

1 **MINUTES OF THE CITY OF LAKE MARY, FLORIDA, PLANNING AND ZONING**
2 **BOARD MEETING HELD MAY 11, 2010, 6:00 P.M., CITY HALL, 100 N. COUNTRY**
3 **CLUB ROAD**

4
5 **TAPE 1, SIDE A**

6 I. Call to Order

7
8 The meeting was called to order at 6:01 p.m.

9
10 II. Moment of Silence

11
12 III. Pledge of Allegiance

13
14 IV. Roll Call - Determination of a Quorum

15
16 The following members were present:

17
18 Dr. Robert Hawkins, Chairman
19 Vice Chairman Colleen Taylor
20 Member J.B. Cartmill, II
21 Alternate Joe Schofield (Voting)

22
23 Member Sidney Miller and Member Mike Napier were absent.

24
25 City staff present were Juan (John) A. Omana, Jr., Community Development
26 Director; Gary Schindler, City Planner; Tom Connelly, City Engineer; and Diana
27 T. Adams, Administrative Secretary.

28
29 Also present who spoke were Deborah Lynch, Jerry McCollum and Gary Medley.

30
31 V. Approval of Planning and Zoning Board Minutes - April 27, 2010

32
33 **MOTION:**

34
35 **Member Cartmill moved to approve the Minutes of the Planning and Zoning**
36 **Board meeting of April 27, 2010, as presented. Alternate Schofield**
37 **seconded the motion. Member Miller and Member Napier were absent. The**
38 **motion carried unanimously 4-0.**

39
40 VI. Old Business

41
42 None

1 VII. New Business

- 2
3 A. 2010-VC-01: Recommendation to the Mayor and City Commission for a
4 petition to vacate rights of way west of Palmetto Avenue for CFCR Station,
5 Railroad Avenue and Myrtle Avenue, Lake Mary, Florida; Applicant: City of
6 Lake Mary/Community Development Department
7

8 Gary Schindler, City Planner, presented Item A. and the related Staff Report. An
9 aerial attached to the Staff Report depicting Railroad Avenue and Myrtle Avenue
10 was on the overhead projector. He said, what you are looking at is the – well, it’s
11 easy to see where the CSX tracks are. They are the ones that are curved. The
12 City owns two – actually, three bits of right of way, and you will see Railroad
13 Avenue right of way is in two pieces. And, then we have a piece of Myrtle
14 Avenue. These are all platted rights of way based on plats that are even older
15 than I am. This is the area in which the rail station is proposed (indicating). Now,
16 the easy thing to pick out is right here (indicating). This is the County’s existing
17 storm water pond that is adjacent to Lake Mary Boulevard (indicating), and here
18 we have Palmetto (indicating). So, you can see where these are. This is in that
19 wild, wooly area.
20

21 Mr. Schindler put another document on the overhead entitled Lake Mary Station
22 100% Design Plans. He stated, and here we have the 100% site plan – or a
23 sketch of it and the areas in which the rights of way are located that has been
24 clouded and superimposed. So, you can see it is necessary that these pieces of
25 rights of way be vacated so that the rail station can come to fruition.
26

27 Mr. Schindler concluded his presentation by saying, this vacation is a City-
28 initiated project, and we have reviewed the vacation of the rights of way in light of
29 the criteria and the Code of Ordinances and staff finds the request to vacate a
30 portion of Railroad Avenue and Myrtle Avenue rights of way to be consistent with
31 the Comprehensive Plan and the City Code of Ordinances with compensation to
32 the City for the above-referenced rights of way to be determined.
33

34 Chairman Hawkins asked, so, that’s not a road? That is just a.....
35

36 Mr. Schindler answered, it’s unopened right of way. Now, portions of Railroad
37 Avenue are open, if you want to call a dirt track open. I mean, there was
38 someone that had a storage type of – a pole barn back there, and so there were
39 some vehicles that would access that, but there is no pavement.
40

41 Chairman Hawkins questioned, but, these lots to the east of Myrtle Avenue, are
42 there homes on those lots?
43

1 Mr. Schindler responded, no. There is one privately-owned piece of property
2 west of Palmetto, and it is here at the very corner of where the CSX meets Lake
3 Mary Boulevard (indicating), and that was added to the Downtown. You acted
4 upon the request to rezone to Downtown Centre, but the rest of it, as you can
5 see, this is the property boundary, everything from here to Palmetto and between
6 Lake Mary Boulevard and the CSX is all involved with SunRail.
7

8 Chairman Hawkins commented, I was just looking at the satellite photo.
9

10 Mr. Schindler said, well, at one time, there were homes along the west side of
11 Palmetto and those have all been purchased and those are no longer standing.
12

