Inc. and Geo-Technologies, Inc. for emergency debris monitoring services

Presentation By: Darren Park

- 9j.** Approve Labor Attorney invoices for the month of March 2022 in the amount of \$6229.85

Presentation By: Chris Watt

- 9k.** Approve renewal of Trakit software maintenance with Superior LLC for as long as the software is in use with an estimated annual expenditure of \$45,000

Presentation By: Christopher Ramos

- 9l.** Approve contract with Wolen, LLC for Ocala International Airport air traffic control tower equipment in the amount of \$74,921

Presentation By: Matthew Grow

- 9m.** Approve Regular City Council Meeting Minutes for Tuesday, April 19, 2022

Presentation By: Angel Jacobs

10. Consent Agenda Items Held for Discussion

Should any items be removed from the Consent Agenda for discussion, they will be discussed at this time.

11. Introduction and First Reading of Ordinances

(Second and Final Reading - May 17, 2022)

- 11a.** Adopt Ordinance 2022-42 for a zoning change from B-4, General Business & B-5, Wholesale Business, to M-1, Light Industrial, for approximately 8.45 acres of property located at 1205 NW 27th Avenue (Case ZON22-44688) (Quasi-Judicial).

Presentation By: Tye Chighizola

Introduced By: James P. Hilty Sr

RESULT: INTRODUCED

- 11b.** Adopt Ordinance 2022-43 for a rezoning from Planned Unit Development, PUD, to Planned Development, PD for approximately 32.22 acres of property located at 5451 SW 66th Street between SW College Road/State Road 200, SW 49th Road, and SW 66th Street (Case PD21-0001) (Quasi-Judicial).

Presentation By: Aubrey Hale

Introduced By: Barry Mansfield

RESULT: INTRODUCED

- 11c.** Adopt Ordinance 2022-44 for an annexation of approximately 9.10 acres located at 4240 SW 43rd Ct and 4300 SW 43rd Ct (Case ANX20-0012).

Presentation By: Aubrey Hale

Introduced By: Barry Mansfield

RESULT: INTRODUCED

- 11d.** Adopt Ordinance 2022-45 for an amendment to the Future Land Use Designation from Low Residential (County) to Neighborhood (City) for approximately 9.10 acres of property located at 4240 SW 43rd Ct and 4300 SW 43rd Ct (Case LUC20-0004).

Presentation By: Aubrey Hale

Introduced By: James P. Hilty Sr

RESULT: INTRODUCED

- 11e.** Adopt Ordinance 2022-46 for a rezoning from A-1, Agricultural (County), to PD, Planned Development for approximately 9.10 acres of property located at 4240 SW 43rd Ct and 4300 SW 43rd Ct (Case PD20-0009) (Quasi Judicial).

Presentation By: Aubrey Hale

Introduced By: Barry Mansfield

RESULT: INTRODUCED

- 11f.** Adopt Ordinance 2022-47 for a zoning change from R-3, Multi-Family Residential, to B-2, Community Business, for property located at 432 NW Martin Luther King Ave, approximately 3.97 acres. (Case ZON22-44678) (Quasi-Judicial).

Presentation By: Tye Chighizola

Introduced By: Jay A. Musleh

RESULT: INTRODUCED

- 11g.** Adopt Ordinance 2022-48 for a zoning change from OP, Office Park, and Pending to PD, Planned Development, of approximately 40.38 acres of property located at the 4400 block of SW 20th Street (Case PUD17-0003) (Quasi-Judicial).

Presentation By: Tye Chighizola

Introduced By: James P. Hilty Sr

RESULT: INTRODUCED

12. Internal Auditor's Report

13. City Manager's Report

Solid Waste Providers Program scheduled on May 4, 2022, 2 – 4 pm, located at MLK First Responders Campus Community Building

Marion County Commission Workshop: Growth and Development Projects scheduled on May 9, 2022, 1:30 pm to 3:30 pm, located at McPherson Governmental Campus Auditorium

Builders Round Table event pending June 2022

Interim City Manager Pete Lee commented the City will be implementing some of the feedback from the previous round table event.

14. Police and Fire Department Report

Police Chief Mike Balken – Public Safety Opioid Response Efforts

Police Chief Balken discussed the public safety Opioid response efforts for April 18, 2022 to May 1, 2022. The Police Departments Opioid response efforts 8, overdose deaths 1, Narcan leave behind 3 and Amnesty participation 1. The Police Departments Big Brother's & Big Sister's Program will launch on Saturday, May 6, 2022, at 10 am.

