WINTER GARDEN

A REGULAR MEETING MINUTES
PLANNING AND ZONING BOARD
JULY 07, 2014

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE / INVOCATION

Chairman Jimmy Dunn called the meeting of the City of Winter Garden Planning and Zoning Board to order at 6:30 p.m. in the City Hall Commission Chambers. The Pledge of Allegiance was given followed by the invocation.

2. ROLL CALL AND DETERMINATION OF QUORUM

The roll was called and a quorum was declared present.

MEMBERS PRESENT:

Chairman Jimmy Dunn, Vice-Chairman Eric Weiss, and Board Members: Heather Gantt, Gerald Jowers, Mark Maciel and Mac McKinney

MEMBERS ABSENT:

Rohan Ramlackhan - Excused

STAFF PRESENT:

City Attorney Kurt Ardaman, Community Development Director Ed Williams, Senior Planner Stephen Pash, Planner II Kelly Carson, and Customer Service Rep. Kathy Rathel

3. APPROVAL OF MINUTES

Approval of minutes from the regular meeting held on June 2, 2014.

Motion by Gerald Jowers to approve the above minutes. Seconded by Eric Weiss, the motion carried unanimously 6 - 0.

ANNEXATION / FUTURE LAND USE MAP AMENDMENT / REZONING (PUBLIC HEARING)

4. 17806 Marsh Road – Fischer Spears Property (ANNEXATION/FLU)

Senior Planner Steve Pash presented a request for Annexation and Future Land Use designation for the property located at 17806 Marsh Road. It is a voluntary annexation of a 38.655 ± acre property located on the south side of Marsh Road at the western boundary of Orange County. The owner has requested Annexation and a Future Land Use designation of Urban Village. These properties are required to go through Urban Village Planned Unit Development when they decide to develop the property. Staff

recommends approval of Ordinance 14-22 and 14-23 to annex the property and apply the future land use designation of Urban Village.

Motion by Gerald Jowers to recommend approval of the Annexation and Future Land Use for 17806 Marsh Road [Ordinances 14-22 and 14-23] with Staff Recommendations (Attached Exhibit "A"). Seconded by Mark Maciel, the motion carried unanimously 6 - 0.

5. Seidner Road –McKinnen Groves (ANNEXATION/FLU)

Senior Planner Steve Pash presented a request for Annexation and Future Land Use designation for the property located at Seidner Road. It is a voluntary annexation of a 9.527 ± acre property located on the south side of Seidner Road at the western boundary of Orange County. The owner has requested Annexation and a Future Land Use designation of Urban Village. These properties are required to go through Urban Village Planned Unit Development when they decide to develop the property. Staff recommends approval of Ordinance 14-24 and 14-25 to annex the property and apply the future land use designation of Urban Village.

Motion by Eric Weiss to recommend approval of the Annexation and Future Land Use for Seidner Road [Ordinances 14-24 and 14-25] with Staff Recommendations (Attached Exhibit "B"). Seconded by Heather Gantt, the motion carried unanimously 6 - 0.

6. 426 West Plant Street - Plant Street Market, LLC (REZONING)

Senior Planner Steve Pash presented a request by the City to rezone the property located at 426 W. Plant Street from R-NC to C-1. City has been working with the owners of the property for the last several months to convert the property from apartments to a market. This project has already gone through the Architectural Review Board and the owner will demolish and rebuild. Staff recommends approval of Ordinance 14-11 to rezone the property from R-NC to C-1.

General discussion followed regarding the project timeline.

Motion by Mark Maciel to recommend approval of Ordinance 14-11 with Staff Recommendations (Attached Exhibit "C"). Seconded by Gerald Jowers, the motion carried unanimously 6 - 0.

7. 562 Beard Road – Adalee J. Roper Trust (PUD REZONING)

Senior Planner Steve Pash requested that the application for 562 Beard Road be tabled to the August 4, 2014 Planning & Zoning Board Meeting to allow Staff to work with the applicant.

General discussion ensued on the issues regarding this property.

Motion by Eric Weiss to table 562 Beard Road to the August 4, 2014 Planning & Zoning Board Meeting. Seconded by Mark Maciel, the motion carried unanimously 6 - 0.

PRELIMINARY PLAT / FINAL PLAT / LOT SPLIT (PUBLIC HEARING)

8. 968 Lake Brim Drive – Oakland Park Phase 3 (PRELIMINARY PLAT)

Senior Planner Steve Pash presented a request for a Preliminary Plat for 23 single-family lots located in Oakland Park Phase 3. This application is consistent with the approved PUD and Staff recommends approval of the Preliminary Plat with conditions outlined in the Staff Report.

John Classe with Crescent Communities, the owner and master developer located at 15241 E. Oakland Ave., Winter Garden FL, spoke to the Board regarding Staff's conditions. The first refers to Phase 2 which should read Phase 3. The second refers to the two conditions regarding homes constructed as of 07/01/14 and drainage concerns had not been discussed at the DRC meeting and were not part of the original DRC conditions or comments from Staff. He requested these two items be removed to allow time to work with Staff for solutions moving forward within the project. He also asked if they could work with Staff to have the easements on Tildenville School Road at 20 foot for front yard with the remaining 10 foot being within Tildenville School Road right-of-way.

A general discussion ensued regarding the drainage issues. Senior Planner Pash clarified that variances from the drainage requirement of gutters, downspouts and underdrains can be reviewed on a lot by lot basis but wants the safety feature included so the problems do not continue.

Community Development Director Ed Williams suggested leaving the drainage condition in to make sure the builders cooperate. The swimming pool condition could be modified to apply to this phase. A smaller home should be built if a pool will be installed.

John Classe wants the application to move forward but would like to continue to work with Staff on the drainage issues and if the other two requests would be approved.

Chairman Jimmy Dunn clarified the wording change from Phase 2 to Phase 3 and Senior Planner Steve Pash agreed to the width of the drainage easement along Tildenville School Road change from 30 feet to 20 feet.

Motion by Heather Gantt to recommend approval of the Preliminary Plat for 968 Lake Brim Drive with edits discussed and Staff Recommendations (Attached Exhibit "D"). Seconded by Eric Weiss, the motion carried unanimously 6 - 0.

SPECIAL EXCEPTION PERMIT (PUBLIC HEARING)

9. 218 W. Smith Street – Mike Bollhoefer / Roe Upper Cervical (SPECIAL EXCEPTION)

Senior Planner Steve Pash presented a request for a Special Exception Permit to allow a Professional Office in an R-NC Zoning District for the property located at 218 W. Smith Street. Applicant is requesting a special exception for a Chiropractor Office in an existing single family house. Staff recommends approval of the Special Exception with conditions outlined in Staff Report.

Motion by Gerald Jowers to recommend approval of the Special Exception Permit for 218 W. Smith Street with Staff Recommendations (Attached Exhibit "E"). Seconded by Mark Maciel, the motion carried unanimously 6 - 0.

10. 1450 Daniels Road – Applied Behavior Center for Autism (SPECIAL EXCEPTION)

Planner II Kelly Carson presented a request for a Special Exception Permit for the property located at 1450 Daniels Road which is the West Orange Church of Christ property as well as the main office for Mathews Hope. Applicant is requesting a special exception for a therapy center for children with autism and learning disabilities. Pending approval would cause three organizations to operate on the same site. After review of the site plan showing the planned future facilities of all the organizations Staff recommends approval of the Special Exception with conditions outlined in Staff Report.

Board Member Mac McKinney inquired how the City monitors temporary buildings.

Community Development Director Ed Williams stated the applicant must come back with renewal requests and the Building and Fire Departments perform safety checks. The extension request would be brought before the Planning & Zoning Board for approval.

Motion by Eric Weiss to recommend approval of the Special Exception Permit for 1450 Daniels Road with Staff Recommendations (Attached Exhibit "F"). Seconded by Mark Maciel, the motion carried unanimously 6 - 0.

VARIANCE (PUBLIC HEARING)

11. 319 Courtlea Oaks Blvd – Sheri Wallen (VARIANCE)

Senior Planner Steve Pash presented a request for Variances for the property located at 319 Courtlea Oaks Blvd. Applicant is requesting a variance of 2.9 foot to the side yard setback and a variance of 3.7 foot to the rear yard setback to construct an addition to the single family house. The addition would consist of a pool bathroom and a covered porch located 7.1 feet from the side property line in lieu of the 10 foot minimum required side yard setback and 23.3 feet from the rear property line in lieu of the 27 foot minimum required rear yard setback. Staff recommends approval of the Variances with conditions outlined in Staff Report and applicant must receive HOA approval prior to construction.

Motion by Gerald Jowers to recommend approval of the Variances for 319 Courtlea Oaks Blvd. with Staff Recommendations (Attached Exhibit "G"). Seconded by Heather Gantt, the motion carried unanimously 6 - 0.

12. 400 Mary Ellen Court – Peter Z. and Kimberly C. Fulmer (VARIANCE)

Planner II Kelly Carson presented a request for a Variance for the property located at 400 Mary Ellen Court. Applicant is requesting to construct an addition onto the rear of the existing single family house at a rear setback of 20 feet in lieu of the 28.4 foot minimum required rear yard setback for this lot. Staff recommends approval of the Variance.

Motion by Mark Maciel to recommend approval of the Variance to Section 118-308(1)(c) for 400 Mary Ellen Court with Staff Recommendations (Attached Exhibit "H"). Seconded by Eric Weiss, the motion carried unanimously 6 - 0.

13. 555 Bethune Avenue – Habitat for Humanity (VARIANCE)

Planner II Kelly Carson presented a request for a Variance for the property located at 555 Bethune Avenue. Applicant is requesting a variance to allow a new residential building

to be built at a 6 foot side yard setback from the north and a 7 foot side yard setback from the south in lieu of the 7.5 foot minimum required side yard setbacks in an R-4 Zoning District. Staff recommends approval of the Variance with conditions outlined in Staff Report.

Motion by Gerald Jowers to recommend approval of the Variance for 555 Bethune Avenue with Staff Recommendations (Attached Exhibit "I"). Seconded by Mac McKinney, the motion carried unanimously 6 - 0.

CITY OF WINTER GARDEN CODE UPDATES (PUBLIC HEARING)

14. Ordinance 14-29 – Amending Chapter 110

Senior Planner Steve Pash presented Ordinance 14-29 which amends Chapter 110, the subdivision section. The amendment clarifies definitions, requirements that utility easements be dedicated back to the City, provisions that prohibit the use of HOA funds for reimbursement and requires the Developer to finish sidewalks prior to turnover to the HOA. Staff recommends approval of Ordinance of 14-29.

> "An Ordinance of the City Commission of the City of Winter Garden, Florida amending Sections 110-56, 110-152, 110-153, 110-154, 110-157 and 110-162 of Article III, Division 1, 4 and 5 of Chapter 110 of the Code of Ordinances of the City of Winter Garden concerning platting requirements; providing for utility easement dedications; amending definitions; clarifying the definition of community subdivision infrastructure and making other related revisions; providing for additional required and prohibited language for declarations."

Motion by Mac McKinney to recommend approval of Ordinance 14-29 as recommended (Attached Exhibit "J"). Seconded by Gerald Jowers, the motion carried unanimously 6 - 0.

15. Ordinance 14-30 – Amending Chapter 102

Senior Planner Steve Pash presented Ordinance 14-30 which amends Chapter 102, the billboard section. Staff is working with Billboard companies and requests tabling the proposed amendment to Chapter 102 to a future date.

Motion by Eric Weiss to recommend tabling Ordinance 14-30. Seconded by Mark Maciel, the motion carried unanimously 6 - 0.

16. ADJOURNMENT

There being no further business, the meeting was adjourned at 7:14 pm.

ATTEST: **APPROVED:**

Customer Service Rep. Kathy Rathel **Chairman Jimmy Dunn**

EXHIBIT "A"

CITY OF WINTER GARDEN

PLANNING & ZONING DIVISION

300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

STAFF REPORT

TO: PLANNING AND ZONING BOARD

PREPARED BY: STEVE PASH, SENIOR PLANNER

DATE: July 7, 2014

SUBJECT: ANNEXATION/FUTURE LAND USE MAP AMENDMENT
FISCHER SPEARS PROPERTY (38.655 +/- ACRES)
Parcel ID # 06-23-27-4288-08-350 – 17806 Marsh Road

APPLICANT: Fischer Everette H Family Limited Partnership 2/3 Int, Spears Charles E Spears Ann 1/3 Int

INTRODUCTION

The purpose of this report is to evaluate the proposed annexation and future land use map amendment for compliance with the City of Winter Garden Code of Ordinances and Comprehensive Plan.

The subject property is located on the south side of Marsh Road at the western boundary of Orange County and is approximately 38.655 +/- acres. The map below depicts the location of the property within the City's jurisdictional limits:

The applicant has requested annexation into the City and amendment to the Future Land Use Map (FLUM) of the City's Comprehensive Plan to designate the property as Urban Village.

In accordance with the City's Comprehensive Plan, permitted uses within the Urban Village land use include single family homes and churches and schools. The zoning classifications that are consistent with the Urban Village land use designation include Urban Village PUD and INT.

The City endorses infill of its jurisdictional limits through voluntary annexation of enclaves. The elimination of enclaves through voluntary annexation furthers the goals, objectives, and policies of the City's Comprehensive Plan..

The City's Comprehensive Plan policy for the future land use designation of Urban Village states:

> **Policy 1-1.2.12:** Urban Village. Properties designated with the Urban Village land use category are required to be developed at a floor area ratio not greater than 0.3, and a residential density not greater than 4 dwelling units per acre, except in the Village Center where the residential density shall be not greater than 12 units per acre. This land use designation is limited to those 658 ± acres identified on Figure 1.2. These parcels are located within the JPA-6 area as shown on Exhibit —BI of the Sixth Amendment to the Restated Interlocal Agreement for Joint Planning Area Between Orange County and the City of Winter Garden, Dated January 24, 2007 and were formally part of the Horizon West development in unincorporated Orange County that proposed the same type of development. Development in this area shall be characterized by a community Village structure that includes a Village, Village Center, and neighborhoods that may vary in size to facilitate recreation and pedestrian traffic while preserving natural systems and shall follow the development program below:

Use	Acres	Amount
Residential	531 ±	2,140
Commercial	20 ±	115,000 Sq Ft
Natural	107 ±	N/A

> Notes: All parcel acreages and natural delineations are estimated.
>
> Actual determination of acreage shall be made at time of the PUD rezoning.
>
> Development in this land use shall also be subject to the regulations found in the Urban Village PUD zoning designation. The zoning classifications that is consistent with the Urban Village land use designation is the Urban Village PUD and INT.

EXISTING USE

The property is mainly planted pines and has been used for agricultural uses.

ADJACENT LAND USE AND ZONING

To the north of the property are two properties that are developed as single family homes, one of

which was recently annexed into the City and another property that is planted pines. To the south is a property with an orange grove (being annexed into the City of Winter Garden) and a lot with a single family home in unincorporated Orange County with A-1 zoning. To the east are two lots with single family homes, zoned A-1, and located in unincorporated Orange County. To the west of the property is an orange grove, located in Lake County.

PROPOSED USE

There is no current proposal to develop the property and the agricultural use will remain. When the owner decides to develop the property, they will be required to submit an application for Urban Village Planned Unit Development.

PUBLIC FACILITY ANALYSIS

The property's primary point of transportation access is from Marsh Road. The existing property access is in several locations along Marsh Road, and any future connections will be analyzed when they submit for the UVPUD.

The City will provide potable water, reclaimed water, and sewer service to the property. When the property is developed, the owners will be required to install these facilities to the property.

The City will provide garbage collection, police protection, and all other services regularly provided to City of Winter Garden residents including building permits. The property will be served by both Orange County Fire and Rescue and the City Fire Department under the First Response system.

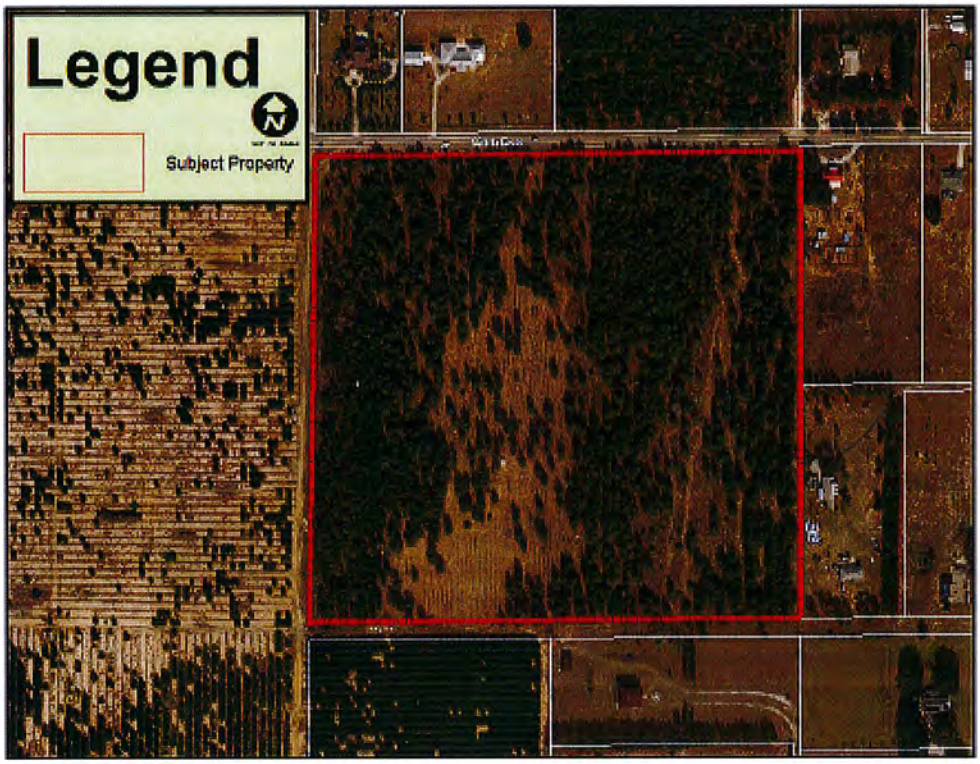
SUMMARY

The City Planning Department has reviewed the proposed ordinances and recommends approval.