13 Tom Connelly, P.E., City Engineer, stated, FDOT has actually purchased all of
14 those properties except, as Gary mentioned, that one parcel way to the west that
15 is in the triangle, and as a matter of fact, did purchase through negotiating with
16 the owners, and I believe these sales have already been completed.
17

18 Mr. Schindler stated, and that is not proposed to be acquired.
19

20 Chairman Hawkins thanked Mr. Schindler for his presentation.
21

22 Mr. Schindler said, in parting, I was just going to say that I believe that the plans
23 for SunRail are "on track".
24

25 Chairman Hawkins asked, so, the City is the Applicant? FDOT is not; right?
26

27 Juan (John) A. Omana, Jr., Community Development Director, replied, actually,
28 FDOT is the Applicant. It's the City for the FDOT folks.
29

30 Chairman Hawkins requested the Applicant to come forward.
31

32 Deborah Lynch from FDOT Right of Way, 719 South Woodland Boulevard,
33 DeLand, Florida 32720, came forward in favor of the proposed vacation.
34

35 Chairman Hawkins questioned Ms. Lynch is she had anything further to add to
36 Mr. Schindler's presentation.
37

38 Ms. Lynch answered, no, I don't.
39

40 Chairman Hawkins commented, okay. Good. Everybody has done their
41 homework. It has fallen into place neatly.
42

43 Ms. Lynch thanked Chairman Hawkins.

1 Jerry McCollum, Seminole County Engineer, 520 W. Lake Mary Boulevard,
2 Sanford, Florida 32773, also came forward in favor of the proposed vacation. He
3 stated that they have had a very good working relationship with the City, as well
4 as the FDOT. Also, that they are one of the funding partners for the SunRail. He
5 thanked the Board for their consideration of this matter from him and also from
6 the Seminole County Board of County Commissioners. Lastly, he thanked staff
7 and hoped that we can get the train on the tracks soon.

8
9 Chairman Hawkins opened the hearing to public comment. Hearing none, he
10 closed that portion and entertained board discussion and/or a motion.

11
12 **MOTION:**

13
14 **Alternate Schofield moved to recommend approval to the Mayor and City**
15 **Commission the request by City of Lake Mary/Community Development**
16 **Department for a petition to vacate rights of way west of Palmetto Avenue**
17 **for CFCR Station, Railroad Avenue and Myrtle Avenue, Lake Mary, Florida,**
18 **consistent with staff's Findings listed in the Staff Report and subject to the**
19 **following condition. Member Cartmill seconded the motion. Member Miller**
20 **and Member Napier were absent. The motion carried unanimously 4-0.**

21
22 **CONDITION:**

- 23
24 **1. Compensation to the City for the above-referenced rights of way to be**
25 **determined.**

26
27 Mr. Omana announced that this item will move forward to the City Commission's
28 June cycle; that staff will notify the Applicant of the time and date.

- 29
30 B. 2010-RZ-05: Recommendation to the Mayor and City Commission for a
31 rezoning from R-1A (Residential) to C-1 (General Commercial) and voluntary
32 Developers Commitment agreement for Lake Mary Professional Offices, LLC,
33 east side of Middle Street, Lake Mary, Florida; Applicant: Land Trust
34 Administration, LLC, for Flozell Mitchell

35
36 Gary Schindler, City Planner, presented Item B. and the related Staff Report. An
37 aerial attached to the Staff Report depicting the location subject property with
38 Lake Mary Boulevard written at the top was on the overhead projector. He said,
39 as you have noted, there are two issues before you. They are separate but
40 related, and I would ask that you take action on each of these separately. One,
41 we have the request to rezone; and two, we have the voluntary Developers
42 Commitment agreement. The request to rezone is based upon the existing
43 zoning not being compatible with the existing land use. North of this, along Lake

1 Mary Boulevard, we have Restricted Commercial land use. South of it, including
2 the subject property, we have Commercial land use. We have R-1A
3 (Residential/Single-Family) zoning and that is not compatible. The subject
4 property is being proposed for development, and the first step is to change the
5 zoning to a category that is compatible with the land use and which will allow
6 them to develop one or more office buildings on the property.
7

8 Mr. Schindler stated, as you can see, staff has reviewed the proposed request in
9 light of the four criteria on page 2 of the Staff Report and have, under Findings of
10 Fact, stated that the above Findings of Fact A through D are determined to
11 provide support for the request to rezone the subject property from R-1A
12 (Residential) to C-1 (General Commercial) by establishing consistency and
13 compatibility.
14

