



city commission agenda

August 12, 2019
3:30 PM
Commission
Chambers

mayor & commissioners

seat 1
Gregory Seidel

seat 2
Sarah Sprinkel

Mayor
Steve Leary

seat 3
Carolyn Cooper

seat 4
Todd Weaver

welcome

Welcome to the City of Winter Park City Commission meeting. The agenda for regularly scheduled Commission meetings is posted in City Hall the Tuesday before the meeting. Agendas and all backup material supporting each agenda item are available in the City Clerk's office or on the city's website at cityofwinterpark.org.

meeting procedures

Persons desiring to address the Commission MUST fill out and provide the the City Clerk a yellow "Request to Speak" form located by the door. After being recognized by the Mayor, persons are asked to come forward and speak from the podium, state their name and address, and direct all remarks to the Commission as a body and not to individual members of the Commission, staff or audience.

Citizen comments at 5 p.m. and each section of the agenda where public comment is allowed are limited to three (3) minutes. The yellow light indicator will remind you that you have one (1) minute left. Large groups are asked to name a spokesperson. The period of time is for comments and not for questions directed to the Commission or staff for immediate answer. Questions directed to the City Commission will be referred to staff and should be answered by staff within a reasonable period of time following the date of the meeting. Order and decorum will be preserved at all meetings. Personal, impertinent or slanderous remarks are not permitted. Thank you for participating in your city government.

*times are projected and
subject to change

agenda

- 1. Meeting Called to Order**
- 2. Invocation**
Reverend Alison Harity, St. Richards Episcopal Church
Pledge of Allegiance
- 3. Approval of Agenda**
- 4. Mayor's Report**
- 5. Citizen Budget Comments**

6. City Manager's Report

- a. City Manager's Report** 5 minutes

7. City Attorney's Report

8. Non-Action Items

9. Citizen Comments | 5 p.m. or soon thereafter

(if the meeting ends earlier than 5:00 p.m., the citizen comments will be at the end of the meeting)
(Three (3) minutes are allowed for each speaker)

10. Consent Agenda

- a. Approve the minutes of July 22, 2019.** 1 minute
- b. Approve the parking lease - St. Andrews United Methodist Church lot for Ward Park and Showalter Stadium overflow parking.** 2 minutes
- c. Approve the following purchases:** 1 minute
1. Presidio Networked Solutions: Core Network Refresh; \$190,464.42.
 2. ACF Standby Systems: Three Generac 60 kw Mobile Generators; \$138,075.

11. Action Items Requiring Discussion

12. Public Hearings

- a. Request of Gulfstream Residential, LLC for:** 10 minutes
- Ordinance - To vacate easement located at 1691 Chestnut Avenue. (2)
- b. Ordinance - Sale of 2600 Lee Road (2)** 2 minutes
- c. Request to Appeal the Interpretation and Determination of the Building and Zoning Official:** 30 minutes
- Regarding the interpretation and determination that nonconforming accessory structures are to be utilized in determining the average lakefront setback (Sec. 58-87) as part of the considerations by the Planning and Zoning Board in lakefront plan reviews, particularly as applied to the June 4, 2019 approval at 1204 North Park Avenue.

13. City Commission Reports

Appeals and Assistance

"If a person decides to appeal any decision made by the Commission with respect to any matter considered at

such meeting or hearing, he/she will need a record of the proceedings, and that, for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based." (F.S. 286.0105)

"Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office (407-599-3277) at least 48 hours in advance of the meeting."



city commission **agenda item**

item type	Invocation	meeting date	8/12/2019
prepared by	City Clerk	approved by	
board approval		final vote	
strategic objective			

subject

Reverend Alison Harrity, St. Richards Episcopal Church

motion / recommendation

background

alternatives / other considerations

fiscal impact



city commission **agenda item**

item type	City Manager's Report	meeting date	8/12/2019
prepared by	City Clerk	approved by	
board approval	final vote		
strategic objective			

subject

City Manager's Report

motion / recommendation

background

alternatives / other considerations

fiscal impact

ATTACHMENTS:

Description

City Manager's Report

Upload Date

8/6/2019

Type

Cover Memo



city commission **city manager's report**

item type	meeting date
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Below are issues of interest to the Commission and community that are currently being worked on by staff, but do not currently require action on the Commission agenda. These items are being tracked to provide the Commission and community the most up to date information regarding the status of the various issues. The City Manager will be happy to answer questions or provide additional updates at the meeting.

8/12/19 meeting

issue	update
Quiet Zones	Railroad street crossing safety improvements construction started February 11 and is expected to be complete by August 2019. Quiet Zones implementation is expected by end of 2019.
Seminole County Ditch Drainage Improvement	The hydraulic model has been updated. Seminole County is reviewing the improvement alternatives and will provide the City feedback regarding participation and phasing over a 5 year capital improvement plan.
Electric Undergrounding	<u>Miles of Undergrounding performed</u> Project G: 4.03 miles 80% complete. Project H: 2.5 miles 12% complete. Orwin Manor reliability undergrounding 1.13 miles (complete) TOTAL so far for FY 2019: 3.75 miles
Fairbanks Transmission	Paving will be taking place August 6 th & 7 th from Shoreview East to 17-92. March 2020 is the estimated completion date for the Fairbanks project.
Canopy Project	Project currently in Construction Drawings (CD's) phase. CD's scheduled to be complete in October.
Orange Avenue Overlay Steering Committee	The Orange Avenue Overlay Steering Committee held its fifth meeting on Wednesday, July 24 th . The Committee discussed zoning and entitlements, then discussed what uses should be allowed or disallowed within the District. The next Steering Committee will be held on August 7 th at 5:30 PM in the Commission Chambers.
Greenway/Connectivity Plan	Planning staff is going to post the Senior Transportation Planner position, with an anticipated start date in early October. To date, staff has created maps that show the locations of trails, easements and potential greenways. Once the new Transportation Planner is on-board, more work will begin.

<p>Old Library Site Task Force</p>	<p>The Task Force has been narrowing down potential uses by meeting with stakeholder groups and considering site constraints. Stakeholder groups that have presented to the board include, the Winter Park Public Library, the Parks Department, Rollins College, Winter Park Historical Association, as well as numerous citizen comments. The Winter Park Playhouse is scheduled to attend August 14. The Task Force is also soliciting public input through the City's website and social media, and some news media articles have been written about the effort. The Task Force will also begin working on a report outline with the intention of preparing a report for the City Commission by the last meeting in September detailing their opinions and findings.</p>
<p>Charter Review Advisory Committee</p>	<p>The next meeting is scheduled for August 13 at 5:00 p.m. as they are extending the meetings to three hours to make sure they complete the process on time. Meetings are subject to change or cancellation if there is not a quorum. Agendas will be posted on the website.</p>

Once projects have been resolved, they will remain on the list for one additional meeting to share the resolution with the public and then be removed.



city commission **agenda item**

item type	Consent Agenda	meeting date	8/12/2019
prepared by	City Clerk	approved by	
board approval	final vote		
strategic objective			

subject

Approve the minutes of July 22, 2019.

motion / recommendation

background

alternatives / other considerations

fiscal impact

ATTACHMENTS:

Description	Upload Date	Type
Minutes	8/1/2019	Cover Memo

**REGULAR MEETING OF THE CITY COMMISSION
JULY 22, 2019**

Mayor Steve Leary called the meeting of the Winter Park City Commission to order at 3:30 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida. Dr. Mike Beates, Dean of Students, The Geneva School provided the invocation, followed by the Pledge of Allegiance.

Members present:

Mayor Steve Leary
Commissioner Greg Seidel
Commissioner Carolyn Cooper
Commissioner Todd Weaver
Commissioner Sarah Sprinkel

Also Present:

City Manager Randy Knight
City Attorney Kurt Ardaman
City Clerk Cynthia Bonham

Approval of agenda

Motion made by Commissioner Cooper to approve the agenda; seconded by Commissioner Sprinkel and carried unanimously with a 5-0 vote.

Mayor's Report

Mayor Leary appointed Tate Scott to the Utilities Advisory Board to replace Rick Baldocchi who resigned. **Seconded by Commissioner Sprinkel and carried unanimously with a 5-0 vote.**

Mayor Leary spoke about the '14 and Under Boys Baseball Team' winning the District, State and Regionals who will play in the World Series representing Winter Park.

Citizen Budget Comments

No comments.

City Manager's Report

City Manager Knight reported that City Clerk Bonham is retiring and he has recommended Rene Cranis to serve as the new City Clerk. **Motion made by Commissioner Cooper to approve the recommendation; seconded by Commissioner Sprinkel and carried unanimously with a 5-0 vote.**

City Manager Knight reported that the Commission Chamber dais has termites and has to be demolished and replaced with a new one.

City Attorney's Report

No report.

Non-Action Items

a. Urban Forestry Management Plan Update

Urban Forestry Director Dru Dennison provided a PowerPoint presentation that covered: the mission of the plan, the key goals of the plan, statistics of right-of-way tree removal and planting from 2014-2018, special projects (Denning Streetscape, Ward Park-Phase 1, the Holiday Tree in Central Park, Moonlight Garden, and Mead Garden), the Eagle Scout Planting Project, educational opportunities provided by the City (Earth Day, Arbor Day, Trees for Peace, Run for the Trees, Duck Derby, GrowVember Fest and the Veterans Memorial Tree); tree removal and permit compensation revenue (commercial and residential), the new State law HB1159; and the current code.

There was discussion regarding the House Bill that passed that is violating the City's rights. Ms. Dennison asked for guidance whether parameters of our current code will be kept and whether to add HB1159 requirements to our code or if residential properties should be exempt from tree removal permits. She also addressed mitigation and the next steps of documents that need to be updated. After comments and discussion, a work session will be scheduled in the future to address this topic after everyone has time to digest what was presented.

Consent Agenda

- a. Approve the minutes of July 8, 2019.
- b. Approve the following piggyback agreements:
 1. DataProse: Extension of City of Boca Raton contract #2016-023 – Utility Bill Printing & Distribution Services; Not to exceed \$200,000.
- c. Approve the following formal solicitations:
 1. Onix Networking; SeeWriteHear: RFP-17-2019 – ADA PDF Remediation Services; Authorize staff to enter into negotiations.
 2. Anixter; Electric Supply of Tampa; Gresco Utility Supply; Stuart C. Irby Co.: IFB-20-2019 – Electric Utility Construction & Maintenance Materials; Not to exceed \$400,000.
 3. Advanced Demolition: IFB-21-2019 – Demolition of Progress Point (Rebid); \$89,765. **PULLED BY COMMISSIONER WEAVER FOR DISCUSSION.**
- d. Approve the following contracts:
 1. 15 Lightyears: RFP-4-2019 – Financing & Installation of Solar Photovoltaic Electric Generating Systems; \$250,000.
- e. Approve the current year FY 2019 Budget Amendments.

Motion made by Commissioner Sprinkel to approve Consent Agenda items a, b, d and e; seconded by Commissioner Seidel and carried unanimously with a 5-0 vote. There were no public comments made.

Consent Agenda Item c-3: Commissioner Weaver disagreed with demolishing the Progress Point building. He spoke about the asbestos removal that needs to be done before demolishing the building that he believed was the only negative of the building and wanted to wait until they determine what will happen with Orange Avenue and if there is a possibility the building can be repurposed. Commissioner Sprinkel spoke about the building being an eyesore for too long and they need to move forward with demolishing it. Commissioner Seidel commented that he can wait to demolish the building a while longer but wanted to see the building improved in the meantime.

Motion made by Commissioner Weaver to remove the Progress Point demolition (Consent Agenda item c.3.) – deny the allocation of \$89,765; seconded by Commissioner Cooper. Upon a roll call vote, Commissioners Seidel, Cooper and Weaver voted yes. Mayor Leary and Commissioner Sprinkel voted no. The motion carried with a 3-2 vote.

Commissioner Cooper asked about Consent Agenda item c.1. and what staff believed the dollar value will be. City Manager Knight spoke about what is included in the budget.

Motion made by Commissioner Cooper to approve Consent Agenda items c.1 and 2; seconded by Commissioner Weaver and carried unanimously with a 5-0 vote.

Budget comments

LaWanda Thompson, 664 W. Lyman Avenue, asked that body cameras be included in the budget because of an incident pertaining to her son. It was clarified that the body cameras are already in the upcoming budget.

Action Item

Moved to the bottom of the agenda.

Public Hearings:

- a. Request of Classic Homes for: Site plan approval, pursuant to the Commission condition tied to the Lake Killarney Shores replat, to construct a new, two-story, 4,473 square foot, single-family home located at 570 Country Club Drive on Lake Killarney, zoned R-2.

The public hearings 'a' and 'b' are related. Allison McGillis summarized the requests and answered questions regarding drainage and stormwater swales, the setbacks agreed to and the setback variance.

Motion made by Commissioner Sprinkel to approve the site plan; seconded by Commissioner Seidel. There were no public comments made. **Upon a roll call**

vote, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weaver voted yes. The motion carried unanimously with a 5-0 vote.

- b. Request of Patrick Finnerty for: Site plan approval, pursuant to the Commission condition tied to the Lake Killarney Shores replat, to construct a new, two-story, 4,595 square foot, single-family home located at 616 Country Club Drive on Lake Killarney, zoned R-2.

Attorney McGregor of the Lowndes Drosdick law firm addressed this item because of the requested front setback variance. He summarized Lot 3, showed the property aerial and overview of the zoning, square footage, the proposed home, the no tree removal requested, the pool/deck meeting code, and that the stormwater swale is sized to meet code.

Commissioner Cooper commented she is opposed with the variance request with changing the front setback at 616 Country Club.

Motion made by Commissioner Sprinkel to approve the site plan; seconded by Commissioner Seidel. There were no public comments made. **Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel and Weaver voted yes. Commissioner Cooper voted no. The motion carried with a 4-1 vote.**

- c. Request of Golfstream Residential, LLC for:

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA VACATING AND ABANDONING A PORTION OF THE UTILITY EASEMENT THAT ENCUMBERS THE PROPERTY LOCATED AT 1691 CHESTNUT AVENUE, DESCRIBED AS LOT 1, BLOCK 1, LAKE KNOWLES TERRACE ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "K", PAGE(S) 4 OF THE PUBLIC RECORDS OF ORANGE COUNTY, MORE PARTICULARLY DESCRIBED IN EXHIBIT A; PROVIDING FOR CONFLICTS, RECORDING AND AN EFFECTIVE DATE First Reading

Subdivision or lot split approval to divide the property at 1691 Chestnut Avenue, zoned R-1A, into two lots with 50 feet of frontage on the street and 9,074 square feet of land area for each lot. Variances are requested for both of the proposed 50 feet of lot width in lieu of the minimum 75 feet of lot width required in the R-1A zoning district.

Attorney Ardaman read the ordinance by title. Planning Manager Jeff Briggs summarized the request including the location, the easement vacate, the lot split request, the zoning, and the impact to the neighboring properties. He stated there is a negative recommendation from staff and the Planning and Zoning Board.

Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weaver disclosed conversations with the applicant.

Applicant Chris Hughes, W. Canton Avenue, asked for approval. Applicant's Engineer Ryan Renardo, Foresite Group, Tampa, provided a presentation in support of the request.

Commissioner Seidel asked about increasing the setback to the east and if they reviewed that. Mr. Hughes stated they discussed that and they are willing to consider it. Commissioner Seidel asked if they can get the project to the required setback for the existing lot width. Mr. Hughes stated they reviewed it and it is not possible given the smaller lot size.

Commissioner Sprinkel asked that they try and save the magnolia tree located on the property. Commissioner Cooper spoke about the project failing the comprehensive plan test and that it does not meet code. Commissioner Weaver spoke about our comprehensive plan that they must follow and the language of vacating an easement that they are not doing but asked it to be smaller. He stated he would be in favor of decreasing the size of the easement based on the work already done. Mayor Leary expressed concerns with not meeting the comprehensive plan test. After comments, the language will be made clear regarding the vacation of the easement.

Motion made by Commissioner Sprinkel to accept the ordinance on first reading; seconded by Commissioner Seidel. There were no public comments made. **Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weaver voted yes. The motion carried unanimously with a 5-0 vote.**

Motion made by Commissioner Seidel to approve the lot split for discussion purposes. Motion failed due to no second on the motion.

Motion made by Commissioner Cooper to deny. Motion failed due to a lack of a second.

After further comments, **motion made by Commissioner Seidel to approve the lot split for discussion purposes; seconded by Commissioner Weaver.**

The following spoke:

Kathy Kiely, 1800 Oneco Avenue, expressed concerns with setting a precedent if this is approved.

Drew Krecicki, 1711 Chestnut Avenue, opposed the request and commented that they need to follow the code and pass the comprehensive plan test.

Jim Esch, 1691 Chestnut Avenue, spoke in favor of the request and did not believe they would setting a bad precedent.

Ernie Gonzalez, 1660 Walnut Avenue, opposed the request to vacate the easement because of future needs and expressed concerns with setting a precedent if this is approved.

Mr. Hughes agreed to cap the homes at a 38% FAR and provided information where the City has approved other similar lot splits.

Mr. Briggs stated Public Works is keeping enough of the easement to maintain the pipe there.

Commissioner Seidel commented that he always tries to make lot splits work and is not ready to approve the lot split as proposed. He wanted the applicant to come back with alternatives for the lot splits but was okay with the easement vacation.

Commissioner Cooper expressed concerns with vacating part of the easement that they may need in the future.

Upon a roll call vote on the easement vacation, Mayor Leary and Commissioners Seidel, Sprinkel and Weaver voted yes. Commissioner Cooper voted no. The motion carried with a 4-1 vote.

Motion made by Commissioner Seidel to table the lot split item to allow the applicant to reevaluate and come back; seconded by Commissioner Cooper. Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weaver voted yes. The motion carried unanimously with a 5-0 vote.

PUBLIC COMMENTS (ITEMS NOT THE AGENDA)

Pat McDonald, 2348 Summerfield Road, asked if anything can be done about the coyotes because of losing two of her pets in the last three weeks. Mayor Leary asked her to speak with staff as to what can be done.

Recess

There was a 10 minute recess.

- d. Request of the Mayflower Retirement community to amend their Preliminary conditional use approval and provide for final conditional use approval for expansions of the Mayflower Retirement Community at 1620 Mayflower Court and 2141 Oakhurst Avenue

Planning Manager Jeff Briggs summarized the request and the P&Z approvals from 2018 with the conditions. He spoke about combining the three story health care facility with the memory care rather than having two separate buildings and employees. He addressed the notice given and the new site plan. He commented

that the only net increase in terms of what had already been approved by the Commission is one additional villa building with approx. 25,000 square feet total; overall the FAR of the properties they are developing is about 30%. He spoke about the 50' no build zone that is in the eastern side of the property. He commented that the issues covered and endorsed by City staff are regarding stormwater retention, the landscape buffer, and the new parking spaces.

Mr. Briggs discussed the issue that has caused angst by the residents concerning the City wanting to work towards a bike path connector involving the Mayflower property. He then explained the two bike path routes desired by staff. After extensive discussion at the P&Z meeting where the bike paths were removed from the P&Z recommendation.

Commissioner Sprinkel spoke about being opposed to a bike path and that the Commission did not approve a bike path.

Discussion ensued as to the recommendation of a bike path by the Transportation Advisory Board. Commissioner Seidel agreed that the Commission only spoke about obtaining an easement that may or may not use it for connectivity purposes. Mayor Leary agreed that a plan was never adopted for a path and that they only accepted a plan for review. He stated if the Mayflower is against a path along their property he will not support one across their property.

Commissioner Cooper addressed the prior preliminary approval and showed the Zoning Code provisions outlining that the Commission has the right to ask for transportation improvements such as these bike path easements or the Commission could just require that the Mayflower go back to the original plan. She spoke about making sure the Mayflower is safe and would not do anything to jeopardize that. She stated she is in favor of an easement that works for everyone. Commissioner Weaver spoke about the City being behind with the connectivity plan and that the easement will not negatively affect the residents.

Attorney Andrew Roy, Winderweedle law firm provided a presentation in support of the project and clarified questions posed by the Commission. He spoke about the lack of a plan currently for an easement and outlined the reasons why the Mayflower was opposed to both of the bike path routes proposed. He also stated that they did not believe there was a nexus between the building program requested and the bike paths.

Motion made by Mayor Leary to approve the plan as presented by the P&Z (that does not include a bike path); seconded by Commissioner Sprinkel.

Amendment #1 Motion amended by Commissioner Seidel to include a 15'-20' easement for both locations on the map (red and blue) to be determined based on more discussion with the applicant, the easement have a sunset

if not used in 10 years it goes away, that the City will dedicate the easement for pedestrian transportation only (non-motorized biking, walking, etc.) and that the City bear the cost of any modification required if the easement is used within that 10 year period; seconded by Commissioner Cooper.

