



CITY OF WINTER GARDEN

City Commission REGULAR MEETING MINUTES

June 8, 2023

REGULAR MEETING and **QUASI-JUDICIAL HEARING** of the Winter Garden City Commission was called to order by Mayor Rees at 6:30 p.m. at City Hall, 300 West Plant Street, Winter Garden, Florida. An Opening Invocation and Pledge of Allegiance were given.

Present:

Mayor John Rees
Commissioner District 1 - Lisa L. Bennett
Commissioner District 2 - Ron Mueller
Commissioner District 3 - Mark A. Maciel
Commissioner District 4 - Colin Sharman

Also Present:

City Manager Jon C. Williams
City Attorney A. Kurt Ardaman
City Clerk Angee Grimmage

1. **APPROVAL OF MINUTES**

Motion by Commissioner Mueller to approve regular meeting minutes of May 25, 2023 with a correction to strike the word defiant from page 6. Seconded by Commissioner Sharman and carried 4-1; Commissioner Bennett opposed.

2. **PRESENTATION**

A. **Proclamation 23-04:** Proclaiming Pollinator Week (June 19-25) was presented by Mayor Rees and the City Commission and was accepted by Dr. Becki Lynch, who spoke of the importance of pollinators. She thanked the City Commission for their support and recognized other members of the Bloom and Grow Garden Society, who were instrumental in this effort. Mayor Rees voiced his appreciation for them and their contributions to the City of Winter Garden.

(Items 4.A, 4.B and 4.C were addressed at this point in the meeting.)

3. **FIRST READING AND PUBLIC HEARING OF PROPOSED ORDINANCES**

A. **Ordinance 23-13:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, RELATING TO WATER AND WASTEWATER UTILITIES; AMENDING THE CITY'S FEE SCHEDULE TO ADOPT REVISED WATER, SEWER, RECLAIMED WATER, AND IRRIGATION UTILITY RATES AND FEES; PROVIDING FOR ANCILLARY REGULATIONS RELATED TO SUCH RATES AND FEES; AND PROVIDING FOR CONFLICTS, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Kurt Ardaman read Ordinance 23-13 by title only. Assistant City Manager for Public Services Stephen Pash stated that this ordinance is to raise the water, sewer and reclaimed water rates. He noted that there is also a monthly charge for a second meter, used for reclaimed water irrigation. He indicated that the City has not raised its

rates since 2001 and these proposed rates are much lower than any of the surrounding cities. He referred to the workshop previously provided for the City Commission before the last meeting, where a consultant showed them rate comparisons. Mr. Pash noted that even with the proposed rate changes, the City's rates would still remain lower than the surrounding cities. He explained the details of the rates being based on an annual rate adjustment of two percent. Mr. Pash informed that information had been distributed to the City Commission regarding information on the prior rates and the proposed rates scheduled to become effective October 1. He informed that the increases would be approximately \$10 per month for residents with a separate irrigation meter and approximately \$4 per month for those without a separate meter.

Mr. Pash stated that these fees would generate approximately \$1.5 million next year to be used for the new sewage treatment plant and maintenance of the City's waterlines and facilities. He noted that the current plant is operating at about 80 – 90 percent capacity. He spoke of State mandates for upgrades to sewage plants, reclaimed water, and water facilities. Mr. Pash shared that the new plant would meet all of those requirements and based on the 30 percent, plans would cost \$100,000,000. He shared that the new plant is being designed to handle seven million gallons per day and would be enough to handle the City's sewer at build out. He noted that there would be ongoing maintenance costs. Staff recommends approval of Ordinance 23-13.

Commissioner Sharman inquired of extra capacity being built in, just in case. Mr. Pash responded yes.

Mayor Rees spoke of the raised rates leading to the awareness to use less water.

There was discussion on the rates being structured with the higher usage resulting in a higher rate; it was noted that this could be reviewed in between ordinance readings.

Commissioner Mueller noted that this item is much needed, however, he would not be in favor of subsection F being an automatic feature and would prefer it be included in the budget. There was discussion that it could be changed, similar language was included in the recently passed solid waste rate adjustment and this item would be incorporated in the recommendation within the budgeting process.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing.

Motion by Commissioner Mueller to approve Ordinance 23-13 with a second reading and public hearing June 22, 2023. Second by Commissioner Sharman and carried unanimously 5-0.

- B. **Ordinance 23-15**: AN ORDINANCE OF THE CITY OF WINTER GARDEN FLORIDA, AMENDING CHAPTER 2, ARTICLE V, SECTION 2-151 OF THE CITY’S CODE OF ORDINANCES TO ACCOUNT FOR CHARTER AMENDMENT PROVIDING FOR 4 YEAR TERMS FOR CITY COMMISSIONERS; AND PROVIDING FOR SEVERABILITY, CODIFICIATION, CONFLICTS, AND AN EFFECTIVE DATE

City Attorney Kurt Ardaman read Ordinance 23-15 by title only. City Clerk Grimmage stated that Ordinance 23-15 amends Chapter 2, Section 2-251 of the City Code. She noted that in the 2020 Charter Amendment, the electorate voted to change the City Commission’s term of office from 3-years to 4-year terms. She indicated that this change made it to the City charter but did not address the City Code, and this ordinance is an update to the actual code. Staff recommends approval.

Mayor Rees opened the public hearing.

Bob Buchanan, 148 Roper Drive, Winter Garden, Florida, asked the City Commission to reconsider changing the terms of office back to three year terms.

Mayor Rees hearing and seeing no other requests for public comment, closed the public hearing.

Motion by Commissioner Sharman to approve ordinance 23-15 with a second reading and public hearing June 22, 2023. Second by Commissioner Bennett and carried unanimously 5-0.

- C. **Ordinance 23-16**: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA MODIFYING THE CITY’S GENERAL MUNICIPAL ELECTION DATES TO COINCIDE WITH THE PRESIDENTIAL PREFERENCE PRIMARY DATE IN 2024; PROVIDING FOR A 7-DAY QUALIFYING PERIOD AND SCHEDULE FOR RUN-OFF ELECTION TO BE APPLIED IN CONJUNCTION WITH SAID ELECTION; AND PROVIDING FOR CONFLICTS, SEVERABILITY, NON-CODIFICATION AND AN EFFECTIVE DATE

City Attorney Kurt Ardaman read Ordinance 23-16 by title only. City Clerk Grimmage stated that Ordinance 23-16 modifies dates related to the 2024 General Election. She noted that the 2024 General Election for the City would run in conjunction with the state-wide 2024 Presidential Preference Primary Election as established in City Code Chapter 2, Section 2-251. She informed that the 2024 General Election would also be canvassed by the Orange County Supervisor of Election’s canvassing board. Additionally, she noted that in order to meet ballot submission deadlines, the City’s standard qualifying period is also being changed to November 7 – 14, 2023. Ms. Grimmage indicated that this ordinance also establishes the 2024 Municipal Run-off Election date to be April 16, 2024, if necessary. She stated that this date was changed after the distribution of the initial agenda packet and noted that Orange County needs the

additional time to coordinate another election; which is what a run-off election would be. Staff recommends approval of Ordinance 23-16; which piggybacks the 2024 Election and changes the qualifying, election & run-off dates.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing.

Motion by Commissioner Maciel to approve ordinance 23-16 with a second reading and public hearing June 22, 2023. Second by Commissioner Sharman and carried unanimously 5-0.

Quasi-judicial Hearing

4. SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCES

- A. **Ordinance 22-40:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 30.24 ± ACRES LOCATED ON TILDEN ROAD; SOUTH OF TILDEN ROAD, WEST OF WEST ORANGE COUNTRY CLUB DRIVE, AND EAST OF TINY ROAD INTO THE CITY OF WINTER GARDEN, FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE
- B. **Ordinance 22-41:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE WINTER GARDEN COMPREHENSIVE PLAN BY CHANGING THE LAND USE DESIGNATION OF REAL PROPERTY GENERALLY DESCRIBED AS APPROXIMATELY 30.24 ± ACRES LOCATED ON TILDEN ROAD; SOUTH OF TILDEN ROAD, WEST OF WEST ORANGE COUNTRY CLUB DRIVE, AND EAST OF TINY ROAD; FROM ORANGE COUNTY VILLAGE TO CITY SUBURBAN RESIDENTIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE
- C. **Ordinance 22-42:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING CERTAIN REAL PROPERTY GENERALLY DESCRIBED AS APPROXIMATELY 30.24 ± ACRES LOCATED ON TILDEN ROAD; SOUTH OF TILDEN ROAD, WEST OF WEST ORANGE COUNTRY CLUB DRIVE, AND EAST OF TINY ROAD; FROM ORANGE COUNTY A-1 (CITRUS RURAL DISTRICT) TO CITY PUD (PLANNED UNIT DEVELOPMENT) AS SET FORTH IN THIS ORDINANCE; PROVIDING FOR CERTAIN PUD REQUIREMENTS AND DESCRIBING THE DEVELOPMENT AS THE TILDEN CLUB PUD; AND PROVIDING FOR SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE

(Items 4.A, 4.B, and 4.C were addressed after Item 2.A.)

City Attorney Kurt Ardaman read Ordinances 22-40, 22-41 and 22-42 by title only. Mr. Ardaman then read an order of the proceedings in order to provide structure for the quasi-judicial hearing.

Mayor Rees and City Attorney Ardaman recognized City Clerk Grimmage to swear in witnesses who would offer testimony or evidence in this hearing. Ms. Grimmage complied.

Mayor Rees recognized each City Commissioner to disclose if they had spoken to anyone regarding these items.

Commissioner Bennett responded, none.

Commissioner Mueller disclosed communicating with both the developer and the neighboring party. City Attorney Ardaman asked that he disclose the nature of the conversations. He described that he had conversation with both parties was an attempt to have dialogue to find a path forward that would relieve further litigation and acceptance by the neighboring party to the developer, and the conversations did not result in the desired outcome.

Commissioner Maciel responded, none.

Commissioner Sharman responded, none.

Mayor Rees responded, none, noting that he had been contacted by both sides and chose not to return the calls as he wanted to be fair and impartial in hearing all evidence this evening.