15 Mr. Schindler then spoke to the voluntary Developers Commitment agreement.
16 He said, this is a voluntary Developers Commitment agreement and it is for the
17 purpose of establishing or identifying those uses that will not be allowed on the
18 subject property. And, as you can see, there are three of them. There are
19 medical offices, dental offices and psychiatrist offices. Two reasons: One is that
20 certain -- per the Florida Building Code, there are certain medical uses that
21 require handicap parking spaces over and above that required by ADA, and there
22 is simply no room on the subject property to increase the number of parking
23 spaces -- the handicap spaces. They are meeting the minimum of ADA. For
24 instance, if an orthopedist moves in -- or wants to move in, before they would be
25 allowed to do that, they would have to comply with the number of handicap
26 parking spaces per the Florida Building Code, which is more than what ADA
27 requires, which is 1 per 25. Well, there is simply no room. And, two, which is
28 equally important, is that the developer simply says that he doesn't believe that
29 the buildings will lend themselves to medical uses. They are not really designed
30 for medical offices and, therefore, why cause problems down the road when we
31 can approve a Developers Commitment agreement. It will be recorded with the
32 County and run with the land and it will clearly state these three uses are not
33 permitted.
34

35 Mr. Schindler concluded his presentation by saying, staff recommends that the
36 City approve the rezoning and the proposed voluntary Developers Commitment
37 agreement which prohibits the subject property from medically-related uses.
38

39 Member Cartmill asked, according to the City, is a medical and a dental office the
40 same?
41

42 Mr. Schindler responded, no. We have medical offices and then we have dental
43 offices. A dental office would not have met the parking requirement. This was

1 proposed by the developer. We don't recommend it, but it is up to them to decide
2 what uses they feel are appropriate and not appropriate in relationship to what
3 the C-1 zoning will allow. And, you would have to be crazy to want a psychiatrist
4 there.

5
6 Chairman Hawkins questioned, so, what happens in 20 years?
7

8 Mr. Schindler replied, well, still we have the Florida Building Code, and if the
9 Florida Building Code says that it has to have so many parking spaces -- and at
10 the end of 20 years, if an orthopedist wants to move in, they will be asked how
11 they are going to accommodate the required number of parking spaces, and if
12 they can't do it, the City will not approve the building permit or the business
13 license for them.

14
15 Chairman Hawkins asked if they could request a variance.
16

17 Mr. Schindler answered, no, because this is State. This is not something over
18 which local governments are able to grant variances. This is Florida State
19 Building Code.
20

21 Vice Chairman Taylor questioned, is medical office, dental office, psychiatrist,
22 which would fall under medical office -- are these defined anywhere?
23

24 Mr. Schindler asked, you mean in the Florida Building Code or in the City's Code
25 of Ordinances?
26

27 Vice Chairman Taylor responded, anywhere. Is there anywhere that references
28 what definition you use for medical, dental, or psychiatrist?
29

30 Mr. Schindler replied, no. We simply -- I don't know that we have a definition of
31 medical. We do distinguish between medical office and clinic or hospital in that a
32 hospital or clinic we distinguish between being day use and having residential
33 care, even if it is short-term residential care.
34

35 Vice Chairman Taylor questioned, but, I wonder, like, if a psychologist wanted to
36 move in, they are not a medical doctor...
37

38 Mr. Schindler interjected answering, a psychologist is not a psychiatrist. That is a
39 profession.
40

41 Vice Chairman Taylor asked, right. They are not a medical doctor, so they could
42 go in there?
43

1 Mr. Schindler responded, yes, they could as far as we're concerned.

2
3 Vice Chairman Taylor questioned, is there a reason that you are specifying three
4 specific things as opposed to saying something...

5
6 Mr. Schindler interjected replying, this is per the Applicant. We did not tell them
7 the uses that they could or could not -- we simply said that to be effective, it
8 would need a Developers Commitment agreement. We gave them a model and
9 said copy this and insert the uses that you wish to either include or uses you wish
10 to exclude.

11
12 Vice Chairman Taylor commented, I don't mean to go, you know, lawyer over
13 everybody, but it just seems that it's kind of vague language since it's not defined
14 anywhere and it's kind of duplicative with medical and psychiatrist. It seems like
15 it would be clearer if it said -- and if they wanted to voluntarily prohibit any use
16 that would require handicap spaces over and beyond what is already provided.

