

**AGENDA MINUTES
CITY COMMISSION MEETING
VENETIAN CENTER, 1 DOZIER COURT
MONDAY, APRIL 22, 2024 5:30 PM**

1. CALL TO ORDER

The City of Leesburg Commission held a regular meeting on Monday, April 22, 2024, at the Venetian Center, 1 Dozier Court. Mayor Burry called the meeting to order at 5:32 p.m. with the following members present:

Commissioner Allyson Berry
Commissioner Jay Connell
Commissioner Mike Pederson
Commissioner Alan Reisman
Mayor Jimmy Burry

Also present, were City Manager (CM) Al Minner, City Clerk (CC) J. Andi Purvis, City Attorney (CA) Grant Watson, the news media, and others.

INVOCATION

Mayor Burry gave the invocation followed by the Pledge of Allegiance to the Flag of the United States of America.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

2. PROCLAMATIONS:

A. Municipal Clerks Week

Mayor Burry read a proclamation proclaiming the week of May 5-11, 2024 as Municipal Clerks Week, and further expressed appreciation to our Municipal Clerks, J. Andi Purvis and Anna Rottermond, and to all Municipal Clerks, for the vital services they perform and their exemplary dedication to our community. CC Purvis accepted the proclamation on behalf of the City Clerk's Office.

3. PRESENTATIONS:

A. None

4. PUBLIC COMMENTS:

This section is reserved for members of the public to bring up matters of concern or opportunities for praise. Issues brought up will not be discussed in detail at this meeting. Issues will either be referred to the proper staff or will be scheduled for consideration at a future City Commission Meeting. Comments are limited to three minutes.

Bill Polk of 600 Cascade Avenue, said he was there to discuss an issue from the Bass Tournament last weekend. The tournament was a big success, but there was a big problem with the boat ramps. People who pay taxes here could not launch their boats on Lake Harris. He was told about an email or a Facebook post that the city manager sent out saying people could launch their boats at the ballpark and park at the old ballpark. However, there were people that told them they could not park there. No one could put their boat in at Lake Harris, and we have three boat ramps; one on South US 27, Ski Beach, and the ballpark. He is all for the fishing tournaments because they bring money to Leesburg, but somebody needs to reserve at least one boat ramp for the people who pay taxes. He would appreciate the city looking into that.

Lay Brother Steven Gerard of 1109 West 8th Street Line, Ohio, said he was there for the third time to help guide the city in a new direction. The new direction consists of two steps, and he would provide the information to the city clerk. Step one is to place a proposed personhood resolution on the city commission agenda, and pass it between Mother's and Father's Day. Step two is to amend the city charter with a new preamble covenant personhood language that citizens would vote on in November. The city would have to pass a resolution and submit it to the Lake County Supervisor of Election by July since step two includes a date cut off to August 23rd. He asked everyone to encourage the city manager to embrace step one and step two. He would need three to five days to prepare the appropriate personhood educational brief. Personhood cities are constitutional and would legally impose the new Florida Amendment. They would also vote on it this coming November. He concluded his comments with a scripture reading from Psalms 78.

June Presley of 3175 Bright Lake Circle, said she wanted to bring a situation to the commission's attention. She resides near the section of CR 33 and CR 470 near CR 48. The intersection in Okahumpka has turned into a fiasco. It has become difficult and dangerous. People are cutting other people off because there are no left turn lanes. People who are heading up from the Groveland area on CR 33 who want to make a left turn to go towards the Turnpike or The Villages hold up the entire intersection. She hoped the city would communicate with the planning and infrastructure people in the county about the growth they are experiencing by adding almost one thousand homes off CR 33 plus the homes coming into The Villages on CR 470. The intersection is located near the Okahumpka Post Office. It is almost impossible to get in and out of there in the afternoon or early morning. Her mother, who is eighty-six, was hit there. She has been a resident of this community for almost sixty years. That accident was not her fault. Traffic has become very stressful for people and they are starting to have road rage. For the people that come off the Turnpike down CR 470 to US 27, it has become very difficult. Those are only two-lane roads. All anyone wants to do is go to work and come home. She is a teacher at Carver Middle School, and it is difficult to get to work. When she gets to US 27, there is mass bedlam. She asked about community growth and how fast we should grow since the current infrastructure does not allow for it. She lives in what she calls the middle of Leesburg. They recently built a home that was annexed into the City of Leesburg. It is located south of Okahumpka. She was told her post office would be the Groveland Post Office, and not Leesburg or Okahumpka. She cannot get over to Groveland from Monday through Friday before they close. Where she lives, property has been annexed into Groveland and Leesburg. They just handed her post office route to Groveland because Leesburg was at capacity. She asked that the city be mindful because almost one thousand homes are going in south of CR 33 below Okahumpka.

Commissioner Connell wanted to know if anything was in the works for the intersection of CR 48 and CR 33. He knows that is county, but are we aware of anything? **Someone from the audience** announced

that they were having problems hearing. **CM Minner** stated that Commissioner Connell asked if there were any road improvement projects in the works for the intersection of CR 470, CR 33, and CR 48 and the answer was no, not to his knowledge. Those are county and/or state roads, which are governed by the county and/or the state. He was unaware if the county had anything in their five-year plan for road improvements in that area. Most of the county's five-year capital improvement projects are in South Lake County and there may be one on CR 466A in Fruitland Park. With the post office issue, that would be handled by the post office. However, he will connect with the county's public works to make sure they have our input as far as the roads go at CR 33, CR 48, and CR 470.

Mattie Atkins of 808 East Magnolia, stated this was her second time coming to a meeting. At the first meeting, she brought up a situation about her home that she purchased in Leesburg. She also wrote a letter to Commissioner Berry regarding some issues she was having. She was back tonight, to speak about the same issue. The city came out and did a little accomplishment, but it was not good enough. There are trees that still need to be trimmed and leaves and debris need to be picked up. She asked about lighting at the rear of her property, since she was a single woman she wanted to be safe. She had already invested in cameras when she could not afford them just to feel safe. She is in the middle of a home renovation, and she does not want anyone squatting in her house. It is very dark behind her house. She appreciated the city putting a handicap parking spot in for her, but the area in the back needs more lighting. There is a church there, and they are doing all they can to help, but the back area needs to be cleaned. If the city expects the community to keep their area clean, then she should expect the city to keep that area clean. If the city does not want to clean it, she will inquire about a permit to install a gate around her home. She will make her yard look good because she appreciates her home and the value of her home. After the last meeting, she never received a response. She also spoke with the city off the record and has not heard anything back. She wanted to know how soon she could expect to hear from somebody about these issues. **CM Minner** answered that he would double-check with public works. He apologized, but someone would be in touch. **Ms. Atkins** inquired about the lighting at the back of her property. How long will it take to be addressed? **Commissioner Berry** pointed out that the property is located on the side of Cutrale. It is at Lake Street and Magnolia. There is one side street that has one strip of road. It is not a thruway street. It is located behind the town homes next to St. Paul Church. **CM Minner** stated he would personally contact her tomorrow. It looks like a three-department issue, being electric and a few divisions of public works. He would reach out to them, and be in touch with her.

5. CONSENT AGENDA:

Routine items are placed on the Consent Agenda to expedite the meeting. If the Commission/Staff wish to discuss any item, the procedure is as follows: (1) pull the item(s) from the Consent Agenda; (2) vote on remaining items with one roll call vote, (3) discuss each pulled item and vote by roll call

Items pulled for discussion:

5.B.1 - Authorization to execute an Agreement for a security access control system installation and configuration services with SourceLink Communications, Inc.

Commissioner Reisman moved to adopt the Consent Agenda except for 5.B.1, and Commissioner Pederson seconded the motion.

The roll call vote was:

Commissioner Connell	Yes
Commissioner Reisman	Yes
Commissioner Pederson	Yes
Commissioner Berry	Yes
Mayor Burry	Yes

Five yeas, no nays, the Commission adopted the Consent Agenda, as follows:
(Each item has its coordinated resolution number listed below the header)

A. CITY COMMISSION MEETING MINUTES:

1. Regular meeting held April 8, 2024

B. PURCHASING ITEMS:

1. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute an Agreement for a security access control system installation and configuration services with SourceLink Communications, Inc; and providing an effective date.

ADOPTED RESOLUTION 11,810

Commissioner Reisman introduced the resolution to be read by title only. CC Purvis read the resolution by title only.

Commissioner Reisman made a motion to adopt the resolution and Commissioner Pederson seconded the motion.

Mayor Burry requested comments from the Commission and the audience.