City Staff Presentation

Planning Director Kelly Carson submitted her resume for the record prior to her testimony. Ms. Carson stated that this is the second read and adoption hearing for the proposed annexation, future land use designation and PUD zoning of a 30.24± located on Tilden Road. Ms. Carson stated that she would provide a brief recap of her previous presentations before delving into the new slides. She informed that the applicant requests a City future land use designation of suburban residential, annexation into the City and zoning of Planned Unit Development (PUD) in order to develop the property with 24 single-family homes. Ms. Carson noted that there is approximately 17 acres of wetlands on the south side of this property, which would remain preserved and buffered from the subdivision by a 25-foot vegetative wetland buffer that cannot and will not be impacted. She noted that the proposed future land use is the suburban residential land use designation, which allows for the lowest residential densities in the City, with a maximum of four dwelling units per acre. Ms. Carson made a clarification from the last meeting, noting that the comprehensive plan states that the gross acreage could be used in the calculation of the residential density. Ms. Carson detailed how this is the lowest residential density available in the City, she gave comparisons of neighboring subdivisions. She displayed a visual of the proposed project plan and noted that it was designed and intended to minimize the impact to the adjacent horse farm, by

only locating three single-family lots directly adjacent to their shared property line. Ms. Carson noted that the rest of the abutting land is wetlands, stormwater tracts and passive vegetated open space. Ms. Carson stated that to ensure that even those minimal adjacent impacts are mitigated, the developers agreed to install an eight-foot tall privacy fence that would run along the entire shared property line up to the wetland buffer. She noted that they would also install a dense bamboo planting that would double the existing bamboo buffer that the horse farm has already established on their side of the line.

Planning Director Kelly Carson expressed that she would now transition into responding directly to claims and objections that were raised by the adjacent property owner's attorney, Brent Spain, at the last meeting on May 25, 2023. She noted that his objection focused on four major points, which she stated she would respond to individually. She noted that his first claim is that the property is not eligible for annexation because it does not meet two of the State's criteria for annexation. Ms. Carson noted that the first claim is that the property is not substantially contiguous with another Winter Garden property. She displayed a slide illustrating that the Winter Garden property is contiguous with the subject property. She informed that the State does allow jumping across streets to establish contiguity. Ms. Carson noted that the property is contiguous with the property to the north by a length of approximately 228 feet, or 30.5 percent of the northern property line. Ms. Carson explained that the State does not define the term substantial contiguity in practice. She explained that staff's analysis and interpretation of the State Statute determined that the property, being more than 30 percent of the northern boundary contiguous with Winter Garden, is substantial and meets the criteria.

Planning Director Kelly Carson noted that the second claim regarding annexation eligibility is that by annexing this property, the City would create a new Orange County enclave with Ms. Bingler's property to the west. Ms. Carson admitted that she did not see this argument coming. She noted that per the map display, it is clear that even if the subject property is annexed into the City, a large portion of Ms. Bingler's property lines would still be bordered by Orange County to the south and to the west. She identified Orange County areas on the map as being all white. Ms. Carson expressed that it is clear to see that Ms. Bingler's property is not going to be an isolated pocket sitting in the middle of City land. It would be well and substantially contiguous with Orange County. She noted that Orange County reviews the proposed City annexations for exactly these types of issues, she stressed that the County still had not objected to this ordinance.

Planning Director Kelly Carson noted that in terms of vehicular access, Ms. Bingler's property would still be accessible via Tilden Road and would not change as that is still a county road. She expressed that passage through Ms. Bingler's property would not be solely through the City, as Mr. Spain contends. Ms. Carson further stated that there would be no confusion regarding police, fire and any other emergency services. Ms.

Carson stated that City staff contends that the subject property is in fact eligible for annexation.

Planning Director Kelly Carson expressed noticing a peculiar thing Mr. Spain did while presenting at the last meeting: he kept circling the northern portion of Ms. Bingler's property in red, completely omitting the southern portion of the property. Ms. Carson addressed the wetlands and displayed aerial views from past to present. She noted that the photos could speak for themselves, but noted being of the opinion that these wetlands had not been left in a pristine, untouched wetland condition. She noted that it is her understanding that Orange County's Environmental Protection Division is currently looking into this issue.

Planning Director Kelly Carson then addressed Mr. Spain's argument, which was presented at the last meeting regarding rezoning and PUD criteria. She stated that his first argument is that the City is not adhering to its own comprehensive plan, only two policies out of hundreds to illustrate. Ms. Carson expressed that the first argument is nonsensical to her as he states that this development does not contribute to the area's job-housing balance, but he gave no explanation. She stated that the project adds 24 single-family homes, contributing to the local housing supply. Ms. Carson noted her disagreement with the argument of commercial use as it would be incompatible to the surrounding residential and would also add far more to the vehicular trips to Tilden Road than that of 24 single-family homes.

Planning Director Kelly Carson noted that the second comprehensive plan policy addressed by Mr. Spain deals with pedestrian safety and that if this project were developed, a dangerous pedestrian situation would be created because of Tilden Road. Ms. Carson indicated that the applicant's traffic engineer was available to provide more details on the traffic study and to speak to safety concerns in general. She noted that she would save time for them to address this issue in their presentation. However, she stated that Mr. Spain kept insisting that Tilden Road is unsafe, and while there does seem to be a general perception that the road is unsafe, no actual data was provided to back this claim. She informed that in staff's analysis, there was a requirement that sidewalks be installed internal to the subdivision, but because Tilden Road is still a County road, the City did not want the developer to build a sidewalk segment that leads to nowhere. The City should have the ability to close those sidewalk gaps. However, she noted that the developer would be required to contribute to the City's sidewalk fund, which would pay for the installation of those sidewalks, if and when the Tilden road is turned over to City control. She noted that in terms of comprehensive plan compliance, pedestrian connections to surrounding areas are only required when there are existing planned sidewalks or bicycle paths. She noted that as far as the City is aware, there is no plan for the county to install such pathways on the south side of Tilden Road.

Planning Director Kelly Carson noted that Mr. Spain's next objection was that the proposed request would have a substantial adverse impact on the adjacent property owners. She noted that based on his presentation, 100 percent of his evidence comes from Tilden Place, which is the development that was constructed on the west side of Ms. Bingler's property. Ms. Carson added that she would not argue Ms. Bingler's points about how she was impacted by Tilden Place. She expressed that Ms. Bingler has the right to her own testimony. Ms. Carson expressed that Tilden Place is not what is up for approval this evening. She stated that Tilden Club is a much different proposal than Tilden Place, noting that this project was designed based on Ms. Bingler's testimony about Tilden Place and was built to address those concerns. Ms. Carson stated that Ms. Bingler's main concern was immediately adjacent residential activities. She explained how this proposed project was designed to situate only three single-family homes directly abutting Ms. Bingler's property. She noted that it equates to 255 feet out of a total of 3,253 feet of shared property line boundary, or 7.8 percent. Ms. Carson noted that everything else is preserved wetlands, stormwater retention areas, or passive open spaces. Additionally, she mentioned the aforementioned fencing to be installed against the shared area and the special exception in height allowed for this project to specifically address Ms. Bingler's concerns. Ms. Carson displayed a comparison of the Tilden Place project versus the Tilden Club project and pointed out the differences. Ms. Carson spoke of the impact of only three single-family lots, having all factors mitigated, the buffering, use restrictions, and height restrictions, which would not interfere with her reasonable use and enjoyment of her property.

Planning Director Kelly Carson noted that Ms. Bingler addressed the issue of knowing who would be the ultimate developer of the homes. Ms. Carson noted that Element Homes prepared the rendering and noted that they may still be involved with the project, but she stressed that the City cannot dictate that any one particular company has to build the homes. She informed that the PUD rezoning ordinance includes specific architectural standards that any builder or developer would be required to follow if building at that location. Ms. Carson referenced the ordinance and noted that Exhibit "C" is where to find these standards, as she described some of them. She indicated that no matter who the builder is, the outcome should be similar.

Planning Director Kelly Carson shared that she did not address this topic previously as her preference is to let projects stand on their own merits, and she does not indulge in worst-case scenarios, but Mr. Spain asked a direct question at the last meeting, and she expressed feeling compelled to give him a direct answer. She noted that his question was *"what might be allowed if these ordinances are denied this evening and the property stays in Orange County"*. Ms. Carson gave the disclaimer that she does not work for Orange County, is not a planner there, and does not sit on their Development Review Committee (DRC). She stated that she could not say with 100 percent certainty what Orange County would or would not allow to be built on this property. However, she noted that she could read their comprehensive plan, observe the development they

have already allowed in the area, and point to a similar situation in the past. She spoke of the zoning, noting that it does not tell the whole story and that a property also has a future land use designation. She stated that a future land use designation lays out a City's long-term use for an area. Ms. Carson read the future land use of "village", which she stated is set for the area, as pulled directly from Orange County's comprehensive plan. Ms. Carson read their overall goal for Horizon's West, noting a transition from rural to urban uses. She compared Orange County's land use designation to that of the City of Winter Garden. Ms. Carson pointed out that the properties in that area have the same future land use as the subject property. She shared the history of the property which eventually became Tilden Place, the property to the west of the horse farm, originally applied while still located in the county to amend their future land use to be incorporated into the Village of Bridgewater in 2018. Ms. Carson displayed an image of the notice for a community meeting that the county held to discuss the proposal. She shared that the community meeting description is still on the county's website today. She read the description, which spoke of expanding Horizon's West Village of Bridgewater boundary to incorporate the 30.80-acre subject property and establish a special planning area land use of garden home district and wetland to allow for the development of up to 161 single-family residential dwelling units. Ms. Carson noted that the West Orange Observer actually published a story about this item. She read an excerpt of the article, which included quotes from Orange County's planner regarding the 161 dwelling units. Ms. Carson spoke of Transfer Development Rights (TDRs) and explained how credits are received so the developer could cluster high-density areas elsewhere within the local area. She noted that the City objected to the county plan; the City argued that this type of density was not consistent with nearby residential areas. She further described the history, noting that the applicant ultimately withdrew their county application, the land became part of JPA 7, and the City annexed the property, allowing 55 dwelling units compared to the previously proposed 161, which the county was going to allow. Ms. Carson displayed a visual comparison of the 55 dwelling units versus the 161 dwelling units.