There was discussion whether or not the changes are substantial. Attorney Ardaman commented that the changes are significant, as was determined by the planning staff and that is the reason why the Mayflower is seeking approval for the revised plan.

Motion amended by Commissioner Sprinkel to take care of only the red line bike path and would like for the Commission to finalize a plan before we do anything but if this needs to be done now I will only consider the red line (and also with the inclusion of Commissioner's Seidel's additional amendments); seconded by Commissioner Cooper. SEE BELOW. THIS AMENDMENT WAS WITHDRAWN.

After questions posed by Commissioner Weaver regarding the setback from the property line, Engineer Joe Cole, VHB Engineers, 225 E. Robinson Street, Orlando, addressed the permits they have and that everything that has been designed accounts for the 50' buffer, the swales, and improving the stormwater conditions for the neighbors to make sure all runoff from the houses are directed to the swale and to the large pond. He stated if any changes are made to the easement, there would be modifications to all the permits and would have a ripple effect regarding the stormwater and pond.

Ex-parte communications were disclosed by Commissioners Seidel, Weaver and Cooper by discussing this with either the applicant or residents.

The following spoke in favor of the easement for a bike/pedestrian connection as recommended:

David Erne, 2313 Woodcrest Drive (on behalf of the Transportation Advisory Board)

Lawrie Platt Hall, 1620 Mayflower Court spoke in favor of the expansion but would like to see a bike path at another location.

The following opposed a bike path:
Bob Maraiio, 1545 Mayflower Court
Mary Fedler, 1529 Mayflower Court
Jack Goggin, 2110 Suffield Drive
Pat Padula, 1950 Oakhurst Avenue
Christa Caldwell, 1808 Yorkshire Drive
Jesse Harris, 2130 Suffield Drive
Walter Johnson, 766 Halifax Avenue

Joseph Gigliotti, 1620 Mayflower Court – provided a petition against the bike path
Cheryl Ku, 1920 Oakhurst Avenue
Trippe Cheek, 329 Park Avenue North

Mike Emerson, 2115 Taylor Avenue, spoke if the easement goes in that oak trees will have to be removed.

Commissioner Seidel asked about any possibility of a lawsuit if this is determined not to be a reasonable condition of approval. Attorney Ardaman spoke about what the code provides. Commissioner Seidel spoke about the amendment he made to sunset the easement. He stated he is still in favor of the easements but would prefer bike improvements to Lakemont Avenue.

After hearing the comments made, the **amendment to the motion for only doing the red section was withdrawn by Commissioner Sprinkel.**

Commissioner Cooper spoke about our citizen advisory boards working hard on plans for the connectivity and that she would not be in favor of an easement going through the Mayflower property. She believed there are substantial changes and are not acceptable to her because of the increase from a three story to a four-story building. However, if there were benefits to improve connectivity such as bikepaths then that would change the trade-offs.

Amendment #2 Motion amended by Commissioner Cooper that we limit this project to three stories (revert back to the original plan); seconded by Commissioner Weaver.

Commissioner Weaver commented that this is not a bike path but is an easement and is not in an area that the Mayflower is going to build and provides the opportunity for connectivity. He stated this is a significant change and if the Mayflower is backing out on their offer for the easement he cannot support the conditional use.

Mayor Leary commented if the Mayflower does not support the easement, he would not be in favor of it.

Attorney Roy, for the applicant, stated the Mayflower wants to continue to be a good neighbor and they did what the City first asked of them to explore a bike path and that they offered easement #1 (red line). He stated if they are not approved the entire project will have to revert back to original function of the one story memory care center and the three story health care center which will require an entire redevelopment and redrawing of the plan and still would not get the City the bike path because they were only exploring it. He asked that the Commission consider this and asked that the final conditional use be approved as recommended by the P&Z.

Upon a roll call vote on Amendment #1 (above), Mayor Leary and Commissioner Sprinkel voted no. Commissioners Seidel, Cooper and Weaver voted yes. The motion carried with a 3-2 vote.

Upon a roll call vote on Amendment #2 to revert back to the original plan, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weaver voted no. The motion failed with a 5-0 vote.

Commissioner Sprinkel asked to reinstate her amendment for only the red line bike path easement portion; Commissioner Cooper withdrew her second and no other second was made.

At this time, Attorney Roy responded that the Mayflower would be willing to offer and agree to the bike path easement area #1 (red line); if it went that they did not have to agree to easement area #2 or that it would not be impose this condition with the final conditional use approval being approved by the Commission with the four stories as well.

Amendment #1 was withdrawn by Commissioner Seidel and revised to include all the same language with the trail area on the south side (red area only), 15'-20' easement, the easement have a sunset if not used in 10 years it goes away, that the City will dedicate the easement for pedestrian transportation only (non-motorized biking, walking, etc.) and that the City bear the cost of any modification required if the easement is used within that 10 year period; city staff will work with the applicant to make sure it meets code for bicycle safety (no 90 degree turns); Mayor Leary voted no. Commissioners Seidel, Sprinkel, Cooper and Weaver voted yes. The motion carried with a 4-1 vote.

Upon a roll call vote on the main motion to approve the project as presented by the Planning and Zoning Board with Amendment #1 as revised and the condition of the irrigation as presented, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weaver voted yes. The motion carried unanimously with a 5-0 vote.

Recess

A recess was taken from 8:20-8:34 p.m.

e. **Request of Glen Haven Cemetery:**

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING REGULATIONS" SECTION 58-81 "PARKS AND RECREATION (PR) DISTRICT" SO AS TO ALLOW FACILITIES FOR FUNERALS AND VISITATIONS, AS A CONDITIONAL USE ON CEMETERY PROPERTIES; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY AND EFFECTIVE DATE
First Reading

Conditional Use approval to construct a new, two-story, 9,100 square foot building for cemetery business offices, visitation, and funeral services on the Glen Haven Cemetery property at 2300 Temple Drive, zoned PR.

Attorney Ardaman read the ordinance by title. Planning Manager Jeff Briggs explained the proposed zoning text change and the conditional use approval.

Attorney James Johnston, Shutts and Bowen law firm and representing the applicant Keith Brindle owner of Glen Haven Cemetery and a national company that does cemetery and funeral homes (operator of the funeral home on the site) provided a presentation in support of their request.

Attorney Johnston summarized the existing property size, their requests for a text change to the code, the conditional use approval of the new facility and funeral home use on the property, and the 25' setback for the new facility. They at the request of Public Works grant the City 15' and 20' easements along Glen Haven's north and eastern property line for stormwater facilities, along with an easement at the end of Place Picardy towards Hibiscus. They requested that the City maintain the Place Vendome median and that Glen Haven will contribute \$2,000 per year to the City towards median maintenance. He spoke about the community meetings that they held and the concerns they have addressed after listening to the neighbors.

Applicant Keith Brindle displayed photos of a new Baldwin-Fairchild building they built in Orlando. He provided 2018 Baldwin Fairchild Aloma statistics regarding the number of families served that should be similar to Glen Haven, the projected business mix and impact at Glen Haven with the new building, and the traffic impact of the new funeral home where they hired a consultant to conduct a traffic review.

The applicant's traffic consultant from Traffic & Mobility Consultants summarized their independent traffic study done where he projected minimal impact to Glen Haven.

Lisa Coney, Dignity Memorial, spoke about the resident's concerns. She clarified there are no plans for a crematory or care facility, the amount of traffic and the impact is no concern, the new facility will be a tremendous value to the neighbors because of giving up easements for stormwater and drainage improvements, and there is a need for this new building that replaces an old building. She thanked the people who have signed petitions in support and provided copies of these for the record. She asked for support based on the merits she provided.

Commissioner Seidel disclosed meeting with the applicant and residents. Commissioner Sprinkel met with the applicant and toured the property.

Commissioner Cooper met with the applicant and residents. Commissioner Weaver met with the applicant, residents and stormwater team. Mayor Leary spoke with the applicant and heard from residents.

Commissioner Seidel spoke about concerns with the maintenance of the cemetery, the financial liability and any addition to the traffic trips. Commissioner Sprinkel did not want to see a funeral home sign posted. Commissioner Cooper asked how it happened to have a cemetery in a park. It was clarified this is a permitted use.

Motion made by Commissioner Seidel to move forward for discussion, seconded by Commissioner Weaver.

The following spoke against the request:

Teri Gagliano, 2349 Lafayette Avenue
Matthew Guntis, 1651 Summerland Avenue
Kathy Picciano, 1350 Place Vendome
Marie Ciaraerno, 2341 Chantilly Avenue
Sheryle Woodruff, 2436 Chantilly Avenue
Devin Sylvester, 2400 Versailles Avenue
Mark Kaczmarek, 1443 Place Vendome
Dinos Constantine, 2356 Temple Drive
Vincent Gagliano, 2349 Lafayette Avenue
Cayce Hurley, 2383 Lafayette Avenue
Suzanne Turbyfill, 2261 Lafayette Avenue
Ryan Davis, 2050 Versailles Avenue
Melissa Frye, 2251 Chantilly Avenue
Meredith Moody, 2435 Chantilly Avenue
Allen Schneider, 1375 Place Vendome
Aaron Stearns, 2420 Versailles Avenue
Jason Bates, 2503 Versailles Avenue
Elizabeth Ingram, 1305 Place Vendome
Kathy Keily, 1800 Oneco Avenue
Lori Kifer Johnson, 2431 Versailles Avenue
Oliver Gurren, 2415 Versailles Avenue
Tim Bayer, 2333 Chantilly Avenue
John Marchentionio, 2345 Chantilly Avenue
Patricia Griffin, 2359 Lafayette Avenue
Justin Ingram, 1305 Place Vendome
Jason Johnson, 2431 Versailles Avenue
Frances Leland, 3040 Temple Trail

The following spoke in favor of the request:

Darlene Glasinger, 2510 Chantilly Avenue

Attorney Johnston spoke about residents not wanting this but did not provide evidence supporting their comments against the proposal. Ms. Coney provided other comments in support of the request.

Commissioner Seidel spoke about the need for compromises to concerns of the residents that he has not heard. Commissioner Sprinkel agreed if there is a way to reach a mediation with the residents it needs to happen because it is not there now. Commissioner Cooper wanted to work out a compromise with the residents and asked if we should be changing our land use code to allow this use in our codes. Commissioner Weaver spoke about being conflicted with this request and about the drainage on the property needing to be improved. He stated he cannot support this request and allowing the precedent to our zoning codes and hoped the applicant would grant the drainage easement anyway. Mayor Leary stated both sides deserve a decision and the request should not be delayed any longer. He stated he cannot support this because of it being a park.

Attorney Johnston, after conferring with the applicant, stated they are willing to table this to a date uncertain if the Commission agrees. Mayor Leary stated he saw no reason to table this because of the time already invested with the applicant and residents and this can come back at a future date. Commissioner Seidel stated if they can get different access and not bring traffic down the road, that would weigh heavily on how he felt about the decision he made so maybe the applicant may want to investigate it now.

Upon a roll call vote on the motion to accept the ordinance on first reading, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weaver voted no. The motion to approve failed with a 5-0 vote.

- f. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AUTHORIZING THE CONVEYANCE OF THE CITY OWNED PROPERTY LOCATED AT 2600 LEE ROAD DESCRIBED ON EXHIBIT "A" AND PURSUANT TO THE CONTRACT ATTACHED HERETO AS EXHIBIT "B"; PROVIDING FOR CONFLICTS AND AN EFFECTIVE DATE First Reading

Attorney Ardaman read the ordinance by title. City Manager Knight addressed the sale of the property.

Motion made by Commissioner Sprinkel to accept the ordinance on first reading; seconded by Commissioner Seidel. There were no public comments made.

Commissioner Weaver stated he did not have sufficient time to research this and that he believed this was not an appropriate use for the property and should not be losing money on the deal. Commissioner Cooper stated she wanted to see

something that goes with the vision of Winter Park and believed they should be able to get a higher value on the property.

Upon a roll call vote, Mayor Leary and Commissioners Seidel and Sprinkel voted yes. Commissioners Cooper and Weaver voted no. The motion carried with a 3-2 vote.

Action Items Requiring Discussion

a. Budget discussion and set tentative millage rate

This item was moved down from above. City Manager Knight addressed the need to adopt the tentative millage rate. Budget Manager Peter Moore summarized the operating millage rate of 4.0923 which is the same rate of the last 12 years, and the need to adopt the voted debt millage rates of .1361 and .3021 mills. Mr. Moore announced the rolled back rate of 3.9009.

Motion made by Commissioner Sprinkel to adopt a tentative millage rate of 4.0923 mills. Adopt a voted debt service millage of 0.1361 mills required to service debt on the General Obligation Bonds, Series 2011 (Public Safety Complex Bonds) and 0.3021 mills required to service debt on the General Obligation Bonds, Series 2017 (Library & Events Center Bonds); seconded by Commissioner Seidel. There were no public comments made. Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weaver voted yes. The motion carried unanimously with a 5-0 vote.

City Commission Reports:

Commissioner Seidel – Apologized to Kathy Kiely because that she took something personal he said that he misunderstood. Attended the Environmental Permitting Summer School and there was a lot of discussion about South Florida planning for a foot of sea level rise on a 30 year horizon and did not about how would affect Winter Park with people moving inland.

Commissioner Sprinkel – No report.

Commissioner Cooper – No report.

Commissioner Weaver – Addressed a Common Ground Town Hall at the Community Center this Saturday at 1:00 p.m.

Mayor Leary – No report.

The meeting adjourned at 11:12 p.m.

Mayor Steve Leary

ATTEST:

City Clerk Cynthia S. Bonham, MMC



city commission agenda item

item type	Consent Agenda	meeting date	8/12/2019
prepared by	Assistant City Manager	approved by	City Manager, City Attorney
board approval	yes final vote		
strategic objective	Exceptional Quality of Life, Investment in Public Assets and Infrastructure, Public Health and Safety		

subject

Approve the parking lease - St. Andrews United Methodist Church lot for Ward Park and Showalter Stadium overflow parking.

motion / recommendation

Approval of lease between the City and St. Andrews Church to increase parking at Cady Way/Ward Park/Showalter Field.

background

The City is proposing to lease approximately 2 acres of the church property for the purposes of building and maintaining additional parking for the Cady Way/Ward/Showalter Park area. It is anticipated that a minimum of 250 spaces will be created in the area identified in Exhibit "A and B." The lease is for a 10 years with a possible 10 year renewal.

The annual cost of the lease is \$24,000. The lease also calls for certain improvements to be made to the property and allows the City the opportunity to purchase the property if the church decided to sell during the term of the lease or renewal period.

Parking area would remain grass with wood parking stop in an effort to maintain a natural park look and avoid any significant storm water impact. Tree impact would be minimal with only three significant removals being necessary (23" Slash Pine, 14" Laurel Oak, and 18" Laurel Oak) as denoted in Exhibit B. The additional 250 spaces would help in alleviating current parking issues during our busy weekend and evening periods that affect the surrounding neighbors, while also redirecting some traffic away from the newly constructed pedestrian trail along Perth and future St. Andrews Trail extension. Additionally, the new lot would allow for greatly reduced use of athletic field B and C that are currently being utilized as overflow parking resulting in reduced playability and increased maintenance costs.

alternatives / other considerations

Reject the lease; continue parking in neighborhood and on fields B and C during sporting events.

fiscal impact

The lease requires an annual payment of \$24,000 and provides the City with first right of refusal during the term of the agreement. .

The lease permits the City to make improvements and changes to the property as detailed in the lease language, Exhibit A, and Exhibit B. These improvements and changes that include fencing, parking stops, and additional site upgrades have a projected one-time cost of approximately \$25,000 with minimal additional costs for upkeep and operation.

Annual Lease: \$24,000

Annual Operational and Maintenance: <\$5,000

Parking Lot and Site Improvements (*One Time Cost*): \$25,000

ATTACHMENTS:

Description	Upload Date	Type
Lease Agreement	7/19/2019	Cover Memo
Parking Lot Site Plan	8/2/2019	Exhibit

LEASE AGREEMENT

This Lease Agreement (“Lease”) is made and entered into this _____ day of _____ 2019, (“Effective Date”) by and between **St. Andrews United Methodist Church, Inc.**, a Florida not-for-profit corporation, whose address is 100 St Andrews Boulevard, Winter Park, Florida 32792 (hereinafter referred to as “Landlord”), and **the City of Winter Park**, a Florida municipal corporation, whose address is 401 South Park Avenue, Winter Park, Florida 32789 (hereinafter referred to as “Lessee”).

RECITALS:

WHEREAS, Landlord owns fee simple title to that certain real property located at 100 St Andrews Boulevard, Winter Park, County of Orange, State of Florida, having Orange County Tax Parcel Identification Number 09-22-30-0000-00-016 consisting of approximately four acres as shown with bolded boundaries and as graphically depicted on the attached **Exhibit “A”** (the “Landlord’s Property”); and

WHEREAS, Landlord desires to lease to Lessee approximately three acres of Landlord’s Property designated in cross hatch as the Leasing Area and as graphically depicted on the attached **Exhibit “A”** (the “Premises”), and Lessee desires to lease the Premises from Landlord pursuant to the terms, conditions and provisions contained herein; and

WHEREAS, Lessee desires to use the Premises for public parking in connection with events held at the park property owned by Lessee located at 2525 Cady Way, Winter Park, FL 32792 (“Park Property”) for the use and benefit of the City, the citizens of the City of Winter Park, the general public, and as more specifically provided for in this Lease.

NOW THEREFORE, in consideration of the Recitals and the terms, conditions and provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereby agree as follows:

1. **Recitals.** The above Recitals are true and correct and are hereby incorporated into this Lease as material provisions hereof.

2. **Term.** The term of this Lease is for ten (10) years commencing on the Effective Date (“Term”). At the option of the parties, the Term may be extended for an additional ten (10) year period with the parties to mutually confirm such extension at least one (1) year before the end of the initial ten (10) year term, or as otherwise agreed by the parties, but the foregoing shall not be construed as a requirement of either party to agree to an extension of the Term. In the event the Term is not extended and the Lessee remains in possession with the consent of the Landlord at the end of the Term, this Lease shall become a month to month tenancy and the other provisions of this Lease shall continue to apply.

3. **Use, Improvements & Easement.**

(a) During the Term and as the Term may be extended, Lessee shall have the exclusive right of possession and use of the Premises for vehicle and pedestrian ingress, egress

and parking. All such ingress and egress to and from the Premises by Lessee, its agents and employees and the general public shall be from the adjacent Park Property, and not across Landlord's Property. As part of its possession and use of the Premises, Lessee is authorized and has the right, but is not required, to allow and provide for vehicle and pedestrian ingress, egress, and parking by the citizens of the City of Winter Park, the general public and City personnel during operating hours for Ward Park. Notwithstanding the foregoing, Landlord may use the Premises for additional parking for those using the church building located on Landlord's Property if previously coordinated with and agreed to by Lessee, in writing.

(b) Lessee shall, at Lessee's expense, install, construct and provide: (i) a decorative black aluminum fence and eight (8') foot wide gate to separate the Premises from the remainder of Landlord's Property ("Improvements"); and (ii) signage related to parking rights provided in this Lease within the Premises, as deemed advisable or necessary by Lessee. Lessee shall have the obligation to design, permit and construct the Improvements and signage subject to the reasonable approval of the Landlord, and the Lessee shall advise Landlord as to the timing of the construction and completion time for the Improvements and signage. In addition, Lessee shall assist Landlord in the upgrade of the existing parking lot within the Premises by redistributing new milling chips, removal of concrete pad, as well as installing some landscaping and tree plantings, all at Landlord's option. All improvements shall be made in a good and workmanlike manner and in accordance with all applicable laws, codes and regulations. Any fees and charges for utility services used by Lessee related to the Premises shall be paid by Lessee.

4. **Rent.** Lessee shall pay to Landlord as rent for the Premises, the sum of \$24,000.00 per year ("Rent") to be paid on or before October 15th of each year of the Term; provided however, the Rent for the 1st year under this Lease shall be paid within five business days of the Effective Date but shall be pro-rated to October 15, 2019. Rent shall be payable without notice or demand and without deduction, off-set, or abatement in lawful money of the United States to the Landlord at the address stated herein for notices, or to such other persons or such other places as the Landlord may designate to Lessee in writing. As a governmental entity, Lessee is exempt from the payment of sales taxes on rent.

5. **Possession.** During the Term of this Lease, Lessee shall quietly have, hold and enjoy possession of the Premises and all rights granted to Lessee by this Lease, so long as Lessee complies with all obligations under this Lease. Upon expiration of this Lease, Lessee agrees to deliver up and surrender possession of the Premises to Landlord in as good or better condition (ordinary wear and tear excepted) as the same shall be at the Effective Date.