Commissioner Connell asked if this pertained to City Hall and the Municipal Service Building? **CM Minner** answered yes. **Commissioner Connell** wanted to know what doors they were referring to at both buildings. **CM Minner** responded that this was a security project. It dates back to the goal-setting sessions last summer. The concept was to ensure that city facilities are secured. There are times when the public is not altogether friendly. They are friendly ninety-nine point nine percent of the time, but we have had occasions where we get interesting visitors and people are threatening. That has set off concerns amongst city employees. We also see it happening around the nation and here locally over the past several years. We have seen different municipal corporations, including the county, take action to secure their facilities. As we moved into this endeavor, we held discussions at the budget workshop, and it was set as a goal. We need to make our facilities secure. We did an analysis of the facilities to find out where we were not secure. The facilities we thought were secure were the police station, the fire stations, and the electric department. Those are secure areas because the public only has access to certain points. The rest of the facilities are literally locked down. You have to be an authorized person to gain access. Some facilities we could not address because the public has access throughout the facility. There are safety areas in case of an emergency where employees could exit. The department head has worked with employees on a plan for safety and that building is the library. There is no good way to secure the library due to the public having access throughout the facility. If an unfortunate situation arises, the Library

Director has worked with her employees on a plan for securing themselves. That leaves two facilities that have a lot of public access City Hall and the Municipal Service Center (LMSC). There are four public departments located at the LMSC building. The purchasing department is currently locked and secure from access of the public. The building department and the planning and zoning department are not locked or secured. The IT department is reasonably locked and secured. The concept was to secure these facilities to help keep city employees safe. It would still allow people to come in. The move was to install a security system where all doors are locked. They would unlock with use of automatic magnet locks. All employees and commissioners will be issued an access/badge swipecard. They will have to swipe that card to gain access through the doors. Each employee who is issued an access/badge card will be registered. It will allow them access to their work area or where they need to go. For example, if you work in the electric department, and you need to see someone in HR, you will use your access card/badge to gain access to where you need to go. You will need to use the access card to gain access to the elevators if you needed to get up to the third floor. If a member of the public needs to see someone in Finance they will have to check in at the front desk. Once checked in, they will receive a card to swipe at the elevator. That will allow them access to the second floor. The second floor would be restricted so the public cannot gain access until they check in with customer service at the front desk. Once finished, they will return the access card to customer service at the front desk. That is how City Hall will be locked down. There were twenty-seven different doors identified that need to be locked down. We have big swinging doors on each level of city hall, the exterior doors and the doors into the hallways. Each hallway has a door and the elevator. If anyone has recently been to the county administration building, they have a system where you have to check in with a security agent in order to be given an access pass. What we set up would be similar to that. The LMSC building is a bit different because some areas are secured. IT and purchasing are secured, but the lobby is not. Right now, they have divisional partitions with doors that open. The plan is to construct walls that are high enough for security yet short enough to allow air flow. That way, the air conditioner and heater can move. We do not want to invest more in a major infrastructure project. We will replace the two doors at the front with secure doors and employees will have to swipe to get in. The public would still have access to the foyer area, but if someone had an appointment with the building department or planning and zoning, they could be granted access. So, step one is to secure all doors. We sent out a bid, did some research, and it came in as an eighty thousand dollar expense. It was actually seventy-nine thousand dollars and some change to secure the doors. City hall has about twenty-seven doors and the LMSC building has two doors. The purpose of the security badges, rather than a key, is that security badges can be tracked. We will know when someone comes in and goes out. We will be able to monitor and give an added level of security versus issuing a bunch of different keys, which is seen more as a breach. Step one, assuming this passes, is to install the security system at city hall. Step two will be to build the walls at the LMSC building, which we can do internally. Once the walls are secure, they will have a door similar to the one in the contract. This contract secures all doors as described. The budget was set aside in FY24 and that was one hundred and fifty grand. By approving this resolution, we would contract with the firm and spend about eighty grand to make the first big swipe at securing city hall and the LMSC building. **Commissioner Connell** asked if they would need to use a pass to gain access to the elevator? **CM Minner** answered yes. The elevator will be locked down along with all entry points of city hall. The first level of city hall is pretty secure, but that is where most of the public come in and out. They come in to pay utilities and open or close accounts. There is a significant amount of public traffic that goes in and out of that area. You will need a card to swipe at the elevators in order to get up to the second or third floor because that will be locked down. People will need a card to gain access to the elevator and stairwells. When we have public meetings, the facilities will be open, but after the meeting they will be locked back down. The public will not need an access card to swipe when coming to city hall for a commission meeting. **Commissioner Connell** asked if it would be necessary to have a pass on a regular basis for vertical accessibility? **CM Minner** answered yes because it will be locked down. **Commissioner Connell** asked what he would do for vertical accessibility to the second and third floors? **CM Minner** responded that employees and commissioners

will have an access card/badge they will use that to gain vertical accessibility. **Commissioner Connell** asked about the public. **CM Minner** replied that the public needs to sign in first and someone would let them up. **Mayor Burry** asked if there was any other discussion. There was none.

The roll call vote was:

Commissioner Reisman	Yes
Commissioner Pederson	Yes
Commissioner Berry	Yes
Commissioner Connell	No
Mayor Burry	Yes

Four yeas, one nay, the Commission adopted the resolution.

C. RESOLUTIONS:

- 1. Resolution of the City Commission of the City of Leesburg, Florida Establishing a rent increase for the Mispah Simmons Apartment Complex; and providing an effective date.**

ADOPTED RESOLUTION 11,807

- 2. Resolution of the City Commission of the City of Leesburg, Florida, approving an amendment to the development restriction covenant established in the warranty deed recorded on June 15, 1962, in O.R. Book 205, Page 318, Public Records of Lake County, Florida, to allow construction of buildings or other improvements on certain real property located at College Drive and U.S. Highway 441 provided such buildings and improvements do not cause an airport hazard and are allowable under applicable rules and regulations of the United States Department of Transportation, Federal Aviation Administration; authorizing the Mayor and City Clerk to execute the amendment; authorizing recording in the public records; and providing for an effective date.**

ADOPTED RESOLUTION 11,808

- 3. Resolution of the City Commission of the City of Leesburg, Florida, amending the Fiscal Year 2023-24 Budget for the Capital Projects and Police Forfeiture Funds for the Second Quarter; and providing an effective date.**

ADOPTED RESOLUTION 11,809

6. PUBLIC HEARINGS AND NON-ROUTINE ITEMS:

A. SECOND READING OF ORDINANCES

- 1. An Ordinance of the City of Leesburg, Florida, in accordance with the Special Magistrate's recommendation pursuant to the Sunnyside Lake Landing Holding, LLC, and Cenizo Ventures Florida, LLC v. City of Leesburg, dated January 15, 2024, rezoning approximately 120.5 +/- acres, from PUD (Planned Unit Development) to PUD (Planned Unit Development) to allow for 150 detached single family residential dwelling units on a property located south of U.S. Highway 441 and west of Sunnyside Drive as legally described in Sections 29 and 32, Township 19 South, Range 25 East, Lake County, Florida; and providing an effective date. (Sunnyside/Magistrate PUD)**

ADOPTED ORDINANCE 24-17

Commissioner Reisman introduced the ordinance to be read by title only. CC Purvis read the ordinance by title only.

Commissioner Reisman made a motion to adopt the ordinance and Commissioner Berry seconded the motion.

Mayor Burry asked CA Brionez to swear in anyone wishing to offer testimony on this item. **CA Brionez** asked anyone wishing to provide testimony to stand and raise their right hand. He swore them in. **Mayor Burry** asked the planning and zoning director to provide an update on this item.

PZD Miller stated this was a request to rezone approximately one hundred and twenty acres. It is generally located south of U.S. Highway 441 and west of Sunnyside Drive. The proposed project includes one hundred and fifty units on one hundred and twenty acres for a gross density of one point two five units per acre. The proposed PUD is a result of the special magistrates' recommendation in the settlement of Sunnyside Landing versus City of Leesburg that was pursued under Florida Statute 70.51, Dispute Resolution Act. The special magistrate recommended amending the PUD in the following areas; the total acreage of the project was dropped from one hundred and thirty-nine acres to one hundred and twenty acres. That was due to the additional tract on the east side of Sunnyside Drive being removed from the plan. The total number of units was recommended to be reduced from one hundred and fifty-nine to one hundred and fifty. Dropping the total number of units slightly increased the size of certain open space areas and buffers adjacent to the nearest existing residents. It was small, but it was there. All other requirements of the PUD have been maintained, including requirements for fifty, seventy, and eighty-foot lot designs and architectural standards for the homes. There are twenty-five-foot planted buffers around the perimeter of the property and a requirement for a boulevard entrance, sidewalks, upgrading of Sunnyside Drive adjacent to the property, preservation of wetlands, and recreational requirements. City staff understands that the commission may want to make some amendments to this request. **CM Minner** clarified there are some amendments that the commission should consider. He had already spoken with city attorney, Mark Brionez about them, and they have been shared with the developer. There are three potential modifications that the commission should make in the form of an amendment to the motion on the floor. The amendment would modify the motion in the following manner; it would add the dark sky lighting requirement that has been added to recent PUDs, the addition of the tree requirement, which is two trees for every lot, and a modification to paragraph 15.c in the PUD, which is the expiration paragraph. He did not want to read what they were striking, but it would be most of paragraph 15.c. As it exists now, there is an expiration date of one hundred and twenty months or ten

years. There is some wiggly language in there that says if this happens, then this may happen. The intent of the change is to have a clear-cut shorter defined action if the PUD does not develop. It would restrict it from ten years to six years. The modification of paragraph 15.c, if approved, means a development or building permit application must be submitted to the city for work to be done in one or more phases of the PUD within six years with no appeals pending. If no application is submitted, the PUD will automatically expire unless otherwise lawfully extended by the city or Section 252.363 of the Florida Statutes. In the event the PUD expires, the property shall be governed by the zoning regulations applicable to RE-1 zoning. That language will be stricken and amended. We need a motion to amend that if the commission chooses to do that. Essentially, the concept has three significant points that modify paragraph 15.c. The first item covers the term of the PUD. It would be six years instead of ten. The second is the last sentence that says if it expires due to no permits being pulled, it automatically goes to the specific zoning of RE-1, which is one to one zoning. While it does not say, one to one zoning, in this case if it were one hundred acres, and they only used thirty acres and jammed one hundred homes into thirty acres, that would be a net of one to one. What we are looking for is a gross one to one, and that is what RE-1 zoning is. It is one acre, one house. If it was one hundred acres there would be one hundred houses. If it was thirty acres there would be thirty houses. The third modification is a state preemption in Section 252.363 of the Florida Statutes whereby state statutes supersede local planning law. That statute says, anytime the governor issues a state of emergency, no matter how long it is, a development is entitled to an extension. If a hurricane comes through and the governor declares a state of emergency for Lake County, it would be under that state of emergency. If it were one week, that means the developers' expiration date would be extended one week. Even if it happens and there are two years left on the PUD, anytime there is a state of emergency, that time is automatically added to the development. That is a bit of an olive branch, and he did not want to speak on behalf of the petitioners. Our counsel had spoken with them, and they seemed amendable to that change. That is an olive branch that allows the city to put more of a restriction on this PUD. It would expire before some of the other PUDs we have recently approved. If the commission likes the modifications, they would need to make a motion to amend the resolution. **Mayor Burry** asked for a motion to amend.

