



LAKE MARY CITY COMMISSION

**Lake Mary City Hall
100 N. Country Club Road**

**Regular Meeting
AGENDA
THURSDAY, OCTOBER 04, 2012 7:00 PM**

- 1. Call to Order**
- 2. Moment Of Silence**
- 3. Pledge of Allegiance**
- 4. Roll Call**
- 5. Approval of Minutes:**
- 6. Special Presentations**
 - A. American Revolutions Public Service Recognition Award (Chief Brackenll - Ronnie Gregory to receive)**
- 7. Unfinished Business**
- 8. New Business**

- A. Ordinance 1472 - Progress Energy Franchise Agreement - First Reading (Public Hearing) (Jackie Sova, City Manager)**
- B. Ordinance No. 1473 - Large Scale Land Use Amendment related to GOP-1, Policy 1.4, to increase the total number of dwelling units permitted within the High Intensity Planned Development-Target Industry (HIP-TI) land use designation; Colonial Realty Limited Partnership, applicant - First Reading (Public Hearing) (Steve Noto, Planner)**

9. Other Items for Commission Action

10. Citizen Participation

11. City Manager's Report

A. Items for Approval

- a. Reappointment of Jeanne Miller to Parks & Recreation Advisory Board. (ATTACHMENT #1)**
- b. Reappointments to Sanford Aviation Noise Abatement Committee (SANAC). (ATTACHMENT #2)**

B. Items for Information

12. Mayor and Commissioners Report

13. City Attorney's Report

14. Adjournment

THE ORDER OF ITEMS ON THIS AGENDA IS SUBJECT TO CHANGE

Per the direction of the City Commission on December 7, 1989, this meeting will not extend beyond 11:00 P. M. unless there is unanimous consent of the Commission to extend the meeting.

PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE CITY ADA COORDINATOR AT LEAST 48 HOURS IN ADVANCE OF THE MEETING AT (407) 585-1424.

If a person decides to appeal any decision made by this Commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim

record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Per State Statute 286.0105.

NOTE: If the Commission is holding a meeting/work session prior to the regular meeting, they will adjourn immediately following the meeting/work session to have dinner in the Conference Room. The regular meeting will begin at 7:00 P. M. or as soon thereafter as possible.

UPCOMING MEETINGS

1 MINUTES OF THE LAKE MARY CITY COMMISSION WORK SESSION held
2 September 20, 2012, 5:00 P.M., Lake Mary City Commission Chambers, 100 North
3 Country Club Road, Lake Mary, Florida.
4
5

6 Mayor David Mealor	Jackie Sova, City Manager
7 Deputy Mayor Gary Brender	Carol Foster, City Clerk
8 Commissioner George Duryea – Arrived Late	Dianne Holloway, Finance Director
9 Commissioner Allan Plank	John Omana, Community Dev. Dir.
10 Commissioner Jo Ann Lucarelli	Steve Noto, Planner
11	Bruce Paster, Public Works Dir.
12	Randy Petitt, HR Manager
13	Bryan Nipe, Parks & Recreation Dir.
14	Steve Bracknell, Police Chief
15	Craig Haun, Fire Chief
16	Mary Campbell, Deputy City Clerk
17	

18 The work session was called to order by Mayor David Mealor at 5:05 P.M.
19

20 Items for Discussion:
21

- 22 I. Epoch Multifamily Project, The Station House – Project Overview (John
23 Omana, Community Development Director)
24

25 Ms. Sova said we are going to have an overview of The Station House project. We
26 have CPH present to begin showing us where we stand with the project they have
27 submitted.
28

29 Javier Omana of CPH Engineers came forward. This is the beginning of a very
30 exciting time for the Downtown, TOD and SunRail related developments. He noted
31 the design team and owner representative were present. We are going to provide
32 an overview and bring the Commission up to date. The name of the project is The
33 Station House.
34

35 Javier Omana showed an aerial depicting the site. It is approximately 3.2 acres and
36 is ideally located across the street from the future commuter rail station. This is the
37 center of a lot of synergy about to occur. The future land use designation is
38 Downtown Development District and the zoning is Downtown Centre. The request is
39 of a PUD because it affords the opportunity to provide design ideas that are not
40 necessarily spelled out in the code and gives flexibility for design enhancements to
41 make this project better. The proposed density is 62.45 acres. It works because it is
42 synergy between population, the building itself and what is needed to create a viable
43 Downtown TOD and work with SunRail.
44

45 Javier Omana said the proposal is for 200 multi-family units with a host of amenities
46 to include a clubhouse, fitness center, swimming pool, and dog park. Parking is a

1 combination of on-site parking and parking structure for a minimum of 300 spaces
2 which works out to 1.5 parking spaces per unit. Stormwater is where the
3 public/private partnership comes in where we are working with the City and the City
4 will provide stormwater for the project. The utility provider is the City.
5

6 Javier Omana showed an aerial interpretation with an overlay of what the project
7 looks like. He pointed out the location for the apartments, parking, and parking
8 garage. On Wilbur Avenue is angled parking, on Old Lake Mary Road we have
9 parallel parking, and on Crystal Lake Avenue we have angled parking. Some
10 interesting conditions is the vacation of the southern portion of First Street and a 99-
11 year lease to take care of the northern portion of First Street and the alley on the
12 north side of the property. We are ideally located next to the commuter rail station.
13

14 Javier Omana showed the engineering site plan and is part of the package
15 submitted and is under review by staff. We have numerous notes requesting and
16 explaining what we are after as far as buffer, setbacks, building heights, how the
17 infrastructure is going to be working, how the parking is going to relate to the
18 building itself, to our users, and the commuter rail users.
19

20 John Cunningham of ACi Architects came forward. He said there are 200 units and
21 are one, two and three-bedroom units. The unit sizes range from 665 S.F. for the
22 one bedroom up to 1,237 S.F. for the three-bedroom units. There are 112 one-
23 bedroom units, 76 two-bedroom units, and 12 three-bedroom units. Construction
24 sequencing is a word that is not synonymous with phasing. It is going to be one
25 phase. All 200 units are going to be built but when this comes in for final you may
26 hear words about sequencing. Sequencing is that you build the garage, you build
27 the parking, you build the clubhouse and a portion of the building so you can pre-
28 lease early. There is one phase but with sequencing. It's going to be one
29 continuous build but the sooner we can lease it the sooner we can bring money in.
30

31 Commissioner Duryea arrived at this time (5:15 P.M.).
32

33 Mr. Cunningham said with regard to style, we were not trying to pick a specific style.
34 We were trying to be aggressive, transitional, and familiar with styles to create
35 timelessness and a unique quality all in one. We are not going to be able to call this
36 colonial or cracker. This is for Gen X and Gen Y and the younger people. With
37 groups like Epoch Properties, these types of projects are incubators for people who
38 are going to buy nice homes. When you look at what the rents equate to, they are
39 significant types of homes. The rents drawn from these are a good thing. These are
40 incubators for people who want to live in Lake Mary.
41

42 Mr. Cunningham said materials would be brick and stucco, board and batten siding,
43 glass insulated windows, architectural grade shingle roofs and metal roofs. The
44 general palette is better served in the packets than what is on the screen. We don't
45 have a final palette because we like to put sample panels on the site. We are

1 looking for a general agreement of where we are heading and not a specific
2 agreement.
3

4 Mr. Cunningham said the first view is looking from your back to the west near the fire
5 station looking to the north by east. He pointed out the clubhouse that is two stories,
6 a terrace/garden area where the pool is, and the entertainment area. The two-story
7 porch with the craftsman type columns is where the clubhouse and leasing office is
8 and where the fun events are taking place. There is great undulation and
9 articulation in the architecture. The deepest setback averages around 9 to 18 feet
10 so there is a lot of movement along these facades. A typical rule of thumb in smart
11 growth and good planning is that every 30 feet you have an 8 or 10-foot wide and 3
12 to 6-foot setback and we far exceed that. He thought that was important going
13 forward for the community and the Commission to feel comfortable there is
14 articulation here.
15

16 Mr. Cunningham said the average eave height is 45 to 46 feet. The typical roof
17 height is 61 to 64 feet and the iconic tower is between 71 and 75 feet. We are giving
18 a range because we are not yet in final drawings. The top wall of the garage is 52 to
19 53 feet tall. He showed the view with your back to the cemetery looking at the
20 northwest and are looking down East Crystal to the west. Old Lake Mary, Crystal
21 and Palmetto all come together and there will be an iconic tower. The top of the
22 tower will have a light glow and will be able to see from Lake Mary Boulevard across
23 the parking lot. This building might be four stories tall but it is shielding the
24 residential neighborhood which is like a grove of live oaks. Until Seminole County
25 has the land turned over to it from FDOT for development of that site, it's going to be
26 a large parking lot.
27

28 Mr. Cunningham showed a view from Lake Mary Boulevard. There will be a pocket
29 park at the apex of Wilbur and Old Lake Mary Road and will be some development
30 taking place there. You have these stair towers that are open, inviting and safe.
31 Through the articulation there is much movement between these facades along Old
32 Lake Mary Road.
33

34 Mr. Cunningham said the gross apartment building footprint is 60,510 S.F. and
35 including the four floors is about 242,000 S.F. of building area.
36

37 Commissioner Duryea asked what they were seeking from the Commission.
38

39 John Omana said tonight is strictly an introduction to the project. This is a quasi-
40 judicial matter and has to go through the rezoning process. There is no decision
41 required by the Commission this evening.
42

43 Commissioner Lucarelli said she liked it and appreciated they paid attention to her
44 comments. She likes the broken up façade and the different textures. It was what
45 she was looking for.
46

1 Scott Toschlog of Dix Lathrop Landscape came forward. He said this is a very
2 urban project. The focus was on streetscape and what everybody would be seeing.
3 We wanted to take advantage of the fact that we are right across from SunRail. We
4 came in off of Crystal Lake and Old Lake Mary and using some creative design
5 techniques we have a nice façade on both those roads of nice silver gates that will
6 help buffer the building and help create a strong streetscape appearance. With the
7 angled parking we came out into the roadway of Crystal Lake with large live oaks to
8 break up the space. The building has a lot of articulation to it and we have taken
9 advantage of that with the landscape by putting in sabal palms and crape myrtles to
10 soften it up. We have a dog park on the corner of the site that will be heavily
11 landscaped with oak trees. The parking garage on the north we have gone in with
12 heavy bamboo screening plantings to buffer that from the adjacent residents. We
13 have created a strong buffer to the roads to soften the building.

14
15 Commissioner Duryea asked what they had planned for the building that leads this—
16 the first one you would see coming down Old Lake Mary Road. It looks like plain
17 façade.

18
19 Mr. Toschlog said we have five or six silver gates lining the streetscape and as the
20 building steps back we came in with a cluster of sabal palms softening that. We also
21 have evergreen hollies which are six to eight feet tall planted along that buffer. We
22 have a heavy evergreen screening along with that treatment.

23
24 Commissioner Duryea asked if the outside staircase was to comply with the
25 requirement for dual access.

26
27 Mr. Cunningham said it is not meant to be utilitarian. Those are very well articulated
28 columns, cornices and trims. We break the stair out because it takes the massing of
29 the building down and creates a positive experience for people. They are fire egress
30 stairs meant to look like porches rather than a big blank wall. These guys are willing
31 to spend more money so it looks porch-like. It adds character. From a safety
32 standpoint the ground floor of the stair is enclosed and from a security standpoint
33 people can't get in there. We are trying to promote health and rather than people
34 using elevators if you have an open stair they feel more comfortable when they are
35 able to be seen by others from a distance.

36
37 Mayor Mealor said he wasn't trying to design the project but Commissioner Duryea
38 had a concern and suggested some trim or something on the first building on the
39 right. It could be something external.

40
41 Mr. Cunningham said we will look to articulate that right-hand element a bit more.

42
43 Jeremy Owens, Civil Engineer, came forward. He said water and sewer for this site
44 is existing. There are water mains along all three roads except for Old Lake Mary
45 Road. Sewer service is existing on Wilbur and Crystal Lake so we will be able to tie
46 into those. For stormwater treatment, the City is in an agreement with Epoch and

1 the City will be providing extra stormwater south of the police and fire stations for
2 this site. There is a row of off-street parking north of the building off Crystal Lake.
3 The remainder of the parking is in the parking garage and there are additional spots
4 along Wilbur, Old Lake Mary Road, and East Crystal Lake.
5

6 Mr. Owens said permitting for the site is the City, and St. Johns will be taken care of.
7 There will be a letter modification once we get the full permit in for the stormwater
8 treatment south of the police station. The City is in the process of taking ownership
9 of the Old Lake Mary Road right-of-way so the City will be the sole permitting agency
10 when it comes for site improvements after that fact. There will be a few per DEP for
11 water and sewer lines and individual services that will have to be done.
12

13 Commissioner Duryea said this development is bordering on three roads which are
14 relatively old. He assumed they would do a traffic element for this site.
15

16 John Omana said when the Downtown land use designations were changed to 18
17 units per acre back when DCA existed, staff conducted an umbrella type of
18 assessment on the traffic which allowed for so many hundred thousand feet of
19 commercial plus so many dwelling units within the Downtown. We took those
20 parameters that were approved by DCA and applied it to this particular project. In
21 terms of those concurrency issues, they have met the criteria for traffic and level of
22 service. During the development review process we will be looking at issues such
23 as geometry, templates for fire trucks and safety vehicles and making sure the
24 radiuses are accommodating.
25

26 Commissioner Duryea said what he is hearing is that these 200 apartments and the
27 ancillary structures are not going to have any effect on the traffic in that area.
28

29 Deputy Mayor Brender said it is going to have an effect because we are going to
30 have 350 cars parked around that building.
31

32 John Omana said there would be an effect that way. From a planner's standpoint
33 when a project comes in, you address the issue of level of service and concurrency.
34 We had already looked at this and established concurrency levels back with DCA. It
35 falls with those concurrency levels. Will it have an impact on the adjoining roadway
36 network with respect to angled parking and circulation, absolutely yes. As a whole
37 from a concurrency standpoint, the project does meet the criteria and that is what we
38 have to base approval on.
39

40 Commissioner Duryea asked if this project affected other people's capacity by
41 allowing this increase in traffic or dwelling units. He asked if they were using up
42 somebody else's capacity down the road.
43

44 John Omana said they are using up the available capacity that was originally created
45 as a baseline when we did the DCA analysis. That is very common whether it is
46 downtown redevelopment or concurrency throughout the City. A roadway network

1 or area will have X capacity. As development comes in it will take away from that
2 capacity.
3

4 Commissioner Duryea said because of the size of this development, somebody
5 wanting to do something down Crystal Lake Avenue or on Wilbur will be in a
6 detrimental position because the Epoch project was here first.
7

8 John Omana said first come takes advantage of what's available. The next person
9 in line will have to deal with the balances available. Within the downtown
10 redevelopment area under new legislation, there are mechanisms and creative ways
11 to address levels of service and circulation.
12

13 Commissioner Duryea said he had a concern we might have a situation at some
14 point where we have two or three big buildings and then little bungalows on the rest
15 of the street because capacity is used up.
16

17 John Omana said he understood and would keep track of that as projects come in.
18

19 Deputy Mayor Brender asked the percentage this project is taking up.
20

21 John Omana said right now we are doing the DRC review and are looking at a
22 number of thresholds. He said he wouldn't speculate what that number is but could
23 bring that up when the item comes before the Commission at a public hearing.
24

25 Commissioner Duryea said when we originally discussed this, he asked if we were
26 locked into or agreed to the 200 units and four stories plus the roof. He asked if that
27 was part of the original agreement or part of the sale.
28

29 John Omana said as he recalled under the contract agreement reviewed back in
30 January/February, he recalled language that the City Attorney had to put in
31 indicating that this contract was not a land use approval. As a result of that
32 language, once it came in through PUD and final site plan, that would be land use
33 approval and at that point the Commission would have the ability to make their final
34 decision. The contract for purchase does not vest the entitlements. What vests the
35 entitlements is the Commission's action under PUD/site plan approval. That is in the
36 process and will come to the Commission at a later date.
37

38 Commissioner Duryea said he was concerned about the straight up and down look
39 and the height of this building. It's not something we had envisioned for the
40 Downtown in the beginning. He wasn't saying he wasn't flexible but hadn't expected
41 such a large looking building. Even if the top floor was indented like a penthouse
42 kind of a thing it wouldn't give such a straight up canyon look.
43

44 John Omana said he understood. One of the things we dealt with before their
45 submittal during our discussions was definitely provide articulation. We hammered
46 these guys on foundation and landscaping and told them they had to soften the look

1 of the building. Their landscape plan will show an extensive landscape program
2 which will help soften that look.

3
4 Commissioner Plank asked the next stage on this.

5
6 John Omana said it is currently going through the DRC review. Next week we will
7 have the Development Review Committee review. If at that meeting all issues have
8 been addressed as well as the legal review of the parking structure agreement and
9 PUD agreement, it will be set up for public hearing at the Planning and Zoning
10 Board. The Planning and Zoning Board will review the project and make their
11 recommendation to the Commission and then there will be a public hearing for the
12 Commission's consideration of the project.

13
14 Commissioner Plank asked when this was set in stone.

15
16 John Omana said the vesting occurs at Final PUD. Once the Final PUD is done,
17 they have to come in with the 100% engineering plan which will be reviewed by staff
18 and will go to P&Z as the terminal board.

19
20 Commissioner Lucarelli said there are public notice requirements and assumed all
21 the people behind this development would be notified.

22
23 John Omana said we have a 300-foot radius that Mr. Noto and staff will put together.

24
25 Deputy Mayor Brender expressed concern of how they are going to get traffic in and
26 out. He realized this is urban and a lot of these people will be getting on SunRail but
27 they are not going to get on SunRail all the time. They are probably going to have a
28 car. He was concerned about getting traffic out of where the garage is going to be
29 and what direction people are going to want to go. We will probably end up needing
30 a light at Lake Mary Boulevard.

31
32 Deputy Mayor Brender said he liked the articulation and the color breakup but this
33 looks like they took the design from Maitland. It is not particularly unique. We talked
34 about curves and roof designs and this doesn't present the kind of unique
35 architecture he was looking for. Whatever they can do to soften this would be
36 appreciated. He asked if this was the drop-dead date for design.

37
38 Justin Sands for Epoch Properties came forward. We have submitted but are here
39 to hear feedback and can take that into consideration.

40
41 Deputy Mayor Brender said the design is done and the only thing we can do now is
42 talk about softening and landscape elements.

43
44 Mr. Sands said the Commission is in charge and if you say we need to go back to
45 the drawing board then we can do so. What we put in front of you is something we
46 feel strongly about. Although it might not be as extreme by some people's taste it's

1 middle of the road. We are experimenting with other color palettes to give it more of
2 an impressive look. If we do get to one of the extremes then other people may find it
3 less attractive at that point. We are trying to keep a balance. What we have put
4 before the Commission is not only the civil engineering plans but also these
5 renderings.
6

7 Deputy Mayor Brender said he understood they were talking about 200 units and
8 four stories. When we were talking about Downtown ten years ago, we didn't
9 envision having a commuter rail station at that point. That changed the dynamics of
10 what we need here. He was just hoping for something a little more "out there" on the
11 architectural side that would make this stop along this SunRail be something where
12 people would get off the train because it looks so interesting. We then want them to
13 walk around Downtown Lake Mary. Whatever we can do from this point to move
14 that is what he was talking about.
15

16 Mr. Sands said we will work with staff in terms of what leeway we have after the
17 PUD review and being able to alter the architecture. It is not final. The next step is
18 to complete the 100% drawings. We thought we had a good start on things but we
19 can look at details and ways to take it one direction or another. Colors and materials
20 can do a lot to alter the look. Although the building is not changing those can steer
21 the look. We will continue to study that and maybe come up with alternatives.
22

23 Commissioner Plank asked how staggered were the individual buildings. He asked
24 if it was possible to stagger the buildings to some degree so you are creating the
25 appearance of individual buildings.
26

27 Mr. Sands said in the rendering he didn't think the landscaping was true to the plan
28 because it was done in advance of the landscape plan. In terms of certain corners
29 being too harsh, he thought the buffering had been thought through the landscape
30 plan but they are not seeing here. In terms of undulations and comparing it to
31 Maitland he couldn't speak to, but said they have done their best with the building
32 blocks that they have which are the unit components to create movement in the
33 façade wherever we can.
34

35 Mr. Cunningham said in Maitland there are four to six-inch movements. Here there
36 are movements of up to ten feet. Every 30 feet or less there is a forward and back
37 movement. There is a lot of articulation.
38

39 Commissioner Plank said the effect we are looking for in the Downtown area is not
40 one massive façade but a series of individual buildings. He understood they had to
41 have the continuity of the development as well. That is something they may want to
42 make clearer.
43

44 Mayor Mealor said the one thing he was emphatic about is that we as a group need
45 to reach consensus that this is the direction we want to go. The County has been
46 very emphatic about their support for us on the Transit Oriented Development

1 District. The densities are a concern to everyone. Epoch has stepped out but they
2 stepped out with a sense of partnership with the City. They are investing a lot of
3 money on the front end, and we are willing to step up in a public/private partnership.
4 His concern is this conversation is going to end up costing Epoch more money. He
5 thought it was imperative that if any individual commissioner has any concern, now
6 is absolutely the time to sit down with staff before the next phase takes place. We
7 need to speak in one voice on this project because what we are doing is very
8 different. We are going to be met with opposition if it hasn't already started. We
9 have to look at what will be in the long-term best interest of this community. He said
10 he and Commissioner Duryea sat on this Commission at a time where we were
11 going to bury utility lines on Lake Mary Boulevard and it split this community for
12 several years. In retrospect it was one of the best things the commission had the
13 courage to step forward and do. He said the premise he was operating on is this is
14 going to be in our best long-term interest in terms of opportunity. His concern was if
15 they are not unified as a group, we are not being fair to Epoch and was not sure we
16 are being fair to the community. He didn't think there was anything talked about
17 tonight that hasn't been presented by staff as a concern for us to address. The
18 rendering is better than what he anticipated from some of the earlier renderings. He
19 felt good about it. This is one time we absolutely make sure Commissioners
20 Duryea's, Brender's and Plank's concerns are taken into account.

21
22 Mr. Sands said he appreciated what was said and considerable time has been
23 devoted to this. We tried to bring something pleasing. The architecture is a little bit
24 safe but we are trying to maintain a balance. We want something that everybody is
25 pleased with and feels good about the decision.

26
27 Mayor Mealor said one concern brought to their attention by others was is 200 the
28 right number to make this project work or did it need to be more. We have already
29 said he were not going more. It has to be stacked for success on the front end. He
30 said the City Manager sent a rendering from a TOD area in California and that
31 rendering is not much different than what we have before us.

32
33 Commissioner Lucarelli said a specific commissioner has something he needs to get
34 with staff on and he keeps saying the same thing over and over but was not giving
35 specifics. "I want to see something unique" but what? She suggested coming up
36 with some examples to give them direction.

37
38
39 **SIDE 1B**

40
41 Mayor Mealor said when ACi did the community forums, this rendering is reflecting
42 back to what the community preferred.

43
44 Mr. Cunningham said that was correct.
45

1 Javier Omana said we are at the preliminary final master plan submittal, the
2 developer's agreement is being looked at by the City Attorney and Epoch's attorney,
3 the school concurrency has been signed off by the Seminole County School Board
4 as of today. We look forward to reaching the last item which is the opening and
5 leasing. We are scheduled to go before the DRC next week and then we go to P&Z
6 and City Commission. Hopefully we will go before the Commission on December 6th
7 for the Final PUD approval. This is the beginning of a great dialogue. He thanked
8 staff for their patience.
9

10 II. SunRail Entry Feature (John Omana, Community Development Director and
11 Bryan Nipe, Parks and Recreation Director)
12

13 Ms. Sova said as part of redevelopment on the eastern section of Downtown in
14 conjunction with SunRail, we have some enhancement funds. We have talked before
15 about an entrance feature and Mr. Noto has some items to present tonight. We have
16 some conceptual designs that we have worked on along with Bryan Nipe and part of his
17 crew.
18

19 Commissioner Duryea asked where this would be located.
20

21 Ms. Sova said at Palmetto and Lake Mary Boulevard. The County Engineer has
22 sounded in on this item in regards to placement in case there would be a request for a
23 traffic signal in the future. We have coordinated with the County. Since the lot has
24 cleared, the telephone and power poles stick out like a sore thumb. Within these
25 enhancement funds we believe we have the funding to bury those and are working on
26 estimates with Progress to have that done. This is one time we can do that little piece
27 without a lot of controversy.
28

29 Commissioner Duryea asked if we wanted this to look like the station or like other things
30 in the City. He said he was trying to get an idea of what everybody thinks.
31

32 Mayor Mealor said we have renderings tonight that are a combination of both. He said
33 he was open to any suggestions. If you travel I-95 north and leave the State of Georgia
34 and come into South Carolina, the one thing that does catch your eye is the entry
35 feature to the state. That monument is very attractive and well done. He said he had
36 that same feeling when he was looking at some of the renderings being presented this
37 evening,
38

39 Mr. Omana said we have been working closely with FDOT and the County to get a
40 location of an entry sign feature as you come onto Palmetto. A challenge is that
41 Palmetto is only 40 feet wide so our intention in the future is to get additional right-of-
42 way as these properties come in. We are in conversation with the property owner on
43 the east side for a sign entry easement and looks to be encouraging. In talking to the
44 County they cautioned us to be careful in how we place this in the event a signal was
45 warranted in the area in the future. The last thing we want to do is put this in and then
46 have the County tear it out for purposes of placing the standard.

1
2 Mr. Noto said the exhibits were a journey of something different to something more
3 traditional that you may see in the City. The one thing harmonious through all of the
4 designs is the Welcome to Lake Mary and the slogan "Where Everyone is Waiting for
5 You". Another common theme is the column look that has two City seals. He showed a
6 rendering with palm trees that was a little more traditional and reminded him of Rinehart
7 Road. We used stone with aluminum rail on either side. The one shone was 25 feet
8 wide but could be modified. The third option has palm trees but they took off the
9 "wings" of the monument. We spoke with the City Manager for feedback on where we
10 were heading and had an interesting concept come up and that was tying in more of
11 Central Park along with the Epoch development. We went with the City brick and then
12 went with the design queues from the tower portion of the Epoch project. He said
13 Bryan's (Nipe) staff came up with a design that stick with elements in the Central Park
14 area. That is evidenced by the design page showing the items they used as inspiration
15 such as the gazebo, fountain, clock tower and bringing in a much more focused
16 pedestal and bringing in the City brick look. We are seeking Commission direction.

17
18 Commissioner Plank asked if we had any idea what the design is going to be on the
19 train station as far as materials.

20
21 Mr. Noto said he was not aware of the materials but the general understanding is that it
22 will have steel or white poles.

23
24 Commissioner Plank asked if we were moving towards any consideration of continuity
25 within the City for our entrance signs. We are all over the map right now.

26
27 Mr. Noto said he thought this opportunity we have with the sign is unique in that we are
28 having this discussion and with the Epoch project they have an entry sign. It's making
29 us think twice about how we are going to take those two and make them look similar to
30 what design elements we already have in the Downtown area. Recently we created the
31 Downtown Lake Mary logo with the incorporation of the sand hill crane. We are having
32 those discussions now, especially with the Epoch project and these designs moving
33 forward.

34
35 Commissioner Plank asked if we were moving toward a brick and mortar design.

36
37 Mr. Noto said we are looking for direction from the Commission on that.

38
39 Commissioner Plank said that wasn't his favorite. He thought it was dated and we have
40 an opportunity to refresh the image of the City. He liked the stone effect just as a
41 change.

42
43 Commissioner Duryea said there is a sign in the museum with a finger pointing and it
44 says: "Lake Mary – A Friendly City". He suggested considering that as the slogan as it
45 is historic.

46

1 Commissioner Lucarelli said she would like to see something fresh but need to think
2 consistency as we move forward because it gets too hodge-podge after a while.
3

4 Deputy Mayor Brender agreed. He looks at the TOD area as being a different sector of
5 Downtown. He didn't think that over there is going to look like what Shaw Development
6 has done over here. There can be consistency between them but didn't think they have
7 to look alike. He liked the second rendering with the wings. He would like to do the
8 same thing as we did on Rinehart and curve it. He suggested curving it around the
9 corner so it is visible from Lake Mary Boulevard and Palmetto and keep it out of the way
10 of the light that we are going to need there. He thought there was a way to create a
11 synergy between the two sides but thought what we put on this side of Country Club
12 versus what we put other there may be two different things.
13

14 Commissioner Plank said he liked all the designs except the first one.
15

16 III. FlexBus 17

18 Ms. Sova said on August 22nd staff attended a meeting with Altamonte's Growth
19 Management regarding the FlexBus project that Altamonte, Casselberry, Longwood,
20 and Maitland have been working on in conjunction with Lynx. There is a grant with Lynx
21 for \$3.3 million to study FlexBus, do some initial design, and find out how they could it
22 operate. At this point we would like to discuss whether or not the City of Lake Mary
23 would like to become a participant and what we think about FlexBus as a whole. We
24 would have to work out in another work session transportation as a bigger project and
25 what the possibilities are coming from the SunRail station. This afternoon we got some
26 responses on additional information on what trolley systems cost and could we look at it
27 from a private vendor operating.
28

29 Mayor Meador noted that Louis Rotunda was present and is the Governmental Affairs
30 representative for the City of Altamonte.
31

32 Mr. Omana said we have been invited to participate in the FlexBus program and he and
33 Mr. Noto had a tag team to look at the issue, try to understand the issue, and try to
34 identify areas of concern and opportunity. He would defer to Mr. Noto on the technical
35 front as it relates to the system, modeling, etc.
36

37 Mr. Omana said his job on the tag team was to ask some difficult, to-the-point
38 questions. He attended a meeting at a SunRail TAC Committee meeting and they had
39 as a special item the FlexBus project. At that point the existing partners were in
40 attendance, specifically Altamonte Springs, Casselberry, Longwood, Maitland, Lynx and
41 the TransSystems project consultants. They shed light on the issue of technology,
42 current status, what is the status of the current modeling and things of that nature.
43 There were very interesting concepts and technology. The fact that you can press a
44 button and have a vehicle show up with 12 minutes is fascinating.
45

1 Mr. Omana said he asked who was funding this and if we become a partner, what
2 portions are we going to have to pony up. The response he got was it's up in the air
3 right now. He said that was not defined and how could he gauge the amount of
4 responsibility or effort without knowing that. After the meeting we talked a bit and the
5 issue came back to who was going to fund it and for how much. Again he didn't get any
6 clarity.

7
8 Mr. Noto said his portion of the tag team deals with technology. We brought this item to
9 the Commission's attention in November of last year when FlexBus started gaining
10 steam and word was getting out that the four cities were pushing this project. We
11 presented to the Commission a general overview of the project. This map is from then
12 so it may or may not have been updated. It does show the four cities, the four funding
13 partners of Maitland, Casselberry, Longwood, and Altamonte. This is the service area
14 for FlexBus. Smartphone technology is moving insanely fast and that is the technology
15 portion of it of how this FlexBus system would work. You could use your Smartphone or
16 strategically located kiosks to call a vehicle. At this point the vehicle to be used is
17 undetermined. You call for a vehicle and within 10 to 12 minutes the vehicle would pick
18 you up within the service area and would take you anywhere within that service area.
19 It's not like Link 45 on Lake Mary Boulevard that runs on Lake Mary Boulevard and runs
20 from A to B and only the portions along that route. The FlexBus system could take you
21 anywhere within that system. It's static and not static at the same time. It is utilizing
22 that breakneck technology.

23
24 Commissioner Plank said this is a change from Lynx's concept of FlexBus where you
25 set up an appointment two hours in advance and go to one of the stops.

26
27 Mr. Noto said that is currently known as the Neighbor Link.

28
29 Deputy Mayor Brender said we are completely open on the funding question. When
30 government funds Lynx you are not funding the riders that are riding to your city but end
31 up funding buses and stops all over their system. He remained skeptical about Lynx's
32 ability to provide the specialized kind of service and make it profitable which eventually
33 Lynx is going to have to do because governments are running out of money to fund it. If
34 we don't pony up for bus transportation then it goes away. This is a separate
35 discussion from SunRail because people on the train are not going to call when they're
36 10 minutes away from Lake Mary and you're not going to have 50 people calling looking
37 for a pickup at SunRail in 10 minutes so they can go to Heathrow. What he is seeing
38 happening is 50 people getting off the train and all of them are going to want to go to
39 Heathrow. He was not sure how much the City would gain in participating. He would
40 have to see a lot of numbers.

41
42 Commissioner Duryea said there were too many "ifs" for him.

43
44 Commissioner Lucarelli said being on the Metroplan board and asking these similar
45 questions to Lynx it has always been that Lake Mary doesn't have the ridership. She
46 didn't know where they picked that out. She didn't like the open-ended blank check and

1 was not agreeable without knowing a specific number. She would look more to the
2 private sector to have a solution to this. She didn't think government public
3 transportation was ever profitable.

4
5 Mayor Meador said at Mayors/Managers we have asked if there could be a briefing. We
6 know there are a number of consultants out there and a lot of different projects going
7 on. He said he couldn't get his arms around all of them and was not sure that he even
8 comprehended what the ultimate end of game is for some of the consultants. We will
9 monitor the progress of the four cities, wish them success, and see where we go from
10 there.

11
12 IV. Adjournment

13
14 There being no further business, the work session adjourned at 6:28 P.M.
15

1 MINUTES OF THE LAKE MARY CITY COMMISSION MEETING held September 20,
2 2012, Lake Mary City Commission Chambers, 100 North Country Club Road, Lake
3 Mary, Florida.

4
5 I. Call to Order

6
7 The meeting was called to order by Mayor David Mealor at 7:03 P.M.

8
9 II. Moment of Silence

10
11 III. Pledge of Allegiance

12
13 The Pledge of Allegiance was led by the home-schooled children,

14
15 IV. Roll Call

16		
17	Mayor David Mealor	Jackie Sova, City Manager
18	Deputy Mayor Gary Brender	Carol Foster, City Clerk
19	Commissioner George Duryea	Dianne Holloway, Finance Director
20	Commissioner Allan Plank	John Omana, Community Dev. Dir.
21	Commissioner Jo Ann Lucarelli	Steve Noto, Planner
22		Bruce Paster, Public Works Dir.
23		Randy Petitt, HR Manager
24		Bryan Nipe, Parks & Recreation Dir.
25		Steve Bracknell, Police Chief
26		Bruce Fleming, Sr. Code Enf. Off.
27		Craig Haun, Fire Chief
28		Katie Reischmann, City Attorney
29		Mary Campbell, Deputy City Clerk
30		

31 The order of the agenda was changed and the proclamation for Home Schooled
32 Student Government Day was presented at this time.

33
34 A. Proclamation – Home Schooled Student Government Day

35
36 The City Attorney read a proclamation proclaiming September 20, 2012, as “Home
37 Schooled Student Government Day”.

38
39 Mayor Mealor presented the proclamation to Sylvia Healy.

40
41 The Commission returned to the regular order of the agenda at this time.

42
43 V. Approval of Minutes: September 6, 2012

1 **Motion was made by Commissioner Duryea to approve the minutes of the**
2 **September 6, 2012, meeting, seconded by Commissioner Plank and motion**
3 **carried unanimously.**

4
5 B. Proclamation – National Community Planning Month

6
7 The City Attorney read a proclamation proclaiming October 2012 as “National
8 Community Planning Month”.

9
10 Mayor Meador presented the proclamation to John Omana, Community Development
11 Director.

12
13 VII. Unfinished Business

14
15 A. Ordinance No. 1469 – 2012/2013 Final Millage Rate – Second Reading
16 (Public Hearing) (Jackie Sova, City Manager)

17
18 Ms. Sova requested to read both ordinances, have simultaneous public hearings, and
19 vote separately.

20
21 The City Attorney read Ordinance No. 1469 and Ordinance No. 1470 by title only on
22 second readings.

23
24 Ms. Sova said she wanted to affirm that the tax rate of 3.6355 mills is being adopted for
25 the fifth year in a row. It is .54% lower than the rolled-back rate of 3.6552.

26
27 Commissioner Duryea gave a thank you to staff, City Manager and Commission. We
28 are again the lowest millage rate in Seminole County by 1.2 mills.

29
30 Mayor Meador asked if anyone wanted to speak in reference to Ordinance No. 1469. No
31 one came forward and the public hearing was closed.

32
33 **Motion was made by Deputy Mayor Brender to approve Ordinance No. 1469 on**
34 **second reading establishing the millage rate at 3.6355 mills and the rolled-back**
35 **rate of 3.6552, a .54% decrease, seconded by Commissioner Lucarelli and motion**
36 **carried by roll-call vote: Deputy Mayor Brender, Yes; Commissioner Duryea, Yes;**
37 **Commissioner Plank, Yes; Commissioner Lucarelli, Yes; Mayor Meador, Yes.**

38
39 B. Ordinance No. 1470 – 2012/2013 Final Budget – Second Reading (Public
40 Hearing) (Jackie Sova, City Manager)

41
42 Ordinance No. 1470 was read by title only on second reading and presented under Item
43 8-A.

44
45 Mayor Meador asked if anyone wanted to speak in reference to Ordinance No. 1470. No
46 one came forward and the public hearing was closed.

1 **Motion was made by Deputy Mayor Brender to approve Ordinance No. 1470 on**
2 **second reading, seconded by Commissioner Lucarelli and motion carried by roll-**
3 **call vote: Commissioner Duryea, Yes; Commissioner Plank, Yes; Commissioner**
4 **Lucarelli, Yes; Deputy Mayor Brender, Yes; Mayor Mealor, Yes.**

5
6 C. Ordinance No. 1471 – Extend Moratorium on Pain Management Clinics until
7 December 31, 2012 – Second Reading (Public Hearing) (Gary Schindler, City
8 Planner)
9

10 The City Attorney read Ordinance No. 1471 by title only on second reading.
11

12 Mr. Not stated staff had no further comments.
13

14 Mayor Mealor asked if anyone wanted to speak in reference to Ordinance No. 1471. No
15 one came forward and the public hearing was closed.
16

17 **Motion was made by Commissioner Lucarelli to approve Ordinance No. 1471 on**
18 **second reading, seconded by Commissioner Plank and motion carried by roll-call**
19 **vote: Commissioner Plank, Yes; Commissioner Lucarelli, Yes; Deputy Mayor**
20 **Brender, Yes; Commissioner Duryea, Yes; Mayor Mealor, Yes.**

21
22 **SIDE 2A**
23

24 **VIII. New Business**

25
26 A. CEB 04-92-006 John Graney, Respondent, 203 Hurst Court (Bruce Fleming,
27 Senior Code Enforcement Officer)
28

29 Bruce Fleming, Senior Code Enforcement Officer, came forward. He said this matter
30 was heard by the Lake Mary Code Enforcement Board on October 20, 1992. At issue
31 for the board's consideration was violation of Lake Mary's Code as it pertains to land
32 use, specifically Chapter 150, the Building Code, and Sections 150.06, Permits
33 Required. The property owner of 203 Hurst Court installed a cinderblock concrete fence
34 around the property. He showed the fence on the overhead projector. The City
35 attempted on numerous occasions to develop compliance by way of sending certified
36 notices, doing stop work orders, and routine things we do for providing notice on a code
37 violation. There was no response from that property owner.
38

39 Mr. Fleming said the Code Enforcement Board determined that the penalty for this
40 infraction would be \$50 per day for each and every day until this property was brought
41 into compliance. The property still remains non-compliant. The number in the memo of
42 \$648,000.00 is the bank's number. He re-calculated the penalty for 20 years as well as
43 interest and his number is \$514,439.87. The amount due September 30, 2012, is
44 \$514,439.87.
45

1 Mr. Fleming said the bank foreclosed on this property around July 2012 and in doing so
2 the title search revealed that there was an outstanding code enforcement lien. The
3 bank has contacted the City of Lake Mary and due to the circumstances surrounding the
4 foreclosure and the 20 years of continued violation, the bank has asked that the City
5 consider a complete forgiveness of the current obligation.
6

7 Mr. Fleming said in his research, he gave options he felt was appropriate. The first is
8 the lien will expire after 20 years and the City Commission could take no action. Twenty
9 years will expire approximately November 18, 2012, at which time the code case dies
10 and the violation remains. Code Enforcement would have to have another hearing and
11 do the process all over again. He cautioned the Commission that the Code
12 Enforcement Board on situations like this go as high as \$250 per day as opposed to \$50
13 per day that was originally assessed so you run the risk of the penalty being reassessed
14 by the Code Enforcement Board and be substantially more.
15

16 Mr. Fleming said the second option is you could foreclose the lien on this property so
17 long as the action is filed before November 18, 2012.
18

19 Mr. Fleming said the third option is the City could pursue a new code violation on the
20 wall with the same findings and file a whole new lien and starting over again.
21

22 Mr. Fleming said he spoke with the Community Development Department to ascertain
23 whether the City would allow such a structure in a residentially zoned district if they
24 were to ask for a permit. The answer was negative. The City would not allow this type
25 of wall to exist. In order to bring this property into compliance they would have to
26 remove the wall in its entirety or the City would allow them to cover it with a brick façade
27 as long as the front of the house is decorative. They would have to have a 25-foot
28 decorative front end on the wall in order for it to remain.
29

30 Ms. Sova said we cannot ascertain the structural integrity of this wall. We are uncertain
31 of that at this point because it never was inspected when it was built. The pictures show
32 the condition and one of the pictures shows what appears to be some sections missing.
33 Maybe over the 20 years the sections have come down or been removed. That is of
34 great concern as well.
35

36 Commissioner Duryea asked the City's legal rights.
37

38 Ms. Reischmann said the lien expires after 20 years. That's the way the State Statutes
39 reads. It is a public policy of not letting these things linger in perpetuity.
40

41 Commissioner Duryea asked what would be the downside of foreclosing, fixing the
42 property and selling it.
43

44 Ms. Reischmann said the downside would be attorney's fees to foreclose and if the
45 bank fights us on it, they may have some defenses. There may be the possibility that
46 they fight us hard on it in which case the attorney's fees could escalate. The City would

1 own the property but maybe they don't want the property. Other than the costs and the
2 cost of ownership it would solve part of the problem.

3
4 Commissioner Duryea asked if the City was sitting in front of that mortgage holder if we
5 decide to go that process.

6
7 Ms. Reischmann said there is no mortgage anymore because they foreclosed. Most
8 likely what happened here is they did not include the City in the foreclosure when they
9 should have. The lien was 20 years ago and assumed their mortgage was subsequent
10 to that so they were foreclosing on a junior lien. She didn't know the state of the title but
11 generally that means they take subject to our lien. They are subject to the lien until
12 November. We have the option of bringing a new case which is going to cause another
13 lien and will escalate quickly.

14
15 Commissioner Plank asked if the City could require as a condition of forgiving the fines
16 that the bank bring the wall into compliance and assure its stability.

17
18 Ms. Reischmann answered affirmatively. Typically you wouldn't entertain a request to
19 reduce or eliminate a lien if they haven't brought it into compliance. That is the City's
20 policy. In this case it was brought because we are about to lose our lien so the
21 Commission needs to decide to foreclose if we are going to keep the lien.

22
23 Commissioner Plank said they could outweigh us and we would be required to file a
24 new lien.

25
26 Commissioner Duryea asked if there was another option between now and November
27 to negotiate with the bank and come to a number we could live with, we have an
28 agreement that they are going to take down the wall, and we will release the lien. If not
29 we have that month of October to file it.

30
31 Mayor Meador said the Bank of America letter stated that it was their intent to correct the
32 situation. The Bank of America holds the rights to the property. We want to negotiate a
33 set amount with the proviso that it will be their responsibility to bring that property into
34 compliance before there is any change of status or we can reinstitute action again.

35
36 Mr. Fleming said that is correct. We have a representative of the bank who wants to
37 speak to the Commission.

38
39 Deputy Mayor Brender asked if the house was empty.

40
41 Mr. Fleming has the house has been empty for a number of years.

42
43 Deputy Mayor Brender asked how this could exist for 20 years. We place the lien and
44 then let it exist for 20 years. He asked if that was the only thing they could do.

1 Mr. Fleming said City staff brought this matter for consideration in 2002. At that time the
2 lien had been there for 10 years. At that time the bank that owned it was superior to the
3 City's lien so we had to back off and leave it alone. The mortgage had federal and state
4 tax liens and then the City's lien. It would not have been cost effective to get involved
5 and pursue a foreclosure.
6

7 Todd Luna of Exit Real Estate Results came forward. He stated he was the listing
8 agent for Bank of America for this property. We were assigned this property through
9 Bank of America on July 23rd which was about 11 days after they received Certificate of
10 Title. During that time we did our due diligence and is when this code violation came
11 up. When we got the property it was not well maintained and our policy is to make sure
12 the properties are maintained and not become an eyesore for the community. Bank of
13 America wants to make sure this is remedied. We have it under contract and our
14 repairs are needed for that transaction to go through. We got a couple of bids to have
15 the fence removed of \$15,000 to \$20,000.
16

17 Mayor Mealor said as long as the lien is sitting they are not going to move the property.
18 Let's find a creative solution and put a family in that home. We have a situation that
19 needs to be corrected and believed Mr. Luna was stating he was willing to take the wall
20 down or bring it into compliance.
21

22 Mr. Luna said whatever we can do to get this. It is currently listed at \$160,000 with
23 \$25,000 of repairs which we are renegotiating to try and reduce that cost. When the
24 \$648,000 lien came up we said what do we have here. We took it upon ourselves to
25 find out what it would cost to get the wall removed and we are waiting to find out what
26 we can do.
27

28 Mayor Mealor said this lien sunsets within two months. He asked Mr. Fleming if he felt
29 comfortable working with Mr. Luna that if we are willing to forgive it the proviso is that
30 goes away in November 2012, however, should the wall not be taken down or brought
31 into compliance that we will initiate a new process.
32

33 Mr. Fleming said generally the way it works in these types of situations is the owner,
34 through its representative, would provide to the City in writing what its intents are and
35 what timeframe it seeks on trying remove the violation. We will take that but we need to
36 have it in writing and have it on file. If they say they are going to do it and didn't and
37 misrepresented the facts then the Code Enforcement Board will deal with them
38 accordingly.
39

40 Mayor Mealor suggested to task Mr. Luna to go to Bank of America and have them put
41 something in writing to Mr. Fleming and the City. He has a two-month window. He
42 asked Mr. Luna if he was comfortable doing that.
43

44 Mr. Luna answered affirmatively. Besides the demolition of the wall there was mention
45 of making the wall decorative. The parts missing from the wall he wasn't sure if it was
46 ever completed in that area.

1
2 Mayor Meador said by law we have to have the structural integrity because we have had
3 this public discussion and it is on the record. Should anything happen out there then we
4 are liable and was not willing to assume that risk on behalf of the taxpayers.

5
6 Mr. Fleming clarified that the determination by the Commission is that the lien will be
7 forgiven so long as they provide in writing how they intend to remediate the violation.
8 He asked if that was correct.

9
10 Deputy Mayor Brender said they could take the wall down or if they check the structural
11 integrity then recover it with brick.

12
13 Mr. Fleming said that would be in the permitting process and in that process staff would
14 demonstrate for the owner that these are the things we require to allow the wall to
15 remain standing which will include engineering, brick façade and things of that nature.

16
17 Deputy Mayor Brender said in either case that will be the bank's responsibility realizing
18 they will have to spend \$20,000 to remove the wall, \$40,000 to fix the wall, or \$514,000
19 to pay the lien.

20
21 Mr. Fleming said the letter will stipulate specifically how they intend to proceed.

22
23 B. Approval of Developer's Agreement for McDonald's, 4210 West Lake Mary
24 Boulevard, CPH Engineers, Inc., applicant (Public Hearing) (Steve Noto,
25 Planner)

26
27 Mayor Meador said this item was postponed from an earlier meeting at the request of the
28 applicant. The original P&Z minutes were quite pointed and the latest P&Z minutes
29 were very agreeable.

30
31 Mr. Noto showed an aerial of the McDonald's property at 4210 West Lake Mary
32 Boulevard. They came to staff earlier in the year for a site plan revision to update the
33 building. He showed a rendering of the proposed update. This is the treatment that
34 McDonald's has started to give many of its restaurants in the nation.

35
36 Mr. Noto said they needed to do some site improvements along with this revision. The
37 issues were number of seats inside the restaurant and number of parking spaces on
38 site. It didn't line up code-wise. After we went to P&Z, CPH came back to staff and we
39 did some digging. Twenty-something years ago before the McDonald's was developed,
40 the property was owned by Sun Bank. A developer's agreement was entered into
41 between the City and Sun Bank that when McDonald's was developed there would be
42 cross access between the Medplex property and McDonald's property. That was done
43 and is there today. In having the public hearings, talking with folks in Medplex, and
44 knowing the issues with parking and the interior seats, we eventually agreed that the
45 number of seats would be decreased to 80, which was the originally approved number
46 of seats in the restaurant. When the site work was to be done that parking spaces

1 were to be removed to allow for the second drive-thru lane. They are moving three
2 parking spaces from the north to the south portion of the site and closing access to
3 Medplex. We have a letter from the Medplex board agreeing to this closure, moving
4 three spaces to this area, adding a motorcycle space, and adding ADA connection to
5 the sidewalk on Sun Drive. Originally they were going to add rumble strips but will be
6 adding a raised crosswalk to better identify the exit to the building on the west side of
7 the property so folks can make it safer to their parked cars and new sidewalk.

8
9 Mr. Noto said the site plan was approved by P&Z on August 28th. The item before the
10 Commission is the amendment to the 1990 developer's agreement. That developer's
11 agreement states that there is to be cross access between Medplex and McDonald's.
12 With the site plan revisions approved by the Planning & Zoning Board, they also
13 recommended approval of the amendment to the developer's agreement. The
14 developer's agreement needs action by the Commission to allow for the closure of that
15 cross access.

16
17 Mr. Noto noted representatives of CPH were present. Staff recommends approval of the
18 amendment to the developer's agreement.

19
20 Deputy Mayor Brender asked what percent decrease in the number of parking spaces
21 by adding a drive-thru.

22
23 Mr. Noto said we had many discussions about that. With the reconstruction of the
24 building—the exterior and interior—they are making their kitchen more efficient to work
25 with. With the addition of the drive-thru they are adding technologies and changed their
26 work flows so the folks going through the drive-thru are served quicker and more
27 efficiently. When McDonald's initially came through they found customers wanted
28 things a certain way but now it has gone to more folks using the drive-thru and less the
29 inside. For the City that doesn't matter. The code says if you have this many seats and
30 this many employees you have this many parking spaces. The initial request was to
31 keep the number of seats that they had in the restaurant which exceeded the required
32 number of parking spaces. They had 112 and were short about 10 to 12 spaces. The
33 original request had a variance tied with it to decrease the number of parking spaces.
34 The P&Z action happened so they came around and said they would do 80 seats and
35 came back with the parking. Even if this new configuration does decrease the demand
36 for parking, our code requirements do not recognize that and they have to have the
37 number needed.

38
39 Deputy Mayor Brender said he understood they were talking code but he was talking
40 about the reality check side. Right now there is overflow parking that goes into the
41 Medplex. He thought McDonald's would have some idea that with two drive-thrus that
42 their number of seat requirements are going to drop.

43
44 Mr. Noto said their philosophy is it may decrease but still want to have seats inside for
45 folks who want to come and eat. The wall that exists they will be adding decorative
46 fencing and toward the north and south portions.

1
2 Commissioner Duryea said he was against taking out the cross access easement
3 because it is there so people don't have to go out on Lake Mary Boulevard and there is
4 no decal lane in front of McDonald's to alleviate that problem. It is very difficult to
5 maneuver in that parking lot because when you turn in from Lake Mary Boulevard you
6 have to make a sharp right-hand turn. If they increase the amount of drive-thru it
7 increases the traffic. It's a very narrow site. He said he didn't think this was a good
8 idea.

9
10 Commissioner Plank asked if McDonald's had this dual order lane in place in other
11 stores.

12
13 Mr. Noto said at Lake Mary Boulevard and 17/92.

14
15 Commissioner Duryea said that one has multiple entrances and has an entrance off
16 Lake Mary Boulevard.

17
18 Commissioner Plank said this one had an entrance off Sun Drive.

19
20 Justin Polk of CPH Engineers, 550 West Fulton Street, Sanford, Florida, came forward.
21 In regard to the question of how the drive-thru affects the capacity issues, when
22 McDonald's first put in drive-thrus in the '70's, 25% of our customers went through the
23 drive-thru. It was a new evolution and nobody utilized it. Throughout the '80's and '90's
24 that number grew to half of our customers. Today more than two-thirds of our
25 customers go through the drive-thrus and at many locations up to 80% more.

26
27 Mr. Polk said he had been designing McDonald's over the state with CPH for eight
28 years. One of his first projects he was tasked with was when side by side drive-thrus
29 were coming out. In all of Central Florida this store in Lake Mary was targeted to do
30 this. At the time there were issues we could not overcome so that did not go through
31 and we have come back now to try and alleviate that. Numbers show that when we
32 have a single drive-thru lane, only about 60 cars an hour can be processed through.
33 When we put the side-by-side drive-thrus that number goes in the triple digits per hour
34 and have had upward 120 to 150 an hour. We are not bringing more customers in but
35 are processing the customers faster. We have been in the situation where we pull up to
36 a McDonald's and all you want is a coffee and the woman in front of you has six kids in
37 the car and they order for ten minutes and they get to the window and the order is not
38 ready. With the side-by-side entry, if that person clogs that lane up, the outside lane is
39 still moving. Five, six, seven, eight cars can go through the outside lane before the
40 inside lane order is processed. It stops these backups.

41
42 Mr. Polk said a perfect example is the store at 17/92 and Lake Mary Boulevard.
43 Routinely that store used to back up onto 17/92. A year ago we put the side-by-side in
44 and you almost can't witness a drive-thru backup. On French Avenue in Sanford we
45 finished that side-by-side less than a month ago and we are getting less backups. We
46 are getting the customers into the site and are eliminating the safety issue of them

1 backing up. You may say what will that do to parking. A lot of problems we have with
2 this store is the drive-thru lane will get backed up on Lake Mary Boulevard so customers
3 park and go in. This will eliminate those customers from parking and that is where we
4 are reducing some of the parking demand. He couldn't say this will never back up
5 because there will be occasions when it will. It increases flow and reduces the demand
6 of the store.

7
8 Mr. Polk said regarding the closing of the cross access, closing a cross access is
9 normally something you never want to do. A cross access is meant to keep people off
10 the arterials. We wouldn't even look at that option if Sun Drive didn't exist. Sun Drive
11 acts as a cross access for all the businesses in between Sun Drive down to Rinehart
12 Road. Medplex was one that brought up the issue of the cross access and people
13 parking and walking over and they asked us to eliminate that. It is part of the
14 negotiation and compromise we have been working on with staff and property owners.

15
16 Commissioner Duryea expressed concern of adding another drive-thru lane on the east
17 side of the building where you are hard pressed to back out of the space without hitting
18 anybody now.

19
20 Commissioner Plank said the additional lane is only at the order point.

21
22 Mr. Noto said that was correct. There will continue to be only one lane used for drive-
23 thru on the east side. There are two windows but they are both on the north side. He
24 pointed out the area that is currently the median landscape area where they are
25 punching through and adding the additional lane. You will continue to have your bypass
26 travel lane.

27
28 Mr. Polk said we still want the lane to queue on one lane. If you queue two lanes wide
29 and you happen to get stuck behind that person in the mini-van he spoke about, the
30 whole theory just went out the window. We queue one lane and as you get to the tip of
31 that island is where the cars will diverge. There is signage and pavement markings.

32
33 Mayor Mealor asked if anyone wanted to speak in reference to this request. No one
34 came forward and the public hearing was closed.

35
36 **Motion was made by Commissioner Lucarelli to approve the amendment to the**
37 **developer's agreement for McDonald's, seconded by Commissioner Plank and**
38 **motion carried by roll-call vote: Commissioner Lucarelli, Yes; Deputy Mayor**
39 **Brender, Yes; Commissioner Duryea, No; Commissioner Plank, Yes; Mayor**
40 **Mealor, Yes.**

41
42 C. Conditional Use Approval of a city-owned health clinic in R-1A zoning, 170
43 Seminole Avenue (Public Hearing) (Gary Schindler, City Planner)

44
45 Ms. Sova said this is the conditional use for the City's Health Clinic on Seminole
46 Avenue. It is the house we are converting for the clinic.

1
2 Mr. Noto said Mr. Schindler was the project manager for this item but is out of town.
3 The subject property is to the west of City Hall. It is a 1,600 S.F. home in R-1A zoning.
4 A community service facility is considered a conditional use in the R-1A zoning district.
5 We reviewed this conditional use against the seven findings of fact that we do for every
6 conditional use and we find that all findings of fact met or exceeded the code and
7 comprehensive plan requirements.

8
9 Mr. Noto said the Planning & Zoning Board heard this item at their August 28, 2012,
10 meeting and voted unanimously to recommend approval. Staff recommends approval.

11
12 Deputy Mayor Brender asked if there would be a separate parking area for the clinic.

13
14 Ms. Sova answered negatively. We will utilize the on-street parking because it will be
15 middle of the day usage. We will have a handicap parking space in the existing
16 driveway.

17
18 Mayor Meador asked if anyone wanted to speak in reference to this conditional use
19 request. No one came forward and the public hearing was closed.

20
21 **Motion was made by Deputy Mayor Brender to approve the conditional use for a**
22 **city-owned health clinic in the R-1A zoning district, seconded by Commissioner**
23 **Lucarelli and motion carried by roll-call vote: Deputy Mayor Brender, Yes;**
24 **Commissioner Duryea, Yes; Commissioner Plank, Yes; Commissioner Lucarelli,**
25 **Yes; Mayor Meador, Yes.**

26
27 D. Resolution No. 906 – Property Acquisition – 140 East Wilbur Avenue and 143
28 East Lake Mary Avenue (Jackie Sova, City Manager)

29
30 The City Attorney read Resolution No. 906 by title only.

31
32 Ms. Sova said we heard earlier in the summer from the Trailblazers that they had a
33 business plan for participating with the City to create a community center. That
34 community center would be in the building that was the former Junior Academy and
35 then became the dormitory for Lake Mary Prep students. It is at 140 East Wilbur
36 Avenue and there is an adjacent parcel at 143 East Lake Mary Avenue. We have
37 looked at the business plan and have done some additional work to get a basic rough
38 estimate on what it would take to remodel the interior of the building and would take
39 approximately \$175,000. That's without bidding and getting competitive with the
40 numbers.

41
42 Ms. Sova said she and Bryan (Nipe) have worked on some additional information. We
43 looked at what revenues used to be in the old community center, the types of meetings,
44 and additional revenues from the Events Center when the whole building could be
45 scheduled for an evening and not be interrupted by smaller meetings in smaller rooms.

1 Mr. Nipe said the center is 6,000 S.F. and a number of options have been tossed
2 around of dividing into two and possibly three rooms. This would give the ability to
3 program in a number of different ways. (1) Rental of the space for any one of our
4 community groups or families. (2) Use of contractors for Zumba, aerobics, and a
5 number of different uses in terms of recreational activities where we would partner with
6 the contractors and receive a certain percentage. (3) We haven't had summer camp in
7 a number of years and this will allow us to contract with camp counselors create a
8 program model to run a good summer camp.

9
10 Mr. Nipe said the \$175,000 demo and renovation is a base and we could go out to bid.
11 That was given to us by a local contractor.

12
13 Commissioner Duryea asked if there was a sense of what the property is worth.

14
15 Ms. Sova said based on comparables and one of the comparables happens to be
16 Walter's Electric which the City now owns.

17
18 **SIDE 2B**
19

20 Ms. Sova said they had a \$1.1 million appraisal a few years ago and updated it with
21 about the same number. They want out from under this and want to be good
22 community partners with the City. Several months ago when we met with them about
23 another property and they talked about they had this piece on the market the number
24 they wanted was significantly higher. The \$625,000 is what they agreed to.

25
26 Commissioner Duryea said that is about \$100 a square foot and includes the land. We
27 couldn't build it for that.

28
29 Ms. Sova said that was true. We looked at that. Commissioner Plank and the
30 Trailblazers priced out St. Peter's and their new activity center. We have an opportunity
31 with this particular location that isn't going to come back our way.

32
33 Mayor Meador said the intent is there will be some revenue recapture.

34
35 Mr. Nipe said all programs will be self-supportive.

36
37 Mayor Meador asked if anyone wanted to speak in reference to Resolution No. 906. No
38 one came forward and the public hearing was closed.

39
40 Deputy Mayor Brender said if we are going to do this, let's do it right. Let's not do what
41 we did with the Events Center and engineer out some of the things we just spent a lot of
42 money on to put back.

43
44 **Motion was made by Deputy Mayor Brender to approve Resolution No. 906,**
45 **seconded by Commissioner Duryea and motion carried by roll-call vote:**

1 **Commissioner Duryea, Yes; Commissioner Plank, Yes; Commissioner Lucarelli,**
2 **Yes; Deputy Mayor Brender, Yes; Mayor Mealor, Yes.**

3
4 IX. Citizen Participation

5
6 Edwin Lawrence, 252 Bald Eagle Run, came forward. He said his hope is to get on the
7 agenda for next month to present a more detailed explanation of what we're seeking.
8 He expressed concerns with the expansion of the SunRail project. As a community we
9 have many people being directly affected with the expansion of the new rail and the
10 demolition of the trees. They are very respectful of everyone's property but it doesn't
11 eliminate the noise, dust, and equipment working. We are here as a group this evening
12 and are asking to be permitted to go on next month's agenda so we can have more time
13 to prepare and bring photographs to show the conditions existing in our backyards.
14 They are literally a foot away from my fence. We have contacted the SunRail folks and
15 they assure us there is nothing in their long-range plans to replant shrubbery, plants,
16 greenery, or fences. Their way of appeasing us is telling us the trains will not be as long
17 and as noisy as the existing freight trains and the horn will be mounted at track level
18 instead of on top of the locomotive. That may be well and good but just the aesthetics.
19 He said he could read a book that one of the passengers is reading as he is passing by
20 because the train is so visible because of the demolition of the trees. He said he didn't
21 know the procedure for getting on next month's agenda.

22
23 Mayor Mealor said it will not be necessary for Mr. Lawrence to get on the agenda. The
24 City Manager or staff will schedule a meeting and will make sure all his information is
25 presented and find a way to bring it to resolution, and if not we will address it as a
26 commission.

27
28 Mayor Mealor said he spoke with the Chairman of the County Commission yesterday
29 about this item and they too have been in touch with the Florida Department of
30 Transportation.

31
32 No one else came forward and citizen participation was closed.

33
34 X. Reports

35
36 A. City Manager

37
38 1. Youth Golf Program Agreement

39
40 Ms. Sova said this is a Youth Golf Program Agreement. She said Bryan has been at
41 work trying to find a way to keep our parks busy and get us a cut of the action.

42
43 Mr. Nipe said this is another program that has come to us. The contractor happens to
44 be a PJ professional who wants to run a program for kids 3 to 8 years old at our multi-
45 use field during a time when it's not getting any use. We are looking to enter into an
46 agreement with them. There is some revenue sharing involved so maintenance is offset

1 in that regard. He thought it was a good program. The kids will be swinging on plastic
2 balls and hitting off mats so they won't be doing any damage to the grass.
3

4 **Motion was made by Commissioner Duryