

ORDINANCE NO. 3023-15

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING ARTICLE I, CHAPTER 70, SECTION 70-10 OF THE CODE OF ORDINANCES REGARDING PEDDLERS, HAWKERS AND SOLICITORS BY CREATING REGULATIONS FOR STREET PERFORMERS IN CERTAIN DESIGNATED AREAS OF THE CITY; PROVIDING LEGISLATIVE FINDINGS OF THE CITY; PROVIDING ADDITIONAL DEFINITIONS; PROVIDING FOR PROHIBITIONS AND UNLAWFUL ACTS OF STREET PERFORMERS; PROVIDING AMPLE ALTERNATIVE CHANNELS RELATING TO PERFORMANCE AREAS; PROVIDING PENALTIES; AND PROVIDING FOR SEVERABILITY, CODIFICATION, CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, it is the primary concern and interest of the City of Winter Park (the “City”) to vigilantly protect and preserve the quality and historical and cultural ambience of the Central Business District of the City and other areas of the City designated by the City Commission for the benefit of the City’s residents, business owners and occupants, and visitors and tourists to such areas; and

WHEREAS, the City desires to balance the freedom of speech and freedom of expression protections afforded by federal and Florida law of those desiring to perform on the streets of the City that is intended to or has the effect of gathering large crowds and audiences with protected and significant governmental interests related to traffic and sidewalk congestion, pedestrian safety, aesthetics, the ability of emergency response personnel to reach locations, limiting access to and egress from businesses and residences, and other interests to ensure smooth pedestrian traffic flow, relieve congestion and overcrowding, limit disorderliness, and prevent potential interference with and visibility obstruction for motorists attempting to navigate through the Central Business District and other designated areas; and

WHEREAS, the City recognizes that allowing street performers during certain times, at certain locations, and in certain manners adversely affects or may adversely affect the City and the public health, safety, and welfare of the City’s residents, business owners and occupants, and visitors and tourists to certain areas within the City; and

WHEREAS, the City recognizes that established federal and Florida law allows municipalities to regulate the time, place, and manner of speech and other forms of expression where such regulations are narrowly tailored, content-neutral, and leave open ample alternative channels of communication for conveying speech and displaying expressive activity; and

WHEREAS, the City recognizes that the Eleventh Circuit Court of Appeals, in *Horton v. City of St. Augustine*, upheld reasonable time, place, and manner regulations that related to street performers who performed in a limited area in St. Augustine’s historic business district. 272 F.3d 1318 (11th Cir. 2001); and

WHEREAS, upon consideration, the City Commission has determined that the reasonable and content-neutral time, place, and manner restrictions outlined herein that apply to certain conduct on the streets of the City will be effective, are narrowly tailored to address the governmental interests outlined herein, and constitute the least restrictive alternative for the purposes intended and set forth herein; and

WHEREAS, the City recognizes that street performers may intend to reach a particular audience at a particular location, and the City desires that such performers be afforded an ample opportunity to engage in expressive activities and performances in City-designated area(s) located reasonably proximate to any prohibited public area as defined herein to ensure that messages and performances can be conveyed to the street performer's intended audience.

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

SECTION 1. Recitals. The City Commission hereby ratifies, approves, and adopts all of the preceding "Whereas" clauses, which constitute the legislative findings of the City Commission.

SECTION 2. Adoption. Article I, Chapter 70, Sections 70-10 through 70-35 are hereby amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 70-10. – Regulation of Street Performers.

(a) *Intent.* The City Commission of the City of Winter Park recognizes that street performers, as defined in this section, are afforded rights defined in established federal and Florida law relating to freedom of expression and freedom of speech. The City Commission further desires to balance such rights with significant and substantial governmental interests related to the public health, safety, and welfare as outlined herein. The City Commission finds that street performers in certain areas of the City defined herein and designated as the prohibited public area have interfered with and have a substantial likelihood of interfering with pedestrian and vehicular traffic of the City, including residents, business owners and occupants, and visitors and tourists by, among other things, attracting audiences which congest the prohibited public area, increase the likelihood for conflict and disorderliness, and may impede the ability of emergency response personnel to reach various locations. Moreover, such street performers may cause or contribute to pedestrian and vehicular safety risks through increased congestion, sight obstruction and obfuscation, and obstruction of pedestrian rights-of-way and crosswalks. The City finds that the existence of street performers in the prohibited public area adversely affects the City's interests in maintaining the aesthetics of the prohibited public area and character of same in a city with a unique historic downtown district. Additionally, the City finds that such street performers adversely affect the interests of residents and code compliant businesses and museums in the enjoyment of peace, repose, and quiet in their homes, businesses, and museums. Therefore, it is the intent of the City to regulate and limit street performers from performing in the prohibited public area of the City. It is the further intention of the City to balance the above-referenced regulations and governmental interests with the recognized rights of street performers

to practice freedom of speech and freedom of expression to their intended audiences. Accordingly, the City further intends for street performers subject to these provisions to be afforded ample alternative channels of communication and expression and reasonable access to proximate performance areas where the street performers may reach their intended audience.