MAPS

AERIAL PHOTO

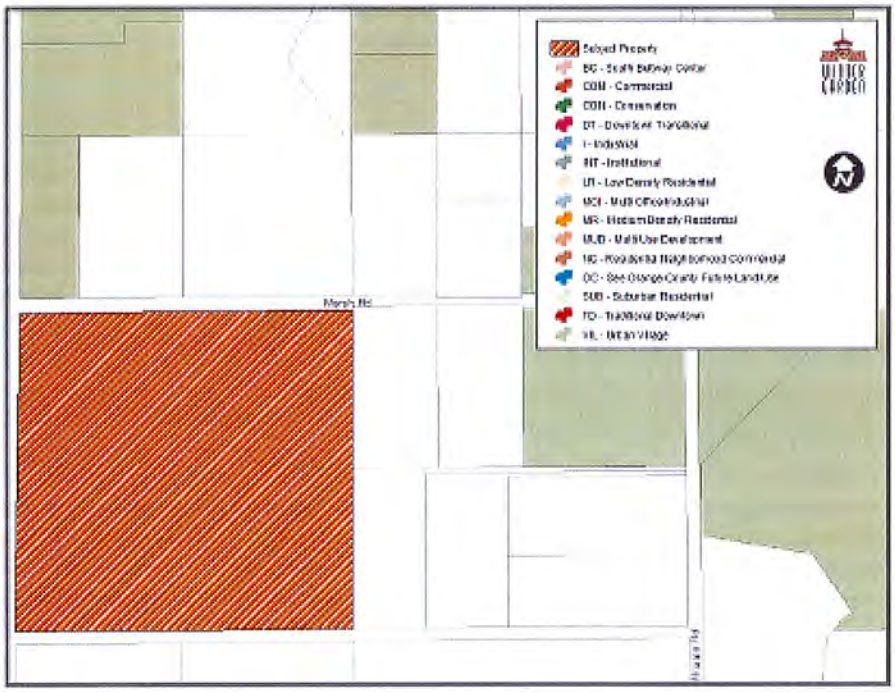
17806 Marsh Road



WINTER GARDEN
FUTURE LAND USE MAP

EXISTING

17806 Marsh Road



ORANGE COUNTY
FUTURE LAND USE MAP

EXISTING

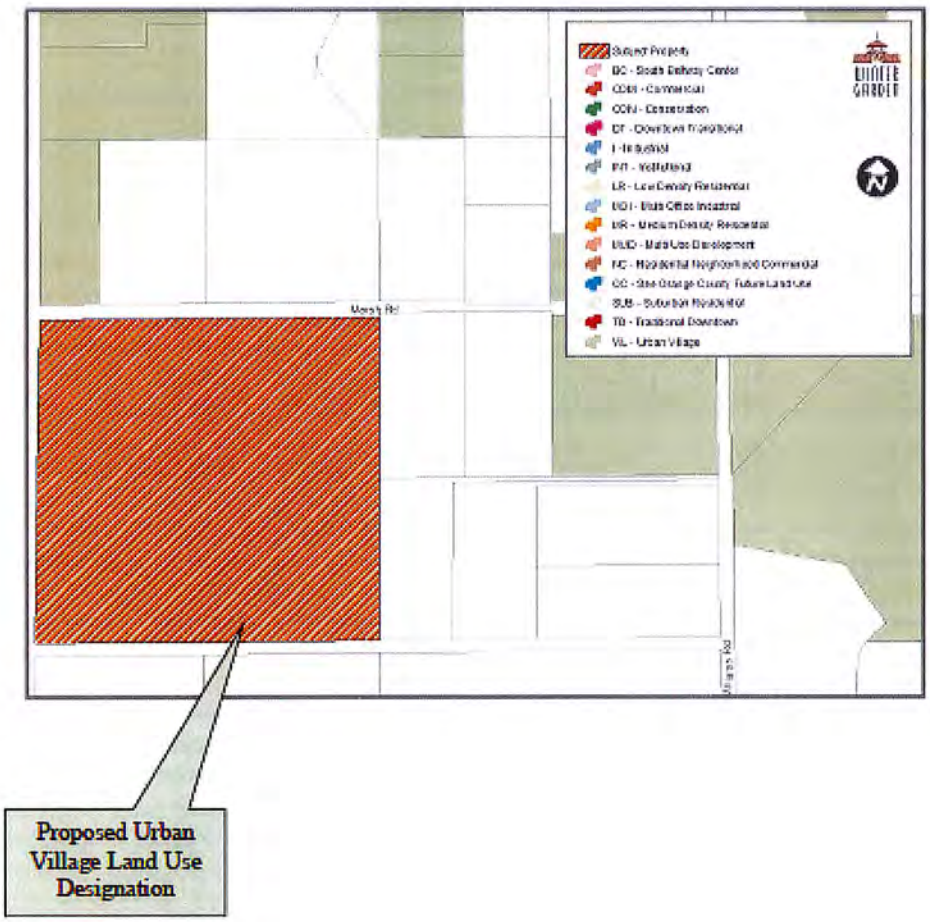
16846, 17000, & 17166 Marsh Road

WINTER GARDEN

FUTURE LAND USE MAP

PROPOSED

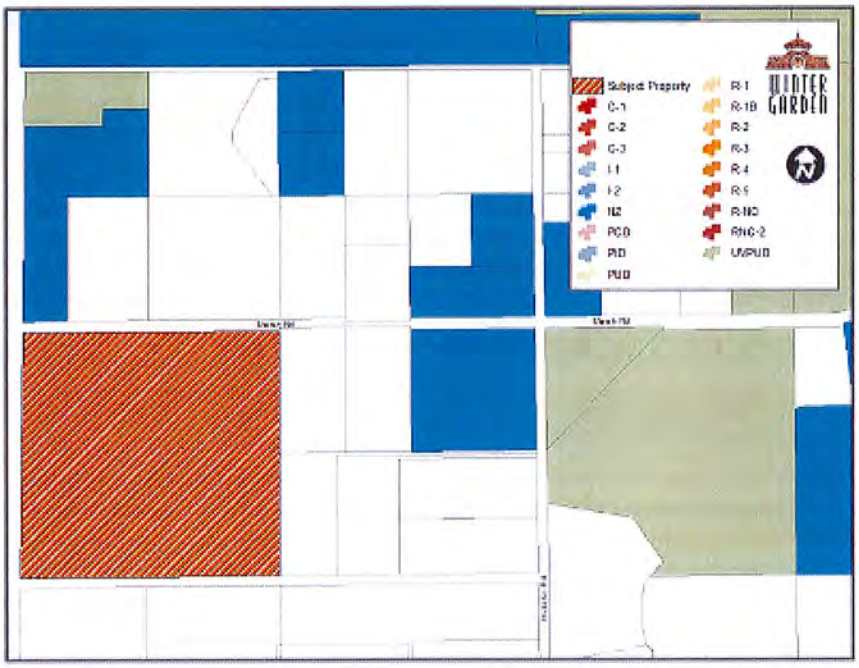
17806 Marsh Road



WINTER GARDEN
ZONING MAP

CURRENT

17806 Marsh Road



END OF STAFF REPORT

EXHIBIT "B"

CITY OF WINTER GARDEN

PLANNING & ZONING DIVISION

300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

STAFF REPORT

TO: PLANNING AND ZONING BOARD

PREPARED BY: STEVE PASH, SENIOR PLANNER

DATE: JULY 7, 2014

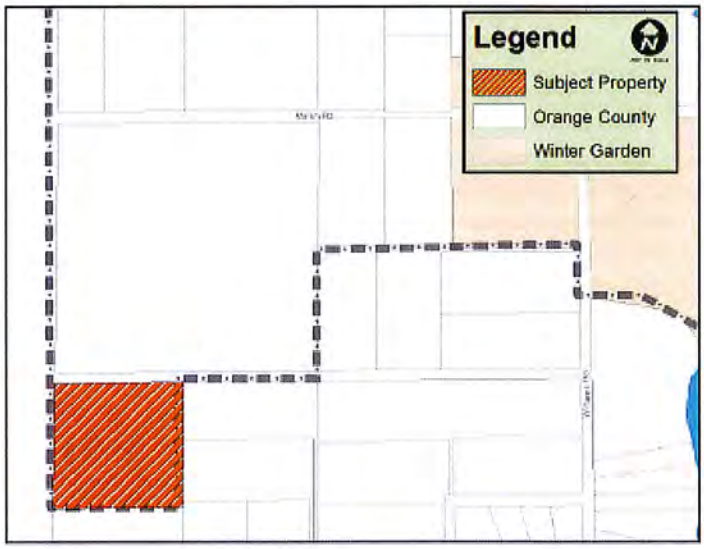
SUBJECT: ANNEXATION/FUTURE LAND USE MAP AMENDMENT
MCKINNON GROVES – SEIDNER ROAD (9.527 +/- ACRES)
Parcel ID # 06-23-27-4288-08-600 – Seidner Road

APPLICANT: MCKINNON GROVES, LLLP

INTRODUCTION

The purpose of this report is to evaluate the proposed annexation and future land use map amendment for compliance with the City of Winter Garden Code of Ordinances and Comprehensive Plan.

The subject property is located on the south side of Seidner Road at the western boundary of Orange County and is approximately 9.527 +/- acres. The map below depicts the location of the property within the City's jurisdictional limits:



The applicant has requested annexation into the City and amendment to the Future Land Use Map (FLUM) of the City's Comprehensive Plan to designate the property as Urban Village.

In accordance with the City's Comprehensive Plan, permitted uses within the Urban Village land use include single family homes and churches and schools. The zoning classifications that are consistent with the Urban Village land use designation include Urban Village PUD and INT.

The City endorses infill of its jurisdictional limits through voluntary annexation of enclaves. The elimination of enclaves through voluntary annexation furthers the goals, objectives, and policies of the City's Comprehensive Plan..

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Natural	107 ±	N/A

> Notes: All parcel acreages and natural delineations are estimated.
>
> Actual determination of acreage shall be made at time of the PUD rezoning.
>
> Development in this land use shall also be subject to the regulations found in the Urban Village PUD zoning designation. The zoning classifications that is consistent with the Urban Village land use designation is the Urban Village PUD and INT.

EXISTING USE

The property is agricultural land that is planted with citrus trees.

ADJACENT LAND USE AND ZONING

To the north of the property is a property that contains planted pines, is being annexed into the City, and is proposed to have Urban Village Future Land Use. To the south is agricultural land in

unincoroporated Orange County with A-1 zoning. To the east is a single-family home with A-1 zoning, located in Orange County. To the west of the propery is agricultural land located in Lake County.

PROPOSED USE

The owners plan to continue using the property as a citrus farm. When the owner decides to develop the property, they will be required to submit an application for Urban Village Planned Unit Development.

PUBLIC FACILITY ANALYSIS

The existing property access is along Seidner, and any future connections will be analized when they submit for the UVPUD.

The City's potable water, reclaimed water, and sewer service can be installed by the property owner or a future owner when they want to develop in the future.

The City will provide garbage collection, police protection, and all other services regularly provided to City of Winter Garden residents including building permits. The property will be served by both Orange County Fire and Rescue and the City Fire Department under the First Response system.

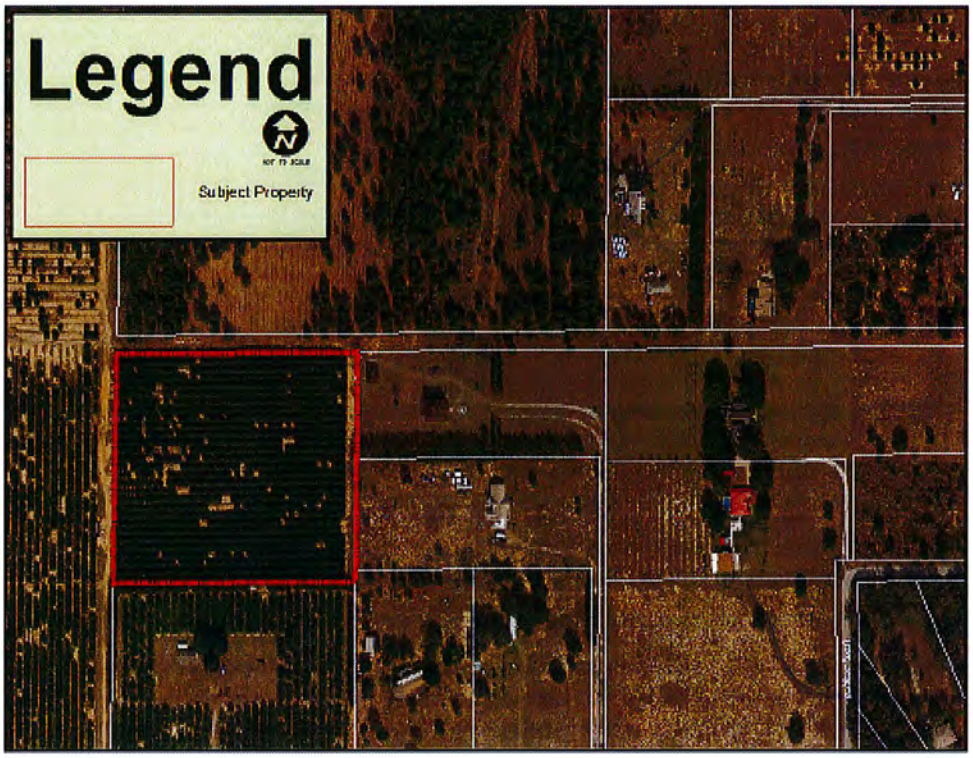
SUMMARY

The City Planning Department has reviewed the proposed ordinances and recommends approval.

MAPS

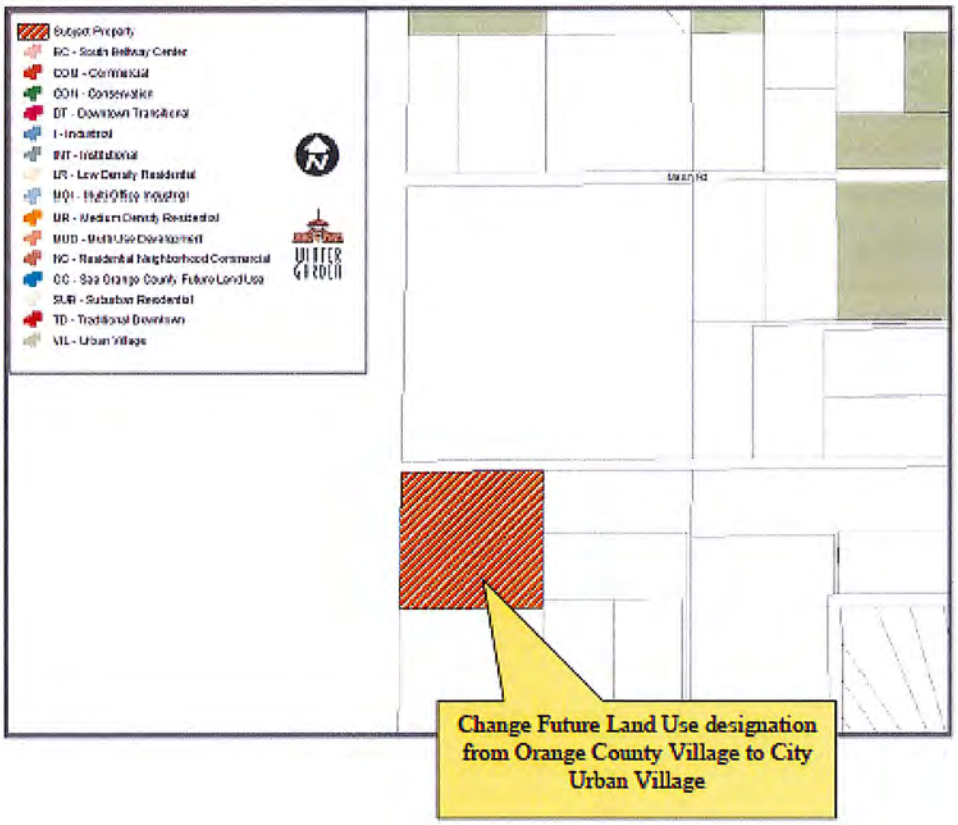
AERIAL PHOTO

Seidner Road



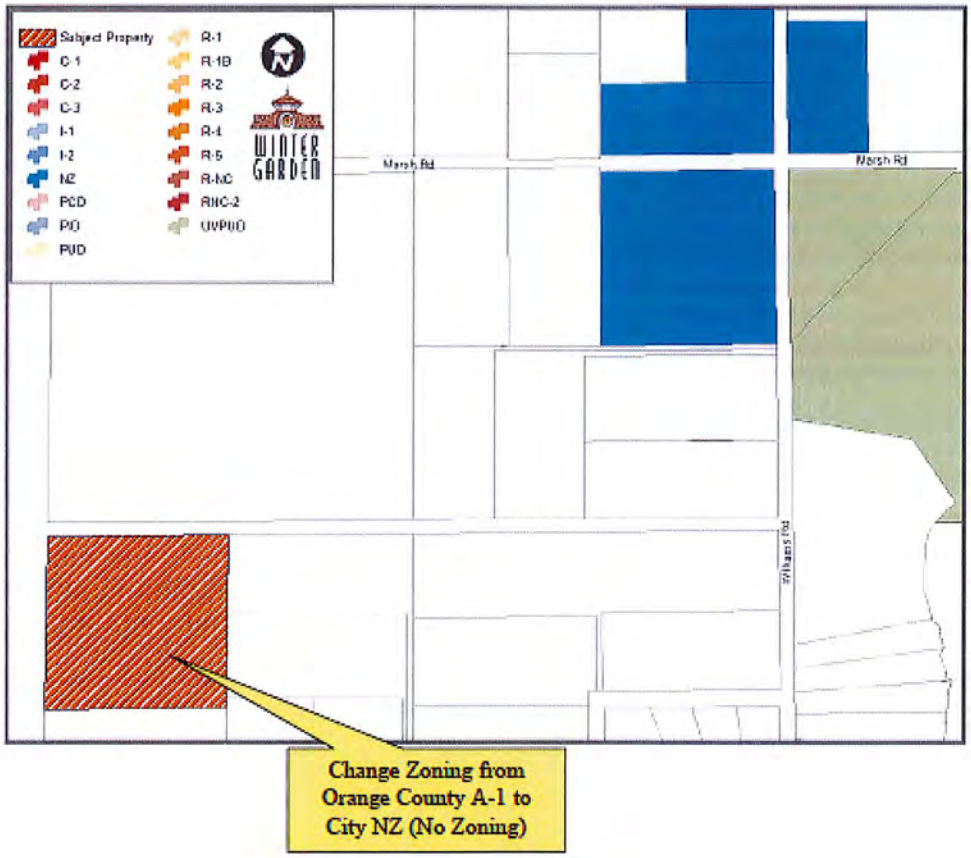
WINTER GARDEN
FUTURE LAND USE MAP

Seidner Road



WINTER GARDEN
ZONING MAP

Seidner Road



END OF STAFF REPORT

EXHIBIT "C"

CITY OF WINTER GARDEN

PLANNING & ZONING DIVISION

300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

STAFF REPORT

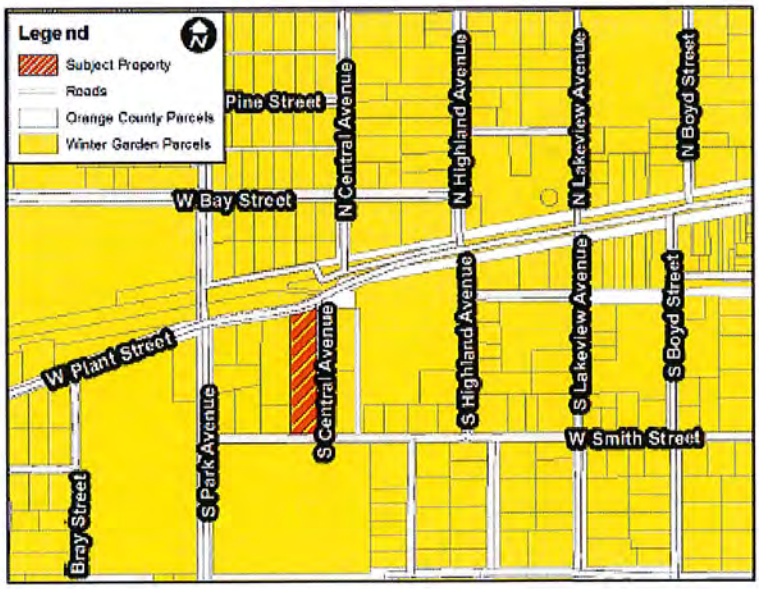
TO: PLANNING AND ZONING BOARD
PREPARED BY: LAURA SMITH, SENIOR PLANNER
DATE: JUNE 30, 2014
SUBJECT: REZONING
426 W. Plant Street (PLANT STREET MARKET)
PARCEL ID # 23-22-27-2888-05-021

APPLICANT: City of Winter Garden

INTRODUCTION

The purpose of this report is to evaluate the proposed project for compliance with the City of Winter Garden Code of Ordinances and Comprehensive Plan.

The subject property, generally located at the southwest corner of the intersection of South Central Avenue and W. Plant Street at 426 W. Plant Street, is approximately .92± acres. The map below depicts the location of the subject property within the City of Winter Garden municipal limits:



The City, acting as applicant, is requesting to rezone .92± acre property which is located within the City of Winter Garden and carries a Future Land Use Designation of TD (Traditional Downtown) on the Future Land Use Map of the City's Comprehensive Plan from R-NC (Residential Neighborhood Commercial District) to C-1 (Central Commercial District).

EXISTING USE

The subject property contains 3 structures built in 1973 which have previously been used for apartments, but have been vacant for approximately six months. The buildings are all two stories and have a combine total square footage of 18,530 square feet.

ADJACENT LAND USE AND ZONING

The properties located to the north of the subject property are single family residences zoned R-2 in the City of Winter Garden. The properties located to the east and west of the subject property include a commercial office zoned R-NC and a single-family residence zoned R-NC. The property located to the south of the subject property is a city park zoned R-NC.

PROPOSED USE

The City has coordinated with the property owner to obtain approval from the Architectural Review and Historic Preservation Board to demolish the buildings and build a new 11,500 SF building with high ceilings to incorporate an artisan market facing Plant Street, a microbrewery located in the back of the building along Smith Street, and a tap room located in the middle of the building. There will be several outdoor patio areas. One of which will be situated directly on Plant Street to encourage pedestrian and bicycle activity. There will also be outdoor patio areas along the east side of the building taking advantage of the large oak trees that are located along Central Avenue.

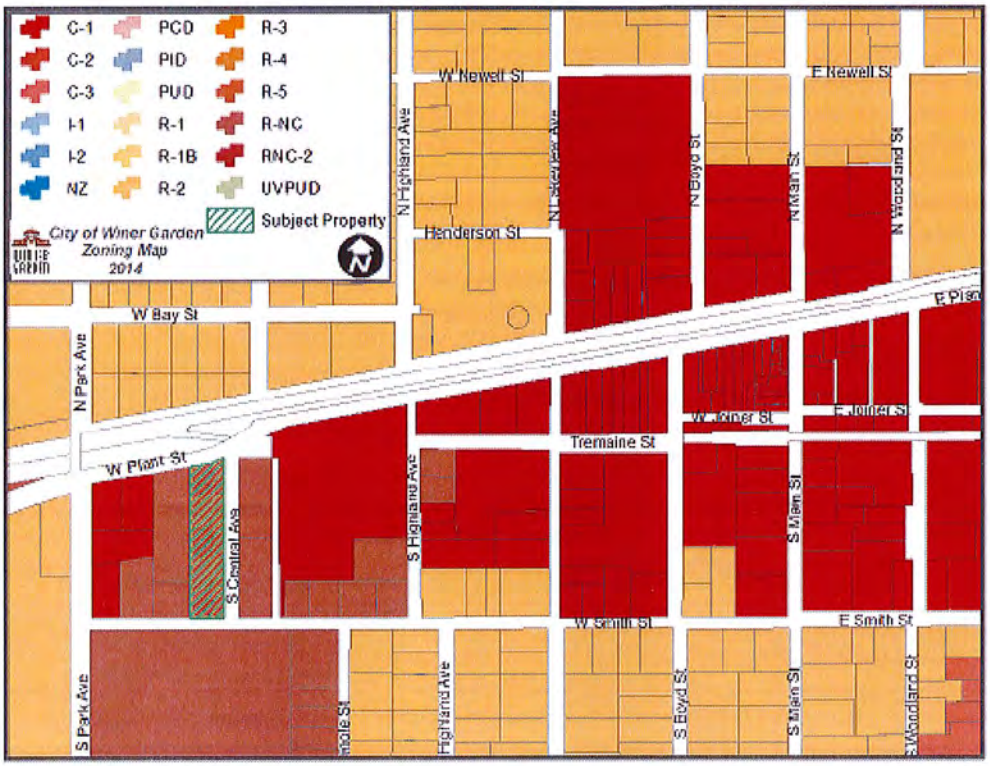
SUMMARY

Staff recommends approval of the proposed Ordinance. Rezoning the subject property from R-NC to C-1 is consistent with the City's Comprehensive Plan and surrounding property uses.