Planning Director Kelly Carson provided a scenario, for the sake of argument, where Mr. Spain convinces the City Commission that this property is not eligible for annexation and the ordinance is denied. Ms. Carson explained how the property would be considered ineligible for annexation into the City, but is still within the City's utility service area. She explained that they could sign an annexation agreement, develop in the county, receive Horizon's West Village future land use, and still obtain City services. Ms. Carson noted that just because the property remains in the county does not mean that it will remain rural. She stressed that the county's stated vision is to turn these properties from rural to urban. Ms. Carson expressed that the City's vision is to keep this area as low-density as possible. She posed the question of which vision is thought to better protect the residents of this area.

Ms. Carson noted that staff has analyzed this proposal and, for all the reasons she stated, recommends approval of Ordinances 22-40, 22-41, and 22-42.

Planning Consultant Ed Williams, Williams Development Services, 29 East Pine Street, Orlando, Florida, shared his history of working as an Orange County Planner and noted that there were eight years that he served in the capacity of the Director of Planning. He shared some history of starting his own firm. He explained some of his experiences in providing expert witness testimony, development permitting, and land use planning for a variety of governments, property owners, and developers.

Mr. Williams noted that he was asked to review this packet, which addresses a lot of the annexation issues. He noted having difficulty reviewing these issues as there were a lot of inaccuracies and misrepresentations. Mr. Williams mentioned one of the allegations regarding this annexation possibly causing an enclave; he expressed that it is very clear that it does not. Mr. Williams noted finding the source of the problem, and referred to a previously presented PowerPoint presentation. He read an excerpt relating to the Florida State Statutes for annexation and, noting the second paragraph and the one following, referred to this particular property. Mr. Williams stated that the problem, and the most important part, was that the definition of an enclave was left out. He stated that maybe it was an oversight, or they may have had an older version. He read the part that was left out, stating that an enclave means an unincorporated, improved, or developed area that is enclosed or within and bounded on all sides. He stressed that the portion of "on all sides" was left out of the definition. Mr. Williams noted that the omission in this portion would lead someone to say that it is an enclave, but it is very clear that it is not bound on all sides. He described that if the annexation were done, over 2,000 feet of the property would back up to Orange County. He noted that, upon further review, Ms. Binger's property is bounded by Orange County. There are 80 square miles of unincorporated Orange County that are part of that whole property. Mr. Williams noted that it is a part of Orange County, and there is no doubt that it complies with the requirement in that it does not encircle the property.

Mr. Williams noted that there was confusion about having to go through areas of Winter Garden in order to access the property. He stated that no part of the right-of-way is municipal property and stressed that it is not the City of Winter Garden but Orange County. He stated that Orange County is responsible for that road, and noted that they are probably responsible for 90 to 95 percent of the traffic on those roads. He spoke of problems with Horizons West, the tremendous amounts of development that have been allowed, but did not require supporting road infrastructure. The City of Winter Garden is dealing with the impacts, and there are a lot of accidents on Tilden Road. He further expounded on the bad road design and the pond, which is right off the curb. He indicated that the City Engineer petitioned the county on numerous occasions to allow for improvements to that area, to stop some of these accidents, and to prevent people from going into the pond. Furthermore, he expressed that the county rejects the

request every time. **Planning Consultant Ed Williams** noted that this causes the City problems, as the City does not treat its residents that way. Mr. Williams shared some history of the county installing one turn lane at the intersection on to the expressway at the mall at CR 535 and State Road 429. He noted how the City Commission decided to approach the Expressway Authority to fund three or four turn lanes to get traffic moving through that area. He expressed that the City does not ignore those issues, but the City has no control over Tilden Road. He expressed that until the City annexes enough property, the county will not give the City Tilden Road. He noted that in our Joint Planning Area (JPA) agreement and in the road agreement, until the City has over 50 percent of the right-of-way between the intersections, it cannot take over control of the road. He described the area from CR 535 all the way over to Tiny Road, noting that the City does not have any of that right-of-way, although he wishes that we did, as some of those problems would be solved very quickly.

Mr. Williams noted that when someone writes that it definitely is an enclave, they have to have the complete definition, which was not included here. He noted that there is a lot of this same issue in other areas of the report, and he keeps referring to two things. In one section, it is an enclave, and in another, it is referred to as a pocket. He explained that the annexation legislation changed as time went on, and so did the court ruling. Once, the legislation said that enclaves and pockets were one and the same, but they are not. They really have nothing in common, but there are one or two cases that may have referred to that. He noted that this is where we have this one with the 15 acres versus the 65 being labeled, so it can be said, No you cannot do this to us. He stressed that it is the 65 that matters, not the 15, and that is where we should address that particular issue.

Mr. Williams noted that the applicant had three cases in Martin County versus the City of Stuart regarding a five-acre annexation. He described how, in the first case, they totally enclosed the property, and the court rightly said that it could not be done. He noted that they came back, opened a little hole so that a little piece of the property touched the city, and the court, noting that they were playing games, again said no, that cannot be done. They opened a bigger area, and the courts, being sick of them, probably said do not bother coming back. Mr. Williams noted that this is not the circumstance that we have here; they are not similar in any regard. The fact that there is no ownership of the right-of-way and what they want to call a pocket of the 15 acres actually abuts 80 square miles of the county and is not a logical argument and does not work.

Mr. Williams noted that Planning Director Kelly Carson is correct; we have all dealt with the county, expressing that he was a part of the county for a long time and still has to deal with them on a regular basis. He spoke about a recent issue regarding a company called PureCycle, noting that the county waived regulations that should never have been waived. He suggested reviewing what the county proposed on the other property and

what has actually built in that area, noting that this was done without putting in any new roads. He shared that pulling up the county's 20 to 30-year long-range plan shows Tilden Road as a two-lane road with an F level of service and nothing in the plans for improvement.

Planning Consultant Ed Williams noted that his recommendation, based on the proposed annexation, the Joint Planning Area Agreement, the comprehensive plan, and the city's service area agreements, is that it would be very appropriate for the city to annex the property. He noted that if the City does not annex the property, it will be developed in the county, and it will be developed at a much greater density than the city thinks is appropriate for that area.

Logan Opsahl, Lowndes Law Firm, 215 North Eola Drive, Orlando, Florida, noted that he was present on behalf of the applicant and thanked staff for the thorough overview. He noted that he has his own presentation, which has been distributed in the past, but noted that he would hold this back for use in rebuttal and any sort of response as necessary. He noted he would address a few items, noting the voluntary conditions. He stated that we would hear from people who are taking time for discussions with the City Commission. Furthermore, he expressed that they want to be mindful of the existing use. He explained that this is why this developer is coming in with an extraordinarily low-density of units per acre. He noted that they just heard from staff at length, certainly from a compatibility and consistency point of view, which is well under the density that both could be possible and those that are existing today. He noted that there was discussion and pictures of the bamboo fencing, an eight-foot fence, and the security fence on the West Orange Golf Course side of the property. He noted that they have included as part of their submission a letter from the golf course in support of his project. He noted that there would be comments made by Mr. Spain, and he would like to reserve time to respond to those comments. However, he thinks that what is before the City Commission today is pretty clear. He stated that there is a long list of state regulations, laws, statutes, the City code, and the comprehensive plan. He noted that those requirements, procedures, and review procedures are what they have before them today.

Mr. Opsahl noted that each decision they make is consequential, but when presented today with an annexation that was contemplated in a JPA entered into by the city and the county and specifically contemplated this property and Ms. Binger's property ultimately being annexed into the City for future development, he stated that in reviewing the density that is being requested today, he noted that they have seen the maps and that they meet all the statutory requirements for annexation, even putting the JPA aside. He noted that reviewing the laws, regulations, statutes, and all of those requirements, that is what they have before them today. He expressed that these requests meet all of those requirements and standards. He expressed that he is not sure what is to be said to the contrary, and they would respond. Furthermore, he noted

that the City Commission's decision is tough but reiterated that this decision was specifically contemplated and that there are multiple benefits to doing so. He voiced appreciation for Mr. William's discussion of the annexation, addressing some of the traffic concerns and offering how these annexations could offer some solutions. Mr. Opsahl then recognized their traffic engineer and asked her to come and address those conversations regarding concerns on Tilden Road.

Myra Monreal, Myra Planning and Design, LLC, 1600 Edgewater Drive, Orlando, Florida, stated that she was here on behalf of the applicant. She shared some history of living in the small town of Bartow, Florida, and noted that she has seen a lot of growth. Ms. Monreal expressed that a lot of work has been done on this project by both the city staff and the county staff. She noted that she would address the development of 24 single-family homes. She expressed hearing the question from the last meeting regarding how the trips from the studies were generated. Furthermore, she explained that they utilize an industry standard from the Institute of Transportation Engineers and the ITE trip generation manual to calculate vehicles based on land use. She noted that when this process started, the development was to include 27 single-family homes and is now down to 24, so the estimated trips would be less than those of the original study. In addition, the existing site is not vacant land; the site supports a retail nursery in Gotha, houses materials, and is also where they store the trailers for their landscape crews. She spoke of using the industry standard to say that their existing trips are based on a wholesale nursery or based on the number of crews as it relates to the existing trips on Tilden from the existing use. She noted that when factoring in those existing trips, it would be less than the 29 or 27 that people are focusing on, as was noted in the report noting 27 single-family uses. Furthermore, she noted that they do a lot of coordination and explained that there are two jurisdictions: the county and the city. She explained that before she starts a traffic study, they propose a methodology that is reviewed by the city's reviewer. She then explained that once that is approved, they go through and project the trips, distribute the trips, and then try to give an idea of how it would impact the traffic.

Ms. Monreal noted working on this project for a few years and feels that Orange County and Winter Garden staff have heard a lot of the concerns regarding safety and the proposed improvements to Tilden Road. She noted that the turn lane entrance is one of those items that came out of those meetings. She explained that because Tilden Road is a county road, they had to meet with the county to be sure that this was something that the developer could install. Furthermore, she informed of a \$2 million project at Tilden and Tiny Road being done by the county that is fully funded for construction and will start in 2024 to 2025.

Ms. Monreal stated that she has heard a lot of concerns about safety, and when talking about safety, what you really want to do is slow down vehicles. She thinks this is why Orange County did a speed study; they reduced the speed limit on Tilden from 45 to 35

mph. She noted that this required five years of crash reports. Ms. Monreal thinks the turn lane was part of the results from the coordination and the analysis.

Ms. Monreal stated that she has heard about a desire for a crosswalk, and she thinks the challenge with having a crosswalk at the site is that there is no continuity of the street; there is no subdivision on the other side. She noted that this is proposed to be a 24-unit single-family subdivision. She described a crosswalk in Oakland, noting it being placed there because of a 180 single-family home development. She stated that from her perspective, from a traffic perspective, the proposed project is a low-density single-family development, and there is an existing business that operates and supports a local nursery, so whereas there may be current future trips due to the single-family nature, we cannot forget about the fact that there is an existing use that is generating trips on the local network.

Logan Opsahl informed that the project engineer as well as the developer were present for any questions. He expressed appreciation for the people's time that were in attendance. He noted that they have legitimate concerns, and he knows, through other correspondence, that the City takes them very seriously. Furthermore, expressed that there is a set of rules by which one must abide, as well as the City. He noted that the best that we can do is make sure that we are following those rules, regulations, and code requirements. He noted that there is an ongoing industrial business on the property. He also stated that it is important to note that last time issues of noise were raised, he stated that agricultural noise decibel levels in the City code are louder than single-family noise decibel maximum requirements. He addressed privacy as a continued point discussed, noting that this is why they are planning to match the bamboo, provide the eight-foot fencing, and add a 25-foot additional setback for a total of 50, reminding that the horse farm is approximately 50 feet from Tilden Road and the backyard single-family lots are 50 feet from the horse farm. He encouraged all to see this as an opportunity, noting that it is a .79 dwelling unit per acre request proposal for 24 lots, three of which abut and all of which privacy has been accounted for. Mr. Opsahl again noted that this development was designed with the current use next door in mind.

Public Hearing

Mayor Rees opened the public hearing.

S. Brent Spain, Theriaque & Spain, 1809 Edgewater Drive, Orlando, Florida introduced documents, which he submitted to the City Clerk for the record. He noted that these documents and information are named in the PowerPoint presentation and were as follows: a 22-tab binder of exhibits. **Tab 1)** Planning analysis prepared by Laura Dedenbach (a copy was distributed to each City Commissioner), **Tab 2)** Resume of Dr. Dedenbach, **Tab 3)** Resume of S. Brent Spain, certified attorney in city, county, and local government law, **Tab 4)** City Commission Meeting Minutes – March 9, 2023, **Tab 5)** Deeds for Anne Bingler's property, **Tab 6)** Martin County Cases and City of Stuart

Ordinances, **Tab 7)** City Commission Meeting Minutes – April 9, 2020, **Tab 8)** City of Winter Garden Development Review Committee memorandum – April 29, 2022, **Tab 9)** Letter from West Orange Country Club – January 9, 2023, **Tab 10)** Applicant’s application for annexation and rezoning, **Tab 11)** Copy of JPA and all eight amendments, **Tab 12)** Excerpts from Chapter 171 – Annexation Law, **Tab 13)** Pocket Maps from cases cited, **Tab 14)** Email from Ms. Bingler to the City regarding the enclave and other issues – October 2022, **Tab 15)** Email from John Laga to Mr. Pash – October 16, 2022, with engineer response to Ms. Bingler’s comments, **Tab 16)** Email from John Laga to Dan Langley and Ms. Carson – January 9, 2023, **Tab 17)** Orange County Information map showing wetlands in the area, **Tab 18)** Plat for Orchard Hills – Phase I, **Tab 19)** Plat for Stillwater Crossings, **Tab 20)** Orange County Property Appraisers map printout, **Tab 21)** Staff Report for Tilden Place – August 30, 2019, **Tab 22)** Orange County Information map of aerial for the subject site.

Mr. Spain objected to the lack of cross-examination on the annexation, noting that this is the third hearing held in this matter, and that staff offered comments regarding the annexation in response to their presentation. He expressed that they are not being provided the opportunity to impeach that testimony. He said that this includes the addition of a new expert witness, and he wanted it noted that they object.

Mr. Spain stated that he would address the remarks that were made and, in his slide presentation, prove why he feels they are erroneous. He stated that, regarding the enclave, Ms. Carson indicated that it is not an enclave because the property could still be accessed via Tilden Road. He noted that this is the whole point of why it is an enclave. Furthermore, he stated that, according to the second definition of an enclave, the only way we can access this property is by traveling through the City on Tilden Road. He expressed that the fact that Tilden Road is a county road is irrelevant, noting the City of Apopka case.

Mr. Spain mentioned remarks about wetlands on the south side of the property, and the alleged alteration to the wetlands has no relevance to whether or not pockets were created. He expressed that, so that the records are complete, and this allegation has been made before, the fact is that this is something Ms. Bingler alluded to when she complained about flooding on her property, and suddenly she was cited by Orange County with a notice of violation for alleged wetland alterations. He introduced a copy of the notice of violation and a letter dated February 14, 2022, from Orange County to Ms. Bingler advising that no further action would be taken. Mr. Spain expressed that there were no improper alterations to the wetlands, as alleged. In fact, it is a permitted agricultural use of the site.

Mr. Spain stated that there was a remark from Ms. Carson regarding traffic safety; he noted not hearing anything about it and stated that there were multiple lay witnesses that testified at the last hearing about it and the accidents. He noted that the new

witness this evening acknowledged that there have been multiple serious accidents on that road, noting that there is serious Competent Substantial Evidence (CSE) on the traffic issue.

Mr. Spain stated that the setback on the three houses is exactly the same as that in Tilden Place and is 25 feet. He noted that it was stated that there is a 25-foot setback plus a 25-foot buffer, which he states is not accurate unless a new plan was submitted in the last 24 hours.

Mr. Spain noted that there was a remark about a tall bamboo and expressed that there is no bamboo proposed along the back of those three lots. He noted that it has been left out, and bamboo is only being proposed for the common areas.

Mr. Spain addressed Ms. Carson's comment that it is her conclusion that the impact of three homes would not interfere with the reasonable use of the property. He expressed that he does not think it is reasonable to be thrown from a horse and receive a concussion. He does not think it is reasonable for a horse to suffer head damage running into barns. Mr. Spain does not think it is reasonable not to be able to use substantial portions of your property.

Mr. Spain addressed remarks about the scenario of what would happen if the applicant went to Orange County. He stated that he represents developers, neighbors, and local governments and he expressed that there is a reason that they are not going to Orange County. He indicated that per the comprehensive plan for Orange County, one dwelling unit per 10 acres would be allowed, which he stated would be three units on that property.

Mr. Spain stated that Ms. Carson speculated about what the Board of County Commissioners would approve on the Tilden Place site, noting that this submittal never went to the Board of County Commissioners, and they never voted on it.

Mr. Spain stated that Mr. Ed Williams commented that he [Mr. Spain] was wrong about the Martin County cases. Mr. Spain indicated that he would show why he is actually right in his opinion on the Martin County cases. Mr. Spain also stated that he was accused of selectively quoting from the Florida State Statutes and noted that he would read the entire statute verbatim regarding an enclave. He noted that the word "or" was left out between A and B.

Mr. Spain stated that the traffic engineer for the applicant notably talked about there being no subdivision on the north side of the street, which Mr. Spain stated that he thinks is not absolutely accurate and named Emerald Ridge. He spoke of building a subdivision, which would inevitably have kids who would want to go see their friends play. He stated that the only way to get there is on Tilden Road itself or to cross Tilden

Road to get to the existing sidewalk network, which he states is on the north side. He indicated that the applicant's site plan states that putting in a crosswalk would create an unsafe pedestrian situation. Mr. Spain indicated that the City is not requiring sidewalks on the south side but stated that it is a condition in the ordinance.

Mr. Spain began his PowerPoint presentation and noted that he would go through the slide duplicative from last time, but noted that there are new slides he would address so that the record is complete.

Mr. Spain noted that he does not disagree on Mr. Ardaman reading of the standards but emphasized that it is the applicant's burden to demonstrate compliance with all the requirements. Mr. Spain addressed suggestions made at the last meeting that his presentation was mere legal argument and did not constitute competent substantial evidence. He noted that the lay testimony that was heard was said to be mere speculation and fear. He noted that their presentation would contain aerial photos, maps, site plans, photos, traffic data, and video, which he stated were all competent substantial evidence under Florida law. Mr. Spain named items which he stated constitute substantial evidence and all the cases contained denials.

Mr. Spain noted suggestions made at the March 25, 2023 meeting, that the staff report, in and of itself, constitutes competent substantial evidence, and he noted that he respectfully disagrees. He described how the report would have to have discussion and evidence that is relevant to the issue. He indicated that he would provide a slide showing why he thinks the staff report is facially deficient.

Mr. Spain addressed the suggestion made that the City must annex the property because it is in the City's utility service area. He noted language from the City's comprehensive plan that reads that the City shall annex when legally possible. He stated that the City is not required to annex property just because they asked for utilities. Mr. Spain commented that the City could offer services even if they were in the county and had the ability under the statute to charge 25 percent more.

Mr. Spain addressed the issue of property rights, as mentioned at the last meeting, and said that the City could face a claim for substantial damages should the application be denied. He stated that if the annexation is denied for failing to comply with state law, there is no claim for damages. Mr. Spain noted that the applicant could file a claim and challenge the denial. He noted that there is no claim under that statute or the JPA. He read an excerpt from the JPA.

Mr. Spain addressed the signed submission provided by the applicant for the City's approval. He spoke of the applicant's property rights not applying to the City of Winter Garden, as they are not in the City of Winter Garden, and any alleged property rights would have are in Orange County. He read an excerpt from the Orange County

comprehensive plan, which refers to one dwelling unit per 10 acres, unless there is a special planning area. He noted that this property is not in a special planning area.