17
18 Mr. Schindler stated, but that's the problem. The Florida Building Code does not
19 clearly define those. You talk about the State taking liberties. It's almost you're
20 guilty until proven innocent. Local governments are required to enforce this, but
21 there is not a list of uses in the Florida Building Code. It says those that attract
22 more handicap or more mobility-impaired clients. So, there is no definitive list.
23 You know, we know that an orthopedist or orthopedic surgeon's office would be
24 one. It really depends upon -- if someone feels that they are not -- should not be
25 included in this, they have to go to the State and fight that battle with the State.
26 The City says, look, this is how we are interpreting it. Now, if you get the State to
27 say that you do not fall in this category, you know, please do that and bring us a
28 letter from the State.

29
30 Chairman Hawkins asked, so, these three uses would be more restrictive than
31 what the State says?

32
33 Mr. Schindler answered, psychiatrist wouldn't, neither would a dentist.

34
35 Chairman Hawkins questioned, but it's more restrictive?

36
37 Mr. Schindler responded, oh, yes, more restrictive. He asked, meaning would
38 require greater number of handicap parking spaces?

39
40 Chairman Hawkins replied, no, I mean as far as interpretation of the State
41 statute. In other words, the Applicant could just list word for word what the State
42 says, if they wanted to, and that would be fine, but they have chosen to be more
43 restrictive in defining these particular three.

1 Mr. Schindler concurred. He added, as I said, we did not tell them what
2 language to use. We simply gave them an example and said, you know, copy
3 this and then insert the uses as you see fit.
4

5 Member Cartmill questioned, what are we requiring a commitment for? He said,
6 it seems like if they wanted to bring a medical office, they would have to come...
7

8 Mr. Schindler interjected answering, they couldn't do it.
9

10 Member Cartmill stated, I understand that. It just seems like this is.....
11

12 Mr. Schindler said, they would have to come in and amend the Developers
13 Commitment agreement.
14

15 Chairman Hawkins added, and they would have to build a smaller building to
16 have more parking and they don't want to do that. They are not designing
17 buildings...
18

19 Mr. Schindler interjected saying, it would depend entirely upon the type of client
20 and the type of medical use, too.
21

22 Member Cartmill stated, well, it depends on what type of building they build as to
23 what they can do. He questioned, why are we asking for a Developers
24 Commitment in the first place?
25

26 Mr. Schindler responded, because this way it is memorialized. It will be
27 recorded. It will be running with the land, and if someone comes in and says,
28 well, I want to put in a medical office and you can't stop me, then we would say,
29 well, yes, we can. There is a Developers Commitment agreement and it also
30 helps the Applicant, the owners of it, because they can say, yes, we have
31 recorded a Developers Commitment agreement and it says that there will be no
32 medical offices, and it becomes -- I don't want to say law, but it becomes
33 complete. It is fata compli when this becomes approved and recorded.
34

35 Chairman Hawkins commented, it is like having a deed restriction.
36

37 Mr. Schindler said, yes, exactly.
38

39 Member Cartmill commented, well, it just seems like if they build the building,
40 then that already sets the table for it, and then the agreement is pretty much null
41 and void, is how I see it.
42

1 Mr. Schindler stated, but also remember they are the ones -- they have said that
2 their offices do not -- the layout of their offices do not really accommodate
3 medical uses.

4
5 Chairman Hawkins commented, this is just something they are volunteering and
6 we are accepting unless we want to not accept it or we want to change it.
7

8 Mr. Schindler said, yes. And, we have done this before. If you can remember
9 the southeast corner of Fifth and Lake Mary Boulevard, that was never
10 developed. Regency Pointe, across the street from it, the southwest corner,
11 there is a Developers agreement that has certain restrictions of uses. So, it is
12 not unheard of. It is not something we do everyday, but it is certainly something
13 that we have done in the past.
14

15 Chairman Hawkins requested the Applicant to come forward and address the
16 Board.
17

18 Gary Medley, 663 Woodridge Drive, Fern Park, Florida 32730, came forward in
19 favor of the proposed rezoning and proposed voluntary Developers Commitment
20 agreement.
21

22 Chairman Hawkins asked Mr. Medley if he had anything further to add to Mr.
23 Schindler's Staff Report.
24

25 Mr. Medley replied, no. It's just -- to put fears at ease, my group does not build
26 medical buildings. They build -- they don't build a shell. They completely finish
27 the inside of a building. So, there is no plumbing. There is no power. There is
28 nothing for medical anyway. And, so, to make this easier -- you know, we have
29 no problem doing that whatsoever, and even if somebody came in after-the-fact,
30 they would have to gut the building and go all the way over anyway. So, we just
31 don't -- the group just does not do medical buildings. They haven't for 20 years.
32

33 Chairman Hawkins commented, yeah. It all makes sense to me.
34

35 Juan (John) A. Omana, Jr., Community Development Director, announced there
36 was a Quasi-Judicial Sign-In Sheet (see attached) located at the back of the
37 chambers for any interested party to sign in order to be kept abreast of this
38 matter.
39

40 Mr. Schindler stated, and just for the record, if someone should come in and say,
41 hey, I want to buy these buildings as medical buildings. I understand I would
42 have to gut it and completely redo the inside, and they came to us and showed
43 us that they could provide the adequate number of parking, they were agreeable

1 to sell, at that point, we would certainly entertain a revision to the Developers
2 Commitment agreement. We have no -- medical offices love Lake Mary. They
3 fill up almost as quickly as they are built and that is because, one, we are easy to
4 get around in, we are centrally located. So, we have no objection to medical.
5

6 Chairman Hawkins commented, yeah. It's clean industry.
7

8 Mr. Schindler said, that's right. So, if that should happen, we would be agreeable
9 to reviewing this again and seeing how we could make it happen.
10

11 Chairman Hawkins opened the hearing to public comment. Hearing none, he
12 closed that portion and entertained board discussion and/or a motion.
13

14 **MOTION:**
15

16 **Member Cartmill moved to recommend approval to the Mayor and City**
17 **Commission the request by Land Trust Administration, LLC, for Flozell**
18 **Mitchell concerning a rezoning from R-1A (Residential) to C-1(General**
19 **Commercial) for Lake Mary Professional Offices, LLC, east side of Middle**
20 **Street, Lake Mary, Florida, consistent with staff's Findings of Fact and**
21 **Recommendation listed in the Staff Report. Alternate Schofield seconded**
22 **the motion. Member Miller and Member Napier were absent. The motion**
23 **carried unanimously 4-0.**
24

25 **MOTION:**
26

27 **Member Cartmill moved to recommend approval to the Mayor and City**
28 **Commission the request by Land Trust Administration, LLC, for Flozell**
29 **Mitchell regarding a voluntary Developer's Commitment agreement for**
30 **Lake Mary Professional Offices, LLC, east side of Middle Street, Lake Mary,**
31 **Florida, consistent with staff's Recommendation listed in the Staff Report.**
32 **Alternate Schofield seconded the motion.**
33

34 Vice Chairman Taylor commented, I understand the statements being made by
35 all the parties. I mean, I can understand exactly what you are saying, but the
36 building really doesn't permit the use because of the way it is going to be
37 constructed and certain offices can't come in by virtue of other codes and
38 regulations with the Florida Building Commission, from what I am understanding.
39 So, I guess I don't understand -- I don't see the need for a voluntary Developers
40 Commitment agreement, especially one that uses vague, undefined terms. I
41 mean, we can all say we understand what a medical office is, but it really is a
42 hugely broad term. And, so, based on that, I don't think it is needed, and for a

1 number of other reasons, and I don't think it is constructed as well as it could be
2 to accomplish the end. So, it is not something I can support.

3
4 **Vice Chairman Taylor was opposed to the motion. Member Miller and**
5 **Member Napier were absent. The motion carried 3-1.**

6
7 Mr. Omana announced that this item will move forward to the City Commission's
8 June cycle; that staff will notify the Applicant of the date and time.

9
10 VIII. Community Development Director's Report

11
12 Juan (John) A. Omana, Jr., Community Development Director, reported on
13 actions taken by the City Commission at their May 6, 2010, meeting.

14
15 Vice Chairman Taylor questioned if Brent Carli's variance with respect to the
16 dumpster could be retroactively applied to Mr. Hyde's building since he was
17 required to get a dumpster for his law practice which probably wouldn't produce
18 that quantity of paper work, over 2 96-gallon containers.

19
20 Mr. Omana answered, we will deal with these individual matters as they come
21 before us on a case-by-case basis.

22
23 IX. Other Business

24
25 Alternate Schofield asked what happened to the gas station project off 46-A near
26 Oaklawn Funeral Home.

27
28 Juan (John) A. Omana, Jr., Community Development Director, responded, I think
29 it is called the economy.

30
31 X. Reports of Other Members

32
33 Alternate Schofield reported there is a large strip of area on 46-A, basically
34 everything in front of the Hills of Lake Mary from the first entrance all the way
35 down to Oregon Avenue, that is unkept.

36
37 Juan (John) A. Omana, Jr., Community Development Director, informed
38 Alternate Schofield that is a County median; that this was discussed at the
39 workshop held at the May 6, 2010, City Commission meeting where a number of
40 options are being considered.

41
42 XI. Adjournment

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2
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4
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6
7
8

The meeting was adjourned at 6:39 p.m.

Dr. Robert Hawkins, Chairman

Diana T. Adams, Administrative
Secretary