(b) *Definitions.* For purposes of this section, the following words, terms, and phrases, shall have the following meanings subscribed to them except where the context clearly indicates a different meaning:

(1) *Perform and performance* means to engage in any of the following activities: acting; singing; playing musical instruments; puppetry; pantomiming, miming; performing or demonstrating magic or acts of illusion; dancing; juggling; or the public display of and composition or creation of crafts, sculpture, artistry, writings, or compositions, including the application of brush, pastel, crayon, pencil, or other similar objects applied to paper, cardboard, canvas, cloth or to other similar medium.

(2) *Prohibited street performer activity* means any activity performed, effectuated, or directed by any street performer during a performance that involves the utilization of any spray painting, or the use of aerosols or propellants, including air pressure, to spray or apply any liquid. Prohibited street performer activity also includes the utilization of fire during a performance.

(3) *Prohibited public area* means the pedestrian accessed public areas of the Central Business and Hannibal Square Districts along Park Avenue from Fairbanks Avenue to Swoope Avenue, and along New England Avenue from Park Avenue to Pennsylvania Avenue including the area within fifty (50) feet of the public right-of-way of Park Avenue and New England Avenue on the public lanes, streets, thoroughfares, and ways, including the Winter Park train station and the public property at what is known as the Winter Park Farmer's Market and the Winter Park Historical Association located at 200 West New England Avenue, excluding public performance zones as provided in subsection (d)(2). A map of the prohibited public area is attached as Exhibit "1."

(4) *Street performer* means individuals or groups who perform in a public area or areas for the purpose of providing public entertainment or whose performance otherwise has the effect of drawing a crowd or audience.

(c) *Prohibition.* No street performers may perform in the prohibited public area, and no street performer may perform a prohibited street performer activity in the City.

(d) *Permitted performances and conditions.* Street performers may perform in the following locations and circumstances:

(1) *Public areas not encompassed in the prohibited public area.* Street performers may perform in all public areas of the City where the public is allowed, including without limitation, the public performance zone(s) provided in subsection (d)(2) except those areas designated as the prohibited public area as set forth in

subsection (b)(3) of this section. Notwithstanding the preceding, street performers shall not perform in locations or in a manner that: (i) unreasonably interferes with, obstructs, or obfuscates the visibility or sight distances of any motorist traveling on or entering or exiting any street, thoroughfare, or right-of-way of the City; (ii) unreasonably interferes with, obstructs, or impedes the safe and orderly movement of pedestrian traffic proximate to City crosswalks; or (iii) is in violation of any other City Ordinance.

(2) *Public performance zone(s).* Street performers may perform in the public performance zone(s), which includes the entirety of Central Park and such other public performance zone(s) as are designated by the City Manager or his or her designee. The location of the public performance zone(s) shall at all times be reasonably proximate to the prohibited public area to ensure that street performers may reach their intended audiences. A map of the public performance zone(s) shall be provided upon request. Notwithstanding the preceding, the City Manager or his or her designee may restrict, limit, or modify any public performance zone(s) for special events or private events where street performers would likely interfere with the event or portions thereof. To the extent such special events or private events necessitate the closing of customary public performance zone(s), the City Manager or his or her designee may provide alternative or additional public performance zone(s) as identified on the attached Appendix "1-4" or as may otherwise be designated as necessary. All street performers who perform in any public performance zone(s) shall not perform in a location or in a manner that is in violation of any other City Ordinance.

(e) *Penalties.* Offenses under this section shall be punishable as provided in section 1-7 of the City Code of Ordinances.

70-11—70-35. – Reserved.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase, provision, or word of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then such invalidity or unconstitutionality shall not be held to invalidate or impair the validity, force, or effect of any other remaining provisions of this Ordinance.