Mr. Spain addressed the proposed annexation. There is nothing in the JPA requiring annexation of this property, and nothing in the JPA excludes or exempts this property from complying with Chapter 171. He noted three key issues for annexation: contiguousness, reasonable compactness, and not creating enclaves. Mr. Spain addressed the staff report, read excerpts from it, indicated that there is nothing about the annexation law, and surmised that it was not Competent Substantial Evidence (CSE), and expressed that there is nothing in it. He indicated that there is no applicant analysis of the annexation. Mr. Spain noted that Ms. Bingler raised the annexation issue in October 2022 and read the applicant's submitted response, noting that they do not believe the annexation creates an enclave, and that Ms. Bingler's property connects to other unincorporated parcels to the south and west. Mr. Spain expressed that this is not the complete definition of an enclave. He expressed that it is the more common definition of an enclave and referred to Dr. Dedenbach's planning analysis, which he stated was submitted for the record. He described the enclave as a property entirely bound on all sides by municipal property. Mr. Spain read an excerpt from the statute, noting that the entire statute was displayed. He spoke of case law from the Apopka case.

Mr. Spain spoke of items he presented at the last meeting, mentioned the thought that he had to have an expert witness, noted that it was not the law, but noted that Dr. Dedenbach's witness was retained anyway. He informed of her resume and background and stated that she was asked to evaluate their submission of Chapter 171. He referred to Dr. Dedenbach's analysis on whether the property is contiguous and noted her conclusion that it is not a substantial part of the boundary. Mr. Spain noted that she found it did not comply with the contiguity requirement. He quoted Dr. Dedenbach's analysis of whether an enclave was created, read the details of the analysis, and provided that her deduction is that the annexation does not meet the test for not creating an enclave. He referred to documents submitted that detailed man-made obstacles and referred to plats for Orchard Hill and Stillwater Crossings, expressing that the man-made obstacles box them in.

Mr. Spain referred to Mr. Williams mention that the courts have confused pockets and enclaves. He noted that the statute states that you cannot create an enclave or a pocket, noting that there cannot be confusion in services. He gave the definition of a pocket as noted in the statutes, and mentioned Ms. Dedenbach's opinion, and read an excerpt. Mr. Spain mentioned accidents and confusion for Emergency Medical Services (EMS).

Mr. Spain addressed unincorporated areas, noted that it was stated that there were misrepresentations of the Martin County versus City of Stuart case. He displayed maps, referenced unincorporated areas, and described pocket areas.

Mr. Spain addressed rezoning criteria, stating that there are six and that they assert that the proposed rezoning does not meet three of them. He spoke of not needing to get to this issue if the City rejects the annexation, suggesting not to annex out of fear.

Mr. Spain noted Criteria 1, stated that there is inconsistency in the comprehensive plan, read an excerpt of Page 3 from the staff report, noting PUD requirements, and surmised that documents that state compliance with all regulations are not CSE under Florida law.

Mr. Spain stated that he would not address the other comprehensive plan policy he previously mentioned regarding jobs to housing, as he feels it has not been demonstrated. He emphasized the City's Multimodal Transportation Element, in policy 2-1.1.11 and noted that no final development permit shall be issued that creates a dangerous traffic or pedestrian situation. Mr. Spain referred to the displayed site plan, highlighted issues related to no sidewalk, and noted that there is one in the plan. He stated that the City staff acknowledged a traffic safety hazard and spoke of a blind spot being a community concern mentioned at the community meeting. He stated that a letter from the West Orange Country Club that was stated that they support this development was not actually the case, explaining that they could potentially support the development if their concerns were addressed, and Mr. Spain noted those concerns as a 5-foot setback and resolved issues with the dangerous curve. He read an excerpt from the applicant's submittal regarding a pedestrian safety issue, noting no sidewalks and no cross-walk.

Mr. Spain addresses Criterion 2 and 5 relating to substantial adverse impacts. He compared staff reports from Tilden Place 2019 and Tilden Club 2023. He noted that the staff analysis is exactly the same. Furthermore, he indicated that the applicant suggested that the neighboring property is undeveloped, and he stated that the property is developed as a horse farm.

Mr. Spain addressed the buffer allegation, displayed a drawing, and stated that this is a misrepresentation and that there is no buffer along the shared property line; it is a setback, the same that Tilden Place has on the eastern side of the client's property. He described the components of Tilden Place and Tilden Club, noting that they are exactly the same. He spoke of the bamboo buffer, described the location, and expressed that the buffer is not in the place it should be along the three lots in question. He displayed photos and spoke of 25-foot setbacks, horse injuries, unusable space on the client's property, activities and the location of homes at the boundaries.

Mr. Spain thanked the City Commission for their patience and requested that the project be denied.

Applicant Rebuttal

Mayor Rees called for any additional testimony from those having been sworn for testimony; hearing and seeing no others, he requested the applicant's rebuttal.

Logan Opsahl, Lowndes Law Firm, 215 North Eola Drive, Orlando, Florida, noted that the main point consistently mentioned was the annexation. He explained that the substantial quantity taken directly from Florida State Statutes is a reasonable standard created by case law, whether it is reasonably substantial. He stated that we know that a boundary under Florida law also counts towards continuity. He noted that the reasonable standard of 30 percent is what the City staff has measured and presented to the City Commission and has concluded to be substantial. Furthermore, he expressed that a boundary, under Florida law, counts towards contiguity and described how contiguity had been satisfied. He further noted that, per the terms of the JPA, the county is required to submit to the City its opposition if they should find that the JPA elements were not met or if there were other objections. He expressed that the county does not have any objections because the county has always contemplated that this property, as well as Ms. Bingler's property, would be annexed into the City.

Mr. Opsahl addressed the argument that the county road somehow negates the contiguity requirement and expressed that Florida law is well settled and that this is not something that negates the contiguous nature of parcels.

Mr. Opsahl addressed compatibility, densities in Orange County, and how they would also have to go through their process to seek rezoning. He stated that Mr. Spain submits that City staff could not discuss those items and that somehow Orange County would not support their request. He expressed how the JPA contemplated this property being in the City and how they want to engage in submission to the PUD to obtain City services and meet the standards that the City code provides. He spoke of the voluntary restrictions that were offered when working with Ms. Bingler. He expressed that the suggestions related to the bamboo were from having direct conversations with Mr. Spain while working with Ms. Bingler. He stated that what this shows is that they want to design a site plan that specifically contemplates the compatibility of the area and the existing use of Ms. Bingler. He noted that a lot of that was the result of the City Commission's insistence that they work with her. Furthermore, he reminded the City Commission that this would be the third vote on annexation, with one having been tabled, but all were favorable. He again reminded them that they were encouraged by the City Commission to work with Ms. Bingler. He said that, as a result of those conversations, they came up with the bamboo and 8-foot fencing, offered masonry behind the three walls, and were told that it was not desired. Furthermore, he spoke of working with the neighbor and no one getting everything that they want. Mr. Opsahl

expressed that when speaking of her reasonable use of her land and her property, the City Commission has to look at the reasonable use of this land as well.

Mr. Opsahl again reiterated that all requirements and criteria had been met and noted that this case is cut and dry and any denial would not pass judicial scrutiny in looking at these facts and the case law. He surmised that, looking at the facts and information provided, there would be no other choice but to approve.

Mr. Opsahl invited the project engineer to address issues related to sidewalks, which he expressed seemed to be a big point of discussion.

Geoff Summit, Summit Engineering, 3667 Simonton Place, Lake Mary, Florida, stated that he would address comments relating to the sidewalk, whether there was a sidewalk on Tilden Road or not. He informed that they had a pre-application meeting with the county regarding access on Tilden Road. He indicated that one of the requirements, when connecting with a county road is that they do want a sidewalk adjacent to the property. Mr. Summit noted that it is in the plans, and the county will require it when they go and request a permit for the connection. He emphasized that yes, there will be a sidewalk.

Mr. Summit spoke regarding a crosswalk, noting that there is a crosswalk at the entrance. He noted hearing in tonight's meeting that there should be a crosswalk across Tilden Road and stated that this is something that the county would not allow them to do. He noted that when there is conversation about the comprehensive plan, there is a co-mingling of the City's comprehensive plan requirements with something that the City cannot control, which is the roadway. Mr. Summit explained that they can only do what is allowed by the county. The roadway and what is seen on the plans regarding the turn lane and frontage along Tilden Road are what resulted from their meeting with the county.

Logan Opsahl, Lowndes Law Firm, 215 North Eola Drive, Orlando, Florida, addressed the setback argument, noting that yes, the PUD does require a 25-foot setback. He indicated that when discussing the spirit of creating a site plan that is in harmony with the existing use, the reasoning was that the 50 feet discussed were for the purposes of the City Commission's own context. He noted that the existing horse training area is 52 feet from Tilden Road. Mr. Opsahl described that it is approximately 25 feet from the western boundary, and there is a 25-foot setback. He noted that he wanted this clarified, just in case there was confusion, and expressed that this was mentioned in terms of noise, again stressing the eight-foot fencing, bamboo, buffering, and privacy.

Mr. Opsahl spoke of the conversation on the three lots adjoining out of the 24, which are 50 feet, the same distance from the road. He stated that he has addressed Mr.

Spain's points and wanted to be given time to discuss any items that staff would address, and he thanked the City Commission for their time.

Planning Director Kelly Carson addressed wetland impacts and dealings with the Orange County Environmental Protection Division (EPD) and noted that she reached out to Liz Johnson regarding the status of the review as there were concerns about the interventions that were being done within the wetlands. Ms. Carson read an excerpt from her communication with Ms. Johnson that stated that the incident has been referred to the St. Johns River Water Management District for their review and determination if the activities being performed by Ms. Bingler are compliant with the Agricultural Best Management Practices (AG BMPs). She noted that this matter is an open-ended thing, which is not a yes or a no, but the issue is not 100 percent resolved as Mr. Spain contended.

Planning Director Kelly Carson addressed Mr. Spain's statement about the village future land use in the county, only getting three units on the property currently because it is not within that special planning area. She noted that he is correct in this and noted that this is what was attempted on the vacant property west of Ms. Bingler. She noted that they approached the county to be included in the special planning area of Bridgewater Village. She noted that with the incorporation into the Bridgewater Village would come access to Horizon West's densities. She noted their attempts at community meetings, which seemed on track for incorporation into that special district and giving them access to the Horizon West densities. She noted not being sure why, if denied tonight and told they would have to develop with the county, questioning why they would not consider that option. She compared how the two properties are almost the same, with 30 plus acres, wetlands, and access to Tilden Road. She disputed Mr. Spain's claim to know what the county would do.