6. **Maintenance.** Lessee agrees to maintain the Premises in a clean and orderly condition after each use of the Premises by Lessee and to make any needed repairs to the Premises to bring the Premises to a condition at least as good as the Premises existed on the Effective Date.

7. **Limitation on Liability.** Lessee agrees that Landlord shall not be liable for any injuries to any person or damage to any personal property occurring in or upon the Premises during the Term except to the extent such injury or damage is caused by the negligence, actions

or inactions of Landlord or Landlord's lessee/s (other than Lessee), tenant/s, sublessee/s, subtenant/s, employee/s, officer/s, contractor/s, agent/s, members or attendees. Otherwise, and without waiving Lessee's sovereign immunity protections and as limited thereby, Lessee indemnifies and holds harmless Landlord from all losses, damages, claims, disputes, lawsuits, interests, and other adverse matters, including attorneys' and experts' fees at the trial and appellate level, caused by or related to Lessee's use, actions, or inactions relating to the Premises during the Term as such may be extended. Landlord indemnifies and holds harmless Lessee from all losses, damages, claims, disputes, lawsuits, interests, and other adverse matters, including attorneys' and experts' fees at the trial and appellate level, caused by or related to any action or omission of Landlord or Landlord's lessee/s (other than Lessee), tenant/s, sublessee/s, subtenant/s, employee/s, officer/s, contractor/s, agent/s, members or attendees and/or any breach of Landlord's obligations under this Lease.

8. **Insurance.** Lessee, at Lessee's sole cost and expense, shall procure and maintain during the Term as such may be extended general liability insurance policies covering the Premises (and the area affected by the Trail Easement, if any) and being consistent with insurance limits of the Lessee's current insurance coverage. Lessee agrees to provide Landlord with a Certificate of Insurance.

9. **Default.** It is agreed between the parties that if any Rent shall be due hereunder and unpaid, or if Lessee shall default and breach any other covenant or provision of this Lease, then the Landlord, after giving Lessee thirty (30) days prior written notice of such default and an opportunity to cure, if not cured, may re-enter the Premises and remove Lessee, any property and any and all persons therefrom in the manner allowed by law whereupon this Lease shall terminate. Any breach of this Lease by either party shall be grounds to terminate the Lease upon written notice by the non-breaching party to the breaching party and thirty (30) days opportunity to cure. In addition to any remedy for breach provided in this Lease, the parties shall have the right to pursue all other additional or alternative remedies as provided by law.

10. **Attorneys' Fees.** If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the non-prevailing party reasonable attorneys' fees and costs of litigation, including through all appeals.

11. **Binding on Successors and Assigns.** Each provision of this Lease performable by either party hereto shall be deemed both a covenant and a condition. The terms, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of each of the parties hereto, their heirs, personal representatives, successors and assigns; provided, however, this Lease shall not be assigned by Lessee without the prior written consent of the Landlord.

12. **Notices.** Any notice or demand to be given or that may be given hereunder shall be in writing and shall be (i) delivered by hand, or (ii) delivered through United States mail, postage prepaid, certified, return receipt requested and addressed to the parties at the address shown on Page 1 of this Lease. Any notice or demand that may be given hereunder shall be deemed complete (i) one (1) day after mailing of such notice or demand in the United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) upon hand-delivery to the appropriate address as herein provided. Any party hereto may change said address by

notice in writing to the other parties in the manner herein provided.

13. **Sale of Landlord's Property.** In the event Landlord desires to sell all or any portion of Landlord's Property during the Term of this Lease and as such Term may be extended, Landlord agrees it will notify Lessee so that Lessee may make an offer to purchase such property, provided the foregoing shall in no way be construed as a requirement on the part of either party to agree to the sale and purchase of the property. Also, if, at any time during the Term of this Lease or any extension thereof, Landlord receives a bona fide offer or offers from any third party to acquire the Premises and/or Landlord's Property, which Landlord desires and intends to accept, Landlord agrees to first offer to sell and convey the Premises and/or Landlord's Property, as applicable, to Lessee upon the same terms and conditions as the terms of the offer the Landlord desires to accept. Such offer to Lessee shall be in writing and Lessee shall have forty-five (45) days in which to accept or reject such offer or exercise Lessee's option to purchase. Within such 45-day period, Landlord shall promptly provide Lessee with any other information reasonably requested by Lessee in relation to such offer, including a copy of the bona fide offer in which Landlord desires to accept that triggered Landlord's offer to Lessee hereunder. The failure of Lessee to either accept such offer or exercise Lessee's option to purchase, in writing within forty-five (45) days shall constitute a rejection of the offer, and Landlord shall have the right to complete the sale and conveyance to the third party. Provided, however, the failure of Lessee to accept an offer to purchase under this paragraph after receiving Landlord's offer shall in no way release or relieve Landlord from Landlord's obligation to provide Lessee with notice of any future bona fide offers to purchase and Lessee's right of first refusal on future offers if Landlord does not consummate and close the transaction relating to the bona fide offer triggering Landlord's offer to Lessee under this paragraph or pursuant to Lessee's exercise of Lessee's option. Lessee shall have the right to record a memorandum of lease in the public records of Orange County, Florida giving constructive notice of this Lease, including the option to purchase and right of first refusal set forth in this paragraph 13. Lessee acknowledges title to Landlord's Property is held in trust for the benefit of the United Methodist Church, and the sale of any portion of Landlord's Property, and the terms thereof, are subject to review and approval of Landlord and the applicable Conference and District of the United Methodist Church.

14. **Holdover.** Should Lessee remain in possession of the Premises after the expiration of the Term or any extension thereof, Lessee shall be deemed to be occupying the Premises as a month-to-month Lessee, at the same Rent, provided Landlord shall have the right to terminate the month-to-month tenancy as provided by Florida law.

15. **Non-Waiver of Sovereign Immunity.** Lessee expressly retains all rights, benefits and immunities of sovereign immunity under the Constitution and statutes of the State of Florida, and particularly with respect to Chapter 768, Florida Statutes Notwithstanding anything in this Lease to the contrary, nothing in this Lease shall be deemed a waiver of immunity or limits of liability of the Lessee beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and any liability of the Lessee for damages shall not exceed the statutory limits of liability, regardless of the number or nature of any claim which may arise, including but not limited to a claim sounding in tort, equity or contract. Nothing in this Lease shall inure to the benefit of any third party for the purpose of allowing

any claim against any party, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law. This paragraph 15 shall survive the termination and expiration of this Lease.

16. **Other Users.** Landlord shall not lease, rent, license or otherwise allow any other entity or person to utilize the Premises.

17. **Time.** Time is of the essence of this Lease. Neither party shall be required to perform any term, covenant or condition of this Lease so long as such performance is delayed or prevented by force majeure, which shall mean any acts of God, strike, lockout, material or labor restriction by any governmental authority, civil riot, and any other cause not reasonably within the control of such party and which by the exercise of due diligence such party is unable, wholly or in part, to prevent or overcome.

18. **Applicable Law.** The laws of the State of Florida shall govern the validity, performance and enforcement of this Lease. The parties to this Lease further agree that any and all litigation arising from the terms of this Lease and the subject matter contained herein shall be filed and heard in a court of competent jurisdiction located in Orange County, Florida.

19. **Severability.** The invalidity or unenforceability of any provision, term, paragraph, sentence, or word of this Lease as determined by a court of competent jurisdiction shall not affect or impair the remainder of the Lease, unless such invalidity or unenforceability frustrates the purpose of the Lease or renders it inequitable to either party.

20. **City Appropriation.** Lessee's payment and performance obligations under the Lease shall be subject to discretionary annual appropriation by Lessee's City Commission of funds therefore. When funds are not appropriated or otherwise made available to support the continuation of payment and performance of this Lease, the Lease shall be deemed terminated on the last day of the fiscal period for which appropriations were made, without further cost, penalty or obligation to the Lessee; provided, however, Lessee shall pay Landlord a pro-rated share of rent based on the number of days of Lessee's possession of Premises up to the date of termination.

IN WITNESS WHEREOF, the Landlord and Lessee have hereunto set their hands and seals the day and year above written.

Signed, sealed and delivered in the presence of:

LANDLORD:

ST ANDREWS UNITED METHODIST CHURCH, INC

Beverly Quick
Witness
Beverly Quick
Print

EW Mullens

By: EW Mullens
Its: TRUSTEE CHAIR

Catherine M. Helms
Witness
CATHERINE M HELMS
Print

Date: 7/15/19

ST ANDREWS UNITED METHODIST CHURCH, INC

Susan Mitchell
Witness
Susan Mitchell
Print

James W. Bonar
By: JAMES W. BONAR
Its: TRUSTEE

Andrew Kim
Witness
Andrew Kim
Print

Date: 7/15/19

ST ANDREWS UNITED METHODIST CHURCH, INC

Christopher D. Dale
Witness
Christopher D. Dale
Print

Charles A. Mitchell

By: CHARLES A. MITCHELL
Its: ADMINISTRATIVE COUNCIL CHAIR
7-15-19

Susan Mitchell
Witness
Susan Mitchell
Print

Date 7/15/19

Susan Mitchell
Witness
Susan Mitchell
Print

**ST ANDREWS UNITED METHODIST
CHURCH, INC**

Andrew Kimm

By: Andrew Kimm
Its: Senior Pastor

Date: 7/16/19

James W. Bonar
Witness
JAMES W. BONAR
Print

Witness

Print

Witness

Print

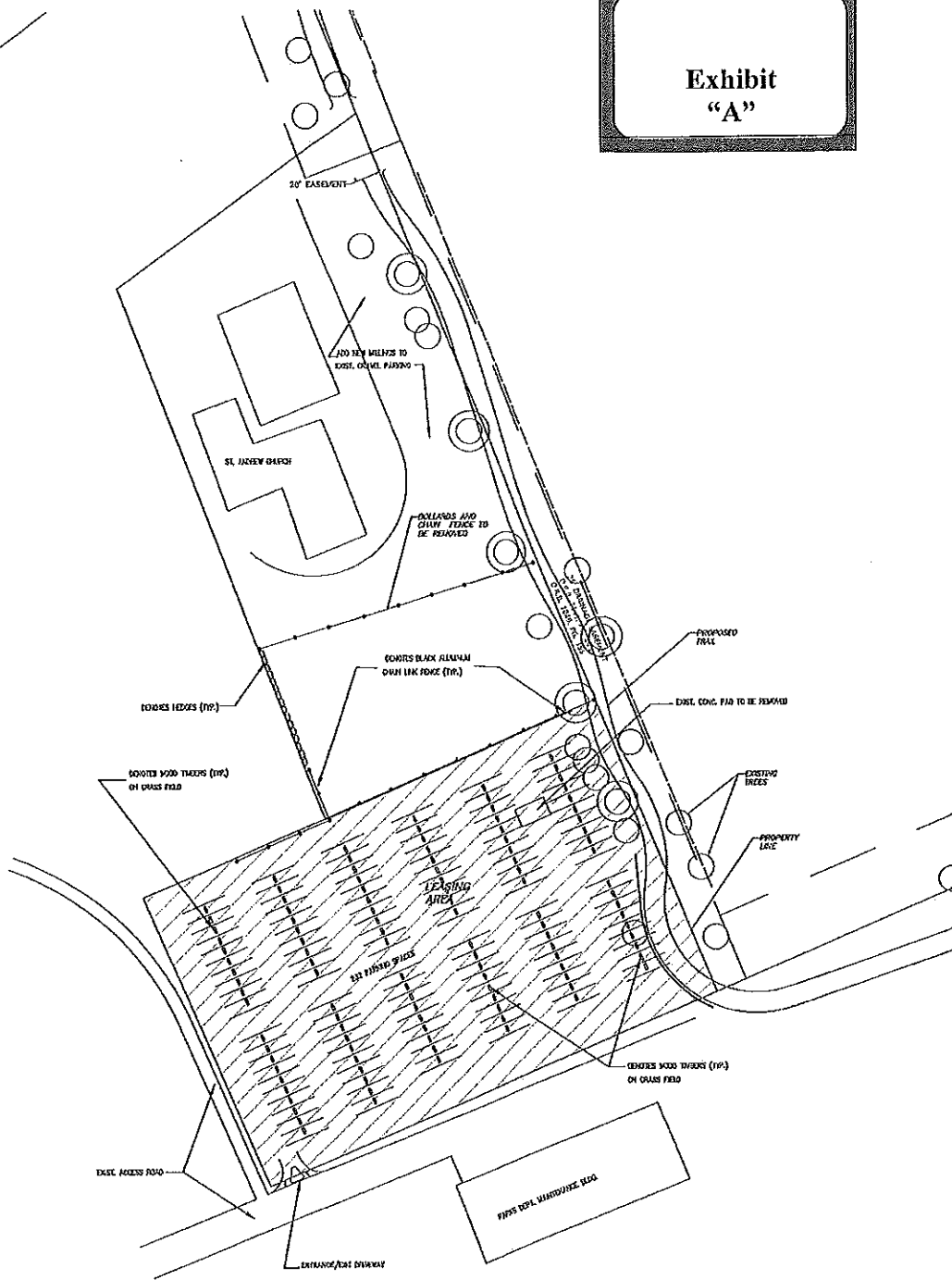
LESSEE:

**THE CITY OF WINTER PARK, a Florida
municipal corporation**

By: _____
Steve Leary, Mayor

Date: _____

Exhibit
"A"



LEGEND



ST. ANDREWS TRAIL/
CHURCH PARKING LOT






1 INCH = 30 FEET
DATE: 9/17/2018
DRAWN BY: MSN

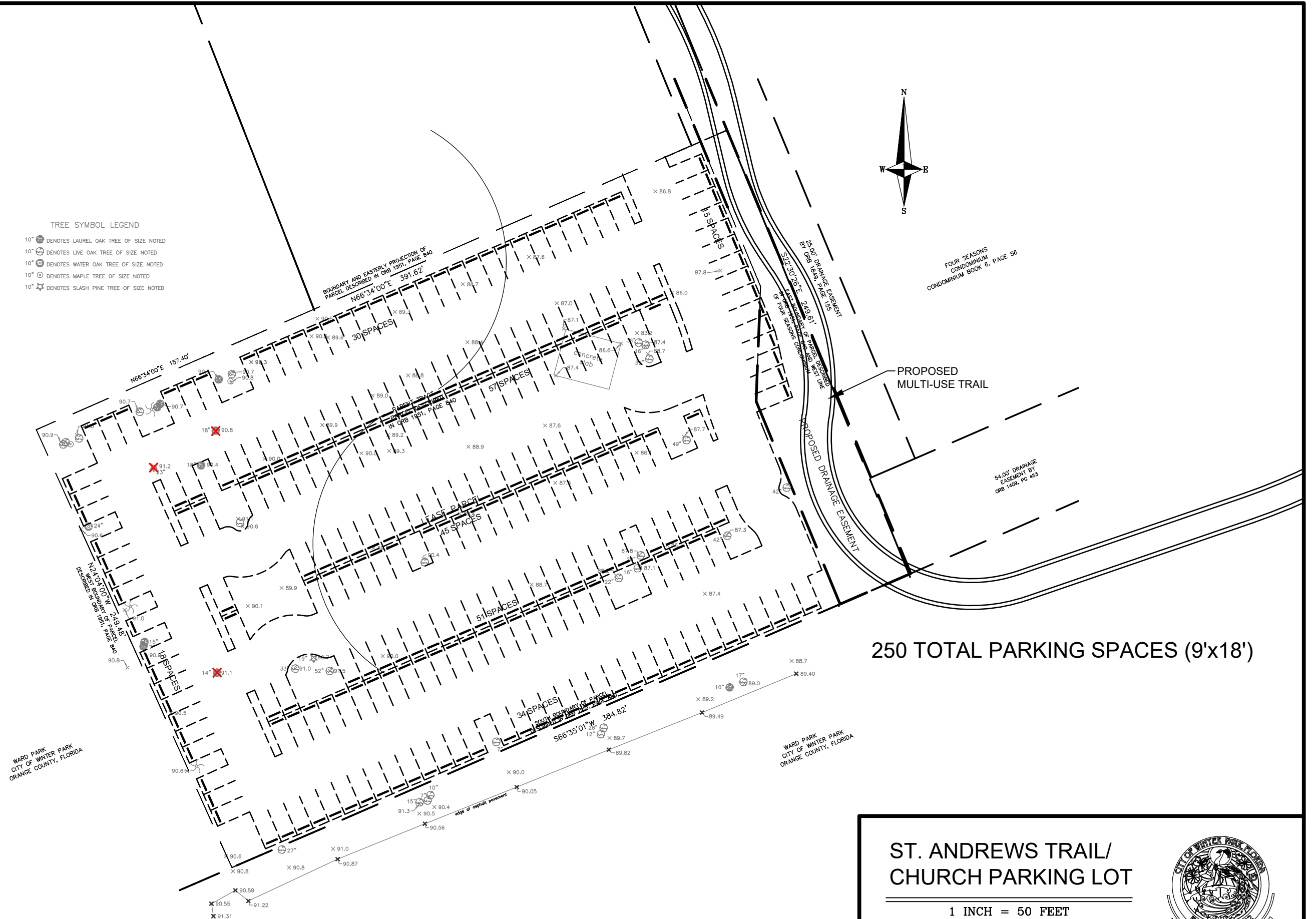


TREES TO BE REMOVED:

- 14" LAUREL OAK - 1
- 18" LAUREL OAK - 1
- 23" SLASH PINE - 1

TOTAL = 3 TREES

- TREE SYMBOL LEGEND
- 10"  DENOTES LAUREL OAK TREE OF SIZE NOTED
 - 10"  DENOTES LIVE OAK TREE OF SIZE NOTED
 - 10"  DENOTES WATER OAK TREE OF SIZE NOTED
 - 10"  DENOTES MAPLE TREE OF SIZE NOTED
 - 10"  DENOTES SLASH PINE TREE OF SIZE NOTED



250 TOTAL PARKING SPACES (9'x18')

**ST. ANDREWS TRAIL/
CHURCH PARKING LOT**

1 INCH = 50 FEET
DATE: 8/2/2019
DRAWN BY: BLP





city commission agenda item

item type	Consent Agenda	meeting date	8/12/2019
prepared by	Purchasing	approved by	
board approval	final vote		
strategic objective	Fiscal Stewardship		

subject

Approve the following purchases:

1. Presidio Networked Solutions: Core Network Refresh; \$190,464.42.
2. ACF Standby Systems: Three Generac 60 kw Mobile Generators; \$138,075.

motion / recommendation

Commission approve items as presented.

background

Item 1: To be purchased utilizing State of Florida co-op contract #250-000-09-1.

Item 2: To be purchased utilizing Florida Sheriffs Association co-op contract #FSA18-VEH16.0.

alternatives / other considerations

N/A

fiscal impact

Total expenditures included in approved budget.

ATTACHMENTS:

Description	Upload Date	Type
\$75k+ Purchases	8/5/2019	Cover Memo



city commission agenda item

item type	Purchases over \$75,000	meeting date	August 12, 2019
prepared by department division	Procurement Division	approved by	<input checked="" type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A		final vote

Purchases over \$75,000

	vendor	item background	fiscal impact	motion recommendation
1.	Presidio Networked Solutions	Core Network Upgrade	Total expenditure included in approved budget. Amount: \$190,464.42	Commission approve the purchase.
To be purchased utilizing State of Florida contract #250-000-09-1.				
2.	ACF Standby Systems	Three Generac 60kw mobile generators	Total expenditure included in approved budget. Amount: \$138,075	Commission approve the purchase.
To be purchased utilizing Florida Sheriffs Associations co-op contract #FSA18-VEH16.0.				



city commission agenda item

item type	Public Hearings	meeting date	8/12/2019
prepared by	Planning/MGR	approved by	City Manager, City Attorney
board approval	yes final vote		
strategic objective	Exceptional Quality of Life, Intelligent Growth and Development		

subject

Request of Gulfstream Residential, LLC for:

- Ordinance - To vacate easement located at 1691 Chestnut Avenue. (2)

motion / recommendation

Recommendation is for approval of the 10 foot wide replacement easement.

background

Easement Vacate Request: As part of the applicant's lot split request for 1691 Chestnut Avenue, that was tabled at the July 22nd Commission meeting, they were requesting that the city vacate a 30-foot-wide utility easement in the eastern portion of the 1691 Chestnut Avenue property. This was approved at first reading at the July 22nd Commission meeting, and the applicant has not given a date-certain that the lot split will come back before the Commission.

This easement was a former right-of-way of Phelps Avenue, but was vacated and abandoned in 1978. It was often the practice of the City Commission in the 1970's, that when right-of-ways were vacated and given to the adjacent owners for the City Commission to reserve a utility easement (making the land unbuildable) even though there were no utilities in that area. The purpose of the City retaining a utility easement was to control whether that land was used at a later time for buildings.