Commissioner Pederson made a motion to amend as described by staff, which is the three-point amendment, and Commissioner Reisman seconded the motion.

The roll call vote was:

Commissioner Pederson	Yes
Commissioner Berry	Yes
Commissioner Connell	Yes
Commissioner Reisman	Yes
Mayor Burry	Yes

Five yeas, no nays, the Commission approved the amendment to the resolution.

Continuing, **Mayor Burry** asked to hear from the petitioner.

Brent Spain of Theriaque & Spain, 1809 Edgewater Drive, Orlando, said he was there on behalf of his applicant. For the record, counsel did reach out to him regarding the proposed modifications and his client was amiable to those. They have no objections to doing those three things. Referring to a PowerPoint, he said the first two slides reviewed the standards for rezoning. He wanted to emphasize on the site specific rezoning which is a quasi-judicial decision. At the end of the day, the decision needs to be supported by competent substantial evidence. The second to last bullet point shows what constitutes competent substantial evidence, which is staff reports from the local planning staff and professional experts. For this case, he introduced a binder which has all the historical public records related to the

case. It includes the prior PUD and staff reports throughout the history of this project. They have consistently recommended approval, and they again recommend approval tonight on the modified plan. Referring to the last bullet, that covered the hearing from a couple of years ago, and it was included in the special magistrates' order. When the commission puts on their judges' hat instead of the normal city commissioner's hat, they have to apply the city's adopted criteria. The decision is not based on what they like best, the decision is made on whether or not the proposal complies with city-adopted criteria.

Referring to a slide, he wanted to explain how we got here. It was briefly discussed at the commission meeting of March 25th. This application initially started in May 2021, when they filed their development application. It was initially for one hundred and sixty-four units on one hundred and thirty-nine acres. That application was reduced to one hundred and fifty-nine prior to the public hearing. The public hearing was held in March 2022, and remember that application was a bit broader than the one before them now. As the planning and zoning director indicated, the application before them does not include the eighteen and a half acres located to the east of Sunnyside Drive. In March 2022, their application included an annexation, a future land use change, and a PUD. The only thing before them now, is the new PUD for the parent track of one hundred and twenty acres. Back in March of last year, there were only four commissioners in attendance, and it ended in a two/two vote, which procedurally ended up being a denial. So, within the thirty-day time frame, their client exercised their right and started the process with the special magistrate, per state statutes. With the planned amendment that failed, they filed for mediation as allowed under the Community Planning Act. They also filed a petition for a Writ of Certiorari with the Lake County Circuit Court and that litigation is always abated. The PUD was essentially put on hold since they were working through the special magistrate process. Last summer, in July, some folks in the room attended that special magistrate's hearing, and the special magistrate was Carlos Alvarez. If you are a Florida Gator fan, you would know that the special magistrate is known as the Cuban Comet. He played for the Gator's football team, and is in the College Football Hall of Fame. However, he has practiced land use law for forty-eight years in Florida. He was mutually selected by the city and his client to serve as the neutral special magistrate. In July 2023, an all-day evidentiary hearing was held. It was not just for show and tell. People were called as witnesses and put under oath. We had to provide expert testimony and the city did the same. Each side submitted proposed orders. In January of this year, the special magistrate issued his recommendation and the ultimate conclusion was to recommend approval of the modified Sunnyside PUD. A denial under state statutes would be unreasonable and unfairly burden the use of the applicant's private property. Last month they came before the commission on the settlement agreement. The recommendation was to accept the magistrates' order by resolution. Tonight, they are at the second stage, which is to implement and ask for approval of the modified PUD.

Moving to the next slide, he showed the project aerial, which showed the existing future land use of the property. It is estate-residential, which is four dwelling units per acre under the city's comprehensive plan. He pointed out the existing zoning on the property. For those who attended the special magistrate's hearing, they heard about this, but the property is still zoned PUD, and it has been zoned PUD. The issue was whether or not the prior PUD had expired or not. That was the impetus for his client to initially apply for a new PUD because the staff indicated it was the city's position that the 2005 PUD had expired. However, as they sat there it was still the same color on the map, they just did not have a PUD in place. As the planning and zoning director indicated during the special magistrate's hearing, if his client went in today and asked for a building permit, the answer would be no, because essentially they have a zoning with no PUD. He showed the revised PUD and a copy of it was attached to the settlement agreement, included in the agenda packet. As the planning and zoning director stated, there are eighty, seventy, and fifty-foot lots. The layout on the slide showed color coded dots for the property and the exterior lots will be the eighty-foot lots. Every lot that borders Sunnyside Drive will be eighty feet and every lot that borders an exterior buffer will be eighty feet in width. The more narrow lots, which are fifty and seventy-foot lots, will be located at the interior of the development. These lots back up to conservation areas or

wetlands. He showed a pie chart of the modified plan and the breakdown. The yellow stands for eighty-foot lots, and the vast majority of the development will consist of eighty-foot lots. All the perimeter lots will be eighty feet in width. The planning and zoning director alluded to distance measurements. His applicant removed five lots in key areas and, as a result of removing the lots, they increased the distance between the nearest existing residents. On the northern part of the PUD, those homes will be four hundred and seventy-two feet and four hundred and thirty-four feet from the existing residential structures and the houses on the northeast are two hundred and sixty-three feet.

Referring to another slide, he showed the increased distance on the southern side. They increased the buffer along the southern side, which is now thirty feet instead of twenty-five feet. They also made a reduction in the lots, so the lots are larger in size. The distances are four hundred and seventy-five and four hundred and seventy-two feet to the nearest resident. By development standards, those are substantial separation distances between houses. He then showed what the property looked like back in 2005, which included a PUD approval. The applicant at that time (the prior owner) came to the city to have a preliminary subdivision plan approved. He showed a picture of the 2006 proposed site plan (PSP), which was reviewed and approved by the city. That plan was found to be compatible with the surrounding area. He pointed out three areas in that plan because that was where they made modifications to enhance compatibility. Looking at the dead center of the plan, the northern lots on the 2006 PSP had five lots in that area. At the top right, which are the east lots, there are four. Moving down to the southern border, that area was circled in red and there were six lots. When comparing the modified plan in the northern and middle area, they eliminated two lots versus the 2006 approved PSP. They now have four lots, which results in an increase of open space immediately to the east. That helps increase the separation of existing residents to the north. The area on the east is exactly the same as the approved PSP from 2006, and it has four lots. In the south, the 2006 PSP had six lots and that was found compatible by the city. They actually increased the lot sizes. They are substantially larger because their plan has four lots along the southern boundary.

Referring to another slide, he showed a quote from the special magistrate's order. He quoted from page 29, "from a strict compatibility standpoint, the revised Sunnyside PUD concept plan is not only an improvement over the 2021 Sunnyside PUD submittal with one hundred and fifty-nine units, which the city's planning staff deemed compatible with the surrounding area, but it is an improvement over the 2006 PSP, which the city approved." Another issue they may hear about is compatibility. There is a policy in the city's comprehensive plan, which was referenced by the magistrate and that is the future land use policy 1.6.5. That was impertinent because it states compatibility with surrounding established neighborhoods shall be considered during the comprehensive plan amendment process. Now, why is that significant? In 2006, the city adopted a comprehensive plan amendment for this property where it went from Lake County urban expansion, which is four to one and Lake County suburban, which is up to three to one dwelling units per acre to city estate-residential and conservation. City estate-residential allows up to four units per gross acre. So, presumably, in 2006, when the plan amendment was adopted under the city's comprehensive plan, there was an inherent compatibility analysis done. It was determined that four dwellings per acre on this property were compatible with the surrounding neighborhood. Now, while this PUD was going through that process, the city planning staff concluded that the proposed request for PUD zoning was compatible with current surrounding zoning districts. It was consistent with the city's growth management plan and future land use element goal objective 1.6, which is land use compatibility. Part of the special magistrate's conclusion was that there was no evidence or testimony introduced during the evidentiary hearing that would support a finding that the Sunnyside PUD would create a legitimate compatibility concern regarding any surrounding land uses. The special magistrate did not just take their word for it, and it is important to note that the special magistrate, on his own, with no parties there to influence him or comment, performed his own independent site visit. He not only visited the Sunnyside property, he actually acknowledged and stipulated on record that he drove and visited the surrounding

area. The special magistrate in his recommendation noted that he did a site visit to the general area where the Sunnyside PUD is located. It did not disclose any grounds why the residential nature and density of the Sunnyside PUD (consistent with the revised Sunnyside PUD concept plan that the petitioners introduced during the evidentiary hearing and subject to all conditions in the prior staff report for the Sunnyside PUD) would not be compatible with the surrounding residential land uses. The Special Magistrate has been practicing in the area of environmental and land use law in Florida for over forty-eight years. If anyone thinks the special magistrate was a little puppy lawyer trying to tell them it was compatible, the special magistrate has almost five decades of land use experience. They also submitted an environmental report, and he showed an excerpt from the original environmental assessment. Based on feedback from when they went through the original review process, the environmental consultants did an update, and in the PUD before them one condition is that their client comes back and does an environmental assessment before any site development work. They always have to do an environmental assessment and one thing that is out there are gopher tortoises. There is a process they have to go through to relocate gopher tortoises, and to preserve the area. There is a condition in the PUD that says they have to do an environmental assessment before moving into site development work.