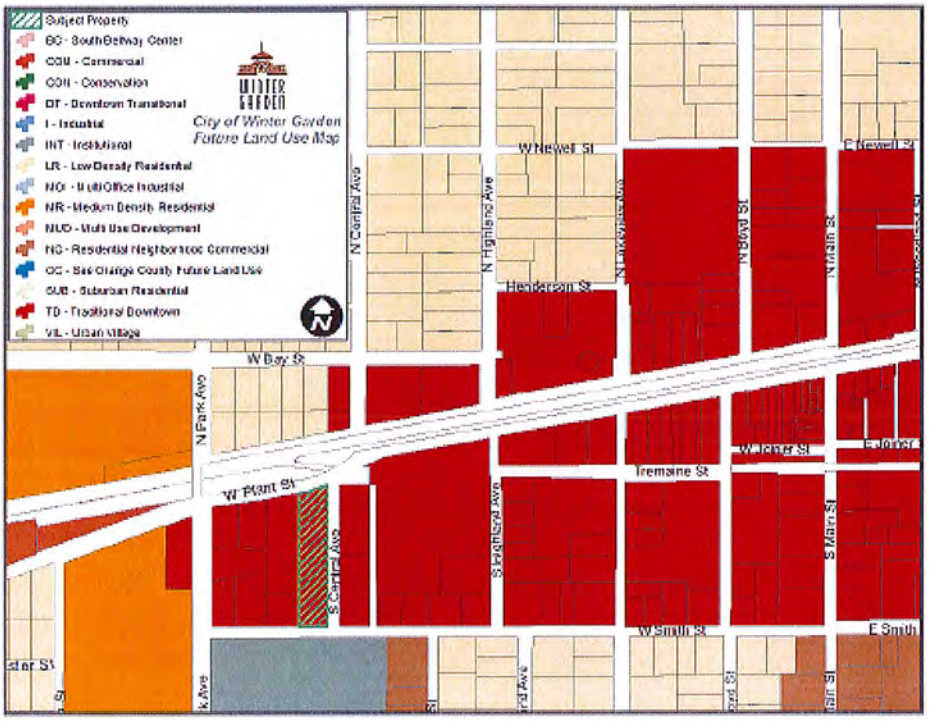
MAPS

AERIAL PHOTO
426 W. Plant Street

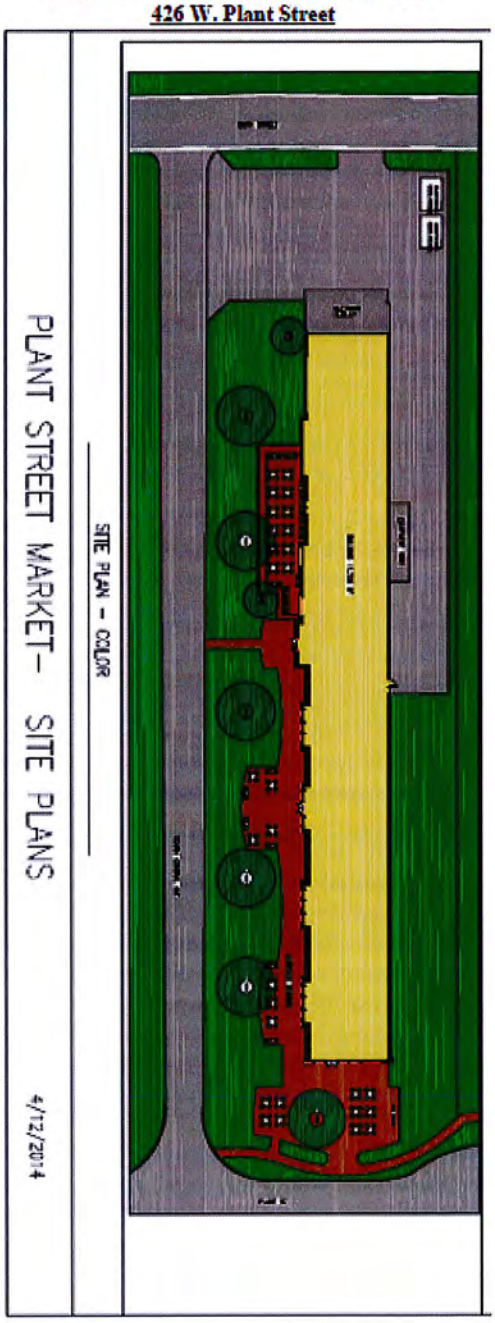
ZONING MAP
426 W. Plant Street



FUTURE LAND USE MAP
426 W. Plant Street



ARHP BOARD APPROVED SITE LAYOUT
426 W. Plant Street



ARHP BOARD APPROVED EXTERIOR ALTERATION
426 W. Plant Street

PLANT STREET PERSPECTIVE

CROOKED CAN BREWERY PERSPECTIVE

SOUTH CENTRAL PERSPECTIVE

END OF STAFF REPORT

EXHIBIT "D"

CITY OF WINTER GARDEN

PLANNING & ZONING DIVISION

300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

STAFF REPORT

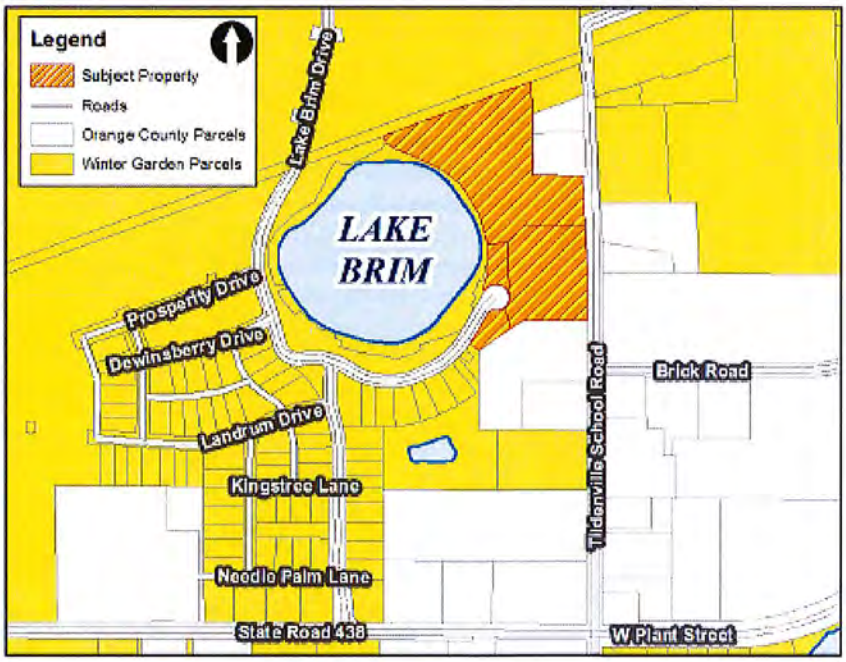
TO: PLANNING AND ZONING COMMITTEE
PREPARED BY: LAURA SMITH, SENIOR PLANNER
DATE: JUNE 30, 2014
SUBJECT: PRELIMINARY PLAT
OAKLAND PARK PHASE 3
968 LAKE BRIM DRIVE (7.83 +/- ACRES)
PARCEL ID # 21-22-27-6091-06-002; 21-22-27-6091-06-003; 21-22-27-6091-06-004; 21-22-27-6091-06-005

APPLICANT: LAKE APOPKA 2012, LLC

INTRODUCTION

The purpose of this report is to evaluate the proposed project for compliance with the City of Winter Garden Code of Ordinances and Comprehensive Plan.

The subject property is located at 968 Lake Brim Drive and is approximately 7.83± acres. The map below depicts the location of the subject property within the City of Winter Garden municipal limits.



EXISTING USE

The subject property is primarily vacant unimproved land; however there is one existing structure located on the portion of the property addressed at 940 Tildenville School Road.

ADJACENT LAND USE AND ZONING

The Oakland Park Property is bordered on the north by Lake Apopka, the properties located to the east are made up of a single family residential subdivision (R-1) and a commercial warehousing facility (R-1) within the City of Winter Garden, and Tildenville Elementary School (A-1) and several single family residences (A-1) located in Unincorporated Orange County. The Oakland Park Property abuts property on the west side, which they also own, located within the Town of Oakland municipal limits. The properties located to the south of the Oakland Park Property consist of single family residential properties (R-1) and vacant unimproved commercial properties along SR 50 (PCD & C-2) within the City of Winter Garden, and single family residential properties (A-1 & A-2) within Unincorporated Orange County.

PROPOSED USE

The applicant is requesting preliminary plat approval to move forward with development plans and the final plat. The preliminary plat will subdivide the 7.83± acre Phase 3 of the Oakland Park PUD to create 23 lots. Lot sizes are as follows:

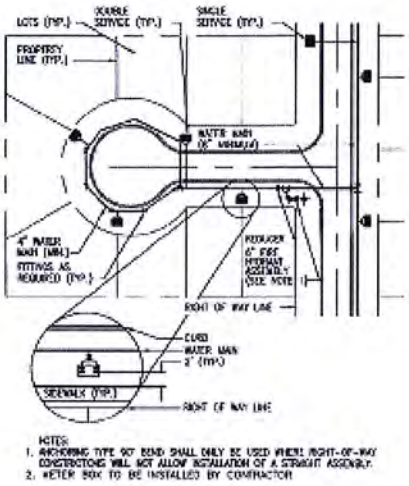
LOT TYPE	TYPICAL WIDTH	QUANTITY
Existing Estate	140'	1
Estate	70'	7
Village	50'	7
Bungalow	40'	8

SUMMARY

City Staff recommends conditional approval of the Preliminary Plat subject to the following condition(s):

- No permits for new homes will be issued in phase 2 or future phases until all curbing, road, sidewalk and other infrastructure repairs have been made throughout the subdivision.
- All homes constructed in the Oakland Park Subdivision from this date (July 1, 2014) forward will require installation of gutters and underdrains. Variance from this condition may be considered on a lot by lot basis.
- Due to drainage concerns that have arisen during construction of subdivision, swimming pools will not be guaranteed on any lots from this date (July 1, 2014) forward. All permit applications for swimming pools will be reviewed on an individual case by case basis, and may require smaller homes or additional drainage solutions in order to secure approval.
- Granny Flats: Additional water & sewer impact fees may be required for lots proposed to support Granny Flats.

- The water main shall be looped around the Tract 3 island per the detail below; no dead-ends with blowoff.



WATER SERVICE LOCATION DETAIL

- Typical Section: Right-of-way width shall be a minimum of 50 feet and will allow the 20' width due to it being private and to save existing trees – show transition from 24' existing pavement to 20' width. 18" of clean fill with no more than 5% passing a #200 sieve required under the subbase; 98% density required on all compaction; 10" soil cement base; 2" minimum asphalt thickness; 5' wide concrete sidewalks required on both sides of street. Show 10' wide drainage and utility easement required outside of 50' private roadway tract. All construction shall meet City of Winter Garden requirements for drainage, roadways and utilities.
- No street parking will be allowed due to the narrow pavement; final plans shall indicate "no parking" signage.
- The proposed drainage easement adjacent to Lot 17 shall be a tract, maintained by the HOA as shown.
- All proposed easements shall be 30' minimum width for sanitary, water and storm; improvements shall be centered within the easement. Common areas not abutting right-of-way shall include a tract (not easement) for access and maintenance.
- Minimum width for drainage and utility easements between lots shall be 30 ft. Narrower easement widths (20 ft minimum) will be allowed for shallow drainage pipes, 12" diameter or less. Additional drainage and utility easements will be required adjacent to proposed rights of way for telephone, electrical power, gas, and cable tv facilities (10 ft minimum width pursuant to code).
- Streetlighting shall be pursuant to City Code, meeting dark skies requirements (Code Section 118-1536(k)). Submit streetlighting plan from Duke Energy prior to preconstruction meeting, including streetlighting agreement required by Code.

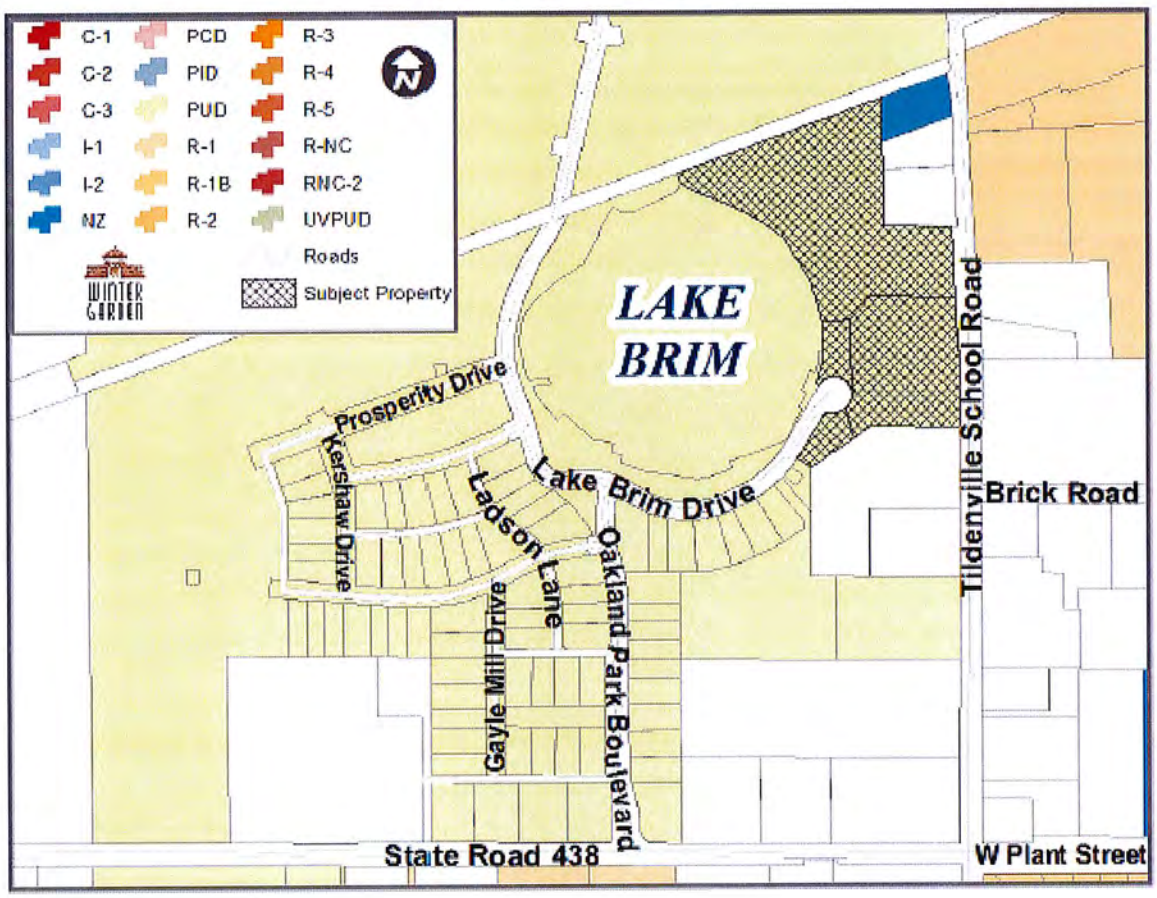
- All irrigation on the site shall be designed to be supplied by reclaimed water.
- Permits from SJRWMD and FDEP (water, wastewater and NPDES) are required prior to issuance of site or building permits.
- A Tree Removal Permit issued by the City of Winter Garden Building Department will be required prior to final plan approval. As required by Code, submittal of the Tree Removal Permit application is required with this preliminary plat submittal; tree protection and removal plan is acknowledged. Coordinate with Building Department (Steve Pash).
- Provide geotechnical report with final construction plans.
- The Owner is responsible for meeting all provisions of ADA and Florida Accessibility Code.
- All work shall conform to City of Winter Garden standards and specifications.
- The City of Winter Garden will inspect private site improvements only to the extent that they connect to City owned/maintained systems (roadways, drainage, utilities, etc.). It is the responsibility of the Owner and Design Engineer to ensure that privately owned and maintained systems are constructed to the intended specifications. The City is not responsible for the operation and maintenance of privately owned systems, to include, but not be limited to, roadways, parking lots, drainage, stormwater ponds or on-site utilities.
- The Contractor is responsible for the notification, location and protection of all utilities that may exist within the project limits.
- No fill or runoff will be allowed to discharge onto adjacent properties; existing drainage patterns shall not be altered. The applicant should note that if approval is granted, the City of Winter Garden is not granting rights or easements for drainage from, or onto, property owned by others. Obtaining permission, easements or other approvals that may be required to drain onto private property is the Owner/Developer's responsibility. Should the flow of stormwater runoff from, or onto adjacent properties be unreasonable or cause problems, the City will not be responsible and any corrective measures required will be the responsibility of the Owner. Site construction shall adhere to the City of Winter Garden erosion and sediment control requirements as contained in Chapter 106 - Stormwater. If approval is granted by the City of Winter Garden, it does not waive any permits that may be required by federal, state, regional, county, municipal or other agencies that may have jurisdiction.
- After final plan approval, a preconstruction meeting will be required prior to any commencement of construction. The applicant shall provide an erosion control and street lighting plan at the preconstruction meeting and shall pay all engineering review and inspection fees prior to construction. Inspection fees in the amount of 2.25% of the cost of all site improvements shall be paid prior to issuance of the building permit.

Conditional approval of the Preliminary Plat will allow the owner to proceed with development plans as well as the final plat.

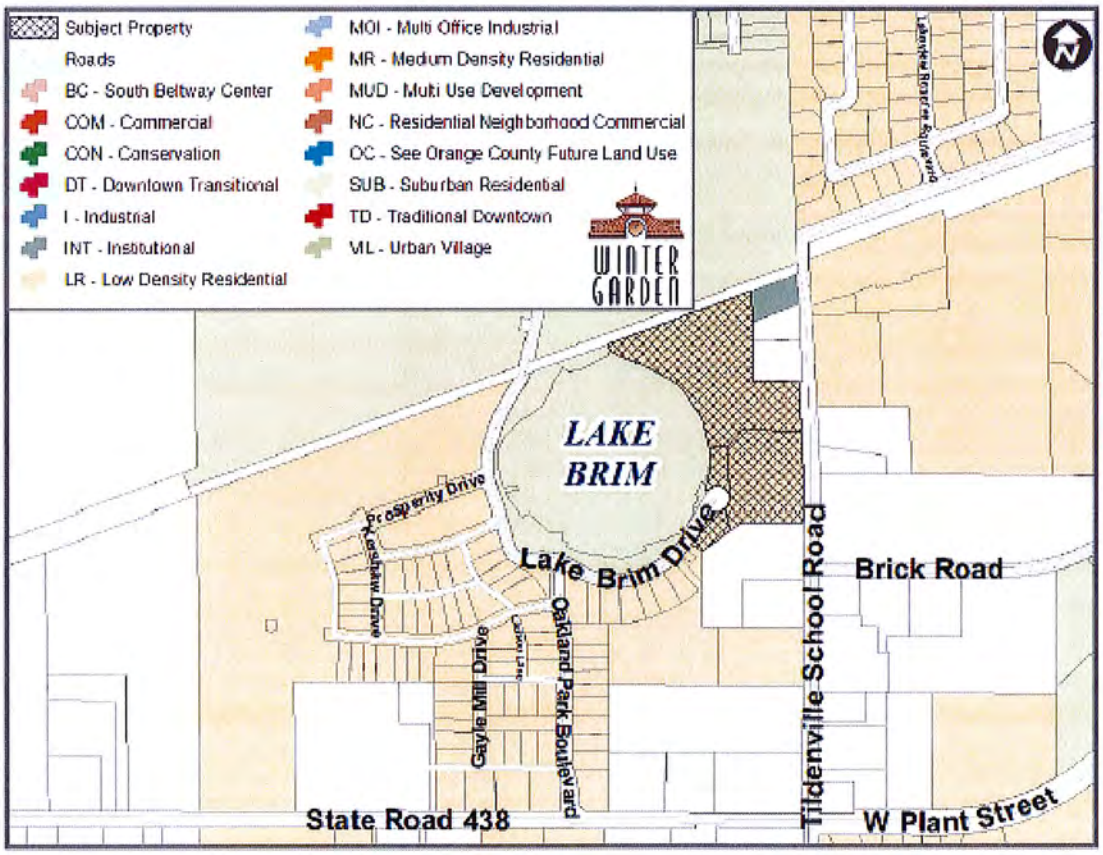
MAPS

AERIAL PHOTO
OAKLAND PARK PHASE 3

ZONING MAP
OAKLAND PARK PHASE 3



FUTURE LAND USE MAP
OAKLAND PARK PHASE 3



END OF STAFF REPORT

EXHIBIT "E"

CITY OF WINTER GARDEN
PLANNING & ZONING DIVISION
300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

STAFF REPORT

TO: PLANNING AND ZONING BOARD
PREPARED BY: STEVE PASH, SENIOR PLANNER
DATE: JULY 7, 2014
SUBJECT: SPECIAL EXCEPTION PERMIT
218 W. Smith Street (Roe Upper Cervical Office)
PARCEL ID # 23-22-27-2888-12-021

APPLICANT: Mike Boellhoefer/Roe Upper Cervical, Inc.