The easement vacate request was investigated by the various utility departments. Charter and Century Link stated that they will require a five (5) foot wide replacement easement along the east property boundary. The City of Winter Park Public Works Department is requesting a ten (10) foot wide replacement easement from the centerline of the existing storm pipe on the property. The existing storm pipe centerline is about six (6) feet off the property boundary, so the ten (10) foot width falls mostly within the five (5) foot easement for Charter and Century Link. Therefore, based on this request, the applicant is proposing one replacement easement as a ten (10) foot wide drainage and utility easement.

alternatives / other considerations

N/A

fiscal impact

N/A

ATTACHMENTS:

Description

Upload Date

Type

Easement Vacate Ordinance

7/1/2019

Ordinance

After Recording Return To:
City of Winter Park, City Clerk's Office
401 Park Avenue South
Winter Park, Florida 32789

ORDINANCE NO. _____ – 20

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA VACATING AND ABANDONING A PORTION OF THE UTILITY EASEMENT THAT ENCUMBERS THE PROPERTY LOCATED AT 1691 CHESTNUT AVENUE, DESCRIBED AS LOT 1, BLOCK 1, LAKE KNOWLES TERRACE ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "K", PAGE(S) 4 OF THE PUBLIC RECORDS OF ORANGE COUNTY, MORE PARTICULARLY DESCRIBED IN EXHIBIT A; PROVIDING FOR CONFLICTS, RECORDING AND AN EFFECTIVE DATE.

WHEREAS, the City of Winter Park has authority to adopt this Ordinance by virtue of its home rule powers and Charter with respect to abandoning and vacating utility easements no longer needed for public purposes, and the City Commission has made such a determination; and

WHEREAS, the property owner has requested the utility easement vacation and abandonment set forth herein and the City has determined that portion of utility easement being vacated and abandoned by this Ordinance is no longer needed by the City of Winter Park.

BE IT ENACTED by the People of the City of Winter Park, Florida as follows:

Section 1. The City Commission of the City of Winter Park, Florida hereby vacates and abandons that certain portion of the utility easement legally described in that certain legal description and sketch of description attached hereto as **Exhibit "A"**.

Section 2. In the event of any conflict between this Ordinance and any other ordinance or portions of ordinances, this Ordinance controls.

Section 3. After adoption, this Ordinance shall be recorded in the public records of Orange County, Florida.

Section 4. This ordinance shall take effect immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida, on the _____ day of _____, 2019.

Mayor Steven Leary

ATTEST:

City Clerk Cynthia S. Bonham

Description Of Sketch

Sheet 1 of 2
Exhibit "A"

Legal Description: Easement Vacation

(Portion of Easement Described in Official Records Book 2906, Page 426, Public Records of Orange County, FL)

A Portion of the West 1/2 of Vacated Street lying East of Lot 1, Block 1, Lake Knowles Terrace, according to the Plat thereof as recorded in Plat Book K, Page(s) 4, Public Records of Orange County, Florida, particularly described as follows:

Commence at the Northwest Corner of Parcel ID: 32-21-30-4536-01-010, thence run North 89°15'53" East, along the North Line of Lots 1 & 2, Block 1, 111.59 feet, to the Point of Beginning; thence continue North 89°15'53" East, along said North Line, a distance of 14.71 feet; thence departing said North Line, South 01°02'34" East 40.13 feet; thence run South 14°35'30" West, 113.77 feet, to a point on the North Right-of-Way Line of Chestnut Avenue; thence run South 89°15'52" West, along said North Right-of-Way Line, 25.93 feet; thence departing said North Right-of-Way Line, North 14°35'30" East 155.38 feet, to the Point of Beginning.

Containing 3,660 sq ft or 0.08 Acres, More or Less.

This is NOT a Survey.
This is ONLY a Sketch.

-Legend-			
C	- Calculated	PC	- Point of Curvature
CL	- Centerline	Pg.	- Page
CB	- Concrete Block	PI	- Point of Intersection
CM	- Concrete Monument	P.O.B.	- Point of Beginning
Conc.	- Concrete	P.O.L.	- Point on Line
D	- Description	PP	- Power Pole
DE	- Drainage Easement	PRM	- Permanent Reference Monument
Esmt.	- Easement	PT	- Point of Tangency
F.E.M.A.	- Federal Emergency Management Agency	R	- Radius
FFE	- Finished Floor Elevation	Rad.	- Radial
Fnd.	- Found	R&C	- Rebar & Cap
IP	- Iron Pipe	Rec.	- Recovered
L	- Length (Arc)	Rfd.	- Roofed
M	- Measured	Set	- Set 1/2" Rebar & Cap "LB 7623"
N&D	- Nail & Disk	Typ.	- Typical
N.R.	- Non-Radial	UE	- Utility Easement
ORB	- Official Records Book	WM	- Water Meter
P	- Plat	Δ	- Delta (Central Angle)
P.B.	- Plat Book	-X-	- Chain Link Fence
W	- Wood Fence		

Sketch Date: 05/13/19	Sketch of Description Certified To: CHRISTOPHER HUGHES
Drawn By: BMJ	
Approved By: PKI	
Field: 04/16/19	

Ireland & Associates Surveying, Inc.

800 Currency Circle Suite 1020
Lake Mary, Florida 32746
www.irelandssurveying.com
Office-407.678.3366 Fax-407.320.8165

- Notes-
- >Sketch is Based upon the Legal Description Supplied by Client.
 - >Abutting Properties Deeds have NOT been Researched for Gaps, Overlaps and/or Hiatus.
 - >Subject to any Easements and/or Restrictions of Record.
 - >Bearing Basis shown hereon, is Assumed and Based upon the Line Denoted with a "BB".
 - >Building Ties are NOT to be used to reconstruct Property Lines.
 - >Fence Ownership is NOT determined.
 - >Roof Overhangs, Underground Utilities and/or Footers have NOT been located UNLESS otherwise noted.
 - >Septic Tanks and/or Drainfield locations are approximate and MUST be verified by appropriate Utility Location Companies.
 - >Use of This Sketch for Purposes other than Intended, Without Written Verification, Will be at the User's Sole Risk and Without Liability to the Surveyor. Nothing Hereon shall be Construed to Give ANY Rights or Benefits to Anyone Other than those Certified.

I hereby Certify that this Sketch of Description of the above Described Property is True and Correct to the Best of my Knowledge and Belief as recently Surveyed under my Direction on the Date Shown, Based on Information furnished to Me as Noted and Conforms to the Standards of Practice for Land Surveying in the State of Florida in accordance with Chapter 5J-17.052 Florida Administrative Codes, Pursuant to Section 472.027 Florida Statutes.

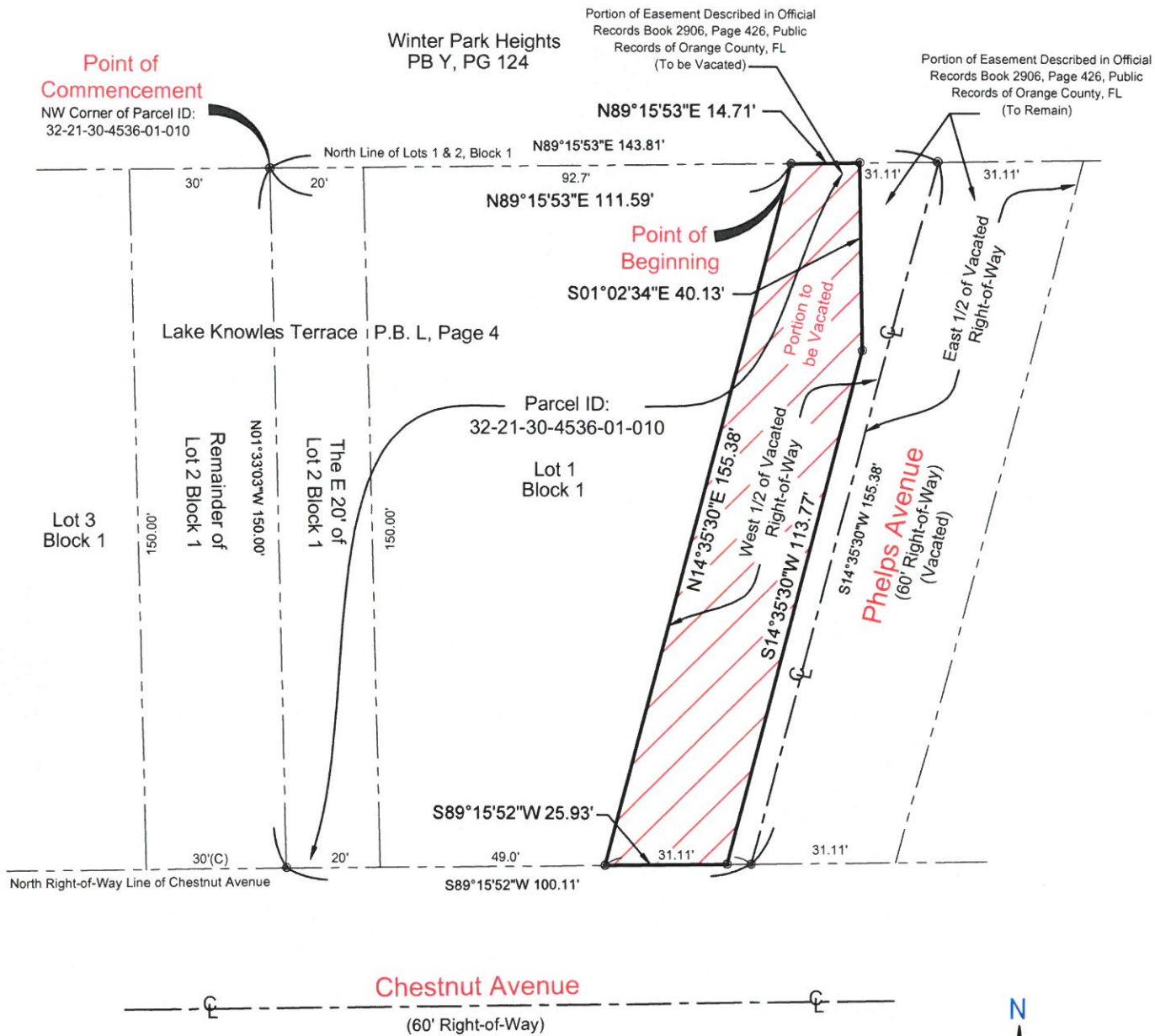


 Patrick K. Ireland FOR THE FIRM
 Date Signed: 05/13/19
 PS# 6637 LB 7623

This Sketch is intended ONLY for the use of Said Certified Parties. This Sketch NOT VALID UNLESS Signed and Embossed with Surveyor's Seal. File No. IS-35886

Sketch of Description

Sheet 2 of 2
Exhibit "A"



*Ireland & Associates
Surveying, Inc.*

800 Currency Circle Suite 1020
Lake Mary, Florida 32746
www.irelandsurveying.com
Office-407.678.3366 Fax-407.320.8165
File No. IS-35886



NOT To Scale
This is NOT a Survey.
This is ONLY a Sketch.

Debbie Wilkerson

From: Ryan Renardo <rrenardo@fg-inc.net>
Sent: Wednesday, April 24, 2019 7:06 PM
To: Donald Marcotte
Cc: Bruce E Lomberk; Debbie Wilkerson; Chris Hughes; Cody Akers
Subject: Easement Vacate Request - 1691 Chestnut Avenue
Attachments: Chestnut Survey_DRAFT.pdf; Chestnut - Lot Split & Easement Vacate Plans.pdf; Easement Vacate Custom Letter- Duke Energy.pdf; Easement Vacate Form - CenturyLink.pdf; Easement Vacate Form - Charter Communications.pdf; Easement Vacate Form - City of Winter Park Electric.pdf; Easement Vacate Form - City of Winter Park Utilities.pdf; Easement Vacate Form - TECO Peoples Gas.pdf

Don,

Please accept this e-mail as our formal request for an easement vacate as shown in the attached plan set. The project is located at 1691 Chestnut Avenue, Winter Park, FL 32789. The easement was conveyed to the City of WP per ordinance #1197 as part of a right-of-way vacate of Phelps Avenue that reserved the entire right-of-way area as a utility easement granted to the City of WP. Charter & Century link are requiring a 5'-wide replacement easement along the east property boundary. The City of WP Public Works is requiring a 10' easement from the centerline of the existing storm pipe. The existing storm pipe centerline is about 6 feet off the property boundary so the 10' width falls mostly within the 5' easement for Charter and Century Link, therefore, we're just proposing one replacement easement as a Drainage and Utility Easement. All other Utility Companies have no objection to the easement vacate, see attached letters from all utility providers.

The reason for the easement vacate request is because we'd like to obtain a lot split on the subject site and have the ability to have two developable single-family lots. Given that the only utility within the easement is a Charter cable, and that we're providing the required 10' width from the existing storm pipe with the proposed replacement easement, we do not believe this easement vacate request causes any detriment to the City or community.

Please let us know if any additional information is required of us to process this request.

Thank You,

RYAN RENARDO, P.E.
Senior Project Manager

FORESITE

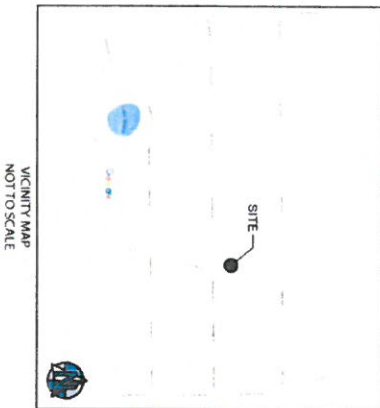
FORESITE GROUP, INC. www.fg-inc.net
10150 Highland Manor Dr, Suite 210 Tampa, FL 33610
o | 813.549.3250 ext. 395 f | 813.621.3580 c | 727.741.3536

*Foresite Group Disclaimer: Private and confidential as detailed [here](#).
If you cannot access hyperlink, please e-mail sender*

SITE DEVELOPMENT PLANS FOR: CHESTNUT LOT SPLIT/ EASEMENT VACATE

1691 CHESTNUT AVENUE
WINTER PARK, FL 32789
SECTION 32, TOWNSHIP 21S, RANGE 30E
PARCEL #: 32-21-30-4536-01-010
ZONED: R1-A

SHEET INDEX
C-0.0 COVER SHEET
C-1.0 EASEMENT VACATE PLAN
C-2.0 PROPOSED EASEMENT PLAN
C-3.0 PROPOSED LOT SPLIT PLAN



VICINITY MAP
NOT TO SCALE

PREPARED BY:

FORESITE
group

FL CA 26115
ForeSITE Group, Inc.
10150 Highland Manor Dr.
Suite 210
Tampa, FL 33610
www.fg-inc.net
813.549.3250
813.621.3580

CONTACT:
RYAN A. RENARDO, P.E.
(813) 549-3250

ISSUED:
APRIL 23, 2019
PROJECT # 1188.005

PROJECT DIRECTORY

OWNER
TODD H. SCARBOROUGH
ESCH SANDAL SCARBOROUGH
1501 CHESTNUT AVENUE
WINTER PARK, FL 32789

DEVELOPER
GULFSTREAM RESIDENTIAL, LLC
225 W. CANTON AVENUE, STE. 220
WINTER PARK, FL 32789
(407) 522-2669
CONTACT: CHRISTOPHER HUGHES

CIVIL ENGINEER
FORESITE GROUP, INC.
10150 HIGHLAND MANOR DRIVE, STE. 210
TAMPA, FL 33610
(813) 549-3250
CONTACT: RYAN A. RENARDO, P.E.

ARCHITECT
N/A

LANDSCAPE ARCHITECT

N/A

SURVEYOR
IRELAND & ASSOCIATES SURVEYING, INC.
800 CURRENCY CIRCLE, STE. 1020
LAKE MARY, FL 32746
(407) 678-3366
CONTACT: PATRICK K. IRELAND

N/A

LOCAL ISSUING AUTHORITY
CITY OF WINTER PARK, FL
401 SOUTH PARK AVENUE
WINTER PARK, FL 32789
(407) 599-5399
CONTACT: PLANNING DEPARTMENT

UTILITY PROVIDERS

WATER SERVICE PROVIDER
CITY OF WINTER PARK
401 SOUTH PARK AVENUE
WINTER PARK, FL 32789
(407) 599-5395
CONTACT: JASON RIEGLER

SANITARY SEWER SERVICE PROVIDER
CITY OF WINTER PARK
401 SOUTH PARK AVENUE
WINTER PARK, FL 32789
(407) 599-5355
CONTACT: JASON RIEGLER

ELECTRICAL SERVICE PROVIDER
CITY OF WINTER PARK
1409 HOWELL BRANCH ROAD
WINTER PARK, FL 32789
(407) 691-7801
CONTACT: MICHAEL PASSARELLA

GAS SERVICE PROVIDER

TECO PEOPLES GAS
600 WEST ROBINSON, P.O. BOX 2433
ORLANDO, FL 32802
(407) 420-0663
CONTACT: SHAWN WINSON

COMMUNICATIONS SERVICE PROVIDER

CHARTER BROADCASTING
3767 ATL AMERICAN BLVD
ORLANDO, FL 32810
(407) 532-8544
CONTACT: MARVIN USRY

COMMUNICATIONS SERVICE PROVIDER

CENTURY LINK
952 FIRST STREET
ALTAMONTE SPRINGS, FL 32701
(407) 893-3279
CONTACT: DAVE KENNEDY



FORESITE
group
FL CA 26115
ForeSITE Group, Inc.
10150 Highland Manor Dr.
Suite 210
Tampa, FL 33610
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813.549.3250
813.621.3580

**CHESTNUT
LOT SPLIT**
C-0.0 COVER SHEET
1691 CHESTNUT AVENUE
WINTER PARK, FL 32789

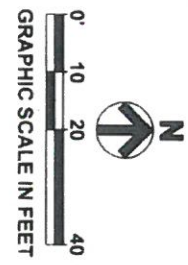
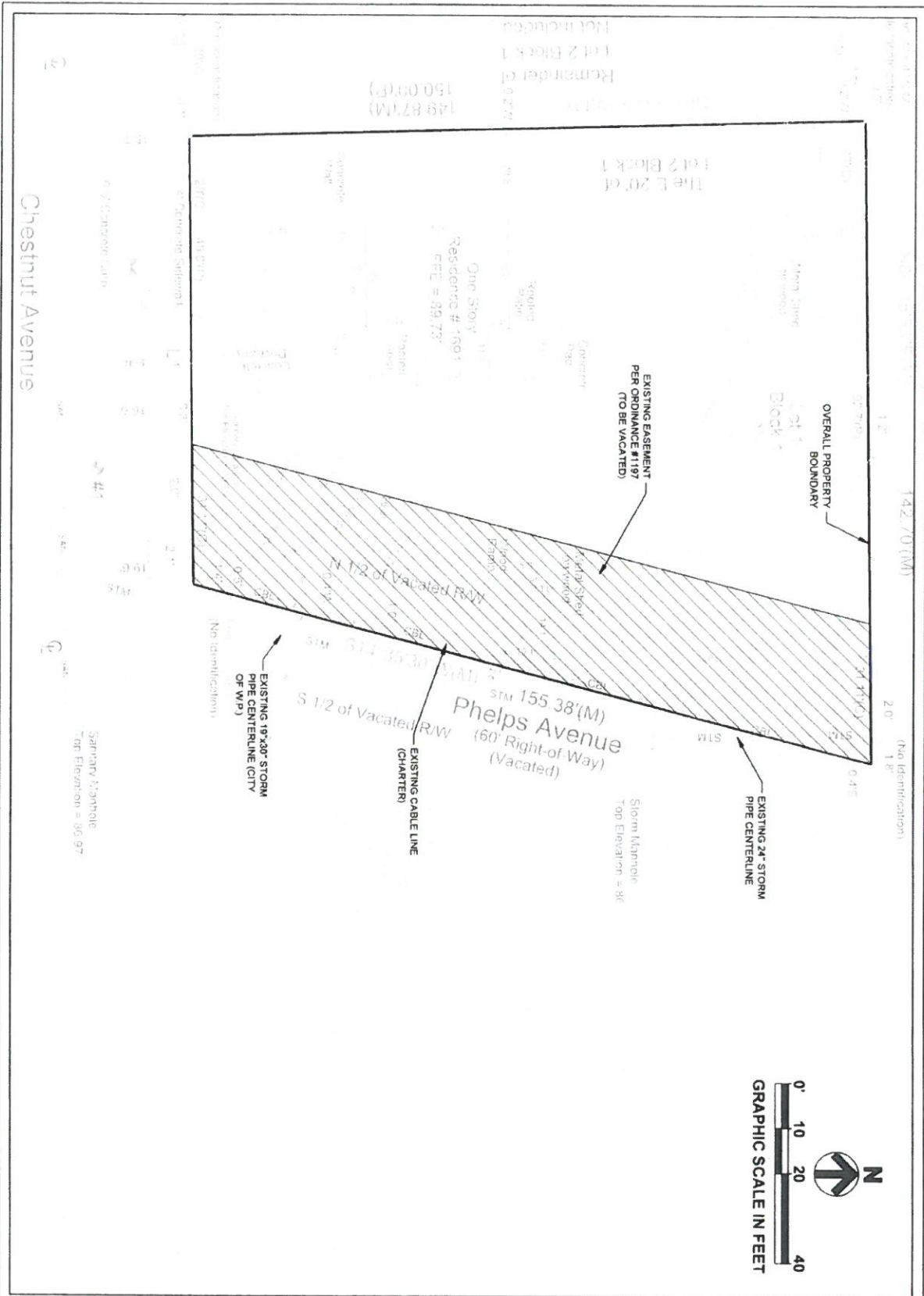
OWNER:
GULFSTREAM
RESIDENTIAL, LLC
225 W. CANTON AVENUE
WINTER PARK, FL 32789