On the special magistrate's recommendation there was a traffic impact study, and he provided an excerpt from that which concluded that the roads were sufficient for the trip generation of this project and no level of services would be tripped. The last time he was before the commission he brought 2021 traffic volumes which showed the available number of trips after this project is developed. The original traffic study analyzed two hundred and nineteen houses, which included property that was not annexed. At that time, they tried to predict 2024. Referring to a chart, he demonstrated the available capacity after the project, and it would not result in any road failing. Since the magistrates' order, they looked at the Lake County Public Works new traffic counts for the three stations because they wanted to see how the 2024 Lake County numbers compared to the numbers from 2021. For Station 451, which is at Sleepy Hollow south of US 441, in 2021 the count was 4,640 trips and the 2024 numbers from Lake County are 4,730. There was an increase of ninety trips per day. As a note, he stated they factored his client's project in the trip distribution and the available trips after this project showed 197 trips available. With Station 423, which is Sunnyside Drive west of Tomato Hill Road, in 2021 the count was 2,709 and in 2024 the count was 2,594. There was an actual decrease at that station of 115 trips. After his client's project, there will be 470 available trips. The last station 414, which is Sunnyside Drive south of the three-way intersection, in 2021, the trip count was 1,523 and in 2024, the trip count was 1,267, which is a decrease of 256 trips. After this project, it leaves an available trip capacity of 764. Again, the source for this data is from Lake County Public Works.

Moving to the next slide, as it relates to testimony and evidence from the special magistrate about pavement ratings, the colors are green, red, orange, and yellow. The area leading east on Sunnyside Drive to the ninety degree bend is orange, and based on information from Lake County that had a pavement rating of eight. The magistrate recognized this in his order, that when you reach his client's property, the pavement rating drops and that is shown in red. That was rated a four. There is a condition in the PUD that requires his client to bring that segment of the roadway up to county pavement standards. The magistrate recognized that and included it in his recommended order. He stated the petitioner's traffic impact study was reviewed by the city, Lake County, and the Lake Sumter Metropolitan Planning Organization, and neither the city nor any other reviewing entity raised any issues with the petitioners' traffic impact study. In fact, there are more trips available now than when they did the traffic study. The unrefuted testimony by both his client and the city planning staff at the hearing was that Sunnyside Drive has sufficient capacity to accommodate the anticipated traffic. More importantly, all segments of Sunnyside Drive will have a sufficient pavement rating following the development of the Sunnyside PUD as conditioned. That is a requirement his client has to comply with. The area on the slide shown in red runs along his client's border to the entrance of the community and that will be brought up with repaving.

The extent of the city commission's denial of the Sunnyside PUD was based upon traffic concerns or the perceived condition of Sunnyside Drive, and such denial is unreasonable and unfairly burdens the petitioner's use of the parent track.

Referring to a slide, he stated this leads him to the conclusion slide for the Sunnyside task report. Everyone should be very familiar with it because they have heard a lot about it over the last two years. It was a primary focus at the special magistrate's hearing and that testimony took up most of the day, and it was a large part of the recommended order. He showed Resolution 7158 from June 2004. That resolution included the language where the city commission, at that time, purportedly adopted the recommendation. It also included language that said "unless otherwise approved by the city commission." Again, that was in June 2004, which is important for the chronology. This came up when the project was initially going through review. He provided an excerpt from the minutes of the Planning and Zoning Commission from August 2020 where the former late city attorney, Fred Morrison, explained there is a proviso "except as otherwise determined by the City Commission" and they passed, for, first PUD. He explained that there must have been a typo in the minutes. He went on to say, that although the study was adopted in 2004, it was not considered binding to future city commissions. Then, in the December 2020 City Commission minutes, the former late city attorney was specifically asked about the Sunnyside study and whether it was applicable to the property. In the minutes, the city attorney explained, referring to the Sunnyside Task Force, in his opinion, it is essentially the same as it was the last time it was implemented by way of resolution. The resolution itself contained a proviso, "unless otherwise decided by the City Commission" that predated the first PUD on this. While it is expired and has no force or effect now, the implementation of that PUD when it was granted is an indication that the City Commission at that time decided otherwise. This Commission has the authority, notwithstanding the Task Force report, to approve this if that is the desire of the Commission. That was before going through the special magistrate's hearing and that was the former city attorney's view of it.

Referring to another slide, he showed the 2005 PUD that was approved in December 2005. That was more than a year and a half after the Sunnyside Resolution. He noted the 2005 PUD Ordinance did not apply the Sunnyside Task Force Study Report to the property. At the magistrate's hearing, both his consultant and the city planning staff acknowledged that the 2005 PUD did not comply with the Sunnyside Task Force Report. The 2006 PSP was approved in June 2006, more than two years after the adoption of the Sunnyside Resolution, and at that time the city did not apply the Sunnyside Task Force Study Report to the property. The 2006 planned amendment ordinance shows the land use was done after the zoning, but typically it is done the other way around. However, it was approved in December 2006 and that was the third and last approval. That approval was more than two and a half years after the adoption of the Sunnyside Resolution. When we look at the 2006 planned amendment, there is no language restricting the density of four dwelling units per acre or somehow subjecting the property to the Sunnyside Task Force Report. In 2006 there was an Objections, Recommendations and Comments report (ORC) from Department of Community Affairs and the city had to do a response to it. He showed a chart that had the city's ORC response for the 2006 plan amendment. In the chart there were several plan amendments for Sunnyside Landing. Looking at the trip generation and the scenario column on the left, it says adopted as proposed. So, it recognized what his client's land use was under the county's urban expansion. It showed four dwellings per acre, the county suburban showed three units per acre plus fifty thousand square feet of commercial. What was proposed was city estate-residential at four units per acre and under the allowed development column, it says up to four hundred and eighty units. The indication, that while this went through the process, the intent was not to apply the Sunnyside Task Force Report to the property.

With the special magistrate's findings, he entered a forty-page order which is a public record. He essentially focused on three points and one was historical evidence. The special magistrate quoted two

things. He indicated that testimony and historical evidence introduced during the evidentiary hearing established that the city did not apply the Sunnyside Task Force Study Report to the parent track when approving the 2005 PUD. The 2006 PSP and the 2006 plan amendment also contained no language restricting the site nor does the future land use map include any asterisk or notation. He focused on historical evidence and that report never intended to apply, or restrict the density on this property. There was reference to the former planning director's testimony from 2006 where she explained the density in place at the time the Sunnyside Report was approved is still valid. The attorney at that time, Steve Richie, demonstrated what the density of this property was under the county's future land use map and comprehensive plan. The magistrate went on to say, even assuming the study report was intended to apply to the parent track, it would be unlawful to apply them because the density level limitations recommended therein are not codified in the city's comprehensive plan or land development code. This was the point the mayor alluded to at the last meeting. They were not on the city commission at that time, and they were not responsible for that oversight, whether it was done purposely or not. That was an issue for the magistrate. He indicated that given the undisputed fact that the city had never formally codified the recommendations of the Sunnyside Task Force Study into the city's comprehensive plan or land development codes, the density level limitations set forth therein are not legally binding and do not apply to the parent track. He went a step further and said, assuming historically the intent was to apply it, and with how it was written, that somehow it can apply to the property. He analyzed the resolution, and it had no objective criteria in it. That is very important under Florida law, because when you are in a quasi-judicial capacity, they have to apply adopted criteria. Florida's courts have said those types of provisions are unenforceable. The conclusion the magistrate reached was that there were no objective criteria or standards to govern when the Sunnyside Task Force Study Report would or would not apply to a particular parcel of land. There is no land use regulation in Florida and likely in any state, that is enforceable or valid under such circumstances. Such a scenario is the definition of unreasonable and arbitrary and certainly unfairly burdens the use of the property. The mayor and another commissioner previously commented by saying it has been a long road for all involved, including folks in the room, his client, and city staff. They were there to ask the commission to respectfully approve the PUD consistent with the magistrates recommendation and the city planning department's staff report. It would be the modified plan subject to the additional three modifications being imposed this evening. They submit that the modified plan complies with the city's comprehensive plan and land development codes. He noted as part of the special magistrate's recommendation that the city take the steps to implement the Sunnyside Task Force Report into it the comprehensive plan and land development code, so this type of situation does not repeat itself. From the mayor's comments at the last meeting, he believed the city was in the process of doing that. He concluded by saying he had a binder he wanted to introduce as part of the record. It had thirty-five tabs, and it covered everything that was part of the development file for this PUD. He handed it to the city clerk and asked to have a few minutes for rebuttal. **Mayor Burry** asked if there were any questions for the petitioner from the commission. There were none. He opened up public comments.

