

# City Commission Meeting Minutes

January 18, 2022

(APPROVED)

1/18/2022 - Minutes

1. INVOCATION

Rev. Michael Blare gave the invocation.

2. PLEDGE OF ALLEGIANCE

3. CALL TO ORDER

Mayor Fultz called the meeting to order at approximately 6:00 p.m. after the invocation and the pledge of allegiance.

4. ROLL CALL

**Commission Members Present:** Mayor Eugene Fultz, Terrye Howell, Jack Hilligoss, Deputy Mayor Robin Gibson, Daniel Williams

**Commission Members Absent:**

**Staff Present:** Jennifer Nanek, City Clerk; Albert C. Galloway, Jr., City Attorney; City Manager

5. PROCLAMATIONS AND AWARDS

5.1. Proclamation - School Choice Week January 23-29, 2022

Mayor Fultz proclaimed January 23-29, 2022 as School choice week. Debra Wright Hudson, McLaughlin Middle School, accepted the proclamation.

6. PRESENTATION/REPORT

6.1. PRESENTATION - McLaughlin Middle School

Debra Wright Hudson, Principal of McLaughlin Middle School, gave an update on the status of McLaughlin Middle School. She shared the school motto and details of their innovative programs. She reviewed their improvement plan. She said that each student learns differently and they create opportunities for learning for all the students. They are trying to give all students small group instruction. The students are doing well in math, notably algebra and geometry, outperforming other schools. All students and staff are part of a squad which helps encourage students and makes them feel included and helps hold them accountable. She shared data showing improvement among the students. They hope to exceed expectations this year. Dr. Wright Hudson invited the Commission to volunteer for a day about public service. This brings in representatives of various levels of government. She said they have a barbershop on campus to help students have a new haircut at school. Instruction is their primary focus.

7. COMMENTS AND PETITIONS

Diallo Burkes, new head football coach at Warner University, introduced himself and shared his background.

Michelle Threatt, President of Northwest Neighborhood Association, announced a Night out with the Kids event on Saturday and shared the details. They have partnered with several businesses and organizations to help with this.

Ben Wilds, resident, expressed concern about the level of growth and the loss of citrus groves. He questioned the need for all the development. Deputy Mayor Gibson said he would like to share some material on urban sprawl with him.

8. CONSENT AGENDA

Commissioner Howell made a motion to approve the Consent Agenda. Deputy Mayor Gibson seconded the motion.

By Voice Vote:

Commissioner Howell "YES"

Deputy Mayor Gibson "YES"

Commissioner Williams "YES"

Commissioner Hilligoss "YES"

Mayor Fultz "YES"

Motion Approved 5-0.

8.I. Minutes - January 4, 2022. November 10, 2021

8.II. Approval Of The Florida Midland Railroad Lease

[Begin Agenda Memo]

**SYNOPSIS:** Staff seeks commission approval to enter into two railroad right-of-way leases associated with the Northwest Watermain Extension project.

**STAFF RECOMMENDATION** It is recommended that the City Commission: 1) Approve the railroad right-of-way leases 2) Authorize the Mayor to execute the lease agreement on the City's behalf.

**BACKGROUND** The Northwest Watermain Extension project consists of extending a larger water main from Water Treatment Plant #1 (WTP #1) to various locations in the City's northwest utility service area. The extension of a larger water main allows for additional volume, which provides increased fire protection. In order for staff to be able to complete this installation, there are two sets of railroad right-of-ways that have to be crossed. The first crossing is located on First Street, between Dorsett Avenue and Seminole Ave. The second crossing is located on Lincoln Avenue between A Street and East Street. Staff recommends the commission take the following action; authorize the Mayor to execute the lease agreements on the City's behalf.

**OPTIONS** None. If the commission chooses not to approve the lease agreements, the Northwest

Watermain Extension project will not be able to move forward. All routes leading to the northwest service area requires crossing the railroad right of way.

**FISCAL IMPACT** There are \$2,800.00 in fees associated the first year's lease payment with the initial set-up of each lease agreement. The cost of the lease thereafter is \$ 350.00 paid annually per lease. The water division would budget this expense in the annual budget going forward.