CONTRACT AND CERTIFICATION NOTES:

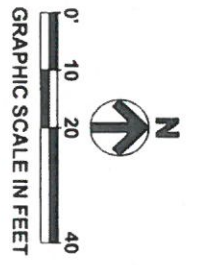
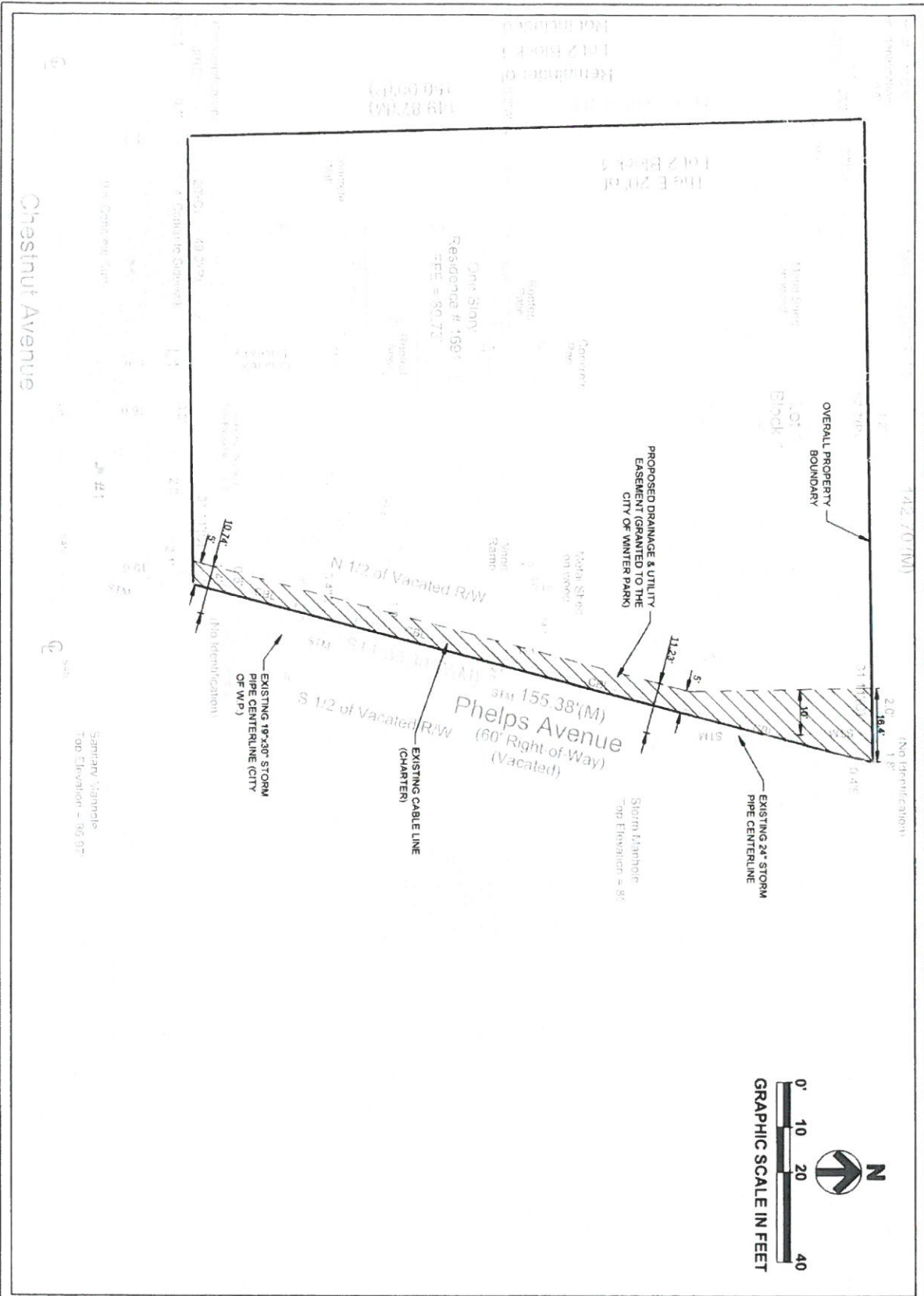
REVISIONS: _____ DATE: _____

COVER SHEET

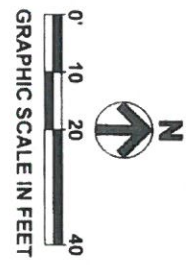
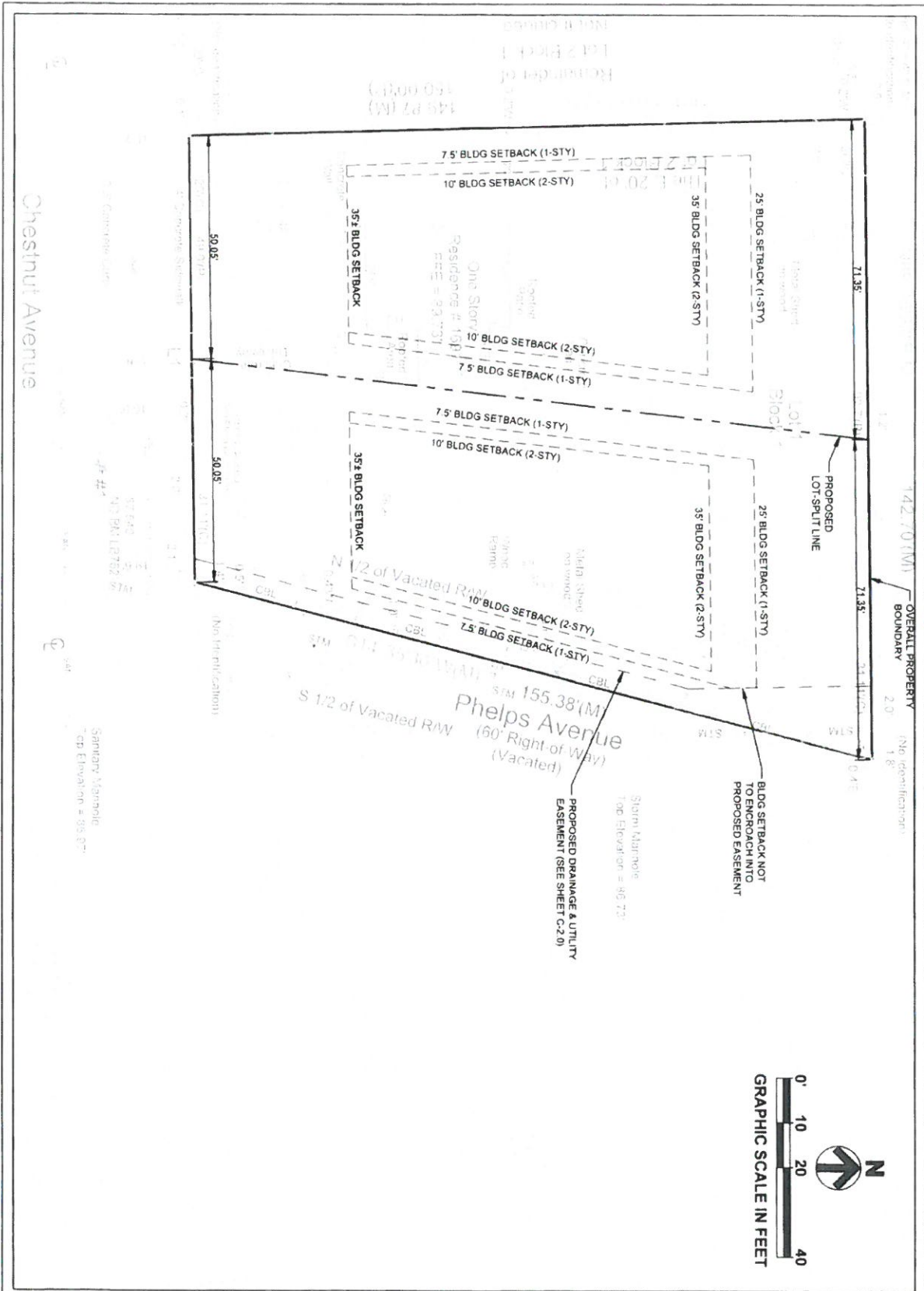
DATE: APRIL 23, 2019
DRAWN BY: _____
CHECKED BY: _____
APPROVED BY: _____
TITLE: CHESTNUT LOT SPLIT
JOB NUMBER: 1188.005
C-0.0



<p>PROJECT CHESTNUT LOT SPLIT</p> <p>1801 CHESTNUT AVENUE WINTER PARK, FL 32789</p> <p>CLIENT GULFSTREAM RESIDENTIAL, LLC</p> <p>225 W. CANTON AVENUE WINTER PARK, FL 32789</p> <p>CONTACT AND ORDERED DATES</p>		<p>SCALE</p>		<p>FORESITE group</p> <p>FL CA 26115 Foresite Group, Inc. www.fg-inc.net 10150 Highland Manor Dr. 813.549.3250 Suite 210 813.621.3580 Tampa, FL 33610</p>													
<p>REVISIONS</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		NO.	DATE	DESCRIPTION										<p>PROJECT MANAGER NAME</p> <p>DRAWING BY NAME</p> <p>APPROVED BY NAME</p> <p>DATE DATE</p>		<p>TITLE EASEMENT VACATE PLAN</p> <p>SHEET NUMBER C-1.0</p> <p>PROJECT NUMBER 1188.005</p>	
NO.	DATE	DESCRIPTION															



<p>PROJECT CHESTNUT LOT SPLIT</p> <p>LOCATION: 158 CHESTNUT AVENUE WINTER PARK, FL 32789</p> <p>DEVELOPER: GULFSTREAM RESIDENTIAL, LLC 325 W. CAMPBELL BLVD SUITE 200 WINTER PARK, FL 32789</p> <p>CONTACT: MR. CARLTON@GULFSTREAM.COM</p>		<p>REVISIONS</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		NO.	DATE	DESCRIPTION										<p>PROJECT NUMBER C-2.0</p> <p>DRAWING BY CITY OF WINTER PARK</p> <p>DATE MAY 23, 2023</p> <p>TITLE PROPOSED EASEMENT PLAN</p> <p>DRAWING NUMBER C-2.0</p> <p>CITY FILE NUMBER 1188.005</p>		<p>FORESITE group</p> <p>FL CA 26115 Foresite Group, Inc. www.fg-inc.net 10150 Highland Manor Dr. 813.549.3250 Suite 210 813.621.3580 Tampa, FL 33610</p>	
NO.	DATE	DESCRIPTION																	



REVISIONS	DATE

PROJECT MANAGER: [Blank]
 DRAWING BY: [Blank]
 APPROVED BY: [Blank]
 DATE: [Blank]

PROPOSED LOT-SPLIT PLAN

SHEET NUMBER: C-3.0
 PROJECT NUMBER: 1188.005

PROJECT
CHESTNUT LOT SPLIT

OWNER:
GULFSTREAM RESIDENTIAL, LLC
 275 W. CAMPBELL AVENUE
 WINTER PALM, FL 32789

CONTACT: MR. CHRISTOPHER HUGHES

FORESITE group

FL CA 26115
 Foresite Group, Inc.
 10150 Highland Manor Dr.
 Suite 210
 Tampa, FL 33610

www.fg-inc.net
 813.549.3250
 813.621.3580



April 22, 2019

Cody Akers cakers@fg-inc.net
Foresite Group, Inc.

**RE: Vacate of Chestnut Ave
1691 Chestnut Ave., Winter Park, FL, 32789**

Please be advised that Duke Energy does not service this address. Accordingly, the Distribution Department of Duke Energy Florida, LLC d/b/a Duke Energy **does not object** to the vacation and abandonment of the right of way formerly known as Chestnut Ave. within the following described property:

**LAKE KNOWLES TERRACE K/4 LOT 1 & E 20 FT OF LOT 2 BLK 1 & W1/2 OF VAC ST
LYING E OF LOT 1**

If I can be of further assistance, please do not hesitate to contact me.

*Lindsay M. Olivieri
Land Representative, Land Services
3300 Exchange Place
NP4A,
Lake Mary, FL 32746*

Enclosures: Survey

Date: 04/08/2019

City of Winter Park Utilities
401 Park Avenue South
Winter Park, FL 32789

Dear Jason Riegler :

I am in the process of requesting the City of Winter Park vacate an (easement/right of way) as shown on the copy of the enclosed tax map. The site is located at (address) 1691 Chestnut Ave, Winter Park, FL 32789 in Winter Park. In order to have this action heard, I must provide letters of no objection from utility companies serving the neighborhood.

Please review your records, complete the form, below, and return this letter to me at Foresite Group, Inc. 10150 Highland Manor Dr. Suite 210, Tampa, FL 33610 . If you have any questions, please contact Foresite Group, Inc. (813-549-3250)

Sincerely

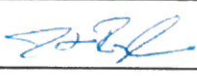
Name: Christopher D. Hughes (Gulfstream Residential, LLC.)
Address: 225 W. Canton Avenue, Suite 200
City, State, Zip Code: Winter Park, FL 32789

 The subject parcel is not within our service area.

 X The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.

 The subject parcel is within our service area. We object to the vacation.

Additional comments: _____

Signature: 
Print Name: Jason Riegler
Title: Assistant Director, Water and Wastewater Department
Date: 4/9/19

Date: 04/08/2019

City of Winter Park, Electric Utility
1409 Howell Branch Rd.
Winter Park, FL 32789

Dear Mr. Michael Passarella :

I am in the process of requesting the City of Winter Park vacate an (easement/right of way) as shown on the copy of the enclosed tax map. The site is located at (address) 1691 Chestnut Ave, Winter Park, FL 32789 in Winter Park. In order to have this action heard, I must provide letters of no objection from utility companies serving the neighborhood.

Please review your records, complete the form, below, and return this letter to me at Foresite Group, Inc. 10150 Highland Manor Dr. Suite 210, Tampa, FL 33610 . If you have any questions, please contact Foresite Group, Inc. (813-549-3250)

Sincerely

Name: Christopher D. Hughes (Gulfstream Residential, LLC.)
Address: 225 W. Canton Avenue, Suite 200
City, State, Zip Code: Winter Park, FL 32789

 The subject parcel is not within our service area.

 X The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.

 The subject parcel is within our service area. We object to the vacation.

Additional comments: The vacation refers specifically to the west 1/2 (approx.30 ft.) of vacated Phelps Avenue - located on this parcel only.

Signature: Michael A. Passarella
Digitally signed by Michael A. Passarella
DN: cn=Michael A. Passarella, o=City of Winter Park, ou=Electric Utility
Operations, email=mpassarella@cityofwinterpark.org, c=US
Date: 2019.04.09 08:41:45 -0400

Print Name: Michael A. Passarella

Title: Engineering Manager - COWP Electric

Date: 9 April 2019

N:\depts.\pworks\COMMON\forms\VacateRequestinstUPDATE 10-5-17

Date: 3-6-19

Texas Peoples Gas
600 W. Robinson St.
Orlando FL 32801

Dear _____:

I am in the process of requesting the City of Winter Park vacate an (easement/right of way) as shown on the copy of the enclosed tax map. The site is located at (address) 1691 Chestnut Ave Winter Park, FL in Winter Park. In order to have this action heard, I must provide letters of no objection from utility companies serving the neighborhood.

Please review your records, complete the form, below, and return this letter to me at Chris Hughes 225 W. Canton Ave. If you have any questions, please contact 407-622-2669 Suite 200
Winter Park FL.

Sincerely

Name: Chris Hughes
Address: 225 W Canton Ave
City, State, Zip Code: Winter Park FL 32789

- The subject parcel is not within our service area.
- The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.
- The subject parcel is within our service area. We object to the vacation.

Additional comments: _____

Signature: Shawn Windsor
Print Name: Shawn Windsor
Title: Gas Design/Project Manager
Date: 3-6-19

Date: 04/08/2019

Charter (Brighthouse)
3767 All American Blvd
Orlando, FL 32810

Dear Marvin Usry :

I am in the process of requesting the City of Winter Park vacate an (easement/right of way) as shown on the copy of the enclosed tax map. The site is located at (address) 1691 Chestnut Ave, Winter Park, FL 32789 in Winter Park. In order to have this action heard, I must provide letters of no objection from utility companies serving the neighborhood.

Please review your records, complete the form, below, and return this letter to me at Foresite Group, Inc. 10150 Highland Manor Dr. Suite 210, Tampa, FL 33610 . If you have any questions, please contact Foresite Group, Inc. (813-549-3250)

Sincerely


Name: Christopher D. Hughes (Gulfstream Residential, LLC.)
Address: 225 W. Canton Avenue, Suite 200
City, State, Zip Code: Winter Park, FL 32789

_____ The subject parcel is not within our service area.

_____ The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.

_____ The subject parcel is within our service area. We object to the vacation.

Additional comments: REPLACEMENT EASEMENT REQUIRED

Signature: 
Print Name: MARVIN L. USRY, JR.
Title: CONSTRUCTION SUPERVISOR
Date: 4/8/2019

Date: 04/08/2019

Century Link
952 First St
Allamonte Springs, FL 32701

Dear Dave Kennedy / Dina Dominguez :

I am in the process of requesting the City of Winter Park vacate an (easement/right of way) as shown on the copy of the enclosed tax map. The site is located at (address) 1691 Chestnut Ave, Winter Park, FL 32789 in Winter Park. In order to have this action heard, I must provide letters of no objection from utility companies serving the neighborhood.

Please review your records, complete the form, below, and return this letter to me at Foresite Group, Inc. 10150 Highland Manor Dr. Suite 210, Tampa, FL 33610. If you have any questions, please contact Foresite Group, Inc. (813-549-3250)

Sincerely

Name: Christopher D. Hughes (Gulfstream Residential, LLC.)
Address: 225 W. Canton Avenue, Suite 200
City, State, Zip Code: Winter Park, FL 32789

 The subject parcel is not within our service area.

The subject parcel is within our service area. We do not have any facilities within the easement/right of way. We have no objection to the vacation.

The subject parcel is within our service area. We object to the vacation.

Additional comments: CenturyLink will approve of the easement being vacated providing the property owner provides a five (5) foot utility easement within the parcel that is being vacated.

Signature: 

Print Name: Dave Kennedy

Title: Engineer I

Date: 04/12/2019

N:\depts.\pworks\COMMON\forms\VacateRequestinstUPDATE 10-5-17



city commission **agenda item**

item type	Public Hearings	meeting date	8/12/2019
prepared by	City Manager	approved by	City Manager, City Attorney
board approval	final vote		
strategic objective	Fiscal Stewardship		

subject

Ordinance - Sale of 2600 Lee Road (2)

motion / recommendation

Approve the ordinance for sale of 2600 Lee Rd.

background

The city has been approached by two Winter Park resident doctors with interest in purchasing the former Club Harem site for \$950,000. The city purchased the property in January 2015 and has been looking to sell the property since that time. The offer by MAX3D LLC, would be an all cash offer with no financing contingency and would allow 60 days for due diligence. The buyers will provide \$50,000 in escrow and these funds will become the city's at the end of the 60 day period. The funds will be returnable if this contract is cancelled during the due diligence period or if environmental concerns at the site, if found through a Phase II study, make the site undevelopable. The buyer is allowed an additional 30 days feasibility period if they decide to pursue a Phase II.

The approval of this agreement does not bind the city in any way to approve any use or zoning or comprehensive plan changes, and the buyer will have to go through all permits and process of anyone coming to redevelop in the city. Uses restricted in the contract include used car sales and also call for the removal of the billboard on site when the billboard lease expires in July 2020.