SECTION 4. Codification. It is the intention of the City Commission and it is hereby ordained that section 2 of this Ordinance shall become and be made a part of the City Code of Ordinances. The provisions of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "Ordinance" may be changed to "Section," "Article," or other appropriate word.

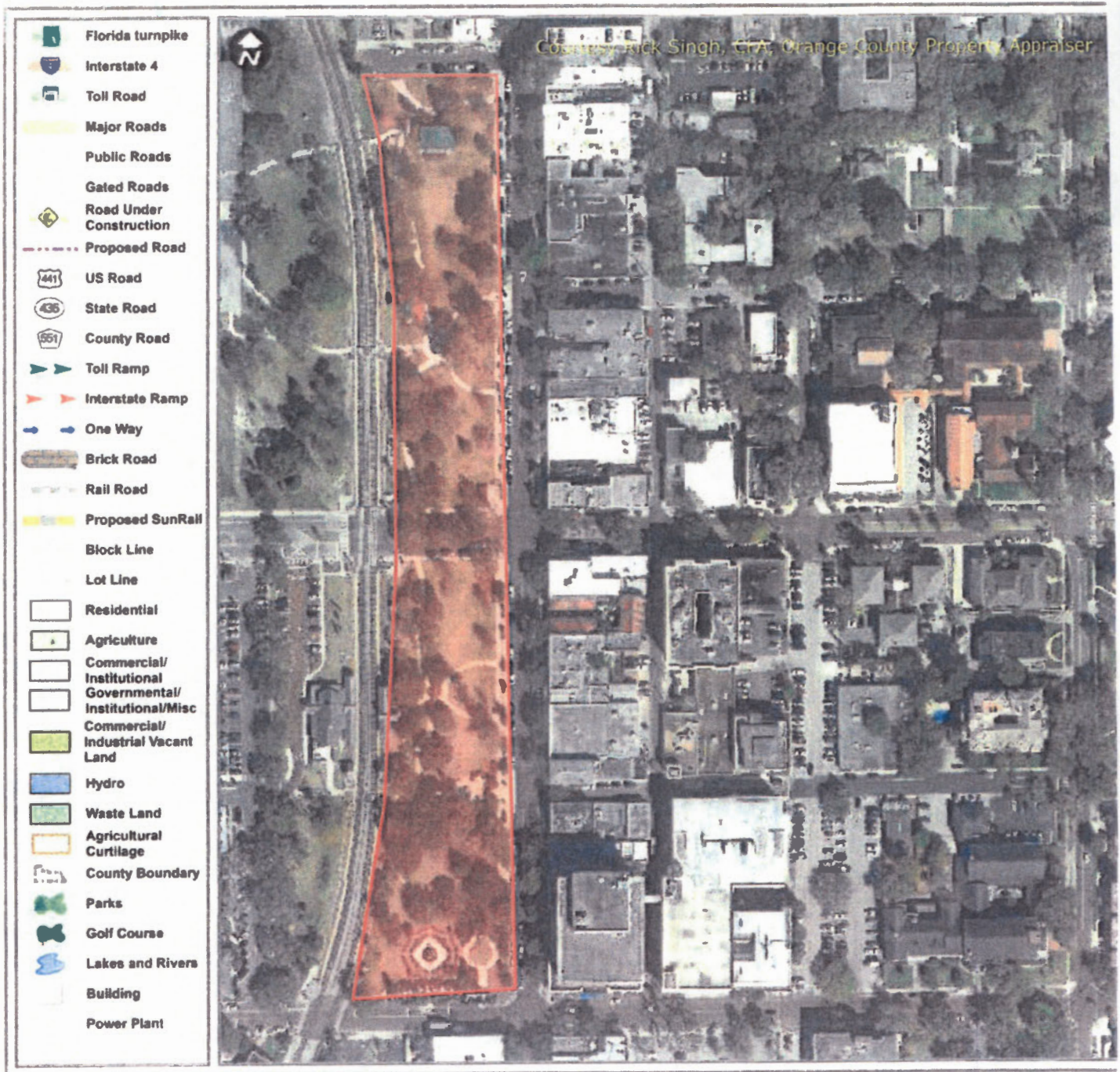
SECTION 5. Conflicts. All ordinances or parts thereof that are in conflict with any provisions of this Ordinance are hereby repealed.

SECTION 6. Effective Date. This Ordinance shall become effective immediately upon its passage and adoption.