Zach Broome, attorney representing Murray Tucker, said he wanted to present some legal issues. Basically, what he perceived after reading the special magistrate's recommendation was the term order that had been thrown around and, to be clear, he is not a judge. He is a special magistrate making a recommendation. The case is actually still abated, and a circuit court judge will ultimately decide if the city does not approve this tonight, whether or not there was competent substantial evidence to support the denial two years ago. With the future land use, Mr. Spain talked about it heavily. He talked about three units per acre and four units per acre. One thing that was mentioned, aside from the current zoning, is the PUD from 2005. If they look at the 2005 PUD and the annexation agreement, they would notice something interesting. The annexation agreement says the annexation of the parent tract, the one hundred and twenty acres, is subject to the terms of the PUD and Mr. Spain alluded to the ordinance from July 2005. The reason that is relevant is that PUD set a density for this project of one unit per acre. More

importantly, the special magistrate noted in his recommendation an interesting proviso of that ordinance that explicitly says that when the ordinance lapsed the applicant can come back and ask for the same density that the applicant had received, or it would get a lower density of estate residential one and not the future land use estate-residential. City staff wanted to amend the zoning in this application because it is a one-to-one zoning density. The future land use and the PUD zoning was somewhat in the special magistrate's recommendation, and he thought it would not go away. He believed that staff was wrong. The special magistrate said there was no notice given and nothing done with the applicant, but it does not clearly say what happened to the PUD. That PUD says one to one, and it says if it expires it goes back to an estate-residential one to one zoning. This proposal is higher than one to one. It is 1.25. An interesting thing about the ordinance is that it mentions it runs with the land, and it does not tie into any sort of termination. Back in 2022, the Sunnyside Task Force was discussed and if they go back and read the minutes from 2005 and 2022, city staff and the community director stated the reason they went for one-to-one density in the PUD, even though the future land use was three or four, is because of the Sunnyside Task Force Report. That was why they went for one-to-one density. Even though the special magistrate was correct, it was not codified into the land development code. The PUD had a zoning and the buyer bought it with the knowledge that it was one-to-one and the minutes from incorporation of that PUD reflect that the Sunnyside Task Force Report was the basis for that decision. This parcel has mostly one to one density with a little bit of one to three. As a final point on the legal issues, there was a lot of discussion about what they could consider and Florida's courts have talked about how staff comments can be used for competent substantial evidence. That does not mean this is the end of the conversation. That is why they are there and that is why they are commissioners. They can use public comments as evidence. They do not have to take generic things as they do not like it or want it. That kind of stuff can be disregarded. However, that does not mean general public comments about specific concerns that are fact-based statements about the project cannot be used as competent substantial evidence. More importantly, the applicants do not have to win. The courts in Florida have been very clear that they do not reweigh the evidence. As long as this body has heard all the evidence and decided they like this evidence better, it is not the job of the court to reweigh the evidence. From their standpoint, what was heard two years ago, there was absolutely confident substantial evidence to deny and that was done by a two to two tie. Essentially, what the special magistrate did was reweigh the evidence and decide what he thought was the better outcome. They say the PUD, with the present zoning still controls with one to one. That is appropriate for that area and the competent substantial evidence that was presented two years ago was sufficient to support that decision.

Murray Tucker of 6839 Tuskegee said he agreed with Attorney Broome and if the applicant came in with the one to one zoning, this room would be empty. Back on April 27th, they filed for a writ and everyone should be familiar with Florida Statutes, in section five, the governmental entity with whom a request has been filed shall also serve a copy of the request for relief by United States mail or by hand delivery to owners of real property contiguous to the owner's property at the address on the county tax roll. He receives letters from planning and zoning and so does his mother. They have two different addresses and they received nothing. No one in attendance received notice that this was going on. The statute requires them to be notified, and that never happened. He did a public record search and found nothing. There was nothing in the newspapers, and zero evidence of letters. After they found out the applicant filed for writ, his attorney filed as an interested party. Again, he has a whole list of dates that show shade meetings to discuss mediation, and they were supposed to have received notice and they did not. Three days prior to the meeting, when his attorney was out of town, he received a notice that the magistrate's meeting was on the April 25th, and it was in the newspaper on April 16th, but the most important meeting was the actual hearing on July 19th. He had a copy of the Daily Commercial showing it was inserted on July 16th. That was a three-day notice and no letters to the residents, which is required. Per Florida, they are supposed to notify within forty days and they only received a three-day notice. How is it reasonable for working people to rearrange their schedules to come to a hearing? The magistrate dinged them because there were

not a lot of people. They said no public comments and that was due to the three-day notice of the meeting. That is against the law, and it goes against state statutes. He did not know about the meeting. He found out about the special magistrate meeting because he happened to be with the mayor and city manager at a Habitat for Humanity project, and they told him about it. He has records from the Daily Commercial and he can provide copies. His attorney's email, name, address and phone numbers are on the bottom listed as interested parties. There is no excuse for him to have not been properly notified. He told his attorney that he heard about it from the mayor. He reached out to Brionez & Brionez to confirm the meeting. That is ridiculous. Also, the magistrate is not a judge. The other night, April 1st, he was watching the 401 Electric Advisory Board meeting on Lakefront TV. He was watching it and just about the thirty-minute mark, the electric director gets up and starts talking about all the big projects coming up and lo and behold, he says they have a big one on Sunnyside. We have not finalized anything yet and the electric department is already talking about doing it. Is that right? Now the biggest problem he has, and he has talked with the commissioners and listened to what they have to say, but the fact that they are sitting here saying they have been told to accept this, there is no other choice, their hands are tied. The last time he checked the city commission was the boss and these guys work for you. This is the same development they turned down and nothing has changed. They have shown plenty of evidence if they look hard. He said the other day to postpone this, get a second opinion, and he strongly believes the city should do that. He believes they can show plenty of evidence that the denial was correct. If it went back to the one hundred and twenty they would not fight for lower because they do not believe they deserve lower. Under current laws, one twenty would be good. The fact that this has been so prejudged, they are not looking at this on the merit of the PUD. They are looking at this on the merit of what some attorney said. That is what was said almost verbatim and, due to the lack of notification and the lack of due process, he finds this whole thing very questionable. It needs to be looked at very carefully. The most important thing in the order that was filed, under line number three, it says the petitioner shall file a status report with the court within fifteen days of completion of the special magistrate's proceeding, either dismissing the proceeding or requesting further action by the court. As of today, there has been nothing filed with the court. That has not been done, so this order has not been followed.

Mark Arney of 7393 Sunnyside Drive said he was an affected resident who lives within two hundred feet of the proposed PUD. He was standing before the commission to provide expert testimony. The reason for him testifying as an expert was because he was very familiar with Florida land use laws and zoning regulations. Before moving to Leesburg from Orlando over five years ago, he served as an HOA president and the PUD consisted of sixty-five single family units. During that time, he served under the HOA as a board member, an ARC committee member and the president. He participated in a number of interactions with local and state authorities and their legal counsel. They were not incorporated and their HOA was part of Orange County, so he had to interface with a number of county officials. He was very familiar with this process. To start, all the trees will be gone. He had a conversation with the planning and zoning director a few weeks ago, and he asked if the city would be looking at the same situation as Hillside, which is a smaller development located on the corner of Old Tavares Road and Sleepy Hollow. If they can remember, that was a wooded area before the two developments went in. That area overlooked trees, and surprisingly the developer came in and took every tree down. The planning and zoning director told him that they have no control over the developer, and he could do the same thing. One of the most beautiful stretches of Sunnyside will be gone. Sunnyside Drive at the top of the road gets narrower as you go down it. It is so narrow and there are a couple little curves going towards the lake that if a big vehicle comes your way you are in trouble. There are corners where they have to drive as slow as ten miles an hour to get around it. Right before the two to two denial in March 2022, the mayor stated the exhibits that the developer showed included portions of Sunnyside Drive where there were tire tracks along the side of the road. He said one of the tire tracks was probably his. If a school bus or a large truck is coming from the other direction, there is not enough room, so someone has to move over. That poses a serious problem that could be very serious and critical if this were approved. As part of the proposal