INTRODUCTION

The purpose of this report is to evaluate the proposed project for compliance with the City of Winter Garden Code of Ordinances and Comprehensive Plan.

The subject property is located at 218 West Smith Street. The map below depicts the location of the subject property within the City of Winter Garden municipal limits:

The applicant is requesting a Special Exception Permit to allow a professional office in an R-NC Zoning District. The subject property is located within the City of Winter Garden municipal limits, and carries the zoning designation R-NC and is designated Residential Neighborhood Commercial on the Future Land Use Map of the Comprehensive Plan.

EXISTING/PROPOSED USE

The property contains a 1,560 square foot building that is currently used as a single-family residence on a +/- 0.49 acre property.

The applicant is proposing to purchase the home and renovate the building to operate a chiroprators office. The site contains sufficient area to accommodate the office, parking, and landscapint to meet code requirements.

ADJACENT LAND USE AND ZONING

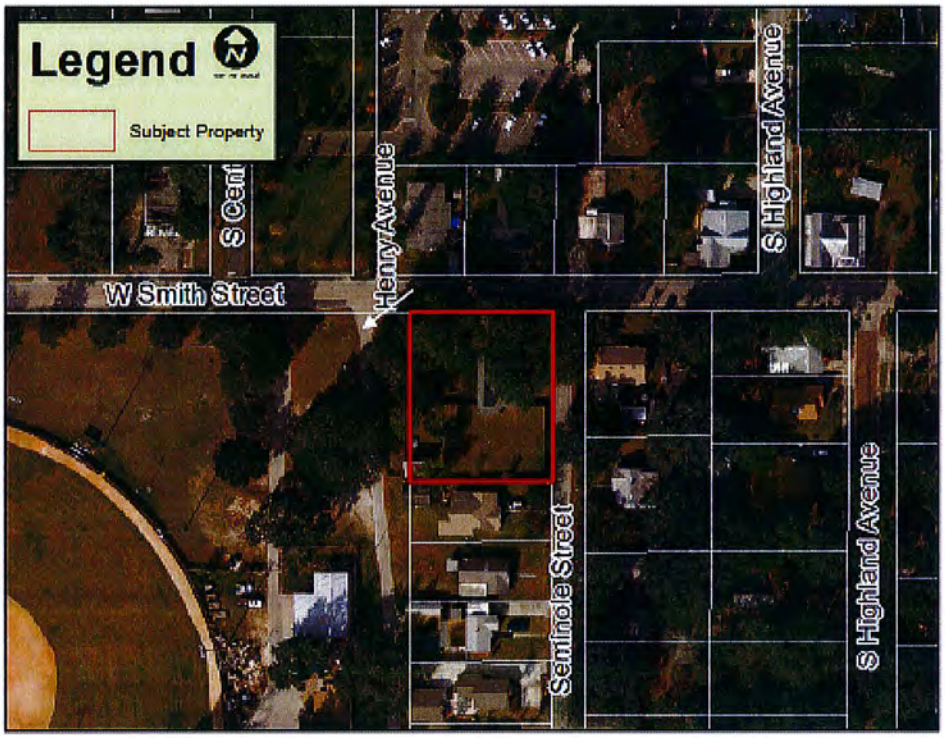
The properties located to the north are single-family houses, zoned R-NC, and in the City of Winter Garden. The properties to the east are developed with a single-family house, zoned R-2, and in the City of Winter Garden. The property to the south is a single-family house, zoned R-NC, and in the City. The property to the west is developed with a City park, zoned R-NC, and in the City.

SUMMARY

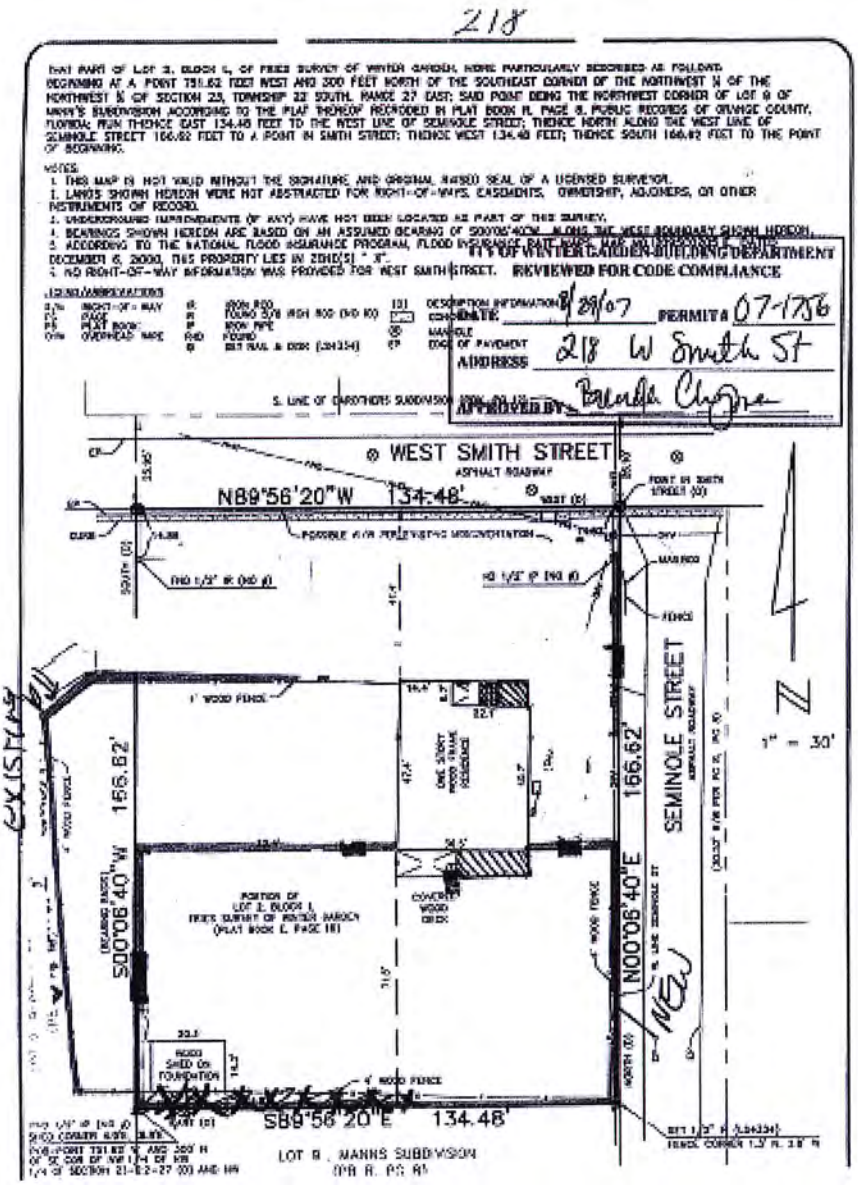
City Staff recommends approval of the proposed special exception permit to operate a professional office in an R-NC Zoning District at 218 West Smith Street with the following conditions:

1. A Minor Site Plan Review is required to install the required parking, landscaping, and possible water retention. The applicant shall submit for the Site Plan Review.
2. Any renovations to the building will require permits. Plans must be submitted to show all interior/exterior renovations to the building.

AERIAL PHOTO
218 West Smith Street



EXISTING SURVEY
218 West Smith Street



END OF STAFF REPORT

EXHIBIT "F"

CITY OF WINTER GARDEN

PLANNING & ZONING DIVISION

300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

STAFF REPORT

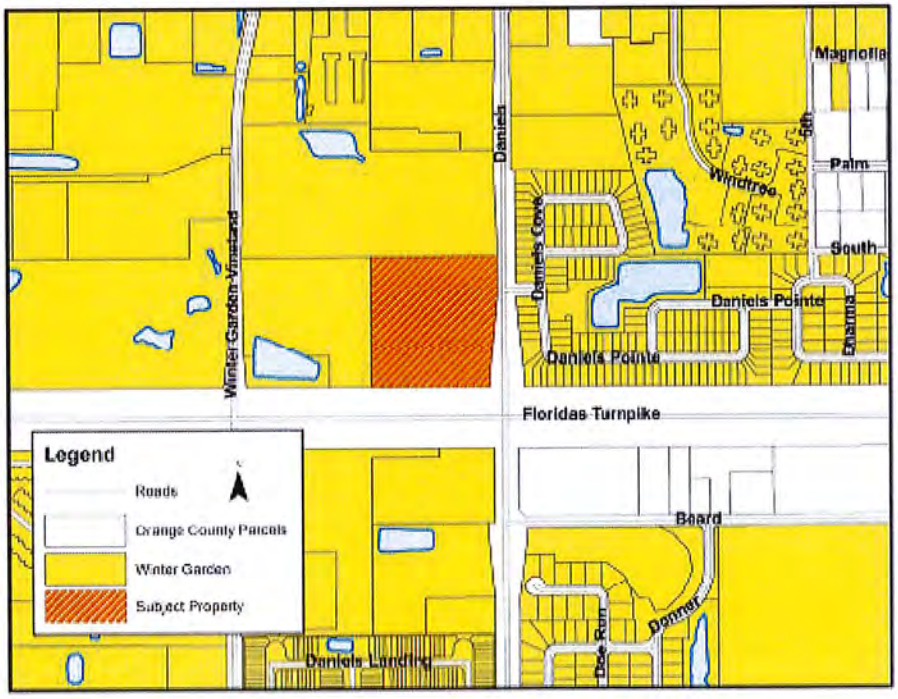
TO: PLANNING AND ZONING BOARD
PREPARED BY: KELLY CARSON, PLANNER II
DATE: JULY 2, 2014
SUBJECT: SPECIAL EXCEPTION PERMIT
1450 Daniels Road (Children's autism therapy center)
PARCEL ID # 26-22-27-0000-00-014

APPLICANT: Applied Behavior Center for Autism, Inc. // Hyndi Khomutetsky

INTRODUCTION

The purpose of this report is to evaluate the proposed special exception permit for compliance with the City of Winter Garden Code of Ordinances and Comprehensive Plan.

The subject property is located at 1450 Daniels Road. The map below depicts the location of the subject property within the City of Winter Garden municipal limits:



The request is for a Special Exception Permit to allow a therapy center for children with autism and learning disabilities. The subject property is located within the City of Winter Garden municipal limits, carries the zoning designation R-2, and is designated Low Density Residential on the Future Land Use Map of the Comprehensive Plan.

EXISTING/PROPOSED USE

The property currently contains two large structures: one approx. 13,500 sf building built in 1969 used as office/classroom space and one approx. 33,300 sf building constructed in 1998 used for church services and administration. Both of these buildings are owned and operated by the Church of Christ of West Orange. Also located on site is a modular office building operated by the Matthew's Hope organization. The majority of the site is currently being used to support religious services, administration, classes, events, and other church-related functions. Matthew's Hope currently uses the modular building for office/administrative uses and maintains a community garden on the Church's adjacent property to support their homeless outreach programs.

The applicant proposes to utilize approximately 2,000 square feet of space within the existing 13,500 sf building to provide applied behavior analysis therapy to children with autism and related disabilities. The center will operate during weekdays from approximately 9:00am to 5:00pm. The applicant anticipates there will be approximately 10 therapists on staff to provide therapy to 20-30 children. The proposal includes the demolition and relocation of an existing playground and the construction of 46 additional paved parking spaces to support this operation.

ADJACENT LAND USE AND ZONING

The property located to the west is, like the subject property, owned by the Church of Christ. It's zoned R-2 and is within the City of Winter Garden Municipal Limits. It contains a road connecting an internal church drive to Winter Garden Vineland Road. This property also has a small area of land used as a community garden by the Matthew's Hope organization.

The property located to the north of the subject property is also being used by a religious organization: the Resurrection Catholic Church. It contains three church facility buildings and one warehouse/storage building. This property is zoned C-2 and is within the City of Winter Garden Municipal Limits.

The property located to the east of the subject property is the Daniels Crossing Subdivision, which contains single-family houses. This property is zoned PUD and is within the City of Winter Garden Municipal Limits.

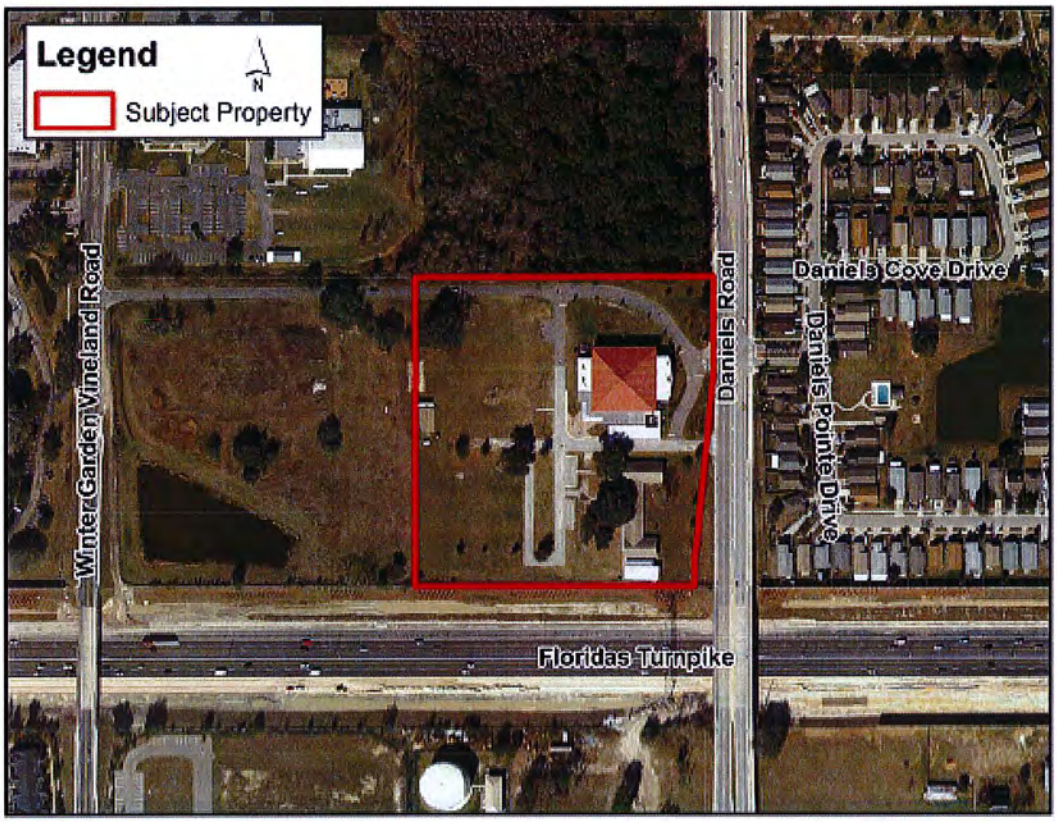
One of the properties located to the south of the subject property, across the Florida Turnpike, is owned and operated by the City of Winter Garden and contains a water processing facility. This property is zoned R-1 and is within the City of Winter Garden Municipal limits. Also located to the south of the subject property is a small segment of a larger commercial property, containing the Winter Garden Professional Center. This property has been developed to support a mix of uses (United Cerebral Palsy School, various office & retail businesses, etc.). It's zoned PCD and is within the City of Winter Garden Municipal Limits.

SUMMARY

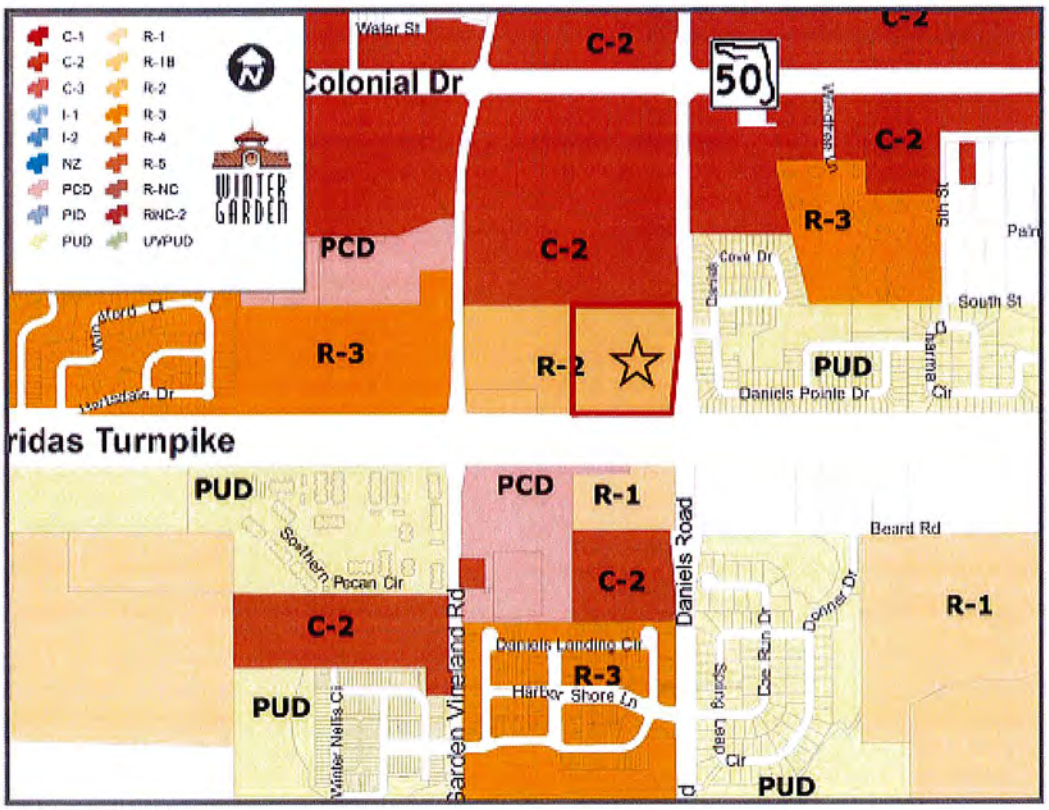
City Staff recommends approval of the proposed special exception permit to allow a therapy center for children with autism and learning disabilities at 1450 Daniels Road with the following conditions:

1. As shown on the proposed site plan, the owner shall immediately install 46 new paved parking spaces and planting islands as required per code to accommodate the parking needs of the three organizations operating on the site (Church of Christ of West Orange, Matthew's Hope, and the Applied Behavior Center for Autism). Approval of this parking area is based on the applicant's description of staff levels for all three organizations and anticipated number of children who will be attending therapy classes: approximately 20 employees and 20-30 children every weekday. If the number of employees, students, and/or daily visitors increases significantly, additional parking may be required.
2. The new temporary classroom buildings proposed by the Matthew's Hope's organization are permitted to be located in the area shown on the site plan for a maximum of two years. After the two year temporary period, these buildings must be removed and the site restored to its original condition. If Matthew's Hope wishes to continue operations on this site after the two year period, they must apply for site plan approval to construct a permanent building.
3. The existing playground located adjacent to Daniels Road shall be removed from its current location and relocated to the area west of the building as shown on the proposed site plan.
4. Chain link fencing for the playground area is not permitted. Another fence type, such as an aluminum or PVC fence, may be used instead of chain link.
5. All necessary permits must be obtained prior to beginning any construction on or alterations to the site.
6. The existing drainage patterns are to be maintained. All drainage to accommodate the proposed paving, structures, and other new impervious surfaces shall be installed to function correctly and any damage to existing drainage shall be repaired and maintained by the property owner.
7. Any new signage must comply with the requirements of the Winter Garden Code of Ordinances Chapter 102 - SIGNS.