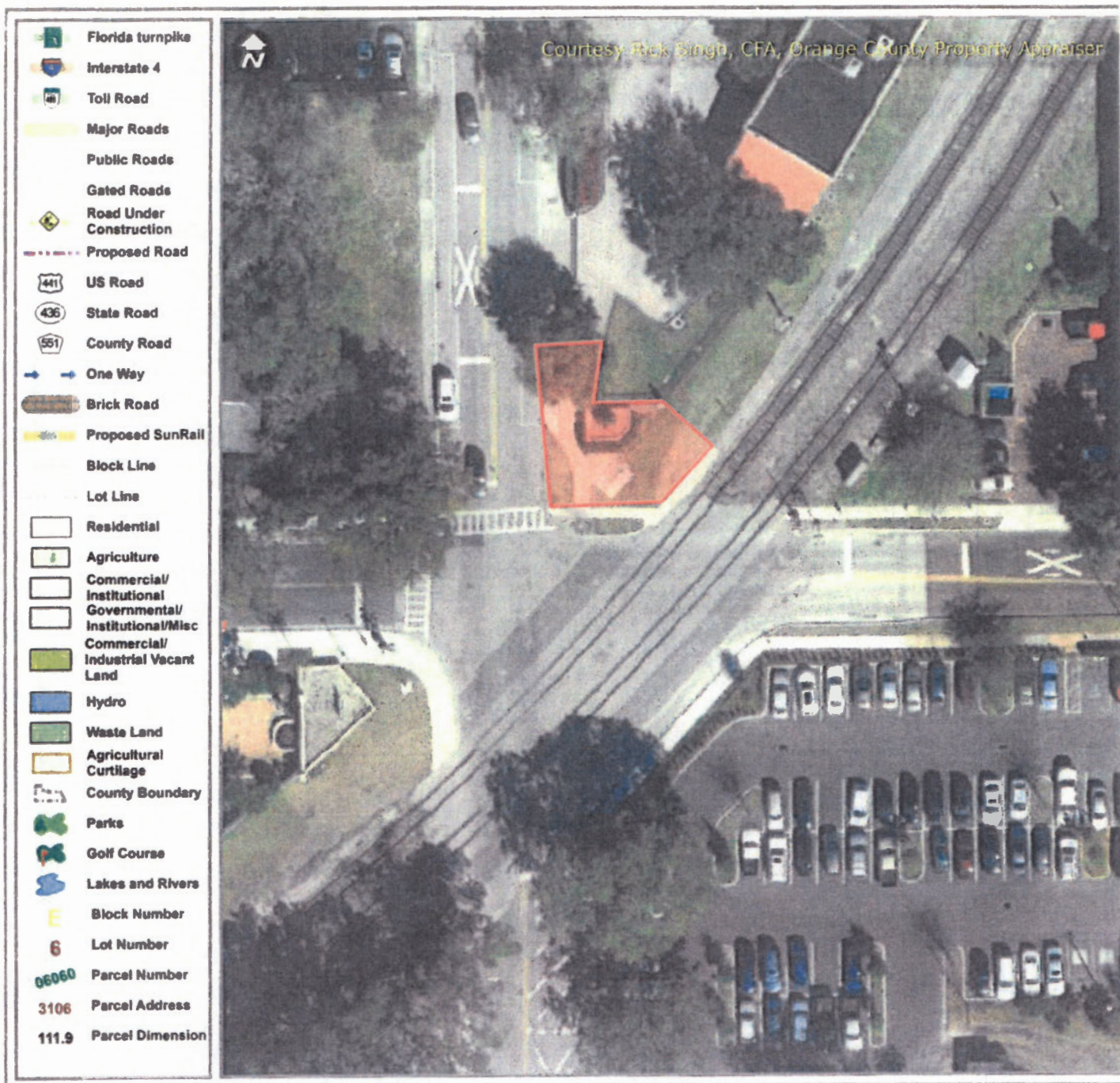


Steven M. Leary, Mayor

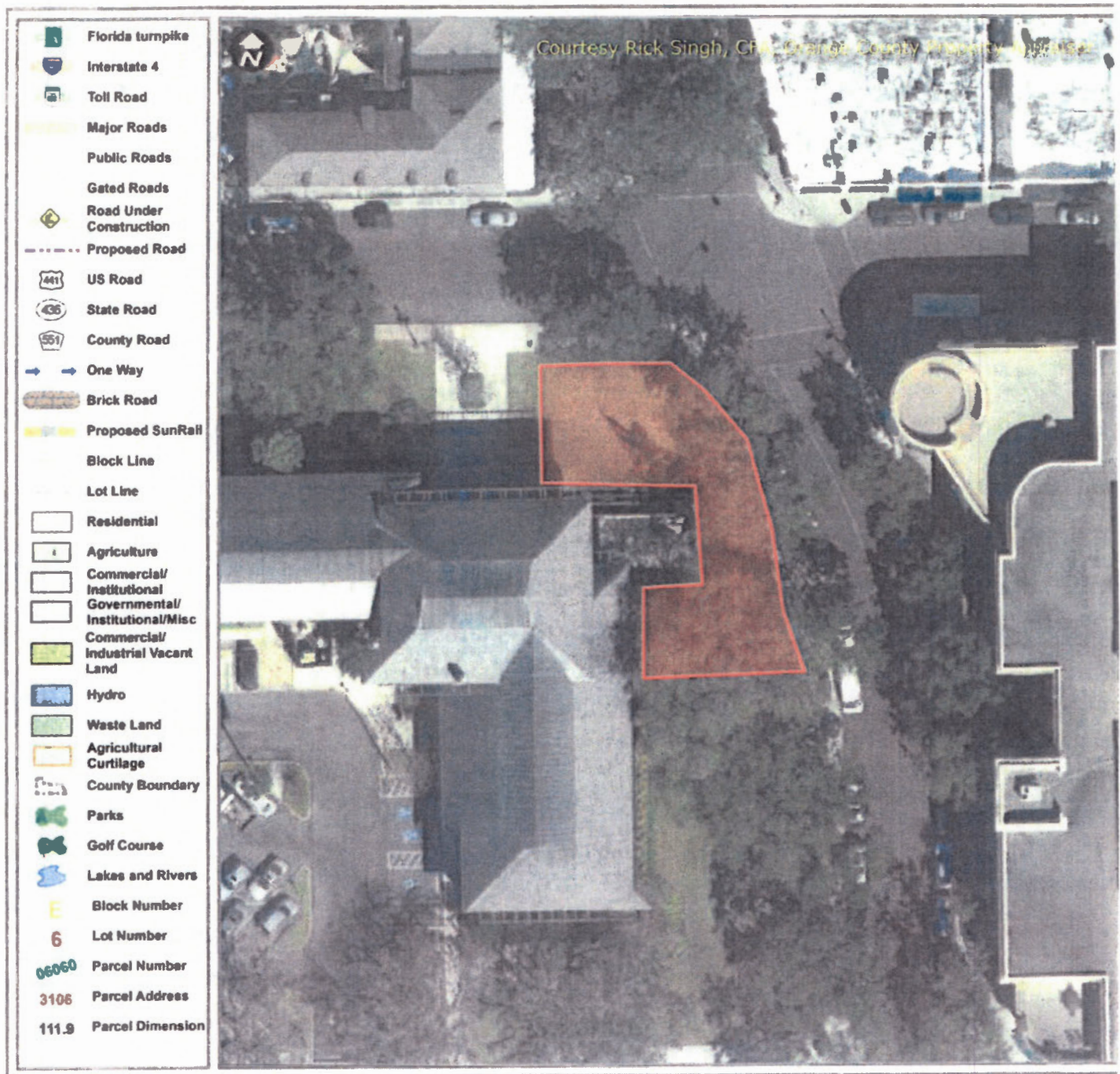
Attest: _____
Cynthia S. Bonham, City Clerk



Appendix 1 – Central Park Area



Appendix 2 – Farmer's Market

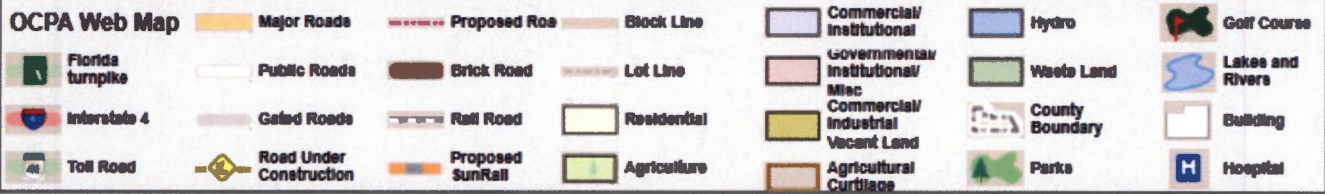


Appendix 3 – South Alternate – City Hall



Appendix 4 – North Alternate – Park and Whipple Avenues

OCA Web Map



Created: 11/23/2015

This map is for reference only and is not a survey.