Planning Director Kelly Carson addressed comments made about why a developer would want to annex into an area with lower densities; she surmised that it is about the service area. The City considers the property contiguous with City of Winter Garden properties and eligible for annexation. If this property were deemed ineligible by the City, they would have no choice but to develop in the county, but they are still in the City's service area. She noted that, as mentioned, they could sign an annexation agreement, develop in the county, and still receive City services. She noted the opportunity that would be opened to them should this item be denied tonight. Ms. Carson noted that she was not fearmongering but stating facts, as developers want to make the most money on their property, which sometimes means the most density on the property.

City Attorney Kurt Ardaman requested that the conversations about Tilden Road be clarified as to whether they were within the jurisdictional boundaries of the city or the county. It was noted that Ed Williams of Williams Consulting would address this issue.

There were discussions of a potential recess at this point in the meeting.

S. Brent Spain, Theriaque & Spain, 1809 Edgewater Drive, Orlando, Florida, asked for clarification on the proceedings before a recess, specifically noting the staff rebuttal at the end. **City Attorney Ardaman** noted that this was requested by the Mayor and is part of the process. Mr. Spain stated that he did not hear the mayor's request for Ms. Carson or Mr. Williams. He noted that, so the record is clear, he never alleged that Tilden Road is in the City's jurisdiction. He stated that what he alleged is that if the City annexes this property, there would be City property on the north of Tilden, City property on the south, and he has to go through the City, because that is the contiguity, to get to his client's property. **Mr. Ardaman** stated that that is not in the City. **Mr. Spain** disputed that he said a roadway is within the City's boundaries. **Mr. Ardaman** stated that Mr. Spain said it was through the City and noted that Ed Williams would address the issue. **Mr. Spain** stated that the road was eliminated for reasons of contiguity. Mr. Spain, for the record, objected to new evidence being introduced in rebuttal and again voiced his objection.

Mayor Rees called for a five-minute recess at this point in the meeting.

Mr. Spain noted the proceedings order, spoke of the staff rebuttal, and the introduction of new evidence, noting that he does not know if he would have an opportunity to address. He also stated, for clarification, that these proceedings are unique and that Mr. Ardaman is counsel for the board in a proceeding such as this and is not counsel for the staff. Mr. Spain stated that lawyers like himself cannot have a dual role, and he voiced concerns that there would be staff rebuttal, and he saw Mr. Ardaman speaking with the witnesses. He stated that the City could have retained special counsel to represent staff. Mr. Spain restated this concern a few times for the record. **Mr. Ardaman** asked if he could address this issue, and after Mayor Rees approved, Mr. Ardaman reminded Mayor Rees that he, Mayor Rees, asked Planning Director Kelly Carson and Planning Consultant Ed Williams to come up to address some of the points raised. **Mr. Ardaman** explained that this is part of the process and read an excerpt from the previously read order for the proceedings. **Mr. Ardaman** recommended that if and when Planning Director Kelly Carson and Planning Consultant Ed Williams speak and introduce something more and Mr. Spain wants to cross-examine them more with respect to the quasi-judicial questions is fine. Mr. Ardaman stated that, with respect to the annexation and the comprehensive plan, that would be inappropriate. He noted that it is up to the Mayor and Commission, as they are in deliberations now and can request it.

Planning Consultant Ed Williams stated that this is not a rebuttal issue but a clarification of his comments, as there seems to be a misunderstanding regarding the right-of-way of Tilden Road. He stated that it is a county road, but they also own the right-of-way. He expressed that this did not come out clearly in his presentation. He

expressed that the county owns the right-of-way and the City does not; the county has jurisdiction over the road, while the City does not have jurisdiction or own the right-of-way. He indicated that if the City had jurisdiction, the frontage of the proposed property to be annexed would have 100 percent frontage of the City, but it does not. He stated that both the road and the jurisdiction are owned by the county. **Mr. Ardaman** asked if it is in the City or not. **Planning Consultant Ed Williams** stated that it is not in the City; it has not been annexed into the City. If they ask to annex the right of way, it comes into the City at that point. He noted that it was not part of this annexation.

Commissioner Mueller inquired, reviewing the diagram, what of the total elevation change of the property adjacent to the horse farm. **Planning Director Kelly Carson** recognized the project engineer to respond. **Geoff Summit**, Summit Engineering, sought clarification on whether this was pre or post. **Commissioner Mueller** responded, post. **Mr. Summit** answered that they would have to fill it up approximately three feet at the boundary line. **Commissioner Mueller** inquired about the outflow of additional water and its impact on the horse farm in relation to the elevational change. **Mr. Summit** explained the drainage, its existing condition, and noted the existing culverts and their placement. **Mr. Summit** described the re-piping of the entire system and displayed how the drainage would connect to the pipe on Tilden Road. He expressed that the existing culverts were in poor condition, noting that they had not been maintained, were full of dirt, and had partially collapsed. He described how the old system would be removed, a brand-new system would be installed, and it would meet the requirements of City code and the requirements of the St. Johns Water Management District. He noted that this is how they would address the issue and ensure that they do not impound water on the adjacent property. **Commissioner Mueller** thanked Mr. Summit for the thorough explanation and noted that this was not just this property, noting that this is common in any development and that the City is concerned regarding flooding of any property.

Commissioner Mueller asked Planning Director Kelly Carson, noting that one of the comments made during Mr. Spain's testimony was that, or was Commissioner Mueller's interpretation of it was, that the comprehensive testimony she gave may have been selective of data to make certain points that are beneficial to the staff's recommendation. Commissioner Mueller stated that he wanted to be clear and asked Ms. Carson if she was thorough in her comprehensive data research and that her testimony given tonight was full, even if it wasn't to the benefit of staff. **Planning Director Carson** responded that she gave her honest testimony that was born from a lot of analysis of this property, and she expressed that she did the best she could and gave the best testimony she could. **Commissioner Mueller** further inquired if there was any missing data. **Ms. Carson** answered none of which she is aware and expressed that she takes her job very seriously.

Commissioner Mueller sought clarification on the net density for the overall property, and it was noted that it is under two dwelling units per acre. **City Manager Jon C.**

Williams later answered that it was 1.83 dwelling units per net developable acre, which was noted to be very low-density.

Commissioner Mueller inquired of vehicular traffic in the area, studies done to prevent stacking in the turn lane, and the length of the turn lane. **Planning Director Carson** recognized **Myra Monreal** of Myra Planning and Design, a traffic consultant for the developer, who again addressed the turn lane issue. Ms. Monreal noted that the turn lane was requested by the City staff and the county to help mitigate or discourage what could be a rear-end crash. She noted some Florida Department of Transportation (FDOT) and county requirements and described possible scenarios of vehicular movement in the area. **Geoff Summit** of Summit Engineering noted that the length is required to meet the Florida Department of Transportation criteria, explaining that it is based on the speed limit. He also noted that stacking it is based off of what the trip generation for the site is and explained the area, noting that it is typically based off of three cars. **Commissioner Mueller** voiced concerns of when the que is full and there could be a potential blind spot. He encouraged collaboration with the county to ensure enough que space is in the turn lane.

Commissioner Mueller inquired of the source of some of the photos displayed. **Planning Director Carson** noted that they were aerials from the Orange County Property Appraiser's website.

Commissioner Mueller noted the testimony that the county was aware of use in the wetlands and inquired of the source and how the county became aware of this information. **Planning Director Carson** noted that it was believed that Ms. Bingler had concerns of neighboring properties activities regarding their stormwater, and upon inspection, the county identified it when they came out to the property. Ms. Carson admitted that she is not aware of the full story, but this is her understanding of what took place. **Commissioner Mueller** noted that he did not want Ms. Carson to speculate, but he wanted to clarify that it was not the City's contact of Orange County that initiated this inspection of Ms. Bingler's property. **Commissioner Mueller** inquired if she was aware of this among any other City staff. **Ms. Carson** responded, not of which she is aware.

Commissioner Mueller noted that the City has future points of conversation to be had about the fact that while the City has various urban, commercial, and industrial zoning and overlay PUDs, we have not and have not in the past had an agricultural zone, and suggested that this is something that should be considered going forward.

Commissioner Maciel addressed comments that he has received and noted that the questions have been, "What are the motivations?" and "Why does it seem that the City wants to annex this property?". He expressed that he has noted in the past that it would be nice to see this project go away and that it would be nice if the City Commission did

not have to deal with it. He noted that it is 25 lots and that no one at the City cares about the tax revenue for 25 lots. He said it was stated that it was the greed of the City and reiterated that we do not care about 25 lots.

Commissioner Maciel commented about the experts that we have in the City, specifically naming Planning Director Kelly Carson, City Attorney Kurt Ardaman and Planning Consultant Ed Williams. He expressed that these people work for you, the residents, and they work for the City Commission. He emphasized that they are here for the best interests of the residents of the City. Furthermore, he expressed, with all due respect to Ms. Bingler, whose concerns he would try to address, but distinguished that she is in the county. He expressed that staff is talking to the residents about what is in their best interest. He stated that staff gets paid by us, and they do not get a bonus if they annex this property. Furthermore, he encouraged everyone to listen to our experts and listen to those who are telling us what is in the best interests of the City. **Commissioner Maciel** then inquired of City Attorney Ardaman about a scenario of this property not being annexed and questioned if this would be considered a taking that would make this property undevelopable. **City Attorney Ardaman** responded by noting the meaning of taking and expressed that, in his view, it is outside the purview of a taking, and he stated that this would not rise to the level of an inverse condemnation.

City Attorney Ardaman noted that he and City Attorney Dan Langley would like to address some of the noted concerns before the City Commission makes its decision.

Commissioner Maciel spoke of Mr. Spain, noted him to be a good land use attorney, but noted that some of Mr. Spain's arguments made him think about some of the items brought forth and voice that he is not sure and would have to rely on the City's Attorney. Commissioner Maciel asked City Attorney Ardaman of his opinions regarding the adverse impact issues brought forth by Mr. Spain about the horse farm. **Mr. Ardaman** responded that the City Commission is the decision-maker who must weigh what has been heard, review what was presented, and make a decision based on that information. He noted that this is not a legal question in his mind as long as they have some competent substantial evidence for the zoning and for the annexation. He advised that they are tasked with weighing what has been heard first for the annexation, then for the comprehensive plan, assuming the annexation passes, and then for the zoning, should the comprehensive plan pass.