[End Agenda Memo]

8.III. Agreement For Annual Property Maintenance Services For Privately Owned Properties With Ray And Sons Lawn Service, LLC

[Begin Agenda]

**SYNOPSIS** The proposed Property Maintenance Services Agreement will provide the Code Compliance Division with a company qualified to perform abatement services requested.

**RECOMMENDATION** Staff recommends Approval of the Agreement for Annual Property Maintenance Services for Privately Owned Properties with Ray and Sons Lawn Service, LLC, and authorize the City Manager to execute the Agreement.

**BACKGROUND** The Code Compliance Division is in need of an on-contract company qualified to perform maintenance at various lots throughout the city as requested, including cleanup of waste and debris, vegetation cutting, and the proper disposal of debris and vegetation cuttings. The City has previously had a contract in place with Ray and Sons Lawn Service, but the agreement will expire this month. In response to Invitation To Bid (ITB) No. 22-500 Annual Property Maintenance Services for Privately Owned Properties, the City received two responsive bids from Ray and Sons Lawn Service, LLC and JDMF, LLC. Ray and Sons has local preference as well as previous history working with the Code Compliance Division. Due to these reasons, staff is recommending approval of the agreement with Ray and Sons. The attached Agreement will be for 3 years, with the option to renew for 2 one-year terms upon mutual agreement of both parties.

**FISCAL IMPACT** The FY 21-22 Budget includes \$15,000.00 for Contract Services (Abatement)

**OTHER OPTIONS** Bid out each abatement request individually.

[End Agenda Memo]

9. OLD BUSINESS

10. NEW BUSINESS

10.I. Preliminary Subdivision Plat Approval / Special Exception Use Permit Approval For A Residential Planned Development Project (PDP) Hunt Club Grove North

[Begin Agenda Memo]

**SYNOPSIS:** Dave Schmitt Engineering, Inc., agent representing owners, is requesting approval of City Commission, of a 600-lot single-family Preliminary Subdivision Plat and a Special Exception Use Permit for a Residential PDP on approximately 130.38 acres of land just west of Hunt Brothers Road, and south of State Road 60.

**RECOMMENDATION** The applicant requests approval of City Commission of a 600-lot single-family Preliminary Subdivision Plat and a Special Exception Use Permit for a Residential PDP, with conditions of approval, as recommended by the Planning and Zoning Board at a regular meeting on December 15, 2021.

## **BACKGROUND**

### General:

The 130-acre vacant grove land is located just west of Hunt Brothers Road, south of State Road 60 and the East Gate Shopping Center (Rural King & Winn-Dixie). Portions of the subject properties were annexed into the City through petition by the owners this year. On October 26, 2021, the Planning Board made a recommendation to City Commission to approve a zoning of R-1C, and a future land use designation of LDR low-density residential at a maximum of 5 units per gross acre.

The proposed single-family subdivision is designed as a Planned Development Project, including requested Waivers of Strict Compliance.

Maximum density allowed on the site is calculated at 5 units per gross acre, or 652 homes, under the Comprehensive Plan for LDR Low-Density Residential; a density of only 4.6 dwelling units per acre, or 600 homes, is proposed.

Typical single-family lot sizes range from 4,400 square feet to 6,600 square feet, with lot widths of 40', 50', and 60'. The rear setbacks exceed the minimum setbacks required by R-1C standards and all units will meet the minimum floor area of 1,200 square feet. A waiver of strict compliance is requested for all other R-1C dimensional standards.

### Proposed Minimum Standards:

#### Single-Family:

Minimum lot size – 4,400 sq. ft.

Minimum street frontage – 40 ft.

Minimum lot width at building line– 40 ft.

Minimum floor area – 1,200 sq. ft.

Front setback – 20 ft.

Side setback – 5 ft.

Rear setback – 20 ft.

Maximum lot coverage – 50%

#### Townhomes:

Minimum lot size – 2,200/2,750 sq. ft. (interior unit/exterior unit)

Minimum street frontage – 20/25 ft.

Minimum lot width at building line – 20/25 ft.

Minimum floor area – 1,200 sq. ft.

Front setback – 20/25 ft.

Side setback – 0/5 ft.

Rear setback – 20/25 ft.