Approval to sell the site was given on June 24th and this item represents the second of two required readings of the ordinance to dispose of the property.

alternatives / other considerations

fiscal impact

After fees and closing costs, the city can expect to clear just under \$900,000 for the sale. This will raise the city's unencumbered reserves from about 26% of annual reoccurring expenditures to about 27.5% or \$15.1 million by the end of FY 2020. Fairly close to the city's policy goal of reaching 30% in reserves.

ATTACHMENTS:

Description

Exhibit A - Ordinance

First Amendment to contract

Upload Date

7/11/2019

8/6/2019

Type

Cover Memo

Cover Memo

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AUTHORIZING THE CONVEYANCE OF THE CITY OWNED PROPERTY LOCATED AT 2600 LEE ROAD DESCRIBED ON EXHIBIT "A" AND PURSUANT TO THE CONTRACT ATTACHED HERETO AS EXHIBIT "B"; PROVIDING FOR CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, Section 2.11 of the Charter of the City of Winter Park, Florida, authorizes the City Commission, by ordinance to convey or authorize by administrative action the conveyance of any lands of the City of Winter Park ("City"); and

WHEREAS, the City acquired that certain real property located at 2600 Lee Road for the purpose of avoiding litigation costs and to eliminate ongoing criminal activity and code compliance issues associated with the use of the property; and

WHEREAS, the City has determined that there is not a municipal use of the property; and

WHEREAS, the City Commission deems it advisable to convey the property to MAX3D, LLC pursuant to the terms of the contract attached hereto as Exhibit "B" ("Contract").

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

SECTION 1. The recitals stated hereinabove are incorporated herein by reference and are made fully a part of this Ordinance.

SECTION 2. The property that is authorized to be conveyed by the City to MAX3D, LLC is the property identified in Exhibit "A" attached hereto and made a part hereof by reference, with a street address of 2600 Lee Road, Winter Park, Florida ("Property").

SECTION 3. The City Commission of the City of Winter Park hereby approves the transfer and conveyance of the Property to MAX3D, LLC subject to the terms of the Contract.

SECTION 4. This Ordinance shall constitute the authorization by the City Commission pursuant to Section 2.11 of the Charter of the City of Winter Park, Florida, for the transfer and conveyance of the Property. The City Commission hereby ratifies the Contract and authorizes the Mayor or the City Manager to execute the deed of conveyance and any other required closing documents on behalf of the City, as may be required to effectuate the intent of this Ordinance.

SECTION 5. CONFLICTS. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this ____ day July, 2019.

Mayor Steven Leary

ATTEST:

City Clerk, Cynthia S. Bonham

EXHIBIT "A"

PROPERTY

Lots 1, 2, 3 and 4, Block "B", KILLARNEY ACRES, according to the plat thereof, as recorded in Plat Book "O", Page 49, of the Public Records of Orange County, Florida. (Less right-of-way on the North for Lee Road (State Road 438) as recorded in Minute Book 87, Page 907, of the Ninth Judicial Circuit in Orange County, Florida).

EXHIBIT "B"

Contract

U:\AKA\CLIENTS\WINTER PARK\MAX3D, LLC, SALE TO W600-26085\ORDINANCE CONVEYING 2600 LEE ROAD FINAL.DOCX

Vacant Land Contract

1. Sale and Purchase: City of Winter Park, a Florida municipal corporation ("Seller") and MAX3D, LLC, a Florida limited liability company ("Buyer") (the "parties") agree to sell and buy on the terms and conditions specified below the property ("Property") described as: Address: 2600 Lee Road, Winter Park, Florida 32789 Legal Description: Lots 1, 2, 3 and 4, Block "B", KILLARNEY ACRES, according to the plat thereof, as recorded in Plat Book "O", Page 49, of the Public Records of Orange County, Florida. (Less right-of-way on the North, for Lee Road (State Road 438) as recorded in Minute Book 87, Page 907, of the Ninth Judicial Circuit in Orange County, Florida). SEC ___/TWP ___/___/ RNG ___ of ___ County, Florida. Real Property ID No.: 02-22-29-4164-02-010 including all improvements existing on the Property and the following additional property: None.

2. Purchase Price: (U.S. currency) \$ 950,000.00 All deposits will be made payable to "Escrow Agent" named below and held in escrow by: Escrow Agent's Name: Fishback Law Firm Escrow Agent's Contact Person: A. Kurt Ardaman, Esquire Escrow Agent's Address: 1947 Lee Road, Winter Park, Florida 32789 Escrow Agent's Phone: 407 262-8400 Escrow Agent's Email: ardaman@fishbacklaw.com

(a) Initial deposit (\$0 if left blank) (Check if applicable) [X] accompanies offer [] will be delivered to Escrow Agent within ___ days (3 days if left blank) after Effective Date \$ 50,000.00 (b) Additional deposit will be delivered to Escrow Agent (Check if applicable) [] within ___ days (10 days if left blank) after Effective Date [X] within 1 days (3 days if left blank) after expiration of Feasibility Study Period \$ 50,000.00 (c) Total Financing (see Paragraph 5) (express as a dollar amount or percentage) \$ (d) Other: \$ (e) Balance to close (not including Buyer's closing costs, prepaid items, and prorations) to be paid at closing by wire transfer or other Collected funds \$ 850,000.00

(f) [] (Complete only if purchase price will be determined based on a per unit cost instead of a fixed price.) The unit used to determine the purchase price is [] lot [] acre [] square foot [] other (specify): ___ prorating areas of less than a full unit. The purchase price will be \$ ___ per unit based on a calculation of total area of the Property as certified to Seller and Buyer by a Florida licensed surveyor in accordance with Paragraph 7(c). The following rights of way and other areas will be excluded from the calculation: ___

3. Time for Acceptance; Effective Date: Unless this offer is signed by Seller and Buyer and an executed copy delivered to all parties on or before See attached Addendum, this offer will be withdrawn and Buyer's deposit, if any, will be returned. The time for acceptance of any counter offer will be 3 days after the date the counter offer is delivered. The "Effective Date" of this contract is the date on which the last one of the Seller and Buyer has signed or initialed and delivered this offer or the final counter offer.

4. Closing Date: This transaction will close on See attached Addendum ("Closing Date"), unless specifically extended by other provisions of this contract. The Closing Date will prevail over all other time periods including, but not limited to, Financing and Feasibility Study periods. However, if the Closing Date occurs on a Saturday, Sunday, or national legal holiday, it will extend to 5:00 p.m. (where the Property is located) of the next business day. In the event insurance underwriting is suspended on Closing Date and Buyer is unable to obtain property insurance, Buyer may postpone closing for up to 5 days after the insurance underwriting suspension is lifted. If this transaction does not close for any reason, Buyer will immediately return all Seller provided documents and other items.

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51 **5. Financing: (Check as applicable)**

52* (a) Buyer will pay cash for the Property with no financing contingency.

53* (b) This contract is contingent on Buyer qualifying for and obtaining the commitment(s) or approval(s)
54* specified below ("Financing") within _____ days after Effective Date (Closing Date or 30 days after Effective
55* Date, whichever occurs first, if left blank) ("Financing Period"). Buyer will apply for Financing within _____
56* days after Effective Date (5 days if left blank) and will timely provide any and all credit, employment, financial,
57* and other information required by the lender. If Buyer, after using diligence and good faith, cannot obtain the
58* Financing within the Financing Period, either party may terminate this contract and Buyer's deposit(s) will be
59* returned.

60* (1) New Financing: Buyer will secure a commitment for new third party financing for \$ _____
61* or _____% of the purchase price at (Check one) a fixed rate not exceeding _____% an
62* adjustable interest rate not exceeding _____% at origination (a fixed rate at the prevailing interest rate
63* based on Buyer's creditworthiness if neither choice is selected). Buyer will keep Seller and Broker fully
64* informed of the loan application status and progress and authorizes the lender or mortgage broker to
65* disclose all such information to Seller and Broker.

66* (2) Seller Financing: Buyer will execute a first second purchase money note and mortgage to
67* Seller in the amount of \$ _____, bearing annual interest at _____% and payable as
68* follows: _____
69* The mortgage, note, and any security agreement will be in a form acceptable to Seller and will follow
70* forms generally accepted in the county where the Property is located; will provide for a late payment fee
71* and acceleration at the mortgagee's option if Buyer defaults; will give Buyer the right to prepay without
72* penalty all or part of the principal at any time(s) with interest only to date of payment; will be due on
73* conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require Buyer to
74* keep liability insurance on the Property, with Seller as additional named insured. Buyer authorizes Seller
75* to obtain credit, employment, and other necessary information to determine creditworthiness for the
76* financing. Seller will, within 10 days after Effective Date, give Buyer written notice of whether or not
77* Seller will make the loan.

78* (3) Mortgage Assumption: Buyer will take title subject to and assume and pay existing first mortgage to
79* _____
80* LN# _____ in the approximate amount of \$ _____ currently payable at
81* \$ _____ per month, including principal, interest, taxes and insurance, and having a
82* fixed other (describe) _____
83* interest rate of _____% which will will not escalate upon assumption. Any variance in the
84* mortgage will be adjusted in the balance due at closing with no adjustment to purchase price. Buyer will
85* purchase Seller's escrow account dollar for dollar. If the interest rate upon transfer exceeds _____% or
86* the assumption/transfer fee exceeds \$ _____, either party may elect to pay the excess,
87* failing which this contract will terminate; and Buyer's deposit(s) will be returned. If the lender disapproves
88* Buyer, this contract will terminate; and Buyer's deposit(s) will be returned.

89* 6. Assignability: (Check one) Buyer may assign and thereby be released from any further liability under this
90* contract, may assign but not be released from liability under this contract, or may not assign this contract.

91* 7. Title: Seller has the legal capacity to and will convey marketable title to the Property by statutory warranty
92* deed special warranty deed other (specify) _____, free of liens, easements,
93* and encumbrances of record or known to Seller, but subject to property taxes for the year of closing; covenants,
94* restrictions, and public utility easements of record; existing zoning and governmental regulations; and (list any
95* other matters to which title will be subject) See attached Addendum
96* provided there exists at closing no violation of the foregoing.

97* (a) Title Evidence: The party who pays for the owner's title insurance policy will select the closing agent and
98* pay for the title search, including tax and lien search if performed, and all other fees charged by closing agent.
99* Seller will deliver to Buyer, at

100* (Check one) Seller's Buyer's expense and
101* (Check one) within 30 days after Effective Date at least _____ days before Closing Date,
102* (Check one)

103* (1) a title insurance commitment by a Florida licensed title insurer setting forth those matters to be
104* discharged by Seller at or before closing and, upon Buyer recording the deed, an owner's policy in the
105* amount of the purchase price for fee simple title subject only to the exceptions stated above. If Buyer is
106* paying for the owner's title insurance policy and Seller has an owner's policy, Seller will deliver a copy to
107* Buyer within 15 days after Effective Date.

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108* (2) an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an
109 existing firm. However, if such an abstract is not available to Seller, then a prior owner's title policy
110 acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy
111 will include copies of all policy exceptions and an update in a format acceptable to Buyer from the policy
112 effective date and certified to Buyer or Buyer's closing agent together with copies of all documents
113 recited in the prior policy and in the update. If such an abstract or prior policy is not available to Seller,
114 then (1) above will be the title evidence.

115* (b) **Title Examination:** After receipt of the title evidence, Buyer will, within 10 days (10 days if left blank)
116 but no later than Closing Date, deliver written notice to Seller of title defects. Title will be deemed acceptable
117 to Buyer if (i) Buyer fails to deliver proper notice of defects or (ii) Buyer delivers proper written notice and
118* Seller cures the defects within 30 days (30 days if left blank) ("Cure Period") after receipt of the notice. If
119 the defects are cured within the Cure Period, closing will occur within 10 days after receipt by Buyer of notice
120 of such cure. Seller may elect not to cure defects if Seller reasonably believes any defect cannot be cured
121 within the Cure Period. If the defects are not cured within the Cure Period, Buyer will have 10 days after
122 receipt of notice of Seller's inability to cure the defects to elect whether to terminate this contract or accept
123 title subject to existing defects and close the transaction without reduction in purchase price.

124 (c) **Survey:** Buyer may, at Buyer's expense, have the Property surveyed and must deliver written notice to
125 Seller, within 5 days after receiving survey but not later than 5 days before Closing Date, of any
126 encroachments on the Property, encroachments by the Property's improvements on other lands, or deed
127 restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a
128 title defect and Seller's and Buyer's obligations will be determined in accordance with Paragraph 7(b).
129

(d) **Ingress and Egress:** Seller warrants that the Property presently has ingress and egress.

130 **8. Property Condition:** Seller will deliver the Property to Buyer at closing in its present "as is" condition, with
131 conditions resulting from Buyer's inspections and casualty damage, if any, excepted. Seller will not engage in or
132 permit any activity that would materially alter the Property's condition without the Buyer's prior written consent.

133 (a) **Inspections: (Check (1) or (2))**

134* (1) **Feasibility Study:** Buyer will, at Buyer's expense and within 60 days (30 days if left blank)
135 ("Feasibility Study Period") after Effective Date and in Buyer's sole and absolute discretion, determine
136 whether the Property is suitable for Buyer's intended use. During the Feasibility Study Period, Buyer
137 may conduct a Phase 1 environmental assessment and any other tests, analyses, surveys, and
138 investigations ("Inspections") that Buyer deems necessary to determine to Buyer's satisfaction the
139 Property's engineering, architectural, and environmental properties; zoning and zoning restrictions;
140 subdivision statutes; soil and grade; availability of access to public roads, water, and other utilities;
141 consistency with local, state, and regional growth management plans; availability of permits, government
142 approvals, and licenses; and other inspections that Buyer deems appropriate. If the Property must be
143 rezoned, Buyer will obtain the rezoning from the appropriate government agencies. Seller will sign all
144 documents Buyer is required to file in connection with development or rezoning approvals. Seller gives
145 Buyer, its agents, contractors, and assigns, the right to enter the Property at any time during the
146 Feasibility Study Period for the purpose of conducting Inspections, provided, however, that Buyer, its
147 agents, contractors, and assigns enter the Property and conduct Inspections at their own risk. Buyer will
148 indemnify and hold Seller harmless from losses, damages, costs, claims, and expenses of any nature,
149 including attorneys' fees, expenses, and liability incurred in application for rezoning or related
150 proceedings, and from liability to any person, arising from the conduct of any and all Inspections or any
151 work authorized by Buyer. Buyer will not engage in any activity that could result in a construction lien
152 being filed against the Property without Seller's prior written consent. If this transaction does not close,
153 Buyer will, at Buyer's expense, (i) repair all damages to the Property resulting from the Inspections and
154 return the Property to the condition it was in before conducting the Inspections and (ii) release to Seller
155 all reports and other work generated as a result of the Inspections.

156 Before expiration of the Feasibility Study Period, Buyer must deliver written notice to Seller of Buyer's
157 determination of whether or not the Property is acceptable. Buyer's failure to comply with this notice
158 requirement will constitute acceptance of the Property as suitable for Buyer's intended use in its "as is"
159 condition. If the Property is unacceptable to Buyer and written notice of this fact is timely delivered to
160 Seller, this contract will be deemed terminated, and Buyer's deposit(s) will be returned.

161* (2) **No Feasibility Study:** Buyer is satisfied that the Property is suitable for Buyer's purposes, including
162 being satisfied that either public sewerage and water are available to the Property or the Property will be
163 approved for the installation of a well and/or private sewerage disposal system and that existing zoning

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- 164 and other pertinent regulations and restrictions, such as subdivision or deed restrictions, concurrency,
- 165 growth management, and environmental conditions, are acceptable to Buyer. This contract is not
- 166 contingent on Buyer conducting any further investigations.
- 167 (b) **Government Regulations:** Changes in government regulations and levels of service which affect Buyer's
- 168 intended use of the Property will not be grounds for terminating this contract if the Feasibility Study Period has
- 169 expired or if Paragraph 8(a)(2) is selected.
- 170 (c) **Flood Zone:** Buyer is advised to verify by survey, with the lender, and with appropriate government
- 171 agencies which flood zone the Property is in, whether flood insurance is required, and what restrictions apply
- 172 to improving the Property and rebuilding in the event of casualty.
- 173 (d) **Coastal Construction Control Line ("CCCL"):** If any part of the Property lies seaward of the CCCL as
- 174 defined in Section 161.053, Florida Statutes, Seller will provide Buyer with an affidavit or survey as required
- 175 by law delineating the line's location on the Property, unless Buyer waives this requirement in writing. The
- 176 Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that
- 177 govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach
- 178 nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida
- 179 Department of Environmental Protection, including whether there are significant erosion conditions associated
- 180 with the shore line of the Property being purchased.
- 181* Buyer waives the right to receive a CCCL affidavit or survey.

182 **9. Closing Procedure; Costs:** Closing will take place in the county where the Property is located and may be

183 conducted by mail or electronic means. If title insurance insures Buyer for title defects arising between the title

184 binder effective date and recording of Buyer's deed, closing agent will disburse at closing the net sale proceeds

185 to Seller (in local cashier's check if Seller requests in writing at least 5 days before closing) and brokerage fees to

186 Broker as per Paragraph 19. In addition to other expenses provided in this contract, Seller and Buyer will pay the

187 costs indicated below.

- 188 (a) **Seller Costs:**
- 189 Taxes on deed
- 190 Recording fees for documents needed to cure title
- 191 Title evidence (if applicable under Paragraph 7)
- 192* Other: _____

- 193 (b) **Buyer Costs:**
- 194 Taxes and recording fees on notes and mortgages
- 195 Recording fees on the deed and financing statements
- 196 Loan expenses
- 197 Title evidence (if applicable under Paragraph 7)
- 198 Lender's title policy at the simultaneous issue rate
- 199 Inspections
- 200 Survey
- 201 Insurance
- 202* Other: _____

203 (c) **Prorations:** The following items will be made current and prorated as of the day before Closing Date: real

204 estate taxes (including special benefit tax liens imposed by a CDD), interest, bonds, assessments, leases,

205 and other Property expenses and revenues. If taxes and assessments for the current year cannot be

206 determined, the previous year's rates will be used with adjustment for any exemptions.

207 (d) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, Seller

208 will pay (i) the full amount of liens that are certified, confirmed, and ratified before closing and (ii) the amount

209 of the last estimate of the assessment if an improvement is substantially completed as of Effective Date but

210 has not resulted in a lien before closing; and Buyer will pay all other amounts. If special assessments may be

211* paid in installments, Seller Buyer (Buyer if left blank) will pay installments due after closing. If Seller is

212 checked, Seller will pay the assessment in full before or at the time of closing. Public body does not include a

213 Homeowners' or Condominium Association.

214 (e) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT

215 PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO

216 PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY

217 IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN

218 HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT

219 THE COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.

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220 (f) **Foreign Investment in Real Property Tax Act ("FIRPTA"):** If Seller is a "foreign person" as defined by
221 FIRPTA, Seller and Buyer will comply with FIRPTA, which may require Seller to provide additional cash at
222 closing.

223 (g) **1031 Exchange:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with
224 closing or after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will
225 cooperate in all reasonable respects to effectuate the Exchange including executing documents, provided,
226 however, that the cooperating party will incur no liability or cost related to the Exchange and that the closing
227 will not be contingent upon, extended, or delayed by the Exchange.

228 **10. Computation of Time:** Calendar days will be used when computing time periods, except time periods of 5 days
229 or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal
230 holidays specified in 5 U.S.C. 6103(a). Any time period ending on a Saturday, Sunday, or national legal holiday
231 will extend until 5:00 p.m. (where the Property is located) of the next business day. **Time is of the essence in
232 this contract.**

233 **11. Risk of Loss; Eminent Domain:** If any portion of the Property is materially damaged by casualty before closing
234 or Seller negotiates with a governmental authority to transfer all or part of the Property in lieu of eminent domain
235 proceedings or an eminent domain proceeding is initiated, Seller will promptly inform Buyer. Either party may
236 terminate this contract by written notice to the other within 10 days after Buyer's receipt of Seller's notification,
237 and Buyer's deposit(s) will be returned, falling which Buyer will close in accordance with this contract and
238 receive all payments made by the governmental authority or insurance company, if any.

239 **12. Force Majeure:** Seller or Buyer will not be required to perform any obligation under this contract or be liable to
240 each other for damages so long as the performance or non-performance of the obligation is delayed, caused, or
241 prevented by an act of God or force majeure. An "act of God or "force majeure" is defined as hurricanes,
242 earthquakes, floods, fire, unusual transportation delays, wars, insurrections, and any other cause not reasonably
243 within the control of Seller or Buyer and which by the exercise of due diligence the non-performing party is
244 unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for
245 the period that the act of God or force majeure is in place. However, in the event that such act of God or force
246 majeure event continues beyond 30 days, either party may terminate this contract by delivering written notice to
247 the other; and Buyer's deposit(s) will be returned.