City Attorney Ardaman noted that on the annexation issue there are differences of opinion and noted that City Attorney Dan Langley is here and noted that he would like Mr. Langley to address. Mr. Ardaman noted that staff has addressed the adverse impacts, but noted that Mr. Spain referred to the staff report as saying that it is not necessarily competent substantial evidence, when most of the cases provide that it is. Mr. Ardaman noted that Mr. Spain then went on to say that it was just staff conclusions and that they were not backed up by further analysis. He noted that there was more

than just the staff's report, but live testimony that was beyond and outside those reports from Planning Director Kelly Carson and Planning Consultant Ed Williams. He expressed that they are not just limited to what was in that staff report. Mr. Ardaman noted that we are not in a court of law, and there was no authentication of the pictures that were displayed. Mr. Ardaman noted that the lawyers, Mr. Opsahl and Mr. Spain, are lawyers, and some of these are lawyer arguments. Some of the items introduced by both of them are evidence, and some of them are not. He noted that the testimony heard at the first reading and the first hearing was by witnesses. Furthermore, he noted that if it is fact-based testimony by a lay witness who is not an expert, the City Commission can consider it. He explained how voicing that there is too much traffic is not competent substantial evidence.

Commissioner Sharman noted the county's development of property as discussed in Planning Director Kelly Carson's presentation. He asked Ms. Carson if the property is in the special planning area. **Ms. Carson** responded that it is not currently; she noted that it has a village future land use, which is a Horizon's West future land use designation. She explained that in order to have the densities that the comprehensive plan covered in her exhibit, they would have to be incorporated into a special district like the Village of Bridgewater to the south, and she noted that they are contiguous with Bridgewater. She again shared the history of Tilden Place, when they were trying to develop in the county. She noted that this property also borders Bridgewater to the south, so they could hypothetically annex into one of those special districts and get those additional densities. She noted that she did not know if they would approve it, but they could make the request. **Commissioner Sharman** surmised that it is a possibility.

Commissioner Sharman shared that he was at the meeting where the other property was going for 161 homes in 2018. He explained that the reason that property was annexed into the City was for the reduction of the number of homes from 161 to 55, which he noted was a win for the residents and less traffic. Furthermore, he expressed that the City controlling it is in control of their destiny, but they could take a chance with the county. He spoke of not knowing what the county would do and asked if it were permissible for Mr. Spain to return for a rebuttal. He wanted to hear the argument for why he thought it would be less dense in the county.

S. Brent Spain, Theriaque & Spain, 1809 Edgewater Drive, Orlando, Florida, noted that he is currently representing a property owner on the west side of State Road 429 with a much similar predicament. He noted that the county is adamant that you can have one dwelling unit per ten acres, unless you do a full PD or merge into an existing PD. There are also facility agreements and costs involved. He noted that it is not as simple as asking the county. **Commissioner Sharman** noted the difference in what is being asked in this case versus what Mr. Spain references. Mr. Spain noted with explanation that the challenges of the requests to the county were the same.

City Manager Jon C. Williams provided clarification on Mr. Spain's previous reference to confusion for Emergency Medical Services (EMS), saying that when someone calls, they ask whether it is on the north or south side of the road. He stated that this is not the case and shared that the City has been operating under the closest unit response agreement for Fire EMS. He noted that if there was a call for services, depending on whose vehicle was in service would dictate who was going to arrive. He noted that in some cases, it could be Orange County and City of Winter Garden. Mr. Williams noted that the sheriff would be for the unincorporated areas, and in those cases, should they request the City services, the City would provide that back-up as well.

City Manager Jon C. Williams addressed Commissioner Mueller's inquiry into whether or not the City initiated some type of harassment campaign. He expressed that he has no knowledge of that, and he requested that if anyone had proof, that it be provided to the City. He shared that he is aware that Ms. Bingler did initiate a complaint against the neighboring property for illegally filling in wetlands, which is what prompted Orange County Environmental Protection Division (EPD) to come out and do the inspection and ultimately inspect her property to initiate the notice of violation. Furthermore, he expressed that nothing was initiated on behalf of the City. **Commissioner Mueller** voiced his appreciation.

Mayor Rees noted the challenge on this issue, stating that most of the City Commission sees both sides. He shared that his sisters and a good friend have dealt with horses their whole lives. He spoke of their broken bones, injuries, and horses being injured. Furthermore, he noted agreement with the thought process of property being better developed in the City of Winter Garden rather than Orange County. He spoke of the Horizons West area and the traffic and issues that it has created for Winter Garden. He noted that his opinion is that they should stick to one to ten acres, but he does not think that this would happen when looking at the surrounding areas. He felt that everyone gave very good presentations this evening, and he voiced his appreciation. He noted Commissioner Maciel's statement and also expressed that the City Commission does not look at this as income or view it as helping a developer. Mayor Rees expressed that the City Commission really does try to do what is best for the citizens, and he thinks that this City Commission does take that to heart.

Commissioner Maciel sought clarification on the bamboo fencing, and it was noted as going the entire length although, it appeared to be left out of the plan. It was reiterated that it would be all the way across.

Commissioner Mueller spoke of the path of least resistance and noted agreement with Mayor Rees, but did not believe that there would be one house per ten acres. He equally believes that if they are coming to the City, there is a reason that there isn't an easier path that thus gives them an easier advantage, and this would somewhat factor into his decision-making.

City Attorney Kurt Ardaman stated that some of the points that Attorney Spain made with respect to annexation from a legal standpoint need to be addressed so that the City Commission can have a different perspective. Mr. Ardaman recognized City Attorney Dan Langley to come and address those issues.

City Attorney Dan Langley, Fishback Dominick Law Firm, identified himself as one of the City attorneys who is board certified in City, County and local government law. He noted that he would be speaking solely on the annexation law. He stated that there was an objection raised about Mr. Ardaman's comments with staff. Furthermore, he clarified that the annexation is a legislative decision and is not subject to the objection that was made about the ability of the City Attorney to ask legal questions or seek clarifications from staff. He noted that this is not the same process as the rezoning.

Mr. Langley expressed that some of the comments made about the definitions of an annexation were not right at all. Furthermore, he indicated that they were mixed and matched definitions under the statutes. He noted that if this gets approved and challenged, the courts would look to the statute and the record. They would then make a decision as to whether there was evidence in the record supporting the decision of the City Commission. Determining whether it meets the annexation statute. He noted that he has reviewed the definition of contiguous under the annexation statute, and in his opinion, it meets that definition. He explained that the definition of contiguous requires that a substantial part of a single boundary of the territory sought to be annexed is coterminous with the City. Mr. Langley shared two case examples. He then noted that this case subject has 30 percent of a JPA that provides that this property is to be annexed into the City.

Mr. Langley noted hearing the term pocket in earlier testimony and noted that the word pocket used to be a term in case law to describe an enclave. He noted that the term pocket is no longer in the definition of enclave or relevant to the definition of enclave. He explained that the word pocket only appears in the definition of the word compactness, and compactness in the statute for annexation is the issue of whether the property annexed, meaning this property at issue is heavily concentrated in one area. He noted that obviously it is a singular piece of land that has a rectangular shape, noting that there is nothing that is not compact about it. He stated that the only time a pocket is reviewed in annexation is to determine whether the shape of the parcel being annexed creates a pocket for compactness purposes.

City Attorney Langley strongly disagrees with the claim that the annexation creates an enclave under the State law. He stated that, as Ms. Carson and Mr. Williams testified, Tilden Road, adjacent to the subject property being annexed, if annexed, is not being annexed into the City. He stressed that Tilden Road is not in the legal description of the ordinance being brought before the City Commission. He noted that there is no change

to the boundaries with respect to Tilden Road. Mr. Langley indicated that there is not a situation being created by this ordinance or changing any circumstance where the neighboring property, owned by Ms. Bingler, would have to drive solely through the City limits in order to go to her property. He noted that Tilden Road remains in unincorporated Orange County. He read the definition of enclave and noted the area of that statute, which is being misconstrued. Mr. Langley stated that, from a legal interpretation of the statute, it appears to them that it meets the annexation statute.

Commissioner Mueller presented a hypothetical question to City Attorney Langley about whether the road was within the City limits. **City Attorney Langley** answered that the maintenance and operation of a road are not the same as whether the road is within the City limits. He spoke of the City incorporating an ordinance for the annexation of the road right-of-way. He noted that the facts would then be considered in that annexation, but he countered that the review now is of these facts and circumstances as they exist now; the road is not within the City limits.

Commissioner Maciel asked City Attorney Dan Langley about the adverse impact issues in his experience: has it been upheld, or has it been a reason for not annexing in other case law? **Mr. Langley** responded that when looking at an annexation, you are reviewing the criteria in the annexation statute. Mr. Langley expressed that while you may have sympathy for the sort of alleged impact or its possibilities, it is not relevant at all to the annexation statute. He expressed that the annexation statute has criteria, such as whether the property that is proposed for annexation is contiguous to the City. He noted that it does not talk about the potential impacts of future development of that parcel being annexed. He stated that is the property compact, and again, that has nothing to do with whether future development of that parcel may have future impacts of people that are not within the City limit. He again stressed that the statutes have criteria that have nothing to do with the alleged adverse impacts of the future development of that property if it is annexed into the City.

Commissioner Sharman, in summarizing his understanding, stated that decisions made today would be based on today's facts. The facts held up in a court of law today would be based on today's facts and not that of the future, should the road be turned over to the City.

Mayor Rees noted that the City would need 50 percent of the property before the road would be turned over to the City. **City Attorney Ardaman** responded that this would be for control of the road and is not bringing the road into the City.

There was discussion on the road being in the county, an alleged annexation creating a situation of only allowing passage through the City, annexation does not change the circumstances, confusing and incorrect interpretation of the law. **City Attorney Ardaman** noted that the county takes a very serious position on subsection B of the

annexation, and he shared the history of an annexation of an enclave and the argument of whether an enclave was created or not.

There was discussion about an eight-foot privacy fence. **Commissioner Sharman** asked about the inclusion of an eight-foot sound wall, the same as that located between the neighborhood near the hospital. Discussion ensued relating to the three abutting homes; the current proposed fencing felt to be sufficient, but staff could ask for a higher-grade fence. **Attorney Logan Opsahl** spoke of previous suggestions that were offered for a sound wall, noted the back and forth, and then was told that it was no longer an issue. **Commissioner Sharman** asked if it were a yes or a no. **Attorney Logan Opsahl** responded that the vinyl fencing is as presented today.