Maximum lot coverage – 50%

Roadways & Access: One entrance to the site is shown from 11th Street S, five entrances are located on Hamlin Street, and two entrances to the site are shown on Hunt Brothers Road. Hamlin Street will be improved to minor collector standards along the project boundary to Post Salter Road.

Five-foot-wide sidewalks will be constructed on both sides of interior streets. The existing pedestrian network on the north side of Grove Avenue will be filled in by the development and sidewalks up along Hamlin will be constructed to connect to SR 60. Additionally, Grove Avenue will be constructed and extended through the project which will connect to an existing roadway grid for future connections.

Landscaping and Buffering: A landscape plan will be required at Site Development Plan submittal, and will be reviewed and approved by Staff after consultation with the City's horticulturist. The proposed buffer may be a wall or berm, and will be planted with shrubs, canopy trees, and understory trees.

Residential tree density requirements will be enforced at building permit issuance, pursuant to section 23-307.2.a.3: a minimum of two, two-inch caliper shade trees, minimum of eight feet at planting.

Recreation: The central green space for the development is approximately 17.5 acres. The size of this park is comparable to Kiwanis Park which is approximately 12 acres. In addition, the developer has designated 6.85 acres of active recreation space. Included in the design of the development, is an open space corridor for pedestrian connectivity to the central green space.

More than 36.5% of the site will remain as open space, where 20% open space is required at a minimum by code. Waivers of Strict Compliance: The applicant requests the following Waivers of Strict Compliance from certain dimensional and area standards in the R-1C zoning district:

1.) Minimum lot size: 4,400/5,500/6,600/2,200/2,750 square feet (40'/50'/60'/interior TH/exterior TH) is requested where 8,000 square feet is required by code. 2.) Minimum street frontage: 40 feet wide for 40' wide single-family lots and 20/25 feet wide for interior and exterior townhomes is requested where 50 feet is required by code. 3.) Minimum lot width at building line: 40/50/60/20/25 feet (40'/50'/60'/interior TH/exterior TH) is requested where 65 feet wide is required by code. 4.) Front building setback: 20 feet for single family lots and interior townhomes is requested where 25 feet is required by code. 5.) Side building setback: 5 feet for single family lots and 0/5 feet for interior and exterior townhomes is requested where 10 feet is required by code. 6.) Corner lot functional side-yard setback of 15 feet is requested where 25 feet is required by code for corner lots. 7.) Increase in the allowable lot coverage not to exceed 50% is requested where 40% is required by code. 8.) Allow the neighborhood park to be further than 600 feet from certain lots it serves.

Proposed Superior Design Standards: In exchange for the consideration of the above-mentioned Waivers of Strict Compliance requested, the applicant provided justification within the project narrative delineating the ways in which the plan is superior to a standard subdivision:

*"The proposed PDP is superior to a standard subdivision because the flexibility provides a balance between the proposed number of lots and to maximize the open space for landscaping and active recreation. The flexibility of different type of lot sizes gives the neighborhood a diverse perception and not a flatness community. Providing two sidewalks will give future residents safe leisure around the community and provide enjoyable activities for each household. Maximizing the open space will create originality in designs for landscaping which will enhance the natural features of the property. Proposing more lots will generate new residents which will help increase revenue for the City of Lake Wales".*

Additionally, the plan will provide recreation and open space in excess of the minimum standards.

-Recreation required: 2.625 acres; Recreation provided: 6.85 acres

-Open space required: 20% of site; Open space provided: 36.5% of site

Staff Findings 1. The use is compatible with the intentions of Policy I.1.2.12 Low Density Residential of the City's Comprehensive Plan.

2. This site is located within the City's utility service area and will connect to municipal water and sewer.

3. The development will maximize existing infrastructure investments by connecting to municipal water and sewer lines.

4. Project does not include cul-de-sacs which can inhibit integration with the surrounding area; instead, proposed roads interconnect with the existing roadway network.

5. The project area is less than 300 feet from a major shopping center, which may reduce the need for automobile dependency for short trips.

6. Recreation trail and sidewalk system promotes walkability and bike-ability.

7. Lots sizes are reduced so to minimize the area of land consumed for new development.

8. New roadways and pedestrian connectivity will be constructed to extend the city's roadway grid for future connectivity.