received, Appendix A states there would be a survey of trees on the property and if, existing on the property, all specimen heritage and historic trees shall be surveyed by staff. They will review the tree survey and such trees should be saved wherever possible during the site plan review process. This may include amending the site plan in order to save specimen heritage and historic trees. A survey of one hundred feet by one hundred feet plots indicates that all protected trees four inches in diameter and larger shall be surveyed for each distinct vegetative variance for use in replacement area. Site areas that are reserved as six inch trees do not need to be included. The mayor read a proclamation at the last meeting saying on April 26th the City of Leesburg would be celebrating Arbor Day. That is a tree day, how ironic is that when we are here at this meeting two days prior and all the trees will be gone. It is not just the way the trees look, they provide a function and this area is prone to flooding. If they take all the trees down, can you imagine what will happen to insurance rates from FEMA. Referring to a drawing he brought in he pointed to where he lives and where his neighbor lives along with the buffer zones, wetlands and green space. He respectfully asked the to commission deny this project. He went on the record saying he did not receive a March 20th communication from the city announcing the meeting and he resides within two hundred feet of the applicants request. Also, he believed the special magistrate was for April 24, 2023, but the meeting was in July and there was no public comment heard. That meeting was supposedly quasi-judicial, but it was more of a legislative issue. **Mayor Burry** asked if he could wrap up his comments. **Mr. Arney** continued to say the document said it was revised to March 4, 2024, and the special magistrates' recommendations were entered on January 15, 2024. That was a legislative format, not quasi-judicial, because there are different standards set for that. The Supreme Court of Florida says you cannot just say you do not like this development or that you should oppose it. It had to be fact-based, and the mayor had a fact-basis because he pointed out the tire tracks and that fact-basis was introduced as evidence. It is a safety hazard. Chapter 166 of the Florida Statute provides municipalities with broad powers to adopt zoning regulations and to set regulations for how property can be developed along with specific uses. Zoning laws are in place to regulate land use. A public municipality serves the health, safety and general welfare of the public. The Florida law weighed in on what constitutes a legitimate public purpose should a local government consider denial of a rezoning application and a legitimate public person or a purpose can include general public, health, safety and welfare issues such as traffic safety concerns and impacts on the local environment. The Supreme Court of Florida has defined substantial evidence as such evidence that will establish a substantial basis of fact, which one fact can be issued and reasonably inferred. There are penalties if proper notification is not given and the attorneys can refer to Sunshine Provisions. The penalties can range from a five hundred dollar fine. He was not accusing anybody of doing anything, but there are provisions the attorneys need to be aware of. He was not an attorney, but he wanted to make them aware of the consequences of improper notification. Not only improper notification, but the type of meeting. When he receives a letter that says nobody can testify, that is not true.

David Cauthen, a resident of Sunnyside and an officer of the Sunnyside Homeowners Association wanted to bring up the issue that the applicants attorney said about the book having everything they needed to know with respect to this development. That book does not show that the owners of the development are not properly registered with the State of Florida. They are required to file and pay an annual fee, and they have not done that. They did not do it after being told at the prior meeting. He was concerned, and they should not believe what was being said. He asked if any commissioners actually spent time driving the roads at Sunnyside. That was the most important thing they had to do. He asked everyone in attendance if they had been in a wreck or run off the road in Sunnyside because it happens frequently. Based on what they see at Sleepy Hollow and U.S. 441, it is rapidly becoming one of the most accident-prone roads, yet there was a study done by the applicant that said road traffic had gone down. He would suggest that common sense dictates that to be BS.

Bill Polk of 600 Cascade Avenue said he was a previous property owner of Sunnyside. He grew up in

Sunnyside. He asked the commission if they were afraid because the recommendation from the special magistrate is not everything. The citizens of Leesburg are telling you what they want. The special magistrate made a recommendation and that does not mean they have to vote for it. They can vote against it. Plus, they have forty percent of this project on fifty-foot lots. Is that zero lot lines? What is that? They cannot fit a tree on a fifty-foot lot, yet the city requires two trees per lot. This does not work. If they go to The Villages, they have trees in the medians, they do not have any trees around the homes. They have bushes, maybe. This is just a recommendation and the commission should not be afraid to vote against it. It was mentioned that Carlos Alvarez was a record holder at the University of Florida from 1969 to 1973. However, he was a conscient objector during the Vietnam War. He was banned from the team and the city is listening to that man. He was sure veterans appreciated Carlos Alvarez.

Mayor Burry asked if there were any further public comments. There were none. He closed the public comment portion of the meeting and asked Mr. Spain if he had any rebuttal.

Brent Spain said they heard from Attorney Broome who suggested the PUD had expired and that it automatically reverted to RE-1, which would be one to one per acre. That is not the case. In fact, that was a major point at the magistrate's hearing and it was touched on in his order. The city planning staff acknowledged that none of the steps were actually formally taken to implement that rescission section and that was part of the reason for the clarification of paragraph 15.c of the current PUD, so this type of event does not happen again. Under the modified PUD, it will automatically expire if a building permit or development permit is not submitted within six years. It would automatically expire and revert to RE-1 zoning. That was not an accurate statement because that did not happen on this property. They heard an accusation that the special magistrate reweighed the evidence, but state statutes provide for what is called a de novo evidentiary hearing. If he was not allowed to consider evidence, then he would be a circuit judge sitting in a pellet capacity, but state statutes allow for an evidentiary hearing and the special magistrate heard sworn testimony. Everyone there was put under oath, including the city planner and his witnesses. Mr. Tucker made several remarks claiming that notice was not right regarding the magistrate's proceeding. The magistrate's proceeding briefly entailed two parts; one was the mediation phase and the second was the hearing phase. Folks that timely petitioned became participants. They were not parties under the statute, they were participants who made a timely submittal. They were able to participate in the mediation phase, so the fact that someone was telling them that they did not get to participate in the mediation phase, under state statute they were not a party to the mediation phase. The mediation phase was not successful because it was not settled. That was when it went to the hearing stage. The reference to April 22, 2023, that was the original date of the special magistrate hearing. However, it was canceled at the city's request because his client made a settlement offer to the city commission through a shade meeting that was scheduled and allowed by law. They requested that meeting at an open city council meeting to consider the settlement offer, but that settlement offer was not accepted. So, the special magistrate proceeding was rescheduled for July 2023 and Mr. Tucker personally attended that meeting. He was given every opportunity to speak. Several members of the public attended but Mr. Tucker did not raise any objections at that hearing. In fact, the transcript from that hearing is in the binder that was introduced into the record. There were multiple opportunities to provide comments at that meeting and the special magistrate was willing to hear from everyone in attendance. They indicated that the city attorneys had raised all the issues they wished to raise, so they did not need to make any comments. There was a comment made by Mr. Tucker that said he and his clients had not complied with the circuit court order because they had not notified the circuit judge within ten days of the special magistrate's proceeding being concluded. The proceedings have not been concluded. They covered the settlement agreement at the March 25th meeting. Under that settlement agreement, they accepted the special magistrates' recommendation. This is step two, which is to implement that recommendation by approving the modified PUD. In the settlement agreement, it specifically states that within five-days of the decision. Tonight, if the commission were to approve the modified PUD, it would become final, and they would dismiss that certiorari proceeding, which would be the notice to the judge. It would be shorter than that

time frame, but his client has been fully compliant with the court's order. They heard from an individual, and with no disrespect, he himself served as an HOA president. However, being an HOA president does not make you a land use expert. What makes you a land use expert is being a certified land use planner, an AICP, like the city planner or Mr. Beliveau. It would include a masters in urban and regional planning or an undergraduate degree in planning.

There were comments regarding accidents and the safety of the road, and we heard some of that at the last meeting. That was also raised at the special magistrate's hearing. The special magistrate's order indicated that the city had introduced no evidence or testimony during the hearing to substantiate any alleged accident history on the surrounding roadway network that would somehow be relevant to the case. Again, he quotes case law about speculation and conjecture that are not competent substantial evidence. They went to the Lake County Sheriff's Department website because they have an accident dashboard. They went back ten years in preparation of this meeting to see what accidents have been reported in the area and those were the findings. That is not his data, it is available on the Lake County's accident dashboard. They can view that 2014 had zero accidents, 2015 had one at Sleepy Hollow and the Recreation Complex entrance which showed a disabled driver. In 2016 there was one accident on Cisky Park Lane, that was a departure. In 2017 there were zero. In 2018 there were two accidents, one at Sleepy Hollow and the Recreation Complex entrance which showed aging road user and the second accident was at the southeast end of Sunnyside Road, and it was a distracted driver and lane departure. These are the descriptions from the sheriff's department. They put that information in their database. In 2019 there were zero, 2020 zero, 2021 zero, in 2022 there were between two and four accidents. The reason for it being numbered like that is because the data on the accident dashboard does not identify if those were a single vehicle event or a multi-vehicle event. That was between the east end of Sunnyside Drive by the three-way intersection by Ashton Woods Road, and it listed one commercial vehicle, two teen drivers, at a three-way intersection, and four was a distracted driver lane departure. Again, they do not know if those descriptions refer to separate events or a multi-car event. In 2023 there were zero and currently in 2024 there have been zero. He understands there were comments before and this evening, but that data is from the Lake County Sheriff's Office, and it does not indicate a substantial number of accidents being reported on the roadway. There was a comment repeated from the last meeting about one of his clients not being registered with the State of Florida. That corporate entity is one of the property owners. They are a Texas limited liability company, and they do not actively do business in Florida. They are just property owners in Florida. There was a comment made about the trip count, but those were not his numbers. Those numbers came from the County Public Works website. Those are their trip count numbers. When rubber wire is put across the road and people drive over it, that is how they get trip counts. The trip counts that the county did themselves show the two segments of roadway have been down since 2021. That is real, hard data. They are not speculating like previously when they tried to extrapolate out to see what 2024 may look like. They now know because the county has done the trip counts. There were some comments about the recommended order, but the fact is, they went through the process that included a very thorough evidentiary hearing in a very detailed order. The order is forty pages long. He encouraged folks in the audience to read the document, because it covered multiple issues that the special magistrate considered prior to his decision. In his role, he listened to expert testimony, and the sworn testimony concluded that it would be unreasonable to deny his client's project under state statute.