Motion by Commissioner Maciel to adopt Ordinance 22-40. Seconded by Commissioner Bennett and carried 3-2; Commissioners Sharman and Mueller opposed.

Motion by Commissioner Maciel to adopt Ordinance 22-41. Seconded by Commissioner Bennett and carried 3-2; Commissioners Sharman and Mueller opposed.

Motion by Commissioner Maciel to adopt Ordinance 22-42 with the recommendation of the sound wall along the three abutting lots. Seconded by Commissioner Sharman.

Commissioner Sharman clarified that the quality needed to be the same as that at Glenwood Phase 1 and the dry retention pond and of equal quality. There was discussion and clarification on the sound wall. **Geoff Summit** of Summit Engineering inquired as to the aesthetics of the sound wall and whether it had to be the standard Florida Department of Transportation (FDOT) sound wall. Discussion ensued, and **Planning Director Kelly Carson** described the fencing and noted that she would provide specifications for the wall. It was further noted that the fence did not require a sound study; it just needed to be 8 feet tall and meet the noted requirement.

Motion carried 4-1; Commissioner Mueller opposed.

End of Quasi-judicial Hearing

(Items 3.A, 3.B and 3.C were addressed at this point in the meeting.)

5. **REGULAR BUSINESS**

- A. Recommendation to approve renewal term for Emergency Debris Management Service with CrowderGulf

Assistant City Manager for Public Services Stephen Pash stated that in 2019, the City approved a contract for debris management services with CrowderGulf. He noted that

the agreement allows for one 36-month period followed by two 12-month renewals. Staff recommends approval of this second 12 month renewal period with CrowderGulf.

Motion by Commissioner Bennett to approve renewal term for Emergency Debris Management Service with CrowderGulf. Second by Commissioner Maciel and carried unanimously 5-0.

B. Recommendation to approve renewal term for Emergency Debris Monitoring Service with Thompson Consulting Services, LLC

Assistant City Manager for Public Services Stephen Pash stated that in 2019, the City approved a contract for debris monitoring services with Thompson Consulting Services, LLC. He noted that the agreement allows for one 36-month period followed by two 12-month renewals. Staff recommends approval of this second 12-month renewal period with Thompson Consulting Services, LLC.

Motion by Commissioner Maciel to approve renewal term for Emergency Debris Management Service with Thompson Consulting Services, LLC. Second by Commissioner Bennett and carried unanimously 5-0.

C. Recommendation to approve SITE PLAN for 1200 Daniels Road (Daniels Road Business Park) Phase II (Access Road), subject to conditions

Planning Director Kelly Carson stated that this is a request for site plan approval for Phase II of Daniels Road Business Park. She noted that it only includes the construction of a new east-west access road on the south side of the property. She noted that it was shown as a future development on the Phase I plans. She described the purpose of the plan as being to provide access for a future cross-connection between Daniels Road Business Park and the Resurrection Catholic Church parcel to the west while the construction crew is still on site. She noted that the City Engineers have reviewed the proposed driveway on Daniels Road and have not raised any particular concerns about its proximity to the Palms crossing.

Mayor Rees noted that his concern was whether there was enough room between the existing area and the new area in both directions. Ms. Carson noted that the palm crossing driveway is in the center of the church driveway, and there is adequate room between those driveways.

Motion by Commissioner Maciel to approve SITE PLAN for 1200 Daniels Road (Daniels Road Business Park) Phase II (Access Road), subject to conditions. Second by Commissioner Sharman and carried unanimously 5-0.

D. BOARD APPOINTMENTS: Planning and Zoning Board

Planning Director Kelly Carson informed of the recent resignation of board member Gabe Kotch, a member of the Planning and Zoning Board. She noted that one member

would need to be appointed. Ms. Carson informed the City Commission that Mr. Kotch was from District 3, and she noted that District 2 also only has one member serving. Ms. Carson recommended the appointment of a Planning and Zoning Board member from District 2 or District 3.

Commissioner Maciel nominated Chloe Brunson Johnson, noting that she has served on the Community Redevelopment Agency Advisory Board (CRAAB) and would be a great member of the board. He lightheartedly noted that she sat through these entire proceedings tonight.

Motion by Commissioner Maciel to appoint Chloe Johnson (District 3) to the Planning and Zoning Board. Seconded by Commissioner Mueller and carried unanimously 5-0.

E. BOARD APPOINTMENTS: Code Enforcement Board

Assistant City Manager for Public Services Stephen Pash stated that one member of the Code Enforcement Board has resigned and noted that there is one open seat. He informed the City Commission that this board does not have a district requirement, but the members must live within the City. Staff recommended appointment of one new member to the Code Enforcement Board.

Commissioner Mueller nominated Henry Wright. Commissioner Bennett nominated Greg Liskey. Commissioner Mueller withdrew his nomination.

Motion by Commissioner Bennett to appoint Greg Liskey (District 1) to the Code Enforcement Board. Seconded by Commissioner Mueller and carried unanimously 5-0.

F. BOARD APPOINTMENTS: Election Canvassing Board

City Clerk Grimmage stated that this item is for annual board appointments to the Election Canvassing Board. The City Charter requires that the City Commission fill the four expiring seats no later than July 1st of the year prior to the City election. She noted that there is an election scheduled for Tuesday, March 19, 2024, for the seats of City Commissioner Districts 2, 3, and 4.

Ms. Grimmage stated that the Canvassing Board appointments are for two regular members and two alternate members, and the City Clerk is a member by City Charter, for a total of five members. She informed the City Commission that the currently seated members have all expressed their desire to remain seated on this board. Staff recommend approval of appointing four members to the Election Canvassing Board.

Additionally, Ms. Grimmage mentioned a unique situation with the current Election Canvassing board members having been appointed in the past but never having had an opportunity to serve. She indicated that this was due to there being no election during the year they were appointed and no opposition of candidates the following election

year. She also noted that the upcoming election is a piggyback election, which would utilize the Orange County Supervisor of Elections canvassing board. She surmised that this newly appointed board would only be allowed to canvass should there be a run-off election.

Motion by Commissioner Sharman to re-appoint Dawn Antonis (*Regular*), Myron Brown (*Regular*), James “Jim” Weisbecker (*First Alternate*), and Mary Rebekah Fritz-Gonzalez (*Second Alternate*), to the Election Canvassing Board. Seconded by Commissioner Mueller and carried unanimously 5-0.

6. **MATTERS FROM PUBLIC**

Bob Buchanan, 148 Roper Drive, Winter Garden, Florida, voiced concerns of a City Commissioner violating the Sunshine Law by texting other City Commissioners. He requested that the City Commission address the issue.

Allison Painter, 393 N. Lakeview Avenue, Winter Garden, Florida, referred to the annexation issue discussed earlier and noted that she would rather have 24 houses as opposed to 100+. She also noted that she spoke to City Manager Williams regarding speed bumps and hopes to see them soon. Ms. Painter also requested that the City review the use of parking meters.

Norine Dworkin, of the VoxPopuli news organization of Winter Garden, acknowledged Pride Month, agreed with the prior parking meters statements, and questioned decisions made regarding the annexation without a visit to Anne Binger’s horse farm. Ms. Dworkin also spoke of a local business’ beer promotion, its connotation, questioned whether it was condoned, and noted that it made national news. She suggested a proclamation.

It was noted that matters from the public is for public comment, not for exchange.

7. **MATTERS FROM CITY ATTORNEY** – There were no items.

8. **MATTERS FROM CITY MANAGER**

Events Updates

City Manager Jon C. Williams gave an update on some of the upcoming calendar events and activities. He also gave an update on the county stormwater project, which was a part of the East Winter Garden annexation. He informed the City Commission of a meeting regarding the Community Development Block Grant (CDBG) program, which he feels would be awarded to the City. He also spoke of the funding received, which completes the funding for the project, and noted that all property has been purchased. Furthermore, he gave an update on speed cushions, which are being installed in various locations throughout the City.

One Winter Garden

City Manager Jon C. Williams reminded the City Commission of their start of 2023 and their mindset of keeping unity in the community. He spoke of how the slogan “We Are One Winter Garden” came forward. This was formalized and recognized that the City of Winter Garden comprises a diverse group of people, which is an asset, making our community exceptional. He stated that “We are One Winter Garden”, further recognizes that we are all different with various backgrounds and beliefs but share an important commodity, and that is being a Winter Garden resident. He stated that collectively, we create one community with a shared desire to create a wonderful life in our family-friendly hometown. He expressed that, back in the beginning of 2023, the City chose not to participate in social or divisive politics.

Mayor Rees wholeheartedly agreed with that statement.

9. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Bennett also wholeheartedly agreed with City Manager Williams’ statement.

Commissioner Mueller expressed that he does not agree and stated that he would address that issue as well as issues brought up by an earlier speaker regarding the Sunshine Law. He indicated that he agrees with Ms. Dworkin and stated that times have changed. He spoke of the demonization of certain groups of people across our nation and noted bills that were written in 2023 with an anti-LGBT slant. He agrees with the City of Winter Garden resolution addressing being one Winter Garden, and the way we treat each other is admirable. He spoke of perceptions, public information, progression and incidents that look like the City is segregated. Furthermore, he suggested a proclamation during Pride Month, spoke of prior proclamations not requiring a board vote, and encouraged the City’s leadership, during this month, to recognize people that have been marginalized to some degree in the City.

Commissioner Maciel addressed his concerns about the division in this nation and noted that he would be the first to stand up for a protected class of people that are being discriminated against. He thinks that there is not much the City can do about First Amendment issues.

There was discussion about people having the right to speak and act as long as they do not violate the constitution or others’ rights.

City Manager Jon C. Williams spoke of the divisiveness in our nation, and proclamations for one group versus another do not allow for saying no to the extremists on either side. He shared an example of this regarding flags in a local city. He noted that the City of Winter Garden recognized the unique qualities in its adoption of the One Winter Garden campaign. Mr. Williams offered that, if needed, this item could be even more formalized, but again he cautioned against adopting proclamations for various different groups.