#### Recommended Conditions of Approval

9. Staff and Planning & Zoning Board recommends the following conditions of approval:

a. Fences shall be setback a minimum of 15 feet behind the front building expression line.

b. Housing shall adhere to the City's monotony standards.

c. Landscape Plan is required at Site Development plan submittal and will be reviewed and approved by Staff and the City's horticulturist.

d. Decorative, dark sky friendly street lighting to minimize glare and reduce light pollution. Street lighting design/type to be approved by the City, and maintained by the HOA.

e. Garages shall be recessed from the front building expression line unless oriented away from the street.

f. Staggered front building setbacks at a minimum of two feet difference between adjacent lots.

g. It is recommended that some orange trees be retained to keep the character and theme of "Grove".

h. The traffic study must be approved by the Administrative Official prior to issuance of Site Development Permit.

i. A bus stop along Hunt Brothers Road shall be coordinated with Polk County Transit.

j. A development agreement is required for road improvements.

k. A utilities agreement is required for the transfer of wells to the City of Lake Wales.

l. A financial mechanism such as a Community Development District or Special Taxing District shall be established to provide a source of funding for transportation improvements, including those improvements defined in the development agreement.

m. Sidewalks shall be constructed on the north side of Grove Avenue to connect the sidewalks of existing residential homes. Sidewalks shall also be constructed along the western side of Hamlin Street to connect to SR 60.

n. ROW shall be dedicated for Hamlin Street.

o. Approval of the Residential PDP is contingent upon the Department of Economic Opportunity's approval for the land use amendment, and the approval of the zoning amendment by City Commission.

p. Mechanical equipment to be located at the rear of the home and not permitted within side yards.

q. Canopy trees within open spaces shall be increased by 25% in excess of current standards.

10. Staff recommends the following plan revisions prior to site development approval:

a. Existing zoning on plans say R-1A, this needs to be corrected to R-1C. Check the surrounding zoning listed.

b. The proposed land use needs to be corrected to say LDR not just Residential.

c. Please include the requested waivers for single-family and townhomes on the plans.

d. Include typical lot layouts for single-family and townhomes.

e. Townhome lot dimensions and setbacks are needed on plans

f. The recreation space calculation shall be separate and apart from the open space calculation.

g. Add a parking space as the required parking is 1 space per 10 dwelling units – 600 units warrants 60 parking spaces.

h. The typical 60' ROW section is needed for Grove Avenue.

i. The landscape buffer typical needs to be corrected to have the buffer outside of the rear yard on the other side of the property line.

j. Hamlin Road needs to be corrected to Hamlin Street.

k. Landscaping and sign locations shall be included at the entryway on plans.

l. Proposed street names, park amenities, site lighting, and irrigation shall be included in construction plans.

m. One tree per lot shall be included for townhomes.

n. Street trees shall be moved to the ROW in between the curb and sidewalk within root barriers, separate and apart from the two lot trees, to be maintained by the HOA, or a separate street tree easement shall be included to be maintained by the HOA.

o. Landscaping around the western-most mini-park is needed to distinguish the mini-park from the rear

yards of residential lots.

p. Landscaping for drainage retention areas shall meet Section 23-307.4 of the Land Development Regulations.

**OTHER OPTIONS** Decline to approve the preliminary subdivision plat and PDP.

**FISCAL IMPACT** Approval of the preliminary plat and PDP would enable the development of this property and the potential increase in property value. Specifically, estimating an average of \$200,000 in taxable value per unit, it could potentially result in over \$89 million in taxable value, and generate \$812,364 in ad valorem taxes. \*Adjusted values for potential homesteaded properties have not been factored into this estimate.

[End Agenda Memo]

Deputy Mayor Gibson said this project is consistent with reducing urban sprawl. It checks all the boxes.

Deputy Mayor Gibson made a motion to approve this project. Commissioner Howell seconded the motion.

By roll call vote:

Deputy Mayor Gibson "YES"

Commissioner Howell "YES"

Commissioner Williams "YES"

Commissioner Hilligoss "YES"

Mayor Fultz "YES"

Motion passed 5-0.