Fire Chief Clint Welborn – Public Safety Opioid Response Efforts & Community Paramedicine

Fire Chief Welborn discussed the public safety Opioid response efforts and community paramedicine program. The overdose response efforts 6, overdose deaths 0 and Narcan leave behind 0. For the month of April, 340 people have enrolled in the Opioid Recovery Project and they had a total of 147 community paramedicine graduates. The Narcan leave behind for the OD2A Program amounts to 97 participants and trained 71 individuals to administer Narcan.

15. Mayor's Report

Mayor Guinn expressed concern regarding 16th Street

Mayor Guinn commented he has received numerous complaints from the public regarding 16th Street. He suggested the City install speed bumps to slow down traffic on 16th Street.

Interim City Manager Pete Lee commented the City will evaluate ways to improve the safety in the area.

Mayor Guinn commented on the Rail-to-Trail project

Mayor Guinn discussed how the new railroad line is actively soliciting new customers. He explained the railway crosses the City's road. He noted Assistant City Attorney Gooding found some documents; however, the documents are in cursive and need to be transposed.

City Attorney Batsel explained the railroad territory issue. The City believes the railway crosses the City road; the railway believes the City road crosses their tracks.

Mayor Guinn he encouraged Council to take action now to eliminate the railroad track.

Interim City Manager Pete Lee discussed eliminating the railroad to create a public trail (Rail-To-Trail project).

Council Member Mansfield requested a follow up regarding the Rail-To-Trail project.

Council Member Musleh expressed concern regarding lawsuits from the new railroad line and asked what would be the likelihood of success.

City Attorney Batsel explained the railroads are a condemning authority, whereas the City has condemnation authority. The goal is to determine who was there first, the City or the railroad. The City pays a high cost annually for the crossing agreements.

Council Member Musleh requested information regarding the purchase and maintenance of the proposed trail.

Mr. Lee commented he will collaborate with the PTO and County regarding the railroad.

16. City Attorney's Report

16a. Approve Council President, on behalf of Council, authority to accept opioid settlements

City Attorney Batsel stated there is still a trial being held with Walgreens. The packet given to Council contains settlement information and funding breakdown. He requested Council make a motion to allow the Council President to sign the participation agreement to allow the City Attorney's to approve the settlements.

There being no further discussion the motion carried by roll call vote.

RESULT: APPROVED

MOVER: Jay A. Musleh

SECONDER: James P. Hilty Sr

AYE: Hilty Sr, Dreyer, Mansfield, Musleh, and Bethea

17. Informational Items

a. Calendaring Items

17a1. Marion County Commission Workshop: Growth and Development Projects -
May 9, 2022 - 1:30pm - McPherson Governmental Campus Auditorium

b. Comments by Mayor

Mayor Guinn shared his experience judging a hot dog tasting contest

Mayor Guinn shared his experience judging a hot dog tasting contest, which will be live on Monday May 9, 2022, at 9 pm; on the Food channel.

c. Comments by Council Members

Council Member Hilty presented a presentation on increasing energy costs and the solar project phase III

Council Member Hilty presented a presentation on increasing energy costs and the solar project phase III. He explained how inflation is affecting the economy and the challenges solar production is facing.

Interim City Manager Pete Lee stated they will create an agenda item to discuss the matter at the next City Council meeting.

Council Member Hilty anticipates customers will experience large financial impacts due to the increasing costs.

Mayor Guinn asked if they discussed battery storage. Council Member Hilty responded no.

Council Member Musleh commented on the Internal Auditor's findings on the banking services

Council Member Musleh commented on the Internal Auditor's findings on the banking services. The Auditor's report did not mention any criminal activity or findings. He discussed how the false comments were very devastating to his reputation.

d. Informational

17d1. Power Cost Adjustment Report - March 2022

17d2. Monthly Budget to Actual Report as of March 31, 2022 and Capital Improvement Project Status Report

17d3. Executed Contracts Under \$50,000

18. Adjournment

Adjourned at 8:10 p.m.

Minutes

Ire Bethea Sr.
Council President

Angel B. Jacobs
City Clerk