In conclusion, he knows the commission has a difficult job. They always have a difficult job, whether it be determining millage rates or zoning decisions. However, zoning decisions are some of the most difficult, and he did not want to delabor the point and, if needed, the city attorney could advise them because these hearings can be emotional since it is their neighborhood. The biggest investment we make in our lives is our house, and these hearings are not popularity polls. In fact, his firm represents city councils and county commissions across the state on special land use. The decision cannot be based on popularity, it is a quasi-judicial decision, it is not legislative. A legislative proceeding would be when they adopt a zoning code or the entire zoning map. This decision is clearly quasi-judicial, and these

hearings are not popularity polls. The issue is whether or not they comply with the city's adopted criteria and that adopted criteria is located in two places; the city's comprehensive plan and land development code. They have a detailed order that they voted to approve at the last meeting that opined that they would comply with that criteria. This evening, not a single individual came up and cited a specific section of the comprehensive plan or land development code that his client's project does not comply with. The city's planning staff reviewed this project five times and each time they recommended approval and each time, have concluded that we meet the land development code and the comprehensive plan requirements. The only requirement he would put in quote marks is the issue of whether they meet the Sunnyside Task Study Report. However, as demonstrated in the special magistrate's recommendation, the task report was adopted by a resolution, and it has no criteria and under Florida law, it does not apply to his client's property. He understands this is a difficult decision and voting for his client's project will not be popular with folks in this room. He asked respectfully to approve this request, so everyone involved can move forward.

Mayor Burry asked the planning and zoning director if he had any further comments. **PZD Miller** answered no, even though he believed Mr. Arney misquoted him, which is fine that kind of stuff happens. **Mayor Burry** asked if any commissioner had questions for the planning and zoning director. There were none. **Someone in the audience** started saying something unaudible. **Mayor Burry** explained that they already heard public comments and they agreed to allow the petitioner to rebuttal. **CM Minner** pointed out for clarity that there is a specific public hearing process and that process is to swear in all witnesses, that was done. The next step in the process is to hear from the city and that was done by the planning and zoning director. After that they heard from the petitioner and that was done by attorney Brent Spain. We then moved into public comments and that was done. Everybody has had an opportunity to speak. After that, the process allows the petitioner to respond, which Mr. Spain did. Then the city responded and the planning and zoning director did that. We are now at the part where the commission deliberates and votes. That is the process of a public hearing. **Mayor Burry** asked if there were any comments from the commission with regard to this issue.

Commissioner Connell asked the city attorney about the present proposal on the floor and, if it were to be accepted, would the city be responsible for any type of legal fees? **CA Brionez** answered as part of the settlement agreement that was approved at the last meeting each party would bear their own attorney's fees and costs if this were to be accepted. **Commissioner Connell** asked if the city were to go to court and lose what would be the city's portion that we would be responsible for when it comes to attorney fees? **CA Brionez** replied that we may be subject to reimbursing attorney's fees and costs.

Commissioner Connell inquired if he knew what that cost could be. **CA Brionez** said it was uncertain at this time. **Someone from the audience** said something that was unaudible and **Mayor Burry** pointed out that they were at the portion of the hearing where commissioners discuss the matter. We have already heard public comments. He asked if someone was having problems hearing and people in the audience said yes. **CA Brionez** stated the question was whether the city could potentially be liable for attorney's fees and costs if they decided not to approve the revised PUD and proceed with the litigation and lose. **Commissioner Connell** agreed that was what he asked. **Commissioner Pederson** stated he could not speak for the whole commission, but he was on the commission in 2022 when it was voted down. There was a lawsuit and he feels the city gave it a good fight. They now have legal counsel strongly advising to settle this. He thought the city commission had the final vote. They had the common sense and logical approach, and he voted no the first time because of the roads. The roads are inadequate, and he does not care what traffic engineers say, the roads in Sunnyside do not support it. However, at the end of the day, he cannot support spending more money on a lawsuit when legal counsel says it would be a losing situation. He does not take this lightly, but he wanted to make those comments. **Commissioner Berry** stated this was not an easy decision. She listened to all the comments presented tonight, and all parties have a vested interest. She reviewed the timeline from 2005 to the present. She reviewed the PUD and

read through the special magistrate's legal opinion and recommendation which was to approve the PUD. The legal advice from our counsel was to settle the pending litigation. She would be negligent in her duties as a commissioner to ignore that legal advice and potentially have negative financial ramifications for the city. At this time, it is the best interest of the city to move forward. **Mayor Burry** asked if there were any other comments. There were none.

The roll call vote was:

Commissioner Berry	Yes
Commissioner Connell	Yes
Commissioner Reisman	Yes
Commissioner Pederson	Yes
Mayor Burry	Yes

Five yeas, no nays, the Commission adopted the ordinance.

At 7:36 p.m. **Mayor Burry** stated they would take a short break to allow people to leave before moving on with the meeting. The meeting reconvened at 7:40 p.m.

B. FIRST READING OF ORDINANCES

- 1. An Ordinance of the City of Leesburg, Florida, amending and restating Ordinance No. 2018-2, as amended by Ordinance No. 2018-35, and as further amended by Ordinance No. 20-14; providing a short title, providing findings and intent; granting certain non-exclusive Franchises to Gibson Place Utility Company, LLC, Gibson Place Water Conservation Authority, LLC, Blue Goose Utility Company, LLC, Blue Goose Water Conservation Authority, LLC, Okeehumkee Utility Company, LLC, Okeehumkee Water Conservation Authority, LLC, and their successors and assigns (Each a Franchise, and sometimes collectively referred to herein as the "Franchisees"); a Franchise period of 30 years to construct, own, operate and maintain certain services and facilities to serve areas within and adjacent to The Villages Age Restricted Development; setting forth the terms and conditions under which such Franchises shall operate; providing for conflict and severability; and providing an effective date.**

Commissioner Reisman introduced the ordinance to be read by title only. CC Purvis read the ordinance by title only.

CA Watson asked for anyone in attendance who wished to provide testimony on any first reading items to stand. He swore them all in.

Mayor Burry asked the city manager to provide an overview of this item. **CM Minner** stated his report would cover first reading items one, two, seven, and eight. When the city entered into a partnership with The Villages, we brought The Villages in, and made several different agreements that were associated with municipal services. The agreements are scattered throughout different ordinances and alike. The purpose of the ordinances is, as The Villages grow into the incorporated limits of Leesburg, we are trying to consolidate all the agreements in all the different areas that The Villages now own or will potentially

move into in the future into three or four documents. The specific agreements deal with Section 163 of the Florida Statutes, which, on a high level, are typically considered municipal services. Municipal corporations have the right by state statutes to provide municipal services. Municipal services are defined by a number of different things; fire, police, library, water, sewer, electric, and gas. State statutes give municipal corporations the right to provide municipal services. As we endeavored with The Villages, we traded off municipal services, and typically, when a municipal corporation trades off services, which are their statutorily right to provide, you enter into franchise agreements or other different service type agreements where the city would receive a fee in exchange for the right to provide that service. There are four ordinances that contemplate essentially three things. Jumping to items seven and eight, that is what we call the 163 agreements. The 163 agreement lays out how we will provide municipal services to all areas of The Villages that are located in the incorporated city limits. They are broken down into two sections; Section A and Section B. Essentially, that is the existing 470 properties and other properties like Secret Promise and Renaissance Trails. Items seven and eight show what Section A and B are. Basically, seven and eight cover all the areas that potentially can be and probably will be The Villages in the City of Leesburg. The 163 agreement lays out all the municipal services and how we are doing it. If you recall back in the day, our fancy name for that was the "hanging chad" agreement. It was everything that we did not contemplate that went into one agreement and that was the 163 agreement. That agreement contemplated fire and police services, recreation, impact fees, the roads and so forth. It was all consistent and repetitive, and it was summed up in one agreement. So, that covers the ordinances under items seven and eight. This specific ordinance deals with franchise fees for water, sewer, and reuse. New residents who live in the City of Leesburg on The Village's property will buy their water, sewer, and reuse from the entities named in the ordinance and those entities will pay the City of Leesburg a 5% franchise fee. The language in the agreements is the same as we have done in past agreements. Item two covers the solid waste franchise agreement. This is a separate entity brought in by The Villages, so that it was separated out. In really high layman language, they are not a partner or a sub-entity of The Villages. They are a separate contractor, and that is why we separate the solid waste service from the Tri-County Sanitation. Essentially, the agreement says Tri-County Sanitation will collect the waste, but it will be handled at a little different service level than what the city provides, but whatever Tri-County Sanitation provides to The Villages Leesburg residents has a 5% franchise fee and that will come back to the city in exchange for providing the municipal services. As a side note, The Villages came back to the city asking if we wanted to physically provide these services instead of franchising them. We put a pencil to that, and for a few different reasons we felt the profit margins and service levels were different from what our native load is. We agreed that it was best for the city to remain in the franchise agreement. That is what this item contemplates. Items seven and eight contemplate all the other remaining services and between now and second reading we will work with representatives at The Villages to double-check and make sure everything is the same. The intent is to have everything be the same as it was previously approved. We want it to be the same moving forward. However, in the latter part of the afternoon, he noted one minor, slight discrepancy in the fire assessment fee section, so he would get that reviewed and report back accordingly. If there are any modifications or differences, they will be corrected before May 13th. **Mayor Burry** asked if there were any questions from the commission. There were none. He stated this item would lay over until the second reading on May 13th.