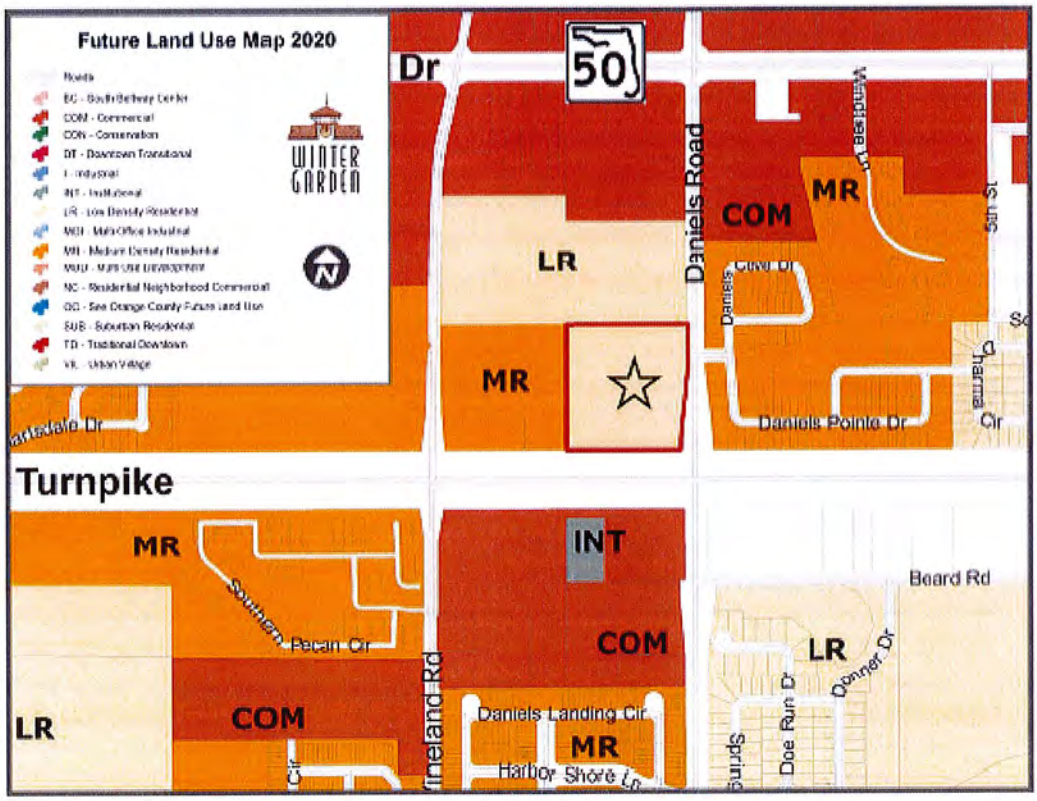
Aerial Map
1450 Daniels Road



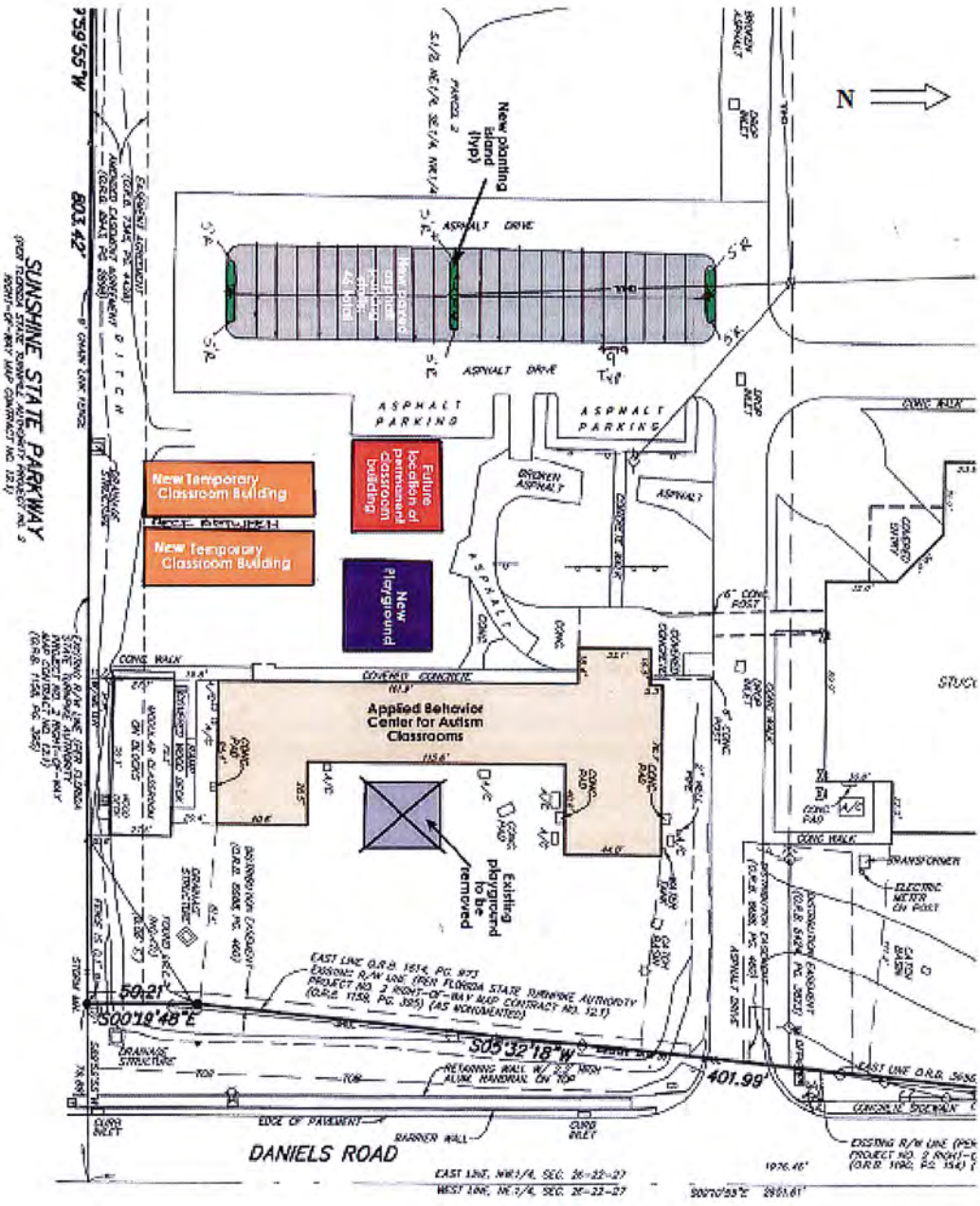
Zoning Map
1450 Daniels Road



Future Land Use Map
1450 Daniels Road



Proposed Site Plan
1450 Daniels Road



END OF STAFF REPORT

EXHIBIT "G"

CITY OF WINTER GARDEN
PLANNING & ZONING DIVISION
300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

STAFF REPORT

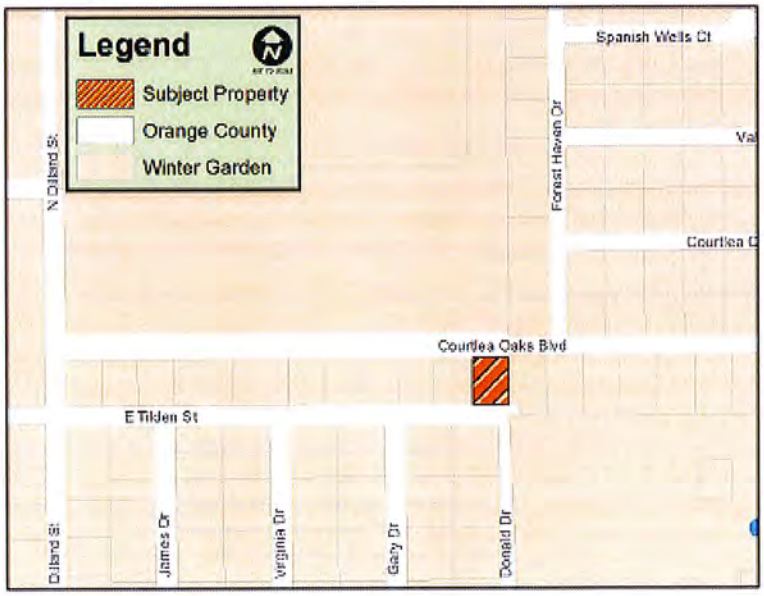
TO: PLANNING AND ZONING BOARD
PREPARED BY: STEVE PASH, SENIOR PLANNER
DATE: JULY 7, 2014
SUBJECT: VARIANCE
319 Courtlea Oaks Blvd (0.33+/- ACRES)
PARCEL ID # 14-22-27-1942-00-080

APPLICANT: Ken Sumal Construction, LLC / Sheri Wallen

INTRODUCTION

The purpose of this report is to evaluate the request of a 2.9 foot side yard setback variance and a 3.7 foot rear yard setback variance to allow construction of an addition to the house which consists of a pool bathroom and a covered porch located 7.1 feet from the side property line and 23.3 feet from the rear property.

The subject property, located at 319 Courtlea Oaks Blvd is approximately a 0.33 ± acre lot located on the south side of Courtlea Oaks Blvd west of Forest Haven Drive. The map below depicts the location of the subject property within the City of Winter Garden municipal limits:



The applicant is requesting a variance to Section 118-308(1)b. and Section 118-308(1)c. to allow a pool bathroom and covered porch addition to be built at a 7.1 foot side yard setback in lieu of the minimum required 10 foot side yard setback and at a 23.3 foot rear yard setback in lieu of the minimum required 27 foot rear yard setback. The subject property carries the zoning designation R-1 (Residential District) and is designated LR (Low Density Residential) on the Future Land Use Map of the City's Comprehensive Plan.

EXISTING USE

The subject property presently consists of a 2,780 square foot single family home.

ADJACENT LAND USE AND ZONING

The properties to the north of the subject site are developed with single-family homes and Dillard Street Elementary School with R-1 zoning designation. The properties to the south of the subject site are developed with single-family homes with R-2 zoning designation and a citrus grove with R-1 zoning designation. The properties to the east and west are developed with single-family homes with R-1 zoning designation.

PROPOSED USE

The applicant is requesting a variance to the side yard setback and the rear yard setback to allow construction of a new pool bathroom and covered porch.

CODE REFERENCE

Sec. 118-308 (1)b. of the City Code of Ordinances addresses setbacks for the R-1 zoning district and states that the side yard setback is 10 feet.
Sec. 118-308 (1)c. of the City Code of Ordinances addresses setbacks for the R-1 zoning district and states that the rear yard setback is 20% of the lot depth (27 feet).

The applicant is seeking a variance to the minimum required side yard setback of 10 feet to allow an addition to the home to be located 7.1 feet from the side property. The applicant is also seeking a variance to the minimum required rear yard setback of 27 feet to allow the addition to be located at a 23.3 foot rear yard setback.

CODE REQUIREMENTS /CRITERIA

Code Requirements/Criteria:

Section 118-131 of the City Code relates to the review criteria states that, "A variance may be granted from land development regulations by the planning and zoning board if the planning and zoning board concludes that literal enforcement of the provisions of land development regulations would result in either practical difficulties (for setback and parking provisions) or unnecessary hardships (for all other land development regulations) for the property at issue." The code also lists the following criteria that are to be addressed before a variance can be approved. Underlined text is Staff's comments concerning this particular petition.

(a) Granting the variance will not cause or allow interference with the reasonable enjoyment of adjacent or nearby property owners or negatively impact the standard of living of the citizens

of the city;
Construction of the proposed structure 7.1 feet from the side property line should not negatively impact or interfere with the reasonable enjoyment of adjacent or nearby property owners as the addition is in line with a portion of the existing structure. Construction of the addition 23.3 feet from the rear property line should not negatively impact or interfere with the reasonable enjoyment of adjacent or nearby property owners as there is a street along the rear property line. Additionally, there were no comments received from any of the surrounding property owners regarding the requested variance.

(b) The variance will allow a reasonable use of the property, which use is not out of character with other properties in the same zoning category;
The requested variance allowing a 7.1 foot side yard setback in lieu of the required 10 foot setback and the variance allowing a 23.3 foot rear yard setback in lieu of the required 27 foot setback is reasonable use of the property. The property to the west has an approved variance to have an accessory structure that exceeds 400 square feet at a 7 foot rear yard setback and this setback is not out of character with other accessory structures in the neighborhood.

(c) In the context presented, strict compliance with the land development regulation will not further any legitimate city objective or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under this criteria if the variance were denied;
Strict compliance with the City's land development regulations will not further any legitimate City objective. This request does not encroach into any recorded easement and does not exceed the maximum impervious surface ratio for R-1 residential zoning.

(d) The granting of the variances is consistent with the city's comprehensive plan; and
The variances are consistent with the provisions of the City's Comprehensive Plan relating to single family residential neighborhood character.

(e) The variance requested is the minimum variance that will make reasonable use of the land, building, or structure or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under these criteria if the variance were denied.
The variances requested are the minimum variances that will make reasonable use of the land. Denying this variances does not benefit the property owner or the City.

SUMMARY

Staff recommends approval of the variance to Section 118-308 (1) b. to allow an addition to be built at a 7.1 foot side yard setback in lieu of the minimum required 10 foot side yard setback.

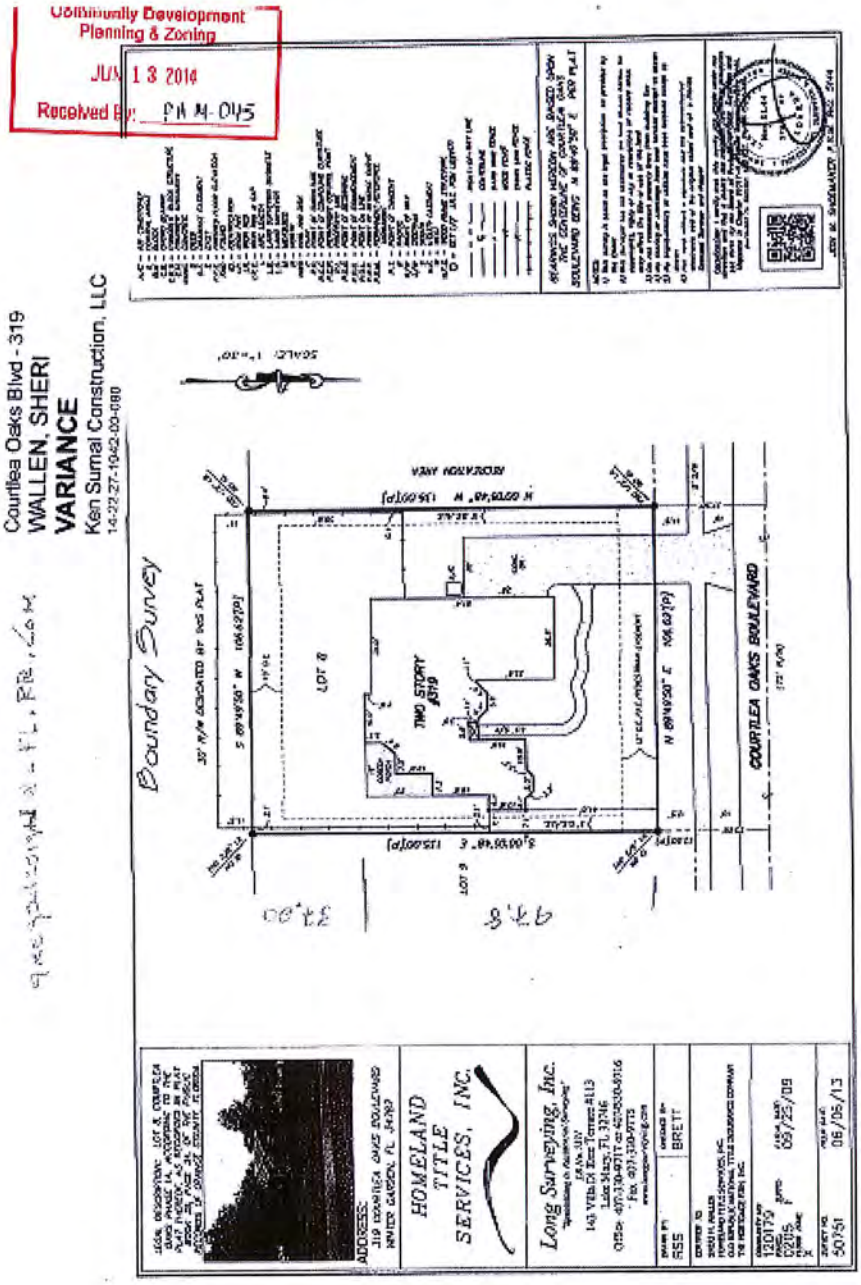
Staff also recommends approval of the variance to Section 118-308 (1) c. to allow the addition to be built at a 23.3 foot rear yard setback in lieu of the minimum required 27 foot rear yard setback.

ATTACHMENTS

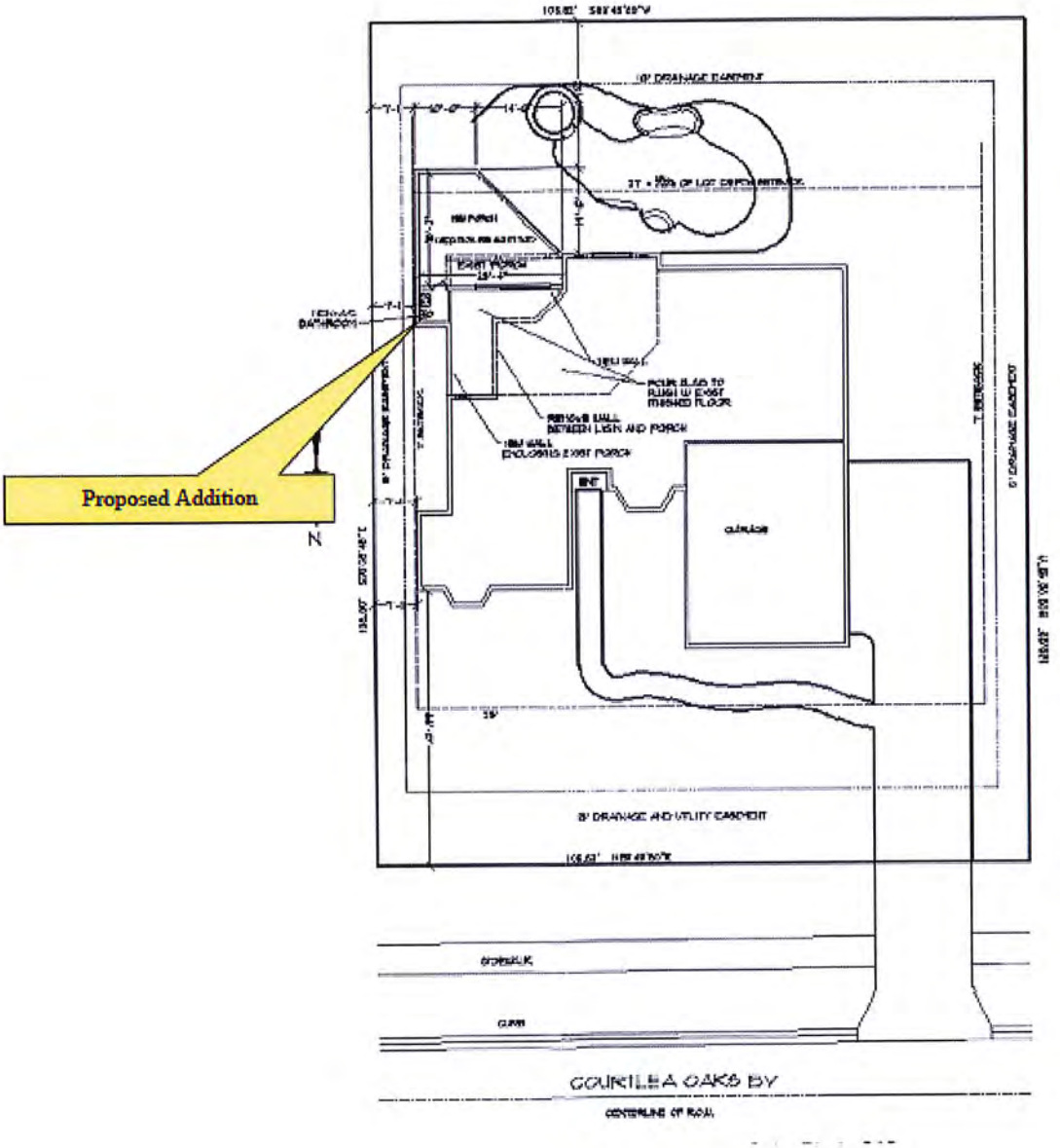
- Aerial Photos
- Site Photos

AERIAL PHOTO
319 Courtlea Oaks Boulevard

SITE SURVEY
319 Courtlea Oaks Boulevard



SITE PLAN
208 Trail Bridge Court



SITE PHOTOS
319 Courtlea Oaks Blvd

View of proposed location of addition (looking east)

View of proposed location of addition (looking west)

Site Photos
319 Courtlea Oaks Blvd

View showing existing side setback (addition in line)

View looking southeast

Site Photos
319 Courtlea Oaks Blvd

View looking southwest

END OF STAFF REPORT

EXHIBIT "H"

CITY OF WINTER GARDEN

PLANNING & ZONING DIVISION

300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

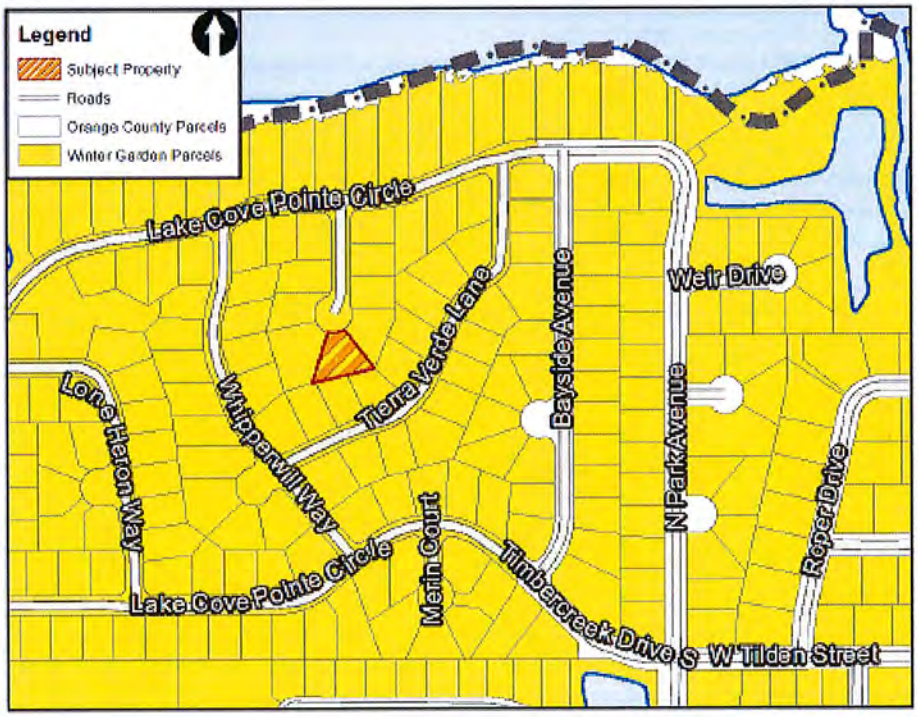
STAFF REPORT

TO: PLANNING AND ZONING BOARD
PREPARED BY: LAURA SMITH, SENIOR PLANNER
DATE: JUNE 30, 2014
SUBJECT: VARIANCE
400 MARY ELLEN COURT (0.30+/- ACRES)
PARCEL ID # 15-22-27-4429-00-440
APPLICANT:

INTRODUCTION

The purpose of this report is to evaluate the request for a reduced rear yard setback from the minimum required 28.4 feet to 20 feet.