10.II. Ordinance 2022-01 Annexation – 1st Reading And Public Hearing 29.94 Acres Of Land South Of Old Scenic Highway And East Of Scenic Highway North

[Begin Agenda Memo]

**SYNOPSIS:** Ordinance 2022-01 proposes the voluntary annexation of approximately 29.94 acres of land located south of Old Scenic Highway, east of Scenic Highway North, and contiguous to the incorporated City limits.

**RECOMMENDATION** Staff recommends approval at first reading, and adoption after second reading of Ordinance 2022-01 following a public hearing. Public Hearing notice requirements have been met. A recommendation from the Planning and Zoning Board is not required for an annexation ordinance.

**BACKGROUND** Story Family Limited Partnership LLLP, owner, petitioned annexation into the corporate city limits of Lake Wales on November 22, 2021. "Attachment A" to the ordinance shows the property's location. It is contiguous to the City Limits along its western boundary.

**OTHER OPTIONS** Decline to annex the property.

**FISCAL IMPACT** The annexation will add to the City's tax roll. The property is valued at \$191,967,

which would bring in additional property taxes. Additionally, the approval of the annexation would allow the applicant to assemble a tract of land for potential residential development.

[End Agenda Memo]

Jennifer Nanek, City Clerk, read ORDINANCE 2022-01 by title only.

**ORDINANCE 2022-01 (Annexation – 29.94 acres south of Old Scenic Hwy and east of Scenic Highway North) Parcel ID: 272935-000000-031030**

**AN ORDINANCE PROVIDING FOR THE ANNEXATION OF APPROXIMATELY 29.94 ACRES OF LAND, CONTIGUOUS TO THE INCORPORATED TERRITORY OF THE CITY OF LAKE WALES, SHOWN ON ATTACHMENT “A” AND SPECIFICALLY DESCRIBED HEREIN; GIVING THE CITY OF LAKE WALES JURISDICTION OVER THE LAND ANNEXED; AND PROVIDING FOR AN EFFECTIVE DATE.**

OPENED PUBLIC HEARING

CLOSED PUBLIC HEARING

Commissioner Howell made a motion to approve ORDINANCE 2022-01 after first reading and public hearing. Commissioner Williams seconded the motion.

By roll call vote:

Commissioner Howell "YES"

Commissioner Williams "YES"

Commissioner Hilligoss "YES"

Deputy Mayor Gibson "YES"

Mayor Fultz "YES"

Motion passed 5-0.

- 10.III. ORDINANCE 2022-02 Annexation – 1st Reading And Public Hearing 236.57 Acres Of Land South Of Belleview Drive, East Of Scenic Highway South, North Of Passion Play Road, And West Of 11th Street South

[Begin Agenda Memo]

**SYNOPSIS:** Ordinance 2022-02 proposes the voluntary annexation of approximately 236.57 acres of land located south of Belleview Drive, east of Scenic Highway South, north of Passion Play Road, and west of 11th Street South, and contiguous to the incorporated City limits.

**RECOMMENDATION** Staff recommends approval at first reading, and adoption after second reading of Ordinance 2022-02 following a public hearing. Public Hearing notice requirements have been met. A recommendation from the Planning and Zoning Board is not required for an annexation ordinance.

**BACKGROUND** Hunt Bros, Inc., owner, petitioned annexation into the corporate city limits of Lake Wales on December 9, 2021. “Attachment A” to the ordinance shows the property’s location. It is contiguous to the City Limits along its northeastern boundaries.

**OTHER OPTIONS** Decline to annex the property.

**FISCAL IMPACT** The annexation will add to the City's tax roll. The properties are valued at a total of \$2,469,512, which would bring in additional property taxes. Additionally, the approval of the annexation would allow the applicant to assemble a tract of land for potential residential development.

[End Agenda Memo]

Jennifer Nanek, City Clerk, read **ORDINANCE 2022-02** by title only.

**ORDINANCE 2022-02 (Annexation – 236.57 acres south of Belleview Drive, east of Scenic Highway South, north of Passion Play Road, and west of 11th Street South.) Parcel ID: 273013-000000-011010, 273013-000000-011020, 273013-000000-011030, 273013-000000-011040, 273013-000000-013010, 273013-000000-013030, 273013-000000-013020, 273013-000000-013040, 273012-000000-024000, 273013-000000-031000, 273013-000000-033010, 273013-000000-033020, 273013-000000-033030, 273012-000000-042010**

**AN ORDINANCE PROVIDING FOR THE ANNEXATION OF APPROXIMATELY 236.57 ACRES OF LAND, CONTIGUOUS TO THE INCORPORATED TERRITORY OF THE CITY OF LAKE WALES, SHOWN ON ATTACHMENT "A" AND SPECIFICALLY DESCRIBED HEREIN; GIVING THE CITY OF LAKE WALES JURISDICTION OVER THE LAND ANNEXED; AND PROVIDING FOR AN EFFECTIVE DATE.**

OPENED PUBLIC HEARING

Ben Wiles, resident, spoke against this as it will negative effect on residents. This is not the character of the City.

CLOSED PUBLIC HEARING

Commissioner Howell made a motion to approve ORDINANCE 2022-02 after first reading and public hearing. Commissioner Williams seconded the motion.

By roll call vote:

Commissioner Howell "YES"

Commissioner Williams "YES"

Commissioner Hilligoss "YES"

Deputy Mayor Gibson "YES"

Mayor Fultz "YES"

Motion passed 5-0.

#### 10.IV. ORDINANCE 2022-03 Amendments To Ch 23 LDR - 1st Reading And Public Hearing

[Begin Agenda Memo]

#### **SYNOPSIS:**

Staff proposes amendments to the following sections of the Land Development Regulations (LDRs) (Chapter 23, Lake Wales Code of Ordinances): Table 23-242 Establishment of review fees Section 23-

## 303 Streets

**RECOMMENDATION** At a regular meeting on November 30, 2021, the Planning and Zoning Board made a recommendation of approval to City Commission for the proposed changes to the Land Development Regulations.

**BACKGROUND** Areas of the Land Development Regulations (LDRs) (Chapter 23, Lake Wales Code of Ordinances) have been identified as needing amendments.

1. Table 23-242 Establishment of review fees Through the Request for Qualifications process with the City's Purchasing Department, the Planning Division retains professional planning firms for consulting services. Such disciplines include specialties like Historic Preservation, Environmental, Transportation, and Comprehensive Planning on an as-needed basis. As development in the city continues to intensify, City planning staff has recognized the increased potential need for professional consulting to supplement and assist staff. In order to share these development-related consulting costs with the developer, Staff recommends the following note under the fee table regarding "Extraordinary expenses":

*\*\*\* EXTRAORDINARY EXPENSES. In addition to the fee schedule set forth above, the applicant shall also be responsible for the payment of any and all extraordinary expenses, which may be incurred by the City in analyzing or reviewing all or any part of an application. These expenses may include the City's retention of a third party consultant. These expenses will be billed at-cost, separately from and in addition to the development review fees set forth herein. The applicant will be advised of the necessity of such expenses prior to such expenses being incurred. The owner/developer and the Development Director, with the advice and consent of the City Manager, shall jointly approve in writing an estimated cost amount before these charges can be authorized. The cost for any such expenses shall be paid in advance to the City prior to incurring such expenses. Upon request of the owner/developer, the City Commission may review such expenses as to the necessity and amount.*

## 2. Section 23-303 Streets

Staff has recognized an increase in development interest in areas south of State Road 60 East, and east of 11 th Street where many groves and unimproved "grove roads" exist. As residential growth continues in this area, a roadway network will need to be created through a partnership of contributions between the City and developers over time. The attached ordinance to this memo illustrates the City's future transportation plan to help distribute traffic throughout this area by mapping future minor and major collector roads. Collector roads gather traffic from local roads and funnel them to an arterial road network, or in this case, State Road 60. Staff proposes to include the SR 60 /11th Street Roadway Network Map within our Streets code section.

**CODE REFERENCES AND REVIEW CRITERIA** Table 23-242 Establishment of review fees Section 23-303 Streets

**FISCAL IMPACT** Adoption of a fee for extraordinary expenses may relieve some of the City's expenses incurred from utilizing contracted consulting firms to assist in reviewing certain development projects.

[End Agenda Memo]

Jennifer Nanek, City Clerk. read **ORDINANCE 2022-03** by title only.

## **ORDINANCE 2022-03**

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES CHAPTER 23, ZONING, LAND USE AND DEVELOPMENT REGULATIONS AMENDING TABLE 23-242 ESTABLISHMENT OF REVIEW FEES, AND SECTION 23-303 STREETS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE**

OPENED PUBLIC HEARING

CLOSED PUBLIC HEARING

Commissioner Howell made a motion to approve ORDINANCE 2022-03 after first reading and public hearing. Commissioner Hilligoss seconded the motion.

By roll call vote:

Commissioner Howell "YES"

Commissioner Hilligoss "YES"

Commissioner Williams "YES"

Deputy Mayor Gibson "YES"

Mayor Fultz "YES"

Motion passed 5-0.

10.V. Legal Action Against Dixie-Walesbilt, LLC

[Begin Agenda Memo]

**SYNOPSIS:** The City Commission will determine a course of legal action against Dixie-Walesbilt, LLC.

**RECOMMENDATION** Staff recommends the City Commission take one of the following actions:

1. Direct the City's legal counsel to file suit and to end negotiations with Dixie-Walesbilt, LLC.

**BACKGROUND** During the December 21, 2021 City Commission meeting, the City Commission directed staff to negotiate a new agreement (novation) with Dixie-Walesbilt, LLC prior to filing a legal complaint. The Commission also established a deadline of January 15, 2022 to reach the new agreement.

Staff negotiated with Dixie-Walesbilt, LLC as directed and was unsuccessful in reaching an agreement prior to the established deadline.

On March 16, 2021, the City Commission voted in favor of noticing Dixie-Walesbilt, LLC of its event of default on the terms and conditions set forth in the original Redevelopment Agreement and provided an opportunity to cure. Dixie-Walesbilt has made no progress in curing the outstanding default(s) to date.

Staff is requesting the City Commission to consider each of the provided options presented and take action. Included with this memorandum is the term sheet submitted by Dixie-Walesbilt, LLC containing the requests made of the City and CRA. This document served as the foundation for the recent negotiations.

**OTHER OPTIONS** While another available option would be to "Do Nothing", allowing the statute of repose deadline of February 1, 2022 to pass and thereby be waived, Staff does not recommend that course of action.

**FISCAL IMPACT** None at this time. Costs will be incurred if the City Commission elects to file suit.

[End Agenda Memo]

James Slaton, City Manager, reviewed this item.

Daniel Greenberg, Representative from Dixie-Walesbilt Hotel, asked for more time to come to agreement. They are still negotiating some things. Filing a lawsuit would cloud title and would cause them to lose financing. They prefer option 2.

Deputy Mayor Gibson said he would prefer to combine options 1 and 2. Direct counsel to file suit and also continue negotiations. Hopefully this will encourage negotiations. Hopefully an agreement can get resolved by the 28th but if not the attorney can move forward. Some of the demands were preposterous. Mr. Greenberg said we need support from the City. This development is important to the downtown. This is part of a partnership. This is a starting point.

Commissioner Howell asked about the deadline. She thought Friday was the deadline. Mr. Slaton said we have until the 28th. The 15th was the date set by the City Commission. Commissioner Howell reviewed the options and asked if under the recommendation if nothing happens we file suit. Mr. Slaton confirmed this. Mr. Greenberg said we are not so far apart in negotiations so we need more time.

Albert Galloway, Jr., City Galloway, said an approved agreement by both bodies would have to be done by the 28th at noon.

Commissioner Williams asked about the likelihood of coming to an agreement by the 28th. Mr. Greenberg said he thinks so. Mr. Slaton said he isn't sure but it is enough time.

Commissioner Hilligoss asked Mr. Greenberg how long he has been working with Mr. Brown. Mr. Greenberg said since June. Commissioner Hilligoss said he doesn't have a problem with this. He asked why something hasn't been worked out since June. Mr. Greenberg said negotiations were only underway since December. He reported on efforts to get financing since June. Commissioner Hilligoss says he wants to see this happen but the City must protect itself. He feels good about the Deputy Mayor's recommendation.

Mayor Fultz said 10 days is enough time to get an agreement acceptable to both sides. The list seems as if they want to hold the City hostage. Mr. Greenberg said that was only a wish list or starting point. This is will bring in a lot of money to downtown. Mayor Fultz said we have to protect itself by authorizing the attorney to prepare to file the lawsuit. We need say in what is going on. After February 2 you all will have all the cards. He agreed with the recommendation. Mr. Greenberg said we need full cooperation from the City.

Commissioner Williams asked if the City was cooperating with them. Mr. Greenberg said yes. Mayor Fultz said the City wants to cooperate but not give away the house.

Deputy Mayor Gibson made a motion to authorize our council to file suit and upon recommendation by City Manager we will meet to consider a signed settlement agreement to replace the one we have to toll the statute of repose. Commissioner Howell seconded the motion.

By roll call vote:

Deputy Mayor Gibson "YES"

Commissioner Howell "YES"

Commissioner Williams "YES"

Commissioner Hilligoss "YES"

Mayor Fultz "YES"

Motion passed 5-0.

Mr. Greenberg asked to confirm that we have until the 28th. Mayor Fultz and Deputy Mayor Gibson confirmed this.

Deputy Mayor Gibson said when pressure is on settlements get made.

#### 11. CITY ATTORNEY

Albert Galloway, Jr., City Attorney, reported that the Seminole Hotel deed is with the Clerk of Courts. We have the deed from the City to CRA ready for signature and execution so long as he has consensus from the Commission.

Mr. Galloway gave an update on the Estes - Blue Goose project. Mr. Estes' attorney passed away. He has rejected doing an asbestos inspection. He is working on getting another appeal. He will seek an inspection warrant to proceed with the next step. Deputy Mayor Gibson said this is not in the courts. Mr. Galloway said he has done this in previously. Deputy Mayor Gibson said we need to wait until he gets a new lawyer and accommodate the other side. Mr. Galloway said he will reach out to Mr. Estes directly on this.

#### 12. CITY MANAGER

James Slaton, City Manager, said there will be a traffic light installed at SR 17 and Mt. Lake Cut-off Rd by FDOT. The work will begin on January 31st.

Mr. Slaton said Congressman Soto reached out to let us know that the Federal government will be providing free rapid COVID tests to reach household.

Mr. Slaton announced that Mark Bennett, Development Services Director, was appointed to the board of directors of the Florida Redevelopment Association.

##### 12.I. Tracking Report

##### 12.II. Commission Meeting Calendar

#### 13. CITY COMMISSION COMMENTS

Commissioner Hilligoss reported that he enjoyed being part of the MLK Celebration yesterday.

Commissioner Hilligoss said Lake Wales is a wonderful place and we are doing our best to keep it that way. He said we need to keep on trying to strike a good balance between property owners and residents.

Commissioner Williams said he also enjoyed the Martin Luther King celebration yesterday. Mr. Slaton let

him know that work on the Austin Center roof begins soon.

Commissioner Howell said she read Mr. Wiles letter and understands his passion and concern for Lake Wales. We need to make sure we don't have urban sprawl. She hopes staff will avoid cookie cutter urban sprawl developments. We need to grow in a smart way. There are many parts of growth we will like.

Deputy Mayor Gibson said the Martin Luther King Celebration was well done. There is a strategy to growth and there are some things we can control.

#### 14. MAYOR COMMENTS

Mayor Fultz said we don't take anything lightly. We fully understand what we are voting on. We respect everyone. We want to grow without staying stale and stagnant. Hopefully these things will be beneficial to everyone. He encouraged additional input from all citizens. We need to keep communicating with citizens. We are trying to making us a crown jewel on the ridge.

Mayor Fultz mentioned the forthcoming Housing Authority meeting tomorrow and with the CRA next week. James Slaton, City Manager, said the meeting tomorrow is a Housing Authority meeting to discuss the City's letter concerning the redevelopment of Grove houses.

#### 15. ADJOURNMENT

The meeting was adjourned at 7:24 p.m.

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Mayor

ATTEST:

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City Clerk