248 **13. Notices:** All notices will be in writing and delivered to the parties and Broker by mail, personal delivery, or
249 electronic means. Buyer's failure to timely deliver written notice to Seller, when such notice is required by
250 this contract, regarding any contingency will render that contingency null and void, and this contract will
251 be construed as if the contingency did not exist. Any notice, document, or item delivered to or received
252 by an attorney or licensee (including a transactions broker) representing a party will be as effective as if
253 delivered to or received by that party.

254 **14. Complete Agreement; Persons Bound:** This contract is the entire agreement between Seller and Buyer.
255 Except for brokerage agreements, no prior or present agreements will bind Seller, Buyer, or Broker
256 unless incorporated into this contract. Modifications of this contract will not be binding unless in writing, signed
257 or initialed, and delivered by the party to be bound. Electronic signatures will be acceptable and binding. This
258 contract, signatures, initials, documents referenced in this contract, counterparts, and written modifications
259 communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be
260 binding. Handwritten or typewritten terms inserted in or attached to this contract prevail over preprinted terms. If
261 any provision of this contract is or becomes invalid or unenforceable, all remaining provisions will continue to be
262 fully effective. Seller and Buyer will use diligence and good faith in performing all obligations under this contract.
263 This contract will not be recorded in any public record. The terms "Seller," "Buyer," and "Broker" may be singular
264 or plural. This contract is binding on the heirs, administrators, executors, personal representatives, and assigns, if
265 permitted, of Seller, Buyer, and Broker.

266 **15. Default and Dispute Resolution:** This contract will be construed under Florida law. This Paragraph will survive
267 closing or termination of this contract.

268 (a) **Seller Default:** If Seller fails, neglects, or refuses to perform Seller's obligations under this contract, Buyer
269 may elect to receive a return of Buyer's deposit(s) without thereby waiving any action for damages resulting
270 from Seller's breach and may seek to recover such damages or seek specific performance. Seller will also
271 be liable for the full amount of the brokerage fee.

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272 (b) **Buyer Default:** If Buyer fails, neglects, or refuses to perform Buyer's obligations under this contract,
273 including payment of deposit(s), within the time(s) specified, Seller may elect to recover and retain the
274 deposit(s), paid and agreed to be paid, for the account of Seller as agreed upon liquidated damages,
275 consideration for execution of this contract, and in full settlement of any claims, whereupon Seller and Buyer
276 will be relieved from all further obligations under this contract; or Seller, at Seller's option, may proceed in
277 equity to enforce Seller's rights under this contract.

278 **16. Attorney's Fees; Costs:** In any litigation permitted by this Contract, the prevailing party shall be entitled to
279 recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting
280 the litigation. This Paragraph 16 shall survive Closing or termination of this Contract.

281 **17. Escrow Agent; Closing Agent:** Seller and Buyer authorize Escrow Agent and closing agent (collectively
282 "Agent") to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them
283 upon proper authorization and in accordance with Florida law and the terms of this contract, including disbursing
284 brokerage fees. "Collection" or "Collected" means any checks tendered or received have become actually and
285 finally collected and deposited in the account of Agent. The parties agree that Agent will not be liable to any
286 person for misdelivery of escrowed items to Seller or Buyer, unless the misdelivery is due to Agent's willful
287 breach of this contract or gross negligence. If Agent interpleads the subject matter of the escrow, Agent will pay
288 the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the
289 escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party.

290 **18. Professional Advice; Broker Liability:** Broker advises Seller and Buyer to verify all facts and representations
291 that are important to them and to consult an appropriate professional for legal advice (for example, interpreting
292 this contract, determining the effect of laws on the Property and this transaction, status of title, foreign investor
293 reporting requirements, the effect of property lying partially or totally seaward of the CCCL, etc.) and for tax,
294 property condition, environmental, and other specialized advice. Buyer acknowledges that Broker does not reside
295 in the Property and that all representations (oral, written, or otherwise) by Broker are based on Seller
296 representations or public records. Buyer agrees to rely solely on Seller, professional inspectors, and
297 government agencies for verification of the Property condition and facts that materially affect Property
298 value. Seller and Buyer respectively will pay all costs and expenses, including reasonable attorneys' fees at all
299 levels, incurred by Broker and Broker's officers, directors, agents, and employees in connection with or arising
300 from Seller's or Buyer's misstatement or failure to perform contractual obligations. Seller and Buyer hold
301 harmless and release Broker and Broker's officers, directors, agents, and employees from all liability for loss or
302 damage based on (i) Seller's or Buyer's misstatement or failure to perform contractual obligations; (ii) the use or
303 display of listing data by third parties, including, but not limited to, photographs, images, graphics, video
304 recordings, virtual tours, drawings, written descriptions, and remarks related to the Property; (iii) Broker's
305 performance, at Seller's or Buyer's request, of any task beyond the scope of services regulated by Chapter 475,
306 Florida Statutes, as amended, including Broker's referral, recommendation, or retention of any vendor; (iv)
307 products or services provided by any vendor; and (v) expenses incurred by any vendor. Seller and Buyer each
308 assume full responsibility for selecting and compensating their respective vendors. This Paragraph will not relieve
309 Broker of statutory obligations. For purposes of this Paragraph, Broker will be treated as a party to this contract.
310 This Paragraph will survive closing.

311 **19. Commercial Real Estate Sales Commission Lien Act:** If the Property is commercial real estate as defined by
312 Section 475.701, Florida Statutes, the following disclosure will apply: The Florida Commercial Real Estate Sales
313 Commission Lien Act provides that when a broker has earned a commission by performing licensed services
314 under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the
315 broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

316 **20. Brokers:** The brokers named below are collectively referred to as "Broker." **Instruction to closing agent:**
317 Seller and Buyer direct closing agent to disburse at closing the full amount of the brokerage fees as specified in
318 separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the
319 extent Broker has retained such fees from the escrowed funds. This Paragraph will not be used to modify any
320 MLS or other offer of compensation made by Seller or Seller's Broker to Buyer's Broker.

321* (a) See Addendum _____ (Seller's Broker)
322* will be compensated by Seller Buyer both parties pursuant to a listing agreement other
323* (specify): _____

324* (b) See Addendum _____ (Buyer's Broker)
325* will be compensated by Seller Buyer both parties Seller's Broker pursuant to a MLS offer of
326* compensation other (specify): _____

Buyer (MP) (M) and Seller (MSL) () acknowledge receipt of a copy of this page, which is 6 of 7 pages.
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327• **21. Additional Terms:** _____
 328 **See attached Addendum** _____
 329 _____
 330 _____
 331 _____
 332 _____
 333 _____
 334 _____
 335 _____
 336 _____
 337 _____
 338 _____
 339 _____
 340 _____
 341 _____
 342 _____

COUNTER-OFFER/REJECTION

344• Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and
 345 deliver a copy of the acceptance to Seller).
 346• Seller rejects Buyer's offer

347 **This is intended to be a legally binding contract. If not fully understood, seek the advice of an attorney before**
 348 **signing.**

349• **Buyer:** MAX3D, LLC, a Florida limited liability company FEDEZ Date: 6/14/19
 350• **Print name:** MANUEL PETER
 351• **Buyer:** DAVID VARNAGY Date: 6/14/19
 352• **Print name:** DAVID VARNAGY

353 **Buyer's address for purpose of notice:**
 354• **Address:** See attached Addendum
 355• **Phone:** _____ **Fax:** _____ **Email:** _____

356• **Seller:** City of Winter Park, a Florida municipal corporation Mayer Steve Leary Date: 6/27/2019
 357• **Print name:** Steve Leary
 358• **Seller:** _____ Date: _____
 359• **Print name:** _____

360 **Seller's address for purpose of notice:**
 361• **Address:** See attached Addendum.
 362• **Phone:** _____ **Fax:** _____ **Email:** _____

363• **Effective Date:** 6/27/2019 **(The date on which the last party signed or initialed and delivered the**
 364 **final offer or counter offer.)**

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ADDENDUM TO VACANT LAND CONTRACT

THIS ADDENDUM TO VACANT LAND CONTRACT (this "Addendum") is made and entered into effective as of the ____ day of 6/27/2019, 2019 (the "Effective Date"), by and between the **CITY OF WINTER PARK**, a Florida municipal corporation ("Seller"); and **MAX3D, LLC**, a Florida limited liability company ("Buyer").

WHEREAS, Seller and Buyer will enter into a Vacant Land Contract (the "Contract") for the purchase and sale of the Property described therein.

WHEREAS, Seller and Buyer wish to attach this Addendum to the Contract regarding various provisions of the Contract as outlined herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Defined Terms. Any defined term used in this Addendum that is not specifically defined herein shall have the meaning given to such term in the Contract.
2. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.
3. Time for Acceptance. Paragraph 3 of the Contract is amended such that Buyer shall execute and deliver the Contract and Addendum to Seller and Seller shall submit the same for approval to the Winter Park City Commission. The Contract and Addendum shall remain a valid and binding offer provided the same is approved by the City Commission and then executed by the Mayor or other authorized representative of the Seller within sixty (60) days from the date Buyer delivers the same to the Seller.
4. Closing Date. Paragraph 4 is hereby amended to provide that the transaction shall close ten (10) days after the later of the following:
 - a. adoption of the ordinance by the Seller approving the sale of the Property;
 - b. expiration of the Feasibility Study Period;
 - c. receipt of a written waiver from Lessee (as hereinafter defined in paragraph 5b) of Lessee's right of first refusal;
 - d. the date Lessee's right of first refusal expires without exercise.
5. Title. Paragraph 7 of the Contract is amended to provide that Seller, in addition to the matters set forth therein, will convey the Property to Buyer subject to the following:
 - a. License Agreement between City of Winter Park and Atlantic Civil Constructors Corporation dated April 21, 2016;
 - b. Lease Agreement between John W. Prevatt, et. al. ("Lessor") and Clear Channel Outdoor Inc., fka Eller Media Company ("Lessee") and all

amendments thereto (the "Lease"). Pursuant to the Lease, Seller must give written notice to Lessee of the terms and price offered by Buyer. Lessee shall be entitled to sixty (60) days to acquire the Property on the terms and conditions of the Contract as modified by this Addendum. In light of Lessee's rights described above, Seller shall provide Lessee with written notice as outlined above within ten days from the Effective Date of the Contract. If Lessee exercises its right to purchase the Property as outlined above, Buyer's rights under the Contract and Addendum shall terminate and Buyer's deposit shall be returned to Buyer.

c. The restrictions set forth in Paragraph 11 below.

6. Costs. Paragraph 9 of the Contract is revised to provide that Seller and Buyer shall be responsible for the following respective costs:

a. Seller will pay:

1. Seller's attorney's fees;
2. One-half of the escrow and closing fees charged by the escrow and closing agent;
3. The cost to prepare the deed and other documents of conveyance;
4. The premium and related charges for the standard owner's title insurance policy excluding any endorsements or supplemental coverage Buyer may choose to obtain;
5. All amounts to obtain releases of any mortgages, liens or encumbrances that Seller is required to remove;
6. Such other costs not described above that are allocated to Seller under the Contract.

b. Buyer will pay:

- a. Buyer's attorney's fees;
- b. One-half of the escrow and closing fees charged by the escrow and closing agent;
- c. The cost to obtain a survey;
- d. All state, county and city transfer taxes and documentary stamp tax arising from the conveyance by Seller to Buyer;
- e. Fees to record the deed;
- f. The premium and related charges for any endorsements and additional coverage Buyer may choose to obtain with respect to the owner's policy, any lender's title insurance policy and endorsements or supplemental coverage related thereto;
- g. Advertising costs;
- h. Appraisal costs;
- i. All costs, fees and expenses in conjunction with Buyer's mortgage financing including documentary stamp tax and intangible tax;

- j. Such other costs not described above that are allocated to Buyer under the Contract.

7. Seller Default. Paragraph 15(a) of the Contract is deleted and replaced with the following: "If Seller fails, neglects, or refuses to perform Seller's obligations under this contract, Buyer may elect to receive a return of Buyer's deposit(s) or seek specific performance."

8. Buyer Default. Paragraph 15(b) of the Contract is amended to delete the words "or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this contact".

9. Brokers. As indicated in paragraph 20 of the Contract, Seller represents that its only broker for this transaction is CBRE, Inc., which will be paid a broker's fee by Seller for this transaction in accordance with Seller's agreement with CRBE, Inc. Buyer represents that its only broker for this transaction is Atlas Affiliated, LLC, which will be paid its broker's fee by Buyer. Seller and Buyer shall indemnify and hold each other harmless from any loss or damage arising from such party's representations set forth above.

10. Additional Terms. The following provisions are added to the Contract:

a. Notwithstanding any contrary provision in this Addendum or the Contract:

- 1. Seller has no obligation to grant or approve any comprehensive plan, land use, rezoning, site plan or other approvals for the Property;
- 2. Nothing in this Addendum or Contract shall relieve Buyer from applying for any approvals necessary for development of the Property;
- 3. Seller has no obligation to sign any documents Buyer is required to file in connection with development or rezoning approvals.

b. Seller's obligations are contingent upon adoption of an ordinance by the City of Winter Park approving the Contract and sale of the Property.

11. Restrictions. The deed in favor of the Buyer shall include restrictions that prohibit the following uses on or in conjunction with the Property, which restrictions shall run with the land and shall be enforceable by Seller:

- a. Used car sales;
- b. Billboard advertising or any related use that allows a billboard structure on the Property except:
 - 1. if the same is authorized pursuant to the existing Billboard Lease referenced in Paragraph 5b above, which use may continue but only until the term of said lease expires on or about July 17, 2020.
 - 2. if the use of the existing billboard structure is pursuant to a plan proposed by Buyer and approved by Seller in writing, which approval is in Seller's sole discretion. If Seller does not approve Buyer's

proposed plan, Buyer shall, at Buyer's cost, remove the billboard structure within sixty days after the above referenced Billboard Lease expires on July 17, 2020.

12. Buyer's address for purpose of notice is:

MAX3D, LLC
630 North Wymore Road
Suite 370
Maitland, FL 32751

13. Seller's address for purpose of notice is:

City of Winter Park
Attn: Randy Knight, City Manager
401 South Park Avenue
Winter Park, FL 32789

With a copy to:
A. Kurt Ardaman, Esquire
Fishback Law Firm
1947 Lee Road
Winter Park, FL 32789

14. Environmental Assessment. If Buyer has a Phase I environmental assessment completed on the Property during the sixty day Feasibility Study Period and the written report recommends that Buyer complete a Phase II environmental assessment, Buyer, may, at Buyer's option, extend the Feasibility Study Period for thirty days by providing written notice to Seller exercising the extension option along with a copy of the written report prior to the end of the initial sixty day Feasibility Study Period. At the end of the initial sixty day Feasibility Study Period, the initial Deposit in the amount of \$50,000.00 is non-refundable unless the Contract is terminated in the manner set forth hereinafter.

If Buyer has a Phase II environmental assessment report completed and it recommends remediation of the Property, Buyer shall provide a copy of the report to Seller, and unless Seller or Buyer agrees to pay the cost of remediation or Seller and Buyer enter into a mutually acceptable amendment to the Contract that resolves their respective concerns regarding remediation, either Seller or Buyer may, at any time prior to the end of the Feasibility Study Period, as extended, terminate the Contract by providing written notice to the other party, in which case, the Deposit shall be returned to Buyer. If the Contract is not terminated by Seller or Buyer prior to the end of the Feasibility Study Period, as extended, the parties shall proceed to closing and Buyer shall accept the Property at closing in its then current condition without any reduction in the purchase price.

15. No Further Changes. The foregoing terms and conditions are hereby incorporated into the Contract. Except as set forth in this Addendum, the Contract in its original form shall have full force and effect. In the event of any conflict or ambiguity between the Contract and this

Addendum, this Addendum controls. This Addendum may be executed in one or more counterparts. Signed counterparts delivered by facsimile or electronic mail shall constitute originals.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have set their hands and seals as of the Effective Date of this Addendum.

SELLER :

CITY OF WINTER PARK
a Florida municipal corporation

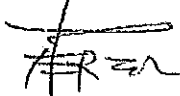
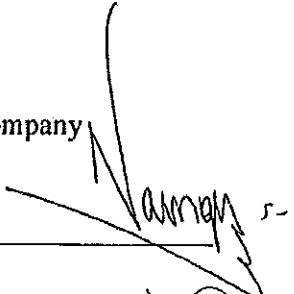
DocuSigned by:
By: Mayor Steve Leary
D83F936A0393492...

Mayor Steve Leary
(Print Name)

Its: Mayor

BUYER:

MAX3D, LLC
a Florida limited liability company

By:  

Manuel Perez DAVID VARNAGY
(Print Name)

Its: OWNERS

FIRST AMENDMENT TO VACANT LAND CONTRACT

THIS FIRST AMENDMENT TO VACANT LAND CONTRACT (this "First Amendment") is made and entered into effective as of the 26 day of July, 2019 by and between the **CITY OF WINTER PARK**, a Florida municipal corporation ("Seller"); and **MAX3D, LLC**, a Florida limited liability company ("Buyer").

WHEREAS, on or about June 27, 2019, Seller and Buyer entered into that certain Vacant Land Contract and Addendum to Vacant Land Contract (hereinafter collectively the "Contract") for the purchase and sale of the Property described therein, which Contract has an Effective Date of June 27, 2019.

WHEREAS, the Feasibility Study Period under the Contract currently expires 60 days after the Effective Date and Buyer has an option to extend the Feasibility Study Period for an additional 30 days under certain circumstances.

WHEREAS, Buyer has requested and Seller has agreed that the Feasibility Study Period be amended so that it expires 120 days after the Effective Date with no extensions.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Defined Terms. Any defined term used in this First Amendment that is not specifically defined herein shall have the meaning given to such term in the Contract.

2. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

3. Feasibility Study Period. Paragraph 8(a) of the Contract is amended such that the Feasibility Study Period is 120 days rather than 60 days.

4. Environmental Assessment. Paragraph 14 of the Addendum is deleted and replaced with the following:

14. Environmental Assessment. If Buyer has a Phase II environmental assessment report completed and it recommends remediation of the Property, Buyer shall provide a copy of the report to Seller, and unless Seller or Buyer agrees to pay the cost of remediation or Seller and Buyer enter into a mutually acceptable amendment to the Contract that resolves their respective concerns regarding remediation, either Seller or Buyer may, at any time prior to the end of the Feasibility Study Period, terminate the Contract by providing written notice to the other party, in which case, the Deposit shall be returned to Buyer. If the Contract is not terminated by Seller or Buyer prior to the end of the Feasibility Study Period, the parties shall proceed to closing and Buyer shall accept the Property at closing in its then current condition without any reduction in the purchase price.

5. No Further Changes. The foregoing terms and conditions are hereby incorporated into the Contract. Except as set forth in this First Amendment, the Contract shall have full force and effect. In the event of any conflict or ambiguity between the Contract and this First Amendment, this First Amendment controls. This First Amendment may be executed in one or more counterparts. Signed counterparts delivered by facsimile or electronic mail shall constitute originals.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have set their hands and seals as of the date set forth above.

SELLER :

CITY OF WINTER PARK
a Florida municipal corporation

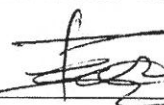
By: Randy Knight

Randy Knight
(Print Name)

Its: City Manager

BUYER:

MAX3D, LLC
a Florida limited liability company

By: 

MANUEL PEREZ IZONANO DAVID VAN DYKE
(Print Name)

Its: _____



city commission agenda item

item type	Public Hearings	meeting date	8/12/2019
prepared by	Planning	approved by	
board approval	final vote		
strategic objective	Intelligent Growth and Development		

subject

Request to Appeal the Interpretation and Determination of the Building and Zoning Official:

- Regarding the interpretation and determination that nonconforming accessory structures are to be utilized in determining the average lakefront setback (Sec. 58-87) as part of the considerations by the Planning and Zoning Board in lakefront plan reviews, particularly as applied to the June 4, 2019 approval at 1204 North Park Avenue.

motion / recommendation

Recommendation from the P&Z Board to uphold the interpretation as set forth by Zoning Official George Wiggins' interpretation letter contained in the agenda package and to reject the appeal that was filed by Attorney Rebecca Wilson on behalf of her clients Mr. and Mrs. Missigman.

background

The City has received an appeal pursuant to Section 58-94 of the Zoning Code contesting the City's interpretation and determination that accessory structures should not be counted when determining average lakefront setbacks per Section 58-87, if such structures are nonconforming per Section 58-64.