The subject property, located at 400 Mary Ellen Court is approximately a 0.30± acre lot. The map below depicts the location of the subject property within the City of Winter Garden municipal limits:



The applicant is requesting a variance to Section 118-308(1)(c) to allow an addition to be constructed onto the rear of the home located at 400 Mary Ellen Court at a rear setback of 20 feet in lieu of the minimum required 28.4 feet. The subject property carries the zoning designation R-1 (Residential District) and is designated LR (Low Density Residential) on the Future Land Use Map of the City's Comprehensive Plan.

EXISTING USE

The subject property presently contains a 4,311 square foot single family home.

ADJACENT LAND USE AND ZONING

The adjacent properties contain single family residential homes zoned R-1 in the Low-Density Residential Future Land Use Category.

PROPOSED USE

The applicant is requesting a variance to the rear yard setback to allow construction of an addition onto the rear of the existing single family residence. The Lake Cove Point Home Owner's Association has approved the proposed addition.

CODE REFERENCE

Sec. 118-310(1)(c) of the City Code of Ordinances addresses rear setbacks for single family residential uses within the R-1 Zoning District and states that structures meet a rear yard setback of 20% of the lot depth (28.4 feet).

The applicant is seeking a variance to the minimum required rear yard setback of 28.4 feet to allow an addition onto the rear of the existing single family residential structure to be located 20 feet from the rear property line.

CODE REQUIREMENTS /CRITERIA

Code Requirements/Criteria:

Section 118-131 of the City Code that relates to the review criteria states that, "A variance may be granted from land development regulations by the planning and zoning board if the planning and zoning board concludes that literal enforcement of the provisions of land development regulations would result in either practical difficulties (for setback and parking provisions) or unnecessary hardships (for all other land development regulations) for the property at issue." The code also lists the following criteria that are to be addressed before a variance can be approved. Underlined text is Staff's comments concerning this particular petition.

(a) Granting the variance will not cause or allow interference with the reasonable enjoyment of adjacent or nearby property owners or negatively impact the standard of living of the citizens of the city;

Construction of the proposed addition at 20 feet from the rear property line should not negatively impact or interfere with the reasonable enjoyment of adjacent or nearby property owners.

(b) The variance will allow a reasonable use of the property, which use is not out of character with other properties in the same zoning category;

The requested variance allowing a 20 foot rear yard setback in lieu of the required 28.4 foot setback is reasonable use of the property.

(c) In the context presented, strict compliance with the land development regulation will not

further any legitimate city objective or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under this criteria if the variance were denied;

Strict compliance with the City's land development regulations does not further any City objectives regarding the public health, safety and welfare.

(d) The granting of the variance is consistent with the city's comprehensive plan; and

The variance is consistent with the provisions of the City's Comprehensive Plan relating to single family residential neighborhood character.

(e) The variance requested is the minimum variance that will make reasonable use of the land, building, or structure or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under these criteria if the variance were denied.

The variance requested is the minimum variance that will make reasonable use of the land. Denying the variance requested does not benefit the property owner or the City.

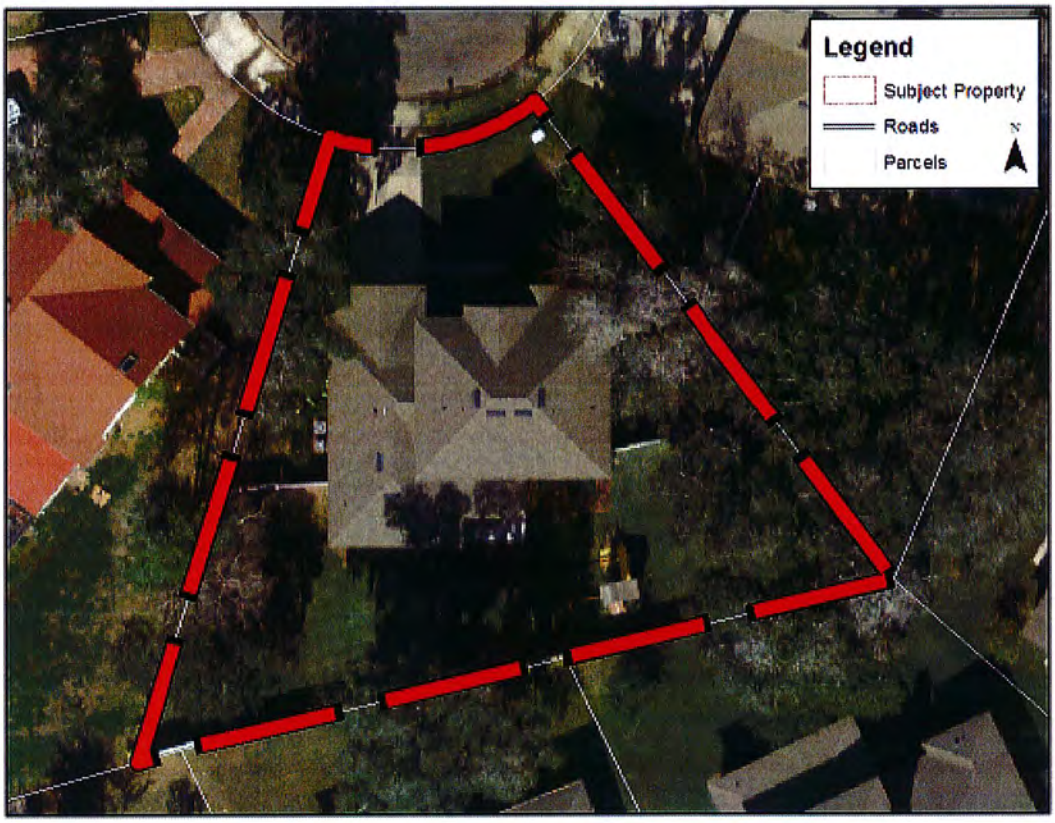
SUMMARY

City Staff recommends approval of the variance to Section 118-308(1)(c) to allow an addition to the existing principal structure to be constructed at a rear setback of 20 feet in lieu of the required 28.4 foot rear setback.

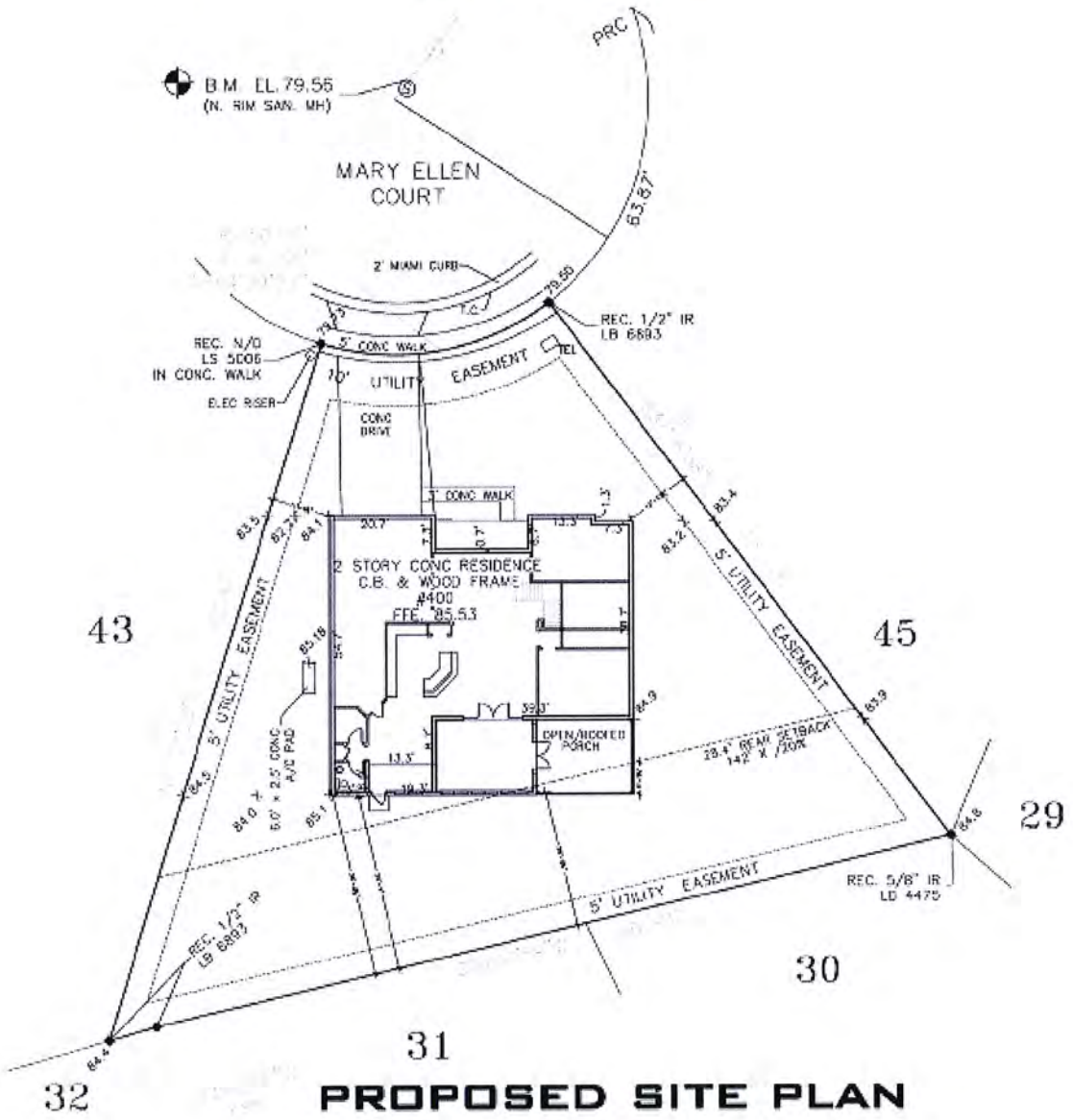
ATTACHMENTS

- Aerial Photo
- Site Plan

AERIAL PHOTO
400 Mary Ellen Court



SITE PLAN
400 Mary Ellen Court



PROPOSED SITE PLAN

END OF STAFF REPORT

EXHIBIT "I"

CITY OF WINTER GARDEN

PLANNING & ZONING DIVISION

300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

STAFF REPORT

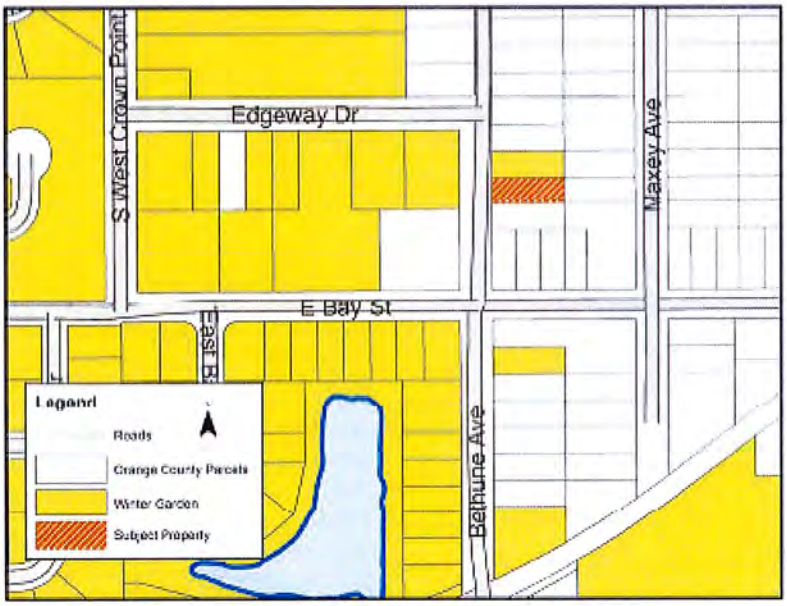
TO: PLANNING AND ZONING BOARD
PREPARED BY: KELLY CARSON, PLANNER II
DATE: JULY 2, 2014
SUBJECT: VARIANCE
555 Bethune Avenue (0.15+/- ACRES)
PARCEL ID # 13-22-27-5248-01-090

APPLICANT: West Orange Habitat for Humanity Inc.

INTRODUCTION

The purpose of this report is to evaluate the request for a side yard setback variance for property located at 555 Bethune Avenue in Winter Garden, Florida. The request is for a 6'-0" side yard setback from the northern property boundary and a 7'-0" side yard setback from the southern property boundary in lieu of the minimum required 7'-6" side yard setbacks. If approved, this variance will allow the construction of a new single-family residence on the property.

The subject property, located on Bethune Avenue, is an approximately 0.15± acre lot in the Joe Louis Park Subdivision. The map below depicts the location of the subject property within the City of Winter Garden municipal limits:



The subject property carries the zoning designation R-4 (R-4 Zoning District) and is designated LR (Low Density Residential) on the Future Land Use Map of the City's Comprehensive Plan.

EXISTING USE

The proposed residential structure is currently under construction on the subject property. The applicant was granted approval to begin construction by City Commission at the June 12, 2014 meeting with the condition that a variance for the side yard setbacks be pursued after approval.

ADJACENT LAND USE AND ZONING

The adjacent properties to the south and east of the subject property are currently vacant. They are located in Unincorporated Orange County and have the County zoning designation R-2. The property to the north of the subject property contains a single-family residential home. This property is located within the City of Winter Garden municipal limits, has a zoning designation of R-4 (R-4 Zoning District) and the future land use designation of LR (Low Density Residential). The property to the west of the subject property features a series of modular office buildings owned and operated by the Bay Street Church of God in Christ. This property is also located within the City of Winter Garden municipal limits, has a zoning designation of R-4 (R-4 Zoning District) and the future land use designation of LR (Low Density Residential).

PROPOSED USE

The applicant would like to build a new one-story single-family home on the property. The building will have approximately 1,324 sf of living area. The site will also feature a 206 sf carport, a front porch, and paved concrete driveway. This project is being facilitated by West Orange Habitat for Humanity, which runs an affiliate program that builds homes for servicemen and women who were severly wounded in combat.

CODE REFERENCE

Sec. 118-458 (1) of the City Code of Ordinances addresses minimum yard requirements. This section states in part that the minimum yard requirements for single-family residential buildings in the R-4 Zoning District are "*front: 20 feet, side: 7.5 feet, rear: 30 feet.*"

The applicant is seeking a variance to the minimum side yard setbacks to allow the proposed single family residence to be built with a 6'-0" side yard setback from the northern property boundary and a 7'-0" side yard setback from the southern property boundary.

CODE REQUIREMENTS / CRITERIA

Code Requirements/Criteria:
Section 118-131 of the City Code that relates to the review criteria states that, "A variance may be granted from land development regulations by the planning and zoning board if the planning and zoning board concludes that literal enforcement of the provisions of land development regulations would result in either practical difficulties (for setback and parking provisions) or unnecessary hardships (for all other land development regulations) for the property at issue." The code also lists the following criteria that are to be addressed before a variance can be approved. Underlined text is Staff's comments concerning this particular petition.

(1) Granting the variance will not cause or allow interference with the reasonable enjoyment of adjacent or nearby property owners or negatively impact the standard of living of the citizens

of the city;
The proposed single family residence located 6'-0" from the northern property boundary and a 7'-0" from the southern property boundary should not negatively impact or interfere with the reasonable enjoyment of adjacent or nearby property owners. The properties to the south and east of the subject property are currently vacant, and the property to the west is used for church administration. In addition, many of the adjacent properties within the neighborhood have similar side yard setbacks, including the adjacent property to the north, which features the same building footprint as the one proposed by the applicant. This project will not negatively impact the standard of living of the citizens of the City.

(2) *The variance will allow a reasonable use of the property, which use is not out of character with other properties in the same zoning category;*
The requested variance allowing a 6'-0" side yard setback from the northern property boundary and a 7'-0" side yard setback from the southern property boundary in lieu of the minimum required 7'-6" side yard setbacks will allow reasonable use of the property. As previously stated, many of the adjacent properties within the neighborhood feature similar side yard setbacks. The Joe Louis Park subdivision includes many properties in Unincorporated Orange County, which have a County zoning designation that allows side yard setbacks similar to the ones proposed by the applicant. The adjacent property to the north, which was annexed into the City from Orange County after the property's residential structure was constructed, features the same building footprint as the one proposed by the applicant. Additionally, a variance was recently granted to a property located at 686 Bethune Avenue allowing the construction of an addition to the primary residence to be built at a 17.8 foot rear yard setback in lieu of the minimum required 30 foot rear yard setback. Furthermore, granting this variance will not change the low-intensity urban residential character of the neighborhood.

(3) *In the context presented, strict compliance with the land development regulation will not further any legitimate city objective or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under this criteria if the variance were denied;*
Strict compliance with the City's land development regulations will not further any legitimate City objective. This request does not encroach into any recorded easements, does not exceed the maximum impervious surface allowed in the R-4 zoning district (50%), and meets all other development regulations of the R-4 zoning district.

(4) *The granting of the variance is consistent with the city's comprehensive plan; and*
The variance is consistent with the provisions of the City's Comprehensive Plan relating to low density residential neighborhood character.

(5) *The variance requested is the minimum variance that will make reasonable use of the land, building, or structure or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under these criteria if the variance were denied.*
The variance requested is the minimum variance that will make reasonable use of the land. The proposed single family residence will not negatively impact the neighbors and is consistent with side yard setbacks enjoyed by many other property owners throughout the City. Denying this variance does not benefit the property owner or the City.

SUMMARY

City Staff recommends approval of a variance to Sections 118-458(1)b to allow a 6'-0" side yard setback from the northern property boundary and a 7'-0" side yard setback from the southern property boundary in lieu of the minimum required 7'-6" side yard setbacks to permit the construction of the proposed single family residence subject to the following condition:

1. All drainage shall be installed to function correctly and any damage to existing drainage shall be repaired and maintained by the property owner.

NEXT STEP

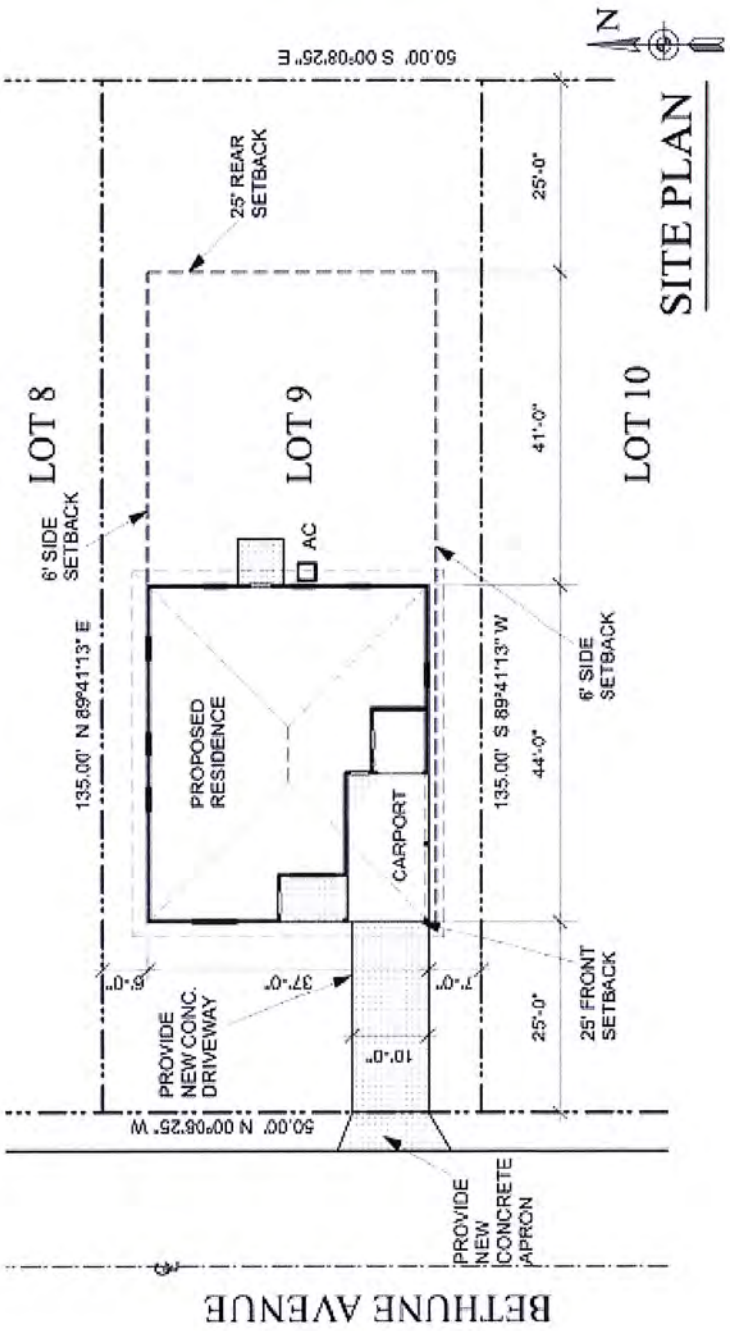
Apply for the appropriate Building Permits.