2. **An Ordinance of the City of Leesburg, Florida, providing a short title; providing findings and intent; granting a non-exclusive Franchise to Tri-County Sanitation, LLC, and its successors and assigns ("Franchisee"); a franchise for a period of 30 years to construct, own, operate and maintain certain services and facilities to serve areas within and adjacent to The Villages Age Restricted Development; setting forth the terms and conditions under which such Franchise shall operate; providing for conflict and severability; and providing an effective date.**

Commissioner Reisman introduced the ordinance to be read by title only. CC Purvis read the ordinance by title only.

Mayor Burry requested comments from the Commission and the audience. He stated this item would lay over until May 13th.

Someone from the audience asked if there would be any public comments offered. **Mayor Burry** stated that typically we wait until the second reading to take questions and comments from the public. **CA Watson** agreed. Typically, questions and comments are taken at second reading, but if the mayor wished to hear public comments now, that would be at his discretion. **Mayor Burry** offered to hear public comments.

Bill Polk of 600 Cascade Avenue wanted to know how the city determines franchise fees. Is it level with the fees that the city citizens of Leesburg pay now? This franchise fee is for The Villages, correct? Will there be a franchise fee for the water and other services and does the level of expense for the franchise fee match what he pays for his trash? He currently pays about \$18 for the trash, so will this company, Tri-County, charge \$18, and will the city receive a percentage of the profits? Somewhere there is a profit line. **CM Minner** replied at this time he did not have the answer to that question. A Leesburg resident who is on Leesburg solid waste pays about \$17.56 a month for trash. A Village resident will pay Tri-County Sanitation whatever they charge for solid waste plus a 5% franchise fee. At this time, he was not sure about Tri-County's charge, but it would be that charge plus the 5% franchise fee. **Mr. Polk** asked if that was equivalent to \$17.56? **CM Minner** answered that he could not answer that at this time, but he would get the answer. **Mr. Polk** wanted to make sure that the current Leesburg residents and the new residents were paying equal amounts for services.

3. **An Ordinance amending the Future Land Use Map of the Comprehensive Plan of the City of Leesburg, changing the Future Land Use Map Designation of certain property containing 4.72 +/- acres from Low Density Residential and Industrial to Low Density Residential, for a property generally located east of Flatwoods Road and west of South Street, lying in Section 28, Township 19 South, Range 24 East, Lake County, Florida; and providing an effective date. (Southwinds Phase III SSCP)**

Commissioner Reisman introduced the ordinance to be read by title only. CC Purvis read the ordinance by title only.

Mayor Burry requested comments from the Commission and the audience.

PZD Miller stated this request was to change the future land use; only. It would go from low density residential and industrial to low density. Last month, the planning commission approved a conditional use permit for the property. Their desire is for forty-four single floor apartments. All we need to do is fix the land use. There will be no two-story buildings and the staff were pleased. **Mayor Burry** asked if there were any questions. There were none. He said this item would lay over until May 13th.

4. **An Ordinance amending the Future Land Use Map of the Comprehensive Plan of the City of Leesburg, changing the Future Land Use Map Designation of certain property containing 10.08 +/- acres from Institutional to General Commercial, for a property generally located**

north of U.S. Highway 441 and west of College Drive, lying in Section 15, Township 19 South, Range 25 East, Lake County, Florida; and providing an effective date. (Silver Lake Commons SSCP)

Commissioner Reisman introduced ordinances 6.B.4 and 6.B.5 to be read by title only. CC Purvis read the ordinances by title only.

Mayor Burry requested comments from the Commission and the audience.

PZD Miller stated the next two cases are for a small scale comprehensive plan and a planned unit development rezoning. The subject property is located north of Highway 441. It is right across the street from the Cracker Barrel. The city currently owns the property and wants to sell off the property and do a lot split because the city has no plans to utilize it. Now, because it is old airport property, the future land use is institutional and that would go to general commercial. The zoning will go from public to planned unit development. It would be split into parcels later, and then platted. The permitted uses we worked out with the developer are general retail, restaurants, pharmacy, and medical. These are typical uses. He would like to clarify one use that needed to be modified. The outdoor storage wording needs to have mini-warehouses added to it. There already is some wording in there for outdoor storage, but they meant to have it as mini-warehouses with outdoor storage since many warehouses already have outdoor storage. They have the architectural standards for the dark sky lighting, irrigation requirements, and everything else in the standard PUD. The second reading is scheduled for May 13th. **Mayor Burry** asked if there were any questions from the commission. There were none. He stated this item would lay over until May 13th.

5. **An Ordinance of the City of Leesburg, Florida, changing the zoning on approximately 10.08 +/- acres from P (Public) to PUD (Planned Unit Development) to allow for commercial uses, including restaurant, retail, and indoor storage, for a property generally located north of U.S. Highway 441 and west of College Drive, lying in Section 15, Township 19 South, Range 25 East, Lake County, Florida; and providing an effective date. (Silver Lake Commons PUD)**
6. **An Ordinance of the City of Leesburg, Florida, vacating a 7,367 square foot portion of Park Avenue generally located between West Meadow Street and the City's Fountain Lake Bike Trail, as shown on the Official Map of the City of Leesburg, Florida, recorded in Plat Book 2, Page 19, of the Public Records of Lake County, Florida; and providing an effective date. (Beacon College)**

Commissioner Reisman introduced the ordinance to be read by title only. CC Purvis read the ordinance by title only.

Mayor Burry requested comments from the Commission and the audience. There were none. He stated this item would lay over until May 13th.

7. **An Ordinance of the City of Leesburg, Florida, Request for a Chapter 163 Florida Statutes Development Agreement amendment for The Villages of West Lake Area A, to incorporate the property known as Secret Promise**

with other adjacent properties; to update the agreement to reflect year and remove information no longer needed; to clarify the definition of VLC (Villages Land Company) to include the affiliates of VLC; to add references to community support districts which allow non-age restricted residential uses; to incorporate and update the provisions that were contained in Chapter 163 Public Facilities Agreement between The Villages and the City. The Public Facilities Agreement and amendments will be terminated when this Chapter 163 Florida Statutes Agreement amendment is completely and fully executed; to update the agreement to reflect the current requirements in Florida Statutes for Chapter 163 Agreements; this request does not include changes to population density, building height or intensity; for a property generally located north and south of the Florida Turnpike, west of County Road 48, and east of the Sumter County line, as legally described in Sections 06, 07, 08, 09, 16, 17, 18, 19, 20, 21, 29, 30, 31, and 32, Township 20 south, Range 24 east, Lake County, Florida; and providing an effective date. (VOWL Chapter 163 Agreement Amendment Area A)

Commissioner Reisman introduced the ordinance to be read by title only. CC Purvis read the ordinance by title only.

Mayor Burry requested comments from the Commission and the audience. There were none. He stated this item would lay over until May 13th.

- 8. An Ordinance of the City of Leesburg, Florida, Request for a Chapter 163 Florida Statutes Development Agreement Amendment for The Villages of West Lake Area B, to update the agreement to reflect year and remove information no longer needed; to clarify the definition of VLC (Villages Land Company) to include the affiliates of VLC; to add references to community support districts which allow non-age restricted residential uses; to incorporate and update the provisions that were contained in Chapter 163 Public Facilities Agreement between The Villages and the City. The Public Facilities Agreement and amendments will be terminated when this Chapter 163 Florida Statutes Agreement Amendment is completely and fully executed; to update the agreement to reflect the current requirements in Florida Statutes for Chapter 163 Agreements; this request does not include changes to population density, building height or intensity; for a property generally located north and south of the Florida Turnpike, west of County Road 48, and east of the Sumter County line, as legally described in Sections 06, 07, 08, 09, 16, 17, 18, 19, 20, 21, 29, 30, 31, and 32, Township 20 south, Range 24 east, Lake County, Florida; and providing an effective date. (VOWL Chapter 163 Agreement Amendment Area B)**

Commissioner Reisman introduced the ordinance to be read by title only. CC Purvis read the ordinance by title only.

Mayor Burry requested comments from the Commission and the audience. There were none. He stated this item would lay over until May 13th.

C. NON-ROUTINE ITEMS

1. None

7. INFORMATIONAL REPORTS:

The following reports are provided to the Commission in accordance with the Charter/Ordinances. No action required.

A. Financial Reports as of January 2024

Mayor Burry asked if there were any questions or comments concerning the financial reports. There were none.

B. Financial Reports as of February 2024

8. CITY ATTORNEY ITEMS:

CA Watson had no further items to discuss.

9. CITY MANAGER ITEMS:

CM Minner had no items to address.

10. ROLL CALL:

Commissioner Pederson had no comment.

Commissioner Berry had no further comment.

Commissioner Connell had no comment.

Commissioner Reisman said he was excited to see everyone out at Bikefest this weekend.

Mayor Burry had no comment.

11. ADJOURN:

PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE HUMAN RESOURCES DEPARTMENT, ADA COORDINATOR, AT 728-9740, 48 HOURS IN ADVANCE OF THE MEETING.

F.S.S. 286.0105 "If a person decides to appeal any decision made by the Commission with respect to any matter considered at this meeting, they will need a record of the

proceedings, and that for such purpose they 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." The City of Leesburg does not provide this verbatim record.

With a motion by Commissioner Reisman and a second by Commissioner Connell, the meeting adjourned at 8:02 p.m.