Appeal Process: This appeal was first heard by the P&Z Board on July 9, 2019, and their decision was to uphold the interpretation as set forth by Zoning Official, George Wiggins', interpretation letter. Following that decision, the applicant has chosen to further appeal this decision to the City Commission.

Background on Appeal: On June 4, 2019, the City Planning and Zoning Board approved a new one-story house at 1204 N. Park Avenue pursuant to the lakefront regulations of Section 58-87. Attached is the letter of Appeal from attorney Rebecca Wilson representing the adjacent homeowners at 1216 N. Park Avenue. Also attached is the response providing the City's official interpretation.

In summary, the appeal is based on the Nonconforming Code text 58-64 (a) that says "nonconformities shall not be ... used as grounds for adding other structures

or to allow uses prohibited elsewhere in the same districts". The City's position is that this sentence of 58-64(a)(1), City Code is expressing an intent to not justify permitting the construction of a new structure that is prohibited by the Zoning Code based on the existence of a non-conforming structure. Section 58-87(d)(5) (a), City Code provides for a measurement of the average existing structures and accessory structures within 200 feet of the subject property; it does not state to exclude from such calculation non-conforming structures or accessory structures. Further, regardless of the outcome of that calculation, the P&Z Board has the authority to approve a setback from the lake's ordinary high water elevation of 50 feet or greater.

In accordance with the general rules of code interpretation [Sec. 1-2, City Code –*Generally* (1)], the more specific code provision controls over the more general code provision. Section 58-87(d)(5)(a), City Code is very specific to the issue of how to calculate an average of setbacks for giving the P&Z Board guidance on establishing proposed structures' setbacks from the lake's ordinary high water elevation for the purposes of achieving the lakefront review objectives stated in Section 58-87(a), City Code. On the other hand, Section 58-64(a)(1), City Code is a rather general statement of intent.

It is the City's interpretation that Section 58-64(a)(1), City Code does not prohibit the use of an existing legally non-conforming structures located within 200 feet of a property that is the subject of a lakefront review for purposes of calculating the average setback from the water's ordinary high water elevation pursuant to Section 58-87(d)(5)(a), City Code, since the new structure to be considered for approval is and must be conforming to the Zoning Code. In other words, there is no conflict between using an existing non-conforming structure in such average setback calculation if the existing non-conforming structure is not being used to justify the construction of another non-conforming structure.

Further, regardless of the result of the average setback calculation, the P&Z Board has the authority to approve a setback from the lake of 50 feet or more. Thus, even if a structure not conforming to the current Zoning Code lake setback requirement is used in the calculation of average setbacks within 200 feet of the subject property, so long as the P&Z Board imposes a 50 feet setback or greater from the water's ordinary high water elevation, the proposed new structure is conforming to the Zoning Code for purposes of such setback requirement.

If a situation arises where an applicant was attempting to establish a lakefront setback that would be closer to the lake's ordinary high water elevation than the Zoning Code permits, Section 58-64(a)(1), City Code can be used as justification for denying the requested non-conforming setback.

Planning and Zoning Board Minutes from July 9, 2019 Meeting:

AP #19-01 REQUEST TO APPEAL THE INTERPRETATION AND DETERMINATION OF THE BUILDING AND ZONING OFFICIAL: REGARDING THE INTERPRETATION AND DETERMINATION THAT NONCONFORMING ACCESSORY STRUCTURES ARE TO BE UTILIZED IN DETERMINING THE AVERAGE LAKEFRONT SETBACK (SEC. 58-87) AS

**PART OF THE CONSIDERATIONS BY THE PLANNING AND ZONING BOARD IN LAKEFRONT PLAN REVIEWS, PARTICULARLY AS APPLIED TO THE JUNE 4, 2019 APPROVAL AT 1204 N. PARK AVENUE.
Board Member Laura Walda recused herself from this item.**

Planning Manager Jeff Briggs addressed the board stating that an appeal of staff's interpretation occurs when someone disagrees with the city's interpretation of a section of the city code. Mr. Briggs also advised that if either party is unhappy with the decision rendered by the Planning and Zoning Board, they may appeal up to the City Commission. Mr. Briggs advised that topically, the aim is to stay focused only in the interpretation question as to whether non-conforming structures are used when calculating averages for lakefront setbacks.

The City Attorney, Dan Langley, then addressed the board stating that the decision of the Planning and Zoning Board during the previous meeting was final and that the focus of the appeal was strictly on the interpretation of using non-conforming use structures when calculating setbacks. Mr. Langley then went over the provisions at issue and stated that the appeal was requested to go to the commission but the process for the appeal means that any appeals of their decisions returns to the Planning and Zoning Board first.

Mr. Langley then discussed with the board the Zoning Official, George Wiggins' interpretation letter providing that the setbacks provision established that non-conforming structures are to be used when calculating setback averages. The ultimate goal of this provision is to avoid creating additional non-conforming use structures.

Board member Owen Beitsch then asked Mr. Langley to affirm that if the board decided that the staff interpretation was incorrect, then the previous decision could not be changed. Mr. Langley stated that he was of the opinion that if that were to be the case, there would be no legal impact of the Planning and Zoning Board's previous decision.

Attorney for the Applicant, Rebecca Wilson of Lownses, Drosdick, Doster, Kantor, & Reed, P.A., 215 N. Eola Drive, Orlando, FL 32801, addressed the board on behalf of the Applicants, Paul M. Missigman and Layne M. Missigman. Mrs. Wilson began by stating that if the Planning and Zoning Board changed the interpretation today, then the interpretation should change going forward. Then she stated that she agrees with staff on the duties of the Planning and Zoning Board to move forward or backward setbacks from staff recommendations as relates to setbacks.

Mrs. Wilson then stated that Article III: Zoning is to be read together under the city's Land Development Code and therefore the conclusion would be that non-conforming structures cannot be used when developing conforming structures.

Mrs. Wilson then stated that her other issue with the code is that there is no listed definition of average. She calculated her average as the mean divided by the sum of all of the terms. By calculating the average of all of the structures on each lot, she reached the conclusion that the setback should be much larger than the staff recommendation.

Mrs. Wilson then stated her formal request of the Planning and Zoning Board, to not allow a non-conforming use when determining the addition of waterfront structures and if so, then when determining setbacks, staff should use the average for all structures on each lot in their determination. Discussion then ensued between Mrs. Wilson and board member Owen Beitsch over her proposed calculations stating that they are in fact the weighted average instead of a straight average.

Discussion between sitting Chair Ray Waugh and Mrs. Wilson ensued about using non-conforming structures when calculating the average. Mr. Waugh and Mrs. Wilson disagreed that non-conforming structures are to be used whether they are houses or accessory structures. Mr. Waugh stated that he agreed completely with Mr. Wiggin's interpretation letter and Mrs. Wilson stated that she would like the Board to take into consideration how this will set precedent for future properties being developed on lakefront lots.

Board member Adam Bert then asked Mrs. Wilson what the point of using any structures to begin with why not just use the fifty-foot setback minimum for every new development. Mrs. Wilson responded by stating that the city wrote it to make sure that homes are set back at a rhythm that is visually pleasing.

Mr. Langley then asked Mrs. Wilson if she would use the accessory structures in the front yard in her calculation. She answered no. Then Mr. Bell asked Mrs. Wilson to affirm that the word she had issue with in the code is the work "properties". Mrs. Wilson affirmed stating that the term "property" is vague. Mr. Bell then asked Mrs. Wilson if everyone would want to build at the fifty-foot minimum. Mrs. Wilson responded that that is the reason why there should be an average calculated for every structure facing the lakefront for each lot.

The Board heard public comment from:

Cecelia Bonifay, Akerman, LLC, 420 S. Orange Avenue, Orlando, FL, addressed the board on behalf of original applicants Alan Cohen of 1204 N. Park Avenue and Z Properties, Inc., 271 N. Pennsylvania, Winter Park, FL 32789. Mrs. Bonifay stated that she found it interesting of Mrs. Wilson to try to twist the interpretation of using non-conforming structures for the placing of a house that would clearly be a conforming structure. Mrs. Bonifay went on to state that she believes the goal of the government is to allow non-conforming structures to exist, but not to expand upon them or add new non-conforming structures. Mrs. Bonifay believed that having staff's recommendations, the city attorney's interpretation, and the Zoning Official interpretation letter is more than enough to prove that the applicant's interpretation has no material facts to upend the prior determination made by the Planning and Zoning Board.

The original applicant, Alan Cohen, 1204 N. Park Avenue, Winter Park, FL 32789, addressed the board. Dr. Cohen stated that when planning his house, he, his wife, and his builder made every attempt to build the house the right way without a single variance. Dr. Cohen went on to state that the house next door, which he built, is a grand house that sits eight feet higher than the houses around it and that he is available to answer any questions. Dr. Cohen finally wanted to clarify that the previous plan from a different buyer fell through only when that buyer backed out

after it was approved by the Planning and Zoning Board.

Bill Roll, 1194 N. Park Avenue, Winter Park, FL 32789, a neighbor of the two properties, addressed the board. Mr. Rolls stated that he had previously served on the Planning and Zoning Board and remembers that during his time, he had never seen a non-conforming structure be used in any lakefront setback determinations. Mr. Rolls also stated that he believes that this should not be allowed to continue.

George Wiggins, Director of Building, addressed the board in reference to his written interpretation letter. Mr. Wiggins stated that there would be no purpose in placing the minimum setback of fifty feet if there were no non-conforming structures around the lake. Mr. Wiggins further stated that the minimum is meant to be a catchall for averages that may come to less than fifty feet using non-conforming structures.

Mick Knight, 1564 Dale Avenue, Winter Park, FL 32789, is the real estate agent for the two properties at issue. Mr. Knight stated that the non-conforming structure provides benefit for the applicant's property but the applicant's request makes it so that it does not benefit surrounding properties. Mr. Knight further stated that this is a very unusual situation and if the applicant has the right to block the neighboring views, then it is reasonable to use the twelve-foot setback used by staff in their recommendation.

Charlie Clayton, 1230, N. Park Avenue, Winter Park, FL 32789, lives two doors down from the applicant's property. Mr. Clayton asked that following this decision, if it is subjective for the Planning and Zoning Board to determine that the twelve-foot setback would be used in determining future redevelopment for other neighboring properties. Mr. Waugh answered that it is subjective and Mr. Bell stated that the only thing that is given is the fifty-foot minimum protection and that the average is calculated using every property within 200 feet.

No one else wished to speak. The public hearing was closed.

The board asked for clarification from the City Attorney as to whether they need to make a motion or not. Mr. Langley affirmed.

Motion made by Owen Beitsch, seconded by Laura Turner to uphold the interpretation as set forth by Zoning Official George Wiggins' interpretation letter contained in the agenda package and to reject the appeal that was filed by Attorney Rebecca Wilson on behalf of her clients Mr. and Mrs. Missigman.

Motion carried unanimously with a 6-0 vote.

[alternatives / other considerations](#)

fiscal impact

ATTACHMENTS:

Description

Backup Materials

Upload Date

8/1/2019

Type

Backup Material

June 10, 2019

Randy B. Knight, City Manager
City of Winter Park
401 Park Avenue South
Winter Park, FL 32789-4386**Re: Zoning Official Interpretation**

Dear Randy:

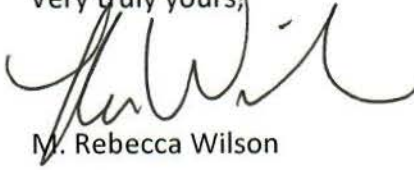
This firm represents Paul and Layne Missigman with respect to their home located at 1202 N. Park Avenue. On May 30, 2019 the City posted the Staff Report for SPR 19-05 *Request of Z Properties for Approval to Construct a New 4,245 square foot single family home located at 1204 N. Park Avenue on Lake Maitland, Zond R-1AAA*. In the staff report, staff took the position that:

- City Code Section 58-64(a)(1) does not apply to Lakefront review;
- Section 58-87 statement that “the setback from the water’s ordinary high water elevation . . . shall be the average established by the adjacent waterfront properties within 200 feet of the subject property or 50 feet, whichever is greater” requires that the setback of the closest structure to the lake is used and not the average of the setback for the width of the Lot; and
- Section 58-87(d)(5) requires non-conforming structures to be included in the required calculation of 58-87(d)(5)(a) for adjacent lots.

The staff report was presented at the June 4, 2019 Planning and Zoning Board meeting. Planning and Zoning Board heard our concerns about the misinterpretation of Section 58-64 and Section 58-87. Planning and Zoning Board agreed with Staff’s interpretation. Accordingly, consistent with City Code Section 58-94, my client is an aggrieved party who wishes to appeal the Staff’s interpretation of Section 58-64 and Section 58-87 to the City Commission. Please respond with the date of the hearing and the “fee” prescribed by the City Commission to cover the administrative costs of such an appeal.

Randy B. Knight
June 10, 2019
Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Rebecca Wilson". The signature is fluid and cursive, with a large initial "M" and "W".

M. Rebecca Wilson

MRW/nle

cc: Kurt Ardaman, Esq.
Dan Langley, Esq.
Bronce Stephenson
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**Building &
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VIA EMAIL (rebecca.wilson@lowndes-law.com)

M. Rebecca Wilson

215 North Eola Drive,

Orlando, Florida 32801-2028

RE: Zoning Official Interpretation Appeal related to determination of lakefront setback at 1204 N. Park Avenue

Dear Ms. Wilson:

The City is in receipt of your June 10, 2019 letter stating the intent of your clients to appeal a written interpretation made in a Staff Report for SPR 19-05 relating to property located at 1204 N. Park Avenue heard during the June 4, 2019 Planning and Zoning Board (P&Z Board) meeting. As the City's Building and Zoning Official, I am responding to your correspondence.

I respectfully submit your letter is not an accurate summary of the Staff Report or of the position taken by the City staff during the June 4, 2019 Planning and Zoning Board meeting. Further, the written Staff Report that you reference does not specifically address Section 58-64(a)(1), City Code and the arguments that you are making in your June 10, 2019 letter and the verbal discussions that occurred at the June 4, 2019 Planning and Zoning Board meeting concerning the interaction between Section 58-64(a)(1) and the provisions of Section 58-87, City Code. In summary, the Staff Report does not address in writing all matters that are the subject of your appeal.

However, as a matter of courtesy, I will accept your June 10, 2019 letter as a request for a written interpretation from me on such issues raised in your letter. Further, I will process your request as an appeal of the written interpretation on such matters addressed herein for a hearing before the Planning and Zoning Board at their first meeting next scheduled 20 days after filing of this appeal with payment of applicable fee. As stated in Section 58-94(a) & (b), City Code, appeals of written interpretations of the Building and Zoning Official go to the Planning and Zoning Board and not directly to the City Commission.

Decisions of the Planning and Zoning Board under their lakefront plan review authority are final under the Zoning Code, and action taken to overturn their decision must be taken to Orange County Circuit Court.

The relevant portions of Section 58-64(a)(1) and Section 58-87, City Code cited in your letter state:

Sec. 58-64. - Nonconforming lots, nonconforming uses and nonconforming structures.

(a) Purpose and intent.

(1) Within the zoning districts established by this article or amendments that may later be adopted here exist: (a) lots; (b) structures, and (c) uses of land and structures which were lawful before this article was passed or amended but which would be prohibited, regulated or restricted under the terms of this article or future amendment. **It is the intent of this article that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or to allow uses prohibited elsewhere in the same district.**

Sec. 58-87. Lakefront lots, canalfront lots, streamfront lots, wetlands, boathouses and docks.

(a) Purpose and intent. It is the intent of this section to insure that buildings and structures on canalfront lots, lakefront lots and streamfront lots are not constructed or placed such that boating hazards will be created, that construction shall be compatible with the natural grade of the property, that water pollution from stormwater runoff and other sources will be minimized, that views of water from adjoining properties will not be unduly impaired, that existing trees shall be preserved to the degree reasonably possible and the appearance of the property and the shore when viewed from the water will be kept as natural as reasonably possible. The city's lakes, canals and streams are among the city's greatest assets, and it is in the public interest to require that their aesthetic appeal and water quality be maintained and enhanced when possible.

(b) Building plans.

(1) A building permit shall not be issued for any new structure or building, addition to any existing structure or building, fence or wall or significant change to an existing property on a lakefront, canalfront or streamfront lot until satisfactory building plans are reviewed and approved that are deemed in compliance with the objectives established in the aforementioned purpose and intent. The planning department shall review all such plans and provide a recommendation to the planning and zoning board.

(d) Other structures on lakefront, canalfront or streamfront lots. The following standards shall apply to all construction on lakefront, canalfront or streamfront lots:

(5) Structures on lakefront lots require the approval of the planning and zoning commission prior to the issuance of a building permit. As conditions necessitate, the planning and zoning commission or city commission may impose increased setbacks in concert with their waterfront review or conditional use authority as necessary to accomplish the objectives in this section. Structures in this context shall also include swimming pools, cabanas, gazebos, screen enclosures, tennis courts and other accessory buildings.

(a) Setbacks - Single family/duplex. **The setback from the lake's ordinary high water elevation for single family and duplex buildings and any other accessory structures on those properties** (other than boathouses, docks, over the water gazebos or retaining walls) **shall be the**

average established by the adjacent lakefront properties within 200 feet of the subject property, or 50 feet, whichever is greater. The planning and zoning commission shall have the authority to approve lakefront and canal front setbacks less than the average to a minimum of 50 feet in accordance with their lakefront review authority.

The last sentence of 58-64(a)(1), City Code is expressing an intent to not justify permitting the construction of a new structure that is prohibited by the Zoning Code based on the existence of a non-conforming structure. Section 58-87(d)(5)(a), City Code provides for a measurement of the average existing structures and accessory structures within 200 feet of the subject property; it does not state to exclude from such calculation non-conforming structures or accessory structures. Further, regardless of the outcome of that calculation, the P&Z Board has the authority to approve a setback from the lake's ordinary high water elevation of 50 feet or greater.

In accordance with the general rules of code interpretation [Sec. 1-2, City Code –*Generally* (1)], the more specific code provision controls over the more general code provision. Section 58-87(d)(5)(a), City Code is very specific to the issue of how to calculate an average of setbacks for giving the Planning and Zoning Board guidance on establishing proposed structures' setbacks from the lake's ordinary high water elevation for the purposes of achieving the lakefront review objectives stated in Section 58-87(a), City Code. On the other hand, Section 58-64(a)(1), City Code is a rather general statement of intent.

It is my interpretation that Section 58-64(a)(1), City Code does not prohibit the use of an existing legally non-conforming structure located within 200 feet of a property that is the subject of a lakefront review for purposes of calculating the average setback from the water's ordinary high water elevation pursuant to Section 58-87(d)(5)(a), City Code, since the new structure to be considered for approval is and must be conforming to the Zoning Code. In other words, there is no conflict between using an existing non-conforming structure in such average setback calculation if the existing non-conforming structure is not being used to justify the construction of another non-conforming structure.

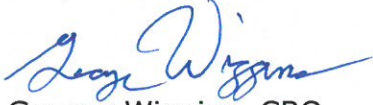
Further, regardless of the result of the average setback calculation, the Planning and Zoning Board has the authority to approve a setback from the lake of 50 feet or more. Thus, even if a structure not conforming to the current Zoning Code lake setback requirement is used in the calculation of average setbacks within 200 feet of the subject property, so long as the Planning and Zoning Board imposes a 50 feet setback or greater from the water's ordinary high water elevation, the proposed new structure is conforming to the Zoning Code for purposes of such setback requirement.

As another example of application of the lakefront setback determination, consider those lakefront homes built within the minimum 50 foot setback prior to the current Zoning Code. When a new home is proposed alongside one of these older existing nonconforming homes, it has always been the practice to average in the setback of those homes, and if determined to be less than 50 feet from the ordinary high water line, then the 50 foot minimum overrides the average lakefront setback similar to the situation be covered in this Zoning Code determination.

If a situation arises where an applicant were attempting to establish a lakefront setback that would be closer to the lake's ordinary high water elevation than the Zoning Code permits, Section 58-64(a)(1), City Code can be used as justification for denying the requested non-conforming setback.

Given the clarity provided in this written interpretation, please let me know if you wish to withhold filing this zoning interpretation appeal.

Respectfully,

A handwritten signature in blue ink that reads "George Wiggins". The signature is fluid and cursive, with the first name "George" and last name "Wiggins" clearly legible.

George Wiggins, CBO

Director of Building & Permitting Service

Winter Park Building and Zoning Official

C: Randy Knight, City Manager
Kurt Ardaman, City Attorney
Dan Langley, Deputy City Attorney
Bronce Stephenson, Director of Planning & Community Development
Jeff Briggs, Planning Manager