ATTACHMENTS

- Aerial Photo
- Site Plan
- Site Photos

AERIAL PHOTO
555 Bethune Avenue

PROPOSED SITE PLAN
555 Bethune Avenue



SITE PHOTOS
555 Bethune Ave

END OF STAFF REPORT

EXHIBIT "J"

ORDINANCE 14-29

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTIONS 110-56, 110-152, 110-153, 110-154, 110-157 AND 110-162 OF ARTICLE III, DIVISION 1, 4 AND 5 OF CHAPTER 110 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN CONCERNING PLATTING REQUIREMENTS; PROVIDING FOR UTILITY EASEMENT DEDICATIONS; AMENDING DEFINITIONS; CLARIFYING THE DEFINITION OF COMMUNITY SUBDIVISION INFRASTRUCTURE AND MAKING OTHER RELATED REVISIONS; PROVIDING FOR ADDITIONAL REQUIRED AND PROHIBITED LANGUAGE FOR DECLARATIONS; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission desires to amend the final plat approval requirements of Article III, Division 1, 4 and 5 of Chapter 110, City of Winter Garden Code of Ordinances to provide for utility easement dedications, amend definitions pertaining to platting requirements, clarify the definition of community subdivision infrastructure and make other related revisions, and to include additional prohibited and required provisions for declarations; and

WHEREAS, the City Commission finds it to be in the best interest of the public health, safety and welfare to make the revisions to Chapter 110, City of Winter Garden Code of Ordinances in the manner specified in this Ordinance.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:

Section 1: **Authority.** The City of Winter Garden has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 166, Florida Statutes.

Section 2: **Adoption.** Section 110-56 of Article III, Division 1 of Chapter 110 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being revised):

Sec. 110-56. Definitions.

Community subdivision infrastructure or "*community subdivision infrastructure improvements*" means all structures and real property improvements to be ultimately owned or

maintained by the subdivision HOA, including without limitation, all stormwater management systems, sod and landscaping within stormwater retention and detention areas, roadways, gates, walls, streetlights, street and traffic signs, sidewalks, docks, pools, clubhouses and other structures or real property improvements on common areas (or common property), but excluding playground equipment and sod and landscaping not within stormwater detention or retention areas. ~~subdivision infrastructure not dedicated to the use of the public or the city and which may include, but is not limited to, roadways, street lights, drainage systems (which includes, without limitation, stormwater detention/retention areas and underdrains), sidewalks, and other improvements and facilities.~~

Homeowners' association or HOA means a mandatory community association as contemplated by Chapter 720, Fla. Stat. in which the owners of all lots, blocks, and tracts within the ~~residential~~ subdivision are required by the terms of the declaration to be members, ~~as contemplated by F.S. (2003) § 720.301(7),~~ with the ability and duty to impose and collect on assessments. This definition includes homeowners' associations or property owners' associations formed pursuant to Chapter 720, Fla. Stat. governing residential, commercial or mixed-use subdivisions.

~~*Private amenities* means those lands and improvements, not considered subdivision infrastructure, which are retained for private use by the HOA or owners of lots within the subdivision, including, but not limited to, entrance and exit gates, walls, swimming pools, clubhouses, parks, landscaping, irrigation, signs, conservation areas, and other recreation areas.~~

Section 3: Adoption. Section 110-152 of Article III, Division 4 of Chapter 110 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being revised):

Sec. 110-152. Final plats; application, supplementary materials, documentation, contents and data required for final approval.

The final plat, application, and other materials required by subparagraphs (b) and (c) of section 110-151 shall, where applicable, at a minimum, comply with and include the following:

(1) Unless otherwise provided for in this article, the final subdivision plat shall comply with the requirements of F.S. Ch. 177, as may be amended from time to time. The final subdivision plat shall be drawn in ink on tracing cloth on sheets as required for filing for record in the county and shall be at a scale of 100 feet to one inch or larger. Where more than one sheet must be used to accurately portray the lands subdivided, an index or key map must be included and each sheet must show the particular number of that sheet and the total number of sheets included, as well as clearly labeled matchlines to show where other sheets match or adjoin. For large subdivisions the final plat may be submitted for approval progressively in contiguous sections satisfactory to the planning and zoning board. In addition to the requirements of F.S. Ch. 177, referenced above, the final plat shall show, depict, or otherwise provide for the following:

a. Primary control points, approved by the city engineer, or descriptions and ties to such control points, to which all dimensions, angles, bearings, and similar data on the plat shall be referred.

b. Tract boundary lines, right-of-way lines of streets, easements and other rights-of-way, and property lines of residential lots and other sites, with accurate dimensions, bearing or deflection angles; and radii, arcs and central angles of all curves.

c. As applicable, the exact location, dimensions, name, identification, purpose, and description of public streets, private roadways, public and private alleys, rights-of-way, waterways, tracts, common areas, parks, public and private areas, playgrounds or other similar uses, reservations, easements or rights-of-way, blocks, lots and significant sites within the subdivision, with accurate dimensions, bearing or deflecting angles and radii, area and central angles, chord bearing and distance, tangent distance and length of all curves where appropriate. All interior excepted parcels as described in the description of the lands being subdivided shall be clearly indicated and labeled "Not a part of this plat."

d. Location, dimensions and purpose of any proposed easements and existing easements identified in the title opinion or certification required by this article below shall be shown on the plat or in the notes or legend, and their intended use shall be clearly stated. Where easements are not coincident with property lines, they must be labeled with bearings and distances tied to the principal lot, tract, or right-of-way.

e. Number to identify each lot or site. All lots shall be numbered either by progressive numbers or, if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name may be numbered consecutively throughout the several additions.

f. Purpose for which sites, other than residential lots, are dedicated or reserved.

g. ~~Reserved.~~ The plat shall dedicate, in a form approved by the city attorney and in locations, size and dimensions acceptable to the public services department and city engineer, utility easements necessary to provide utility services to the lots and tracts within the subdivision. Such utility easements should be granted, at the city's option, either to the city or to the city and the public. The city's rights in such easement areas shall be superior to all others and no utilities or other improvements shall be permitted to conflict or interfere with the city's utility improvements within such utility easement areas. The city shall only be responsible for the maintenance of utilities it accepts and/or installs within utility easements. The plat shall not contain reservations of utility easements in favor of the developer or the HOA which could be used for the purpose of mandating, restricting or controlling the selection of utility service providers providing utility services to lots within the subdivision. The city shall have the authority to permit and regulate the use of utility easements dedicated on any plat to the city, the public or to the city and the public by utility service providers for utility purposes, including for the placement, operation, maintenance, replacement and repair of utilities. For the purposes of this article, the term "utility service providers" includes without limitation, entities providing water, sewer, reclaimed water, cable, internet, electric, gas, or telephone utilities or services.

h. Location and description of monuments.

i. Reserved.

j. All contiguous properties shall be identified by subdivision title, plat book, and page, and date of recording, or, if unplatted, land shall be so designated. If the subdivision platted is a part or the whole of a previously recorded subdivision, sufficient ties shall be shown to controlling lines appearing on the earlier plat to permit an overlay to be made; the fact of its being a replat shall be stated as a subtitle under the name of the plat on each sheet included. The subtitle must state the name of the subdivision being replatted and the appropriate recording reference.

k. Every plat offered for recording must be prepared by a Florida registered professional surveyor and mapper. The plat must be signed and sealed by that professional surveyor and mapper, who must state on the plat that the plat was prepared under his or her direction and supervision and that the plat complies with all of the survey requirements of F.S. Pt. I of Ch. 177, and chapter 110 of the Winter Garden Code of Ordinances. Every plat must also contain the printed name and registration number of the professional surveyor and mapper directly below the statement required by this paragraph, along with the printed name, address, and certificate of authorization number of the legal entity, if any. A professional surveyor and mapper practicing independently of a legal entity must include his or her address.

l. Dedication of the plat to the public and the city for the uses and purposes stated thereon including in the plat notes by the owner or owners of record of lands to be subdivided. The dedication must be executed by all persons, corporations, or entities whose signature would be required to convey the record fee simple title to the lands being dedicated in the same manner in which deeds are required to be executed. All mortgagees having a record interest in the lands subdivided shall execute, in the same manner in which deeds are required to be executed, either the dedication contained on the plat or a separate instrument joining in, consenting to, and ratifying the plat and all dedications and reservations thereon.

m. Each plat shall show a description of the lands subdivided, and the description shall be the same in the title certification. The description must be so complete that from it, without reference to the plat, the starting point and boundary can be determined.

n. In all cases, the letter size and scale used shall be of sufficient size to show all detail. The scale shall be both stated and graphically illustrated by a graphic scale drawn on every sheet showing any portion of the lands subdivided. The name of the plat shall be shown in bold legible letters, as stated in F.S. § 177.051. The name of the subdivision shall be shown on each sheet included. The name of the professional surveyor and mapper or legal entity, along with the street and mailing address and phone number, must be shown on each sheet included. A prominent "north arrow" shall be drawn on every sheet included showing any portion of the lands subdivided. The bearings or azimuth reference shall be clearly stated on the face of the plat in the notes or legend, and, in all cases, the bearings used shall be referenced to some well-established and monumented line. The date of preparation shall be provided on the face of the plat.

o. When a subdivision provides screening walls, landscaping, sidewalks, or other amenities within the public right-of-way and such is acceptable to the city in the city's sole discretion, a license agreement shall be required between the city, the developer and/or the homeowners association and such license agreement shall be referenced on the plat. Such license agreement shall be reviewed by the city as part of the preliminary plat process. Unless otherwise provided

for in the license agreement, the developer and the HOA, jointly and severally, shall be responsible for the maintenance and repair of any such amenities constructed in the public right-of-way, and in no event shall the city be prohibited from removing such amenities within the public right-of-way in its sole and absolute discretion (such removal being at the cost of the developer and HOA, jointly and severally).

p. A statement of approval of the plat by the city.

q. The section, township, and range shall appear immediately under the name of the plat on each sheet included, along with the name of the city, county, and state.

r. As applicable, the following statements shall appear on the face of the plat in the "notes" section:

1. "The homeowners association, as owner of the subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, common properties, and amenities, and the individual lot owners to extent of their interest in the foregoing, shall release, defend, indemnify and hold the City of Winter Garden, other governmental entities and public utilities harmless from any and all costs, expenses, suits, demands, liabilities, damages, injuries (including death), or otherwise including attorney's fees and costs of suit, in connection with the reasonable use of said subdivision infrastructure, common areas, or amenities, or said parties' maintenance thereof, or said parties' exercise of rights permitted in the declaration of the homeowners association, this plat, or as otherwise permitted by law."

2. "The lots within this subdivision are governed by a mandatory homeowners association requiring the payment of fees and with the power to assess the lots. The homeowners association is the owner of and/or responsible for the maintenance, repair, and replacement of all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts _____ and _____ and the improvements thereon. Every lot owner within this subdivision must be a member of the homeowners association. Failure to pay such fees or assessments shall result in the attachment of a lien on the property of the owner which fails to pay such fees or assessments by the homeowners association, which may result in the foreclosure of said property."

3. "The City of Winter Garden shall have the right, but not the obligation, to access, maintain, repair, replace and otherwise care for or cause to be cared for, any and all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts _____ and _____ and the improvements thereon. In the event any or all of the said areas, systems, improvements, properties or areas are not maintained, repaired, or replaced in accordance with the standards of the City of Winter Garden Code of Ordinances, good engineering practices, or become a nuisance or in the event the City of Winter Garden exercises its aforementioned right, each of the lot owners of the subdivision are hereby ultimately

responsible for payment of the cost of maintenance, repair, replacement and care provided by the City of Winter Garden or its contractors and agents, plus administrative costs and attorneys' fees and costs incurred by the City of Winter Garden. If said costs are not paid within 15 days of invoicing, then said costs shall constitute a lien on the property of the owners which fail to pay such costs and may be enforced, without limitation, by foreclosure, special assessments, or as may otherwise be permitted by law. This right, and the City of Winter Garden's exercise of said right, shall not impose any obligation on the City of Winter Garden to maintain, repair, replace, or otherwise care for said private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts _____ and _____ and the improvements thereon."

4. "All platted utility easements shall also be easements for the construction, installation, maintenance, and operation of cable television services; provided, however, no such construction, installation, maintenance, and operation of cable television services shall interfere with the facilities and services of an electric, telephone, gas, or other public utility. In the event a cable television company damages the facilities of a public utility, it shall be solely responsible for the damages. This paragraph shall not apply to those private easements granted to or obtained by a particular electric, telephone, gas, or other public utility. Further, such construction, installation, maintenance, and operation shall comply with the National Electrical Safety Code as adopted by the Florida Public Service Commission."

5. "NOTICE: This plat, as recorded in its graphic form, is the official depiction of the subdivided lands described herein and will in no circumstances be supplanted in authority by any other graphic or digital form of the plat. There may be additional restrictions that are not recorded on this plat that may be found in the public records of this county."

6. If applicable: "The homeowners association shall enter into a license agreement with the city, where additional right-of-way has been dedicated or right-of-way will be utilized for the purpose of providing landscaping, additional areas for sidewalks, walls, or other amenities, and shall be responsible for the installation and maintenance of all landscape areas that are located in the public right-of-way."

7. For subdivisions with private roads or alleys, then the following, or substantially similar statement: "There is hereby granted and dedicated to the City of Winter Garden and other public service and emergency service providers, a non-exclusive easement over and through Tract ___ (Private Right-of-Way) and any other privately owned internal roads, alleys, paved areas and sidewalks for vehicular and pedestrian ingress and egress access for the purpose of providing public and emergency services to the subdivision, including but not limited to, postal, fire protection, police protection, emergency medical transportation, code enforcement, garbage, utilities and other public and emergency services."

(2) A certificate shall be issued by the city engineer certifying that the subdivider has complied with one of the following alternatives:

a. All improvements have been installed in accord with the requirements of this section and with the action of the planning and zoning board giving conditional approval of the preliminary plat; or

b. An original performance guarantee as described in subsection (7) ~~bond, irrevocable letter of credit, cash deposits, or certificate check~~ has been delivered to the city ~~posted, which is available to the city, and in sufficient amount to ensure such completion of all required improvements, said amount being at least equal to 120 percent of the estimated cost of completion.~~

(3) When the subdivider proposes to regulate land use within the subdivision or when required pursuant to this chapter, an executed original declaration, or amendment thereto, in recordable form, providing for the requirements of this chapter shall be required and subject to review by the city attorney for compliance with the provisions of this article.

(4) An original "Affidavit Certifying an Absence of Reserve Strips," in recordable form, executed by the developer and preparing surveyor.

(5) Unless provided for on the plat, an original joinder and consent to dedication, in recordable form, executed by all mortgage holders and such other parties, having a record interest in the land to be platted. Said joinder and consent must be executed in the same manner in which deeds are required to be executed, joining in, consenting to and ratifying the plat and all dedications, reservations, restrictions and covenants thereon.

(6) An original joinder and consent to the declaration, in recordable form, executed by all mortgage holders and such other parties having a record interest in the land to be platted. Said joinder and consent must be executed in the same manner in which deeds are required to be executed, joining in, consenting to and ratifying the declaration and all dedications, reservations, restrictions and covenants therein.

(7) If applicable, an original performance guarantee in the form of a bond~~,~~ or a performance guarantee agreement secured by an irrevocable letter of credit or cash deposit in favor of and acceptable to the city. Said guarantee shall, at a minimum, be in the amount of one hundred twenty (120) percent of the construction cost of the required subdivision improvements to be completed and guarantee the proper and timely completion of all unfinished public and private infrastructure improvements, including, but not limited to, its materials, workmanship, structural integrity, and functionality to the satisfaction and approval of the city.

(8) An original maintenance guarantee in the form of a bond~~,~~ or a maintenance guarantee agreement secured by an irrevocable letter of credit or cash deposit in favor of and acceptable to the city. ~~Subject to approval by the city engineer,~~ ~~s~~Said maintenance guarantee may be provided after final plat approval if the plat is approved based on the delivery of the performance guarantee under subsection (7). ~~but before issuance of the certificate of occupancy.~~ Said maintenance guarantee shall, at a minimum, be in the amount of 20 percent of the construction cost of (i) the required subdivision improvements to be dedicated or conveyed to the city, (ii) the offsite public infrastructure improvements constructed or installed by the developer, and (iii) the private community subdivision infrastructure improvements. The maintenance guarantee shall

provide for the developer's guarantee of all such improvements, including its materials, workmanship, structural integrity, and functionality and require developer's repair, replacement and correction of damage and defects to such improvements for at least a period of two years from the date of final acceptance by the city. The developer's delivery to the city of the maintenance guarantee shall occur prior to the city engineer's issuance of a certificate of completion for such improvements, unless otherwise agreed to by the city engineer, but in no event shall any certificate of occupancy be issued until such maintenance guarantee is provided. Further, ~~P~~prior to the city engineer issuing a certificate of completion for such improvements, the developer shall cause the design engineer of record to provide a signed and sealed certification to the city that all subdivision improvements to be dedicated or conveyed to the city, offsite public infrastructure improvements, and private community subdivision infrastructure improvements constructed or installed by the developer have been completed in accordance with approved design and construction plans. The city engineer may allow segments of internal sidewalks adjacent to each lot to be constructed as a precondition to the issuance of a certificate of occupancy for each individual dwelling unit, provided that prior to and as a pre-condition of turnover of the Association, the developer shall fully complete all sidewalks within the subdivision.

(9) An original "Statement of Lien Settlement - Requirement For Current Year Of Payable Taxes, Tax Sale, and Capital Improvements" from the Orange County Property Appraiser's Office showing that all due taxes have been paid in full and all tax certificates, if any, against the land have been redeemed.

(10) As may be applicable, executed original instruments of conveyance in recordable form as to such property and improvements which are required to be conveyed to the HOA and the city from the developer, along with executed partial release of mortgages. Fee simple ownership of all rights-of-way, lift station tracts and other lands to be used for public purposes, but excluding dedicated easements, should be conveyed to the city by warranty deed, unless otherwise specified by the city. Fee simple ownership of all common area tracts should be conveyed to the applicable homeowners association by quit claim deed, unless otherwise specified by the city. Mortgagees shall execute partial release of mortgages concerning all tracts and lands conveyed in fee simple either to the homeowners' association or the city and such partial releases shall be recorded in the public records concurrently with the recording of the corresponding deeds.

(11) A title opinion of an attorney at law licensed in Florida or a certification by an abstractor or a title company, along with referenced documents, showing that record title to the land as described and shown on the plat is in the name of the persons, persons, corporation, or entity executing the dedication. The title opinion or certification shall also show all mortgages, easements, or encumbrances not satisfied or released of record nor otherwise terminated by law. An update of said title opinion or certification, certified to the city and the offices of the city attorney and the city surveyor, must be provided within 30 days of final plat recording. All documents referenced in said title opinion or certification, and update thereof, shall also be provided for review by the city.

(12) A construction cost estimate shall be submitted, which provides the estimated cost of installing all improvements. Such estimates shall be based upon recent bid information. As an

alternative, bids of two reputable contractors, or a copy of an executed contract, for the installation of the improvements may be submitted.

(13) Payment of required recording costs, fees, deposits and costs as may be applicable or required pursuant to the code, and other applicable laws, ordinances, and regulations.

(14) A phase I environmental site assessment (ESA) must be conducted in accordance with the latest edition of the American Society for Testing and Materials (ASTM) standard E-1527 (Phase I ESA Process). The city will require a specified minimum off-site search distance of one-quarter mile. The minimum search distance may include areas outside the adjoining properties and shall be measured from the nearest property boundary. The ESA must be performed and signed by a Florida registered professional engineer or geologist who is able to demonstrate competence (i.e., education and previous experience) in producing ESA reports.

A previous phase I ESA may be used if it meets or exceeds the requirement of ASTM E-1527 (except as modified herein) and if the conditions of the property and area surrounding the property are not likely to have changed materially since the previous phase I ESA. Should more than one year have passed since the completion of the last phase I ESA, a current site reconnaissance and records review will be required at a minimum. All supplemental phase I ESA documents must also be signed by a Florida licensed engineer or geologist.

The results shall be provided to the city prior to acceptance of any lands to be dedicated to the city. Should environmental conditions requiring any remedial activity, monitoring or regulatory action be identified as a result of the ESA(s), the city will not accept any dedications of such land until the conditions on the land are fully addressed to the satisfaction of the city and all applicable regulatory agencies.

(15) Such other agreements, certificates, endorsements, affidavits, documentation, engineering drawings, and data as may be deemed necessary to ensure conformity with the requirements of this chapter, the code, and other applicable laws, ordinances, and regulations.

Section 4: Adoption. Sections 110-153, 110-154, 110-157 and 110-162 of Article III, Division 5 of Chapter 110 of the City of Winter Garden Code are amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being revised):

Sec. 110-153. Homeowners association.

(1) Prior to final plat approval and, in the case of a gated community, prior to the closure or operation of the gates, a residential subdivision or commercial subdivision which is subject to the provisions of this division shall establish a mandatory homeowners' (or property owners') association in accordance with the requirements of this division, and a declaration (or in the event of an existing recorded declaration, an amendment thereto) must be approved by the city.

A certificate of good standing or such other evidence to determine the status of the HOA shall be submitted to the city as part of the final plat approval process.

(2) Unless otherwise approved by the city, simultaneous with the recording of the plat the developer shall cause to be conveyed to the HOA such land and improvements for which the HOA shall have the responsibility for maintaining and repairing, including the community subdivision infrastructure.

(3) A residential subdivision or commercial subdivision (or any combination thereof) shall be subject to the provisions of this division when:

~~(1)~~a. The responsibility to maintain certain areas~~, private amenities,~~ or community subdivision infrastructure ~~or improvements~~ within the subdivision is to be shared by the lot owners, or where common areas will exist; or

~~(2)~~b. Any of the community subdivision infrastructure~~, including, but not limited to, roadways, street lights, drainage systems (which includes, without limitation, stormwater detention/retention areas and underdrains), sidewalks, or certain other subdivision infrastructure and improvements are~~ is to be owned or maintained privately; or

~~(3)~~c. A gated community is sought to be established.

As long as one or more of the matters set forth in subsections (a), (b) or (c) exists, this division applies to the subdivision regardless of whether such subdivision has public or private roads, or is gated or un-gated.

Sec. 110-154. Declaration

A declaration, or an amendment thereto, which, at a minimum, sets forth the responsibilities and obligations for the maintenance, repair and replacement of the community subdivision infrastructure, common areas and private amenities and such other matters as provided in this division shall be required and submitted to the city prior to final plat approval and, in the case of a gated community, prior to the closure or operation of the gates. The declaration, or amendment thereto, shall be recorded simultaneously with the subdivision plat. The terms of the declaration, or amendment thereto, shall be to the city's satisfaction, legally sufficient and enforceable to, at a minimum, accomplish, provide or otherwise ensure or disclose the provisions of this division. An existing executed and recorded declaration for a subdivision shall be amended, in a form acceptable to the city attorney, to come into compliance with the current version of this division as condition to a final plat approval covering any phase of a subdivision to be platted after the execution and recording of the original declaration, so that an amended declaration incorporating the current requirements of this division governs previously platted phases, current and future phases. Notwithstanding the foregoing, the exclusion of said provisions within the declaration, or amendment thereto, shall not operate as a condition precedent to city's ability to enforce the requirements of this chapter. Further, nothing in this section shall preclude the declaration, or amendment thereto, from addressing other matters so long as the substance of each part of the declaration, or amendment thereto, is not inconsistent with the requirements of

this chapter or any other applicable code reference or state law. The declaration, or amendment thereto, shall, as applicable:

(1) Establish the point at which the developer must turn over control of the HOA consistent with definition of same provided in section 110-56

(2) Provide for the preparation of an initial community subdivision infrastructure report and compliance with the provisions of section 110-155, including developer's requirements prior to turnover.

(3) Provide for the preparation of a subsequent community subdivision infrastructure report and compliance with the provisions of section 110-156

(4) Include the following or similar statement: "Property owners within the subdivision shall receive no discount in property taxes or any other tax or fee because of the retention or private ownership of the community subdivision infrastructure."

(5) Include the following or similar statement: "The City of Winter Garden shall have the right, but not the obligation, to access, maintain, repair, replace and otherwise care for or cause to be cared for, any and all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts ___; and ___; and the improvements thereon. In the event any or all of the said areas, systems, improvements, properties or areas are not maintained, repaired, or replaced in accordance with the standards of the City of Winter Garden Code of Ordinances, good engineering practices, or become a nuisance or in the event the City of Winter Garden exercises its aforementioned right, each of the lot owners of the subdivision are hereby ultimately responsible for payment of the cost of maintenance, repair, replacement and care provided by the City of Winter Garden or its contractors and agents, plus administrative costs and attorneys' fees and costs incurred by the City of Winter Garden. If said costs are not paid within 15 days of invoicing, then said costs shall constitute a lien on the property of the owners which fail to pay such costs and may be enforced, without limitation, by foreclosure, special assessments, or as may otherwise be permitted by law. This right, and the City of Winter Garden's exercise of said right, shall not impose any obligation on the City of Winter Garden to maintain, repair, replace, or otherwise care for said private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts ____; and ___; and the improvements thereon."

(6) Provide for the consequences resulting from a default with the provisions of the declaration, or amendment thereto, or the provisions of this chapter by the HOA or developer as set forth in section 110-159

(7) Provide that any transfer of any portion or component of the community subdivision infrastructure (including the property on which the said community subdivision infrastructure is

located) to the city or other governmental entity is prohibited without the concurrence of the city or governmental entity and the owners of two-thirds (or such higher percentage as the declaration may provide) of the platted lots.

(8) Require the establishment, funding and maintenance of an HOA account for annual routine maintenance and repair of the community subdivision infrastructure (referred to in this division as the "routine-community subdivision infrastructure-maintenance account"), and impose the restrictions and requirements set forth in section 110-157 regarding that account. Provide for the developer's obligation to ensure adequate funding of HOA routine-community subdivision infrastructure-maintenance account required by section 110-157 until turnover of the HOA. Provide that developer/declarant shall continue to have responsibility to ensure proper maintenance of the community subdivision infrastructure until turnover occurs.

(9) Require the establishment, funding and maintenance of an HOA account for major capital repair and replacement of the subdivision's roads, curbing, sidewalks, stormwater drainage systems, and walls, etc. (referred to in this division as the "capital-community subdivision infrastructure reserve account"), and impose the restrictions and requirements set forth in section 110-157 regarding that account. Provide for the developer's obligation to ensure adequate funding of HOA capital-community subdivision infrastructure reserve account required by section 110-157 until turnover of the HOA.

(10) Include the following or similar statement: "The association and the lot and unit owners are responsible for assessing, collecting and reserving sufficient funds to operate, maintain, repair and replace common properties and subdivision infrastructure improvements. The City of Winter Garden shall not be liable or responsible for the maintenance, repair and replacement of private subdivision property and infrastructure improvements."

(11) Include the following or similar statement: "It is prohibited to alter the grade of or original drainage plan for any parcel, lot or tract, or change in the direction of, obstruct, or retard the flow of surface water drainage, or alter or remove of any berm, pipe, ditch, weir, manhole, swale, and stormwater collection, storage and conveyance system unless expressly authorized by the City of Winter Garden. This provision shall be considered a restrictive covenant in favor of and enforceable by the City of Winter Garden and in the event of a violation of this provision, the City of Winter Garden shall have the right to obtain injunctive relief, seek damages, and assess fines and liens in the amount of the cost to remedy the prohibited action (including administrative costs and attorneys' fees and costs) against the violating person or entity and any property owned by such violating person or entity; provided however, such right shall not limit the City of Winter Garden's other available enforcement actions permitted by law or equity."

(12) For subdivisions with private roads or alleys, include the following or similar statement: "There is hereby created, granted and reserved for the benefit of the City of Winter Garden and other public service and emergency service providers, a non-exclusive easement over, under and through the private subdivision roads and alleys for vehicular and pedestrian ingress and egress access for the purpose of providing public and emergency services to the common property and lots, including but not limited to, postal, fire protection, police protection, emergency medical transportation, code enforcement, garbage, utilities and other public and emergency services."

(13) Provide that the HOA may not be dissolved and that no portion of the declaration, or amendment thereto, pertaining to the requirements of this chapter may be amended without the written consent of the city.

(14) Shall not contain any provisions that would circumvent the purpose and intent of any requirement of this chapter, any condition of a development order issued by the city, or any other applicable ordinance as determined by the city manager or his/her designee, including without limitation, any statement of protest of provisions required by this division or any provision impeding or restricting the HOA or the city's access to courts or rights and remedies against the developer in the event of developer's (or declarant's) default of its obligations and responsibilities under this chapter or to the HOA or city (or any combination thereof). This subsection does not prohibit the incorporation by reference of applicable statutes of limitation set forth in Florida Statutes, if any, or voting requirements as may be expressly required of the HOA by Florida Statutes, if any.

(15) Shall not contain any provision providing for a mandatory pre-litigation claims process, arbitration proceeding, or pre-suit mediation procedure in order for the city, the HOA, or any lot owner to make or bring claims, lawsuits or administrative proceedings against the developer (or declarant) or any home builder, except for the incorporation of any provision that is specifically set forth in and required by Florida Statutes.

(16) Shall not contain, unless expressly required by Florida Statutes, any provision providing for: (i) HOA to make payments or reimbursements to the developer (or declarant); (ii) the assessment of lot owners for the benefit or reimbursement of the developer (or declarant); or (iii) lot owners to make payments to pay for, in whole or part, the original construction cost of community subdivision infrastructure improvements required to be constructed by the developer (or declarant) or its successors and assigns as set forth in any development order or permit. This subsection does not prohibit provisions concerning the assessment of lot owners by the HOA concerning the cost to operate, maintain, reconstruct, repair, replace or remodel community subdivision infrastructure improvements.

(17) Shall not contain any provision prohibited by Florida Statutes.

(18) Shall not contain any provision reserving upon the developer (or declarant) or the HOA the authority to restrict individual lot owners' choice of utility service provider(s), including by way of example, but not limitation, through the reservation of the right to sell, lease, or grant licenses, permits or franchises over, under and through the subdivision property to utility service providers for service to the lots. This subsection does not prohibit provisions allowing for the HOA to select utility service providers to service common areas and common properties owned by the HOA.

(19) Provide that the declaration provisions required by this division, referencing the city, or required as a condition of any development order issued by the city shall not be removed or amended without the prior written consent of the city manager or his/her designee. Provide that the declaration shall not be amended to add any provisions prohibited by this division without the written consent of the city manager or his/her designee. Provide that declaration provisions

required (or prohibited) by this division or required as a condition of any development order issued by the city shall be considered a restrictive covenant in favor of and enforceable by the city.

(20) Provide that tracts owned by the city within the subdivision are exempt from the provisions of the declaration, and that the city shall not be subject to enforcement, regulation or assessment under the declaration or by the HOA, declarant, or any owner by virtue of the city's ownership of tracts or easements conveyed or dedicated to the city, or for any other basis. Provide that no provision of the declaration shall restrict or prohibit the city or any other applicable government authority from enforcement of their respective laws, ordinances, rules and regulations (as they may be amended from time to time) against the declarant, HOA, any lot owner or others.

(21) Provide for other such terms as may be required as a condition of any development order issued by the city, including by way of example but not limitation, provisions relating to HOA maintenance of retaining walls, drainage swales and improvements or other improvements on a lot(s) benefiting more than that lot(s).

Sec. 110-157. Homeowners association required accounts for maintenance, repair and reserves.

At a minimum, the requirements, restrictions, terms, conditions, and limitations provided for in this section with respect to the accounts required for the maintenance and repair of the community subdivision infrastructure and the monies on deposit in those accounts shall be established and maintained by each HOA.

(1) *Required HOA asset accounts.* The HOA must create, deposit monies into, retain in perpetuity, and replenish from time to time the following accounts, which are referred to in this article collectively as the "required HOA accounts":

a. A routine-community subdivision infrastructure-maintenance account; and

b. A capital-community subdivision infrastructure reserve account.~~;~~

~~c.This division does not require the establishment of accounts for either routine maintenance or the capital repair and replacement of private amenities not related to the community subdivision infrastructure, but such accounts may be required by the declaration or as may be established at the discretion of the HOA. However, except as otherwise provided for in this section, monies within the required HOA accounts may not be utilized for the maintenance, repair or replacement of the private amenities.~~

Each of the foregoing accounts must be asset accounts kept separate and apart from all other funds and accounts of the HOA, and for accounting purposes the HOA may not commingle these accounts, either with each other or with other funds and accounts of the HOA. However, notwithstanding the foregoing, the monies in the above accounts may be commingled with monies in other HOA accounts for banking and investment purposes, and may be pooled with other HOA monies in a common investment program, so long as the financial books and records

of the HOA account for these monies separately and apart from all other HOA monies and keep such monies earmarked for the purposes set forth below. All earnings from the investment of monies in the required HOA accounts shall remain in their respective accounts and shall follow their respective principal.

(2) *Use of accounts.*

a. Routine-community subdivision infrastructure-maintenance account. Monies on deposit in the routine-community subdivision infrastructure-maintenance account, including any investment earnings, shall be used by the HOA, or by the developer with the written consent of the board of directors of the HOA, only for scheduled maintenance and for unscheduled repair of the roads, drainage system, including, but not limited to, the stormwater detention/retention areas and underdrains, sidewalks, street lights, curbing, bike paths, traffic-control signage and other HOA infrastructure appurtenant to the private roads and drainage systems. If allowed by the declaration, the monies on deposit in the account may also be used for scheduled maintenance and unscheduled maintenance and repair of the entrance and exit gates and their related facilities, but the declaration shall require that the roadways and drainage-system maintenance and repair take priority over the maintenance and repair of the gates and related facilities.

b. Capital-community subdivision infrastructure reserve account. Monies on deposit in the capital-community subdivision infrastructure reserve account, including any investment earnings, shall be used by the HOA for: (i) resurfacing and related reconstruction of the roadways, including alleys, in the subdivision; (ii) major repair, replacement and reconstruction of drainage systems, including, but not limited to, the stormwater detention/retention areas, control structures, underdrains and conveyance systems; and (iii) major repair, replacement and reconstruction of sidewalks, bike paths, curbing, walls, subdivision signage, gates, community clubhouses and pools, and other ~~capital~~ community subdivision infrastructure improvements of the subdivision. Under no circumstances may the monies in the account be expended before the developer conveys the community subdivision infrastructure to the HOA.

(3) *Required funding; required assessments.*

a. *Routine-community subdivision infrastructure-maintenance account.* The HOA must deposit each year into the routine-community subdivision infrastructure-maintenance account an amount of money sufficient to perform all scheduled maintenance and unscheduled repair of the roads, drainage system, and other community subdivision infrastructure during the subsequent year. The amount deposited, when added to investment earnings, must be no less than the amounts estimated under subsection (5) until the reports required under sections 110-155 and 110-156 are prepared, and thereafter the amount deposited must be no less than the amount recommended by the applicable engineer's report required pursuant to sections 110-155 and 110-156. If the declaration allows maintenance and repair of the entrance and exit gates and their related facilities to be paid from the routine-community subdivision infrastructure-maintenance account, then the deposits each year must be increased by amounts sufficient to cover those costs.

b. *Capital-community subdivision infrastructure reserve account.* The HOA must deposit each year into the capital-community subdivision infrastructure reserve account an amount sufficient

for: (i) the private roads and alleys to be resurfaced and, as related to the resurfacing, reconstructed no less frequently than every 12 years; (ii) the restoration and repair or replacement of the drainage systems, including, but not limited to, the stormwater detention/retention areas control structures, underdrains and conveyance systems, no less frequently than once every ten years; and (iii) the restoration and repair or replacement of all other community subdivision infrastructure, no less frequently than once every 50 years. The amount to be deposited each year into the account must be estimated by the developer and approved by the city prior to issuance of a certificate of completion for the subdivision infrastructure. Deposits to the account must begin in the year in which the city issues its certificate of completion. At the end of each five-year community subdivision infrastructure reporting period pursuant to section 110-156, the HOA shall revise and update the estimated cost to restorate, repair and replace community infrastructure improvements taking into consideration actual costs incurred and expected increases in costs, and shall adjust the amount of its annual deposits to the account accordingly.

c. *Required assessments*. The obligation to collect and pay assessments shall commence as of the date on which the city issues its certificate of completion for the infrastructure improvements for the subdivision. However, if no plat has been recorded as of that date, the obligation to collect and pay assessments shall commence as of the date the plat is recorded in the public records of Orange County, Florida. In the case of the conversion of an existing subdivision to a gated community, the city shall determine the appropriate commencement dates on a case by case basis. The HOA shall impose and collect assessments against each platted lot in the subdivision, including lots owned or controlled by the developer and by any builder, without exception. The assessments must be uniform and equitable and must be imposed and collected in amounts sufficient, when added to investment earnings and other available revenues of the HOA, if any, to make all required deposits to each of the required HOA accounts.

Notwithstanding the foregoing, if in the opinion of the city engineer the community subdivision infrastructure has substantially deteriorated at the time a plat is approved, the city may require an additional payment of assessments by the developer to address the loss of useful life of the deteriorated community subdivision infrastructure.

(4) *Financial reports and other requirements*. Each year the HOA shall cause a financial report of the required HOA accounts to be performed and prepared, and a copy of the report shall be submitted to each owner of property in the subdivision and the city within the time frame required under the "financial reporting" requirements of F.S. ch. 720. At a minimum, the report shall confirm the existence of each of the required HOA accounts and report the amounts of deposits into and expenditures from the account during the period year, along with an itemization of the expenditures from the required HOA accounts. Finally, the financial report shall disclose whether any of the required HOA accounts has on deposit less than the amount required under the declaration.

(5) *Initial account funding and developer's obligations*. From the recording of the plat and up to the point in time when turnover of control of the HOA occurs, the developer and its successors in interest, shall remain personally obligated to ensure that adequate funding of the HOA accounts required by this section is provided, that the financial reporting requirements of this section are

met and that the community subdivision infrastructure is being properly maintained. Prior to the issuance of a certificate of completion for the community subdivision infrastructure, the developer shall be required to fund the capital-community subdivision infrastructure reserve account in an amount sufficient cover two-year's estimated deposits for such account and fund the routine-community subdivision infrastructure-maintenance account in an amount sufficient to cover one-year's estimated deposits for such account. For purposes of establishing deposits by the developer required under this subsection, deposit amounts shall be supported by a licensed engineer's evaluation of the community subdivision infrastructure's economic life and cost estimate for maintenance and replacement of such infrastructure provided to the city at the developer's expense and such is subject to the review and approval by the city engineer.

(6) *Original construction costs.* Developer and home builders and their respective successors and assigns in interest are prohibited from using HOA funds or the assessment of lot owners in order to finance, fund, or make reimbursements concerning the original construction cost of community subdivision infrastructure required to be constructed as set forth in any development order(s) or permit(s). This subsection does not prohibit the assessment of lot owners by the HOA concerning the cost to operate, maintain, reconstruct, repair, replace or remodel community subdivision infrastructure improvements after their original construction and completion as determined by the city pursuant to applicable certificate(s) of completion, certificate(s) of occupancy or other form of inspection approval(s).

Sec. 110-162. Developer liability.

Until such time as turnover of control of the HOA has occurred and the developer has conveyed to the HOA such land and improvements for which the HOA shall have the responsibility for maintaining and repairing, including the community subdivision infrastructure, the developer shall remain jointly and severally liable, to the city, along with the HOA, for the maintenance and repair of the community subdivision infrastructure~~, common areas and private amenities within the subdivision~~, for the adequate funding of the HOA accounts required by section 110-157 and for otherwise ensuring compliance with the provisions of this division. ~~By way of example and not limitation, all maintenance and repair of roads, sidewalks, street lighting and the drainage system, including the stormwater detention/retention areas and underdrains, are the responsibility of the developer, except as provided in this section.~~ If turnover occurs and the obligations of the developer under this division have not been met, the rights of the city, HOA, any of the HOA's members, and any and all owners of land within the subdivision to enforce the requirements of this division against the developer shall survive the turnover, with the prevailing party to be entitled to attorneys' fees and costs against the non-prevailing party. Venue for any such enforcement action shall be in the Ninth Judicial Circuit of Florida, in Orange County, Florida.

SECTION 5: Codification: Sections 2, 3 and 4 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

SECTION 6: Control: In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance controls to the extent of the conflict.

SECTION 7: Severability: It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 8: Effective Date: This Ordinance shall become effective upon adoption at its second reading.

FIRST READING: _____, 2014.

SECOND READING: _____, 2014.

ADOPTED this _____ day of _____, 2014, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

_____
JOHN REES, Mayor/Commissioner

ATTEST:

_____
KATHY GOLDEN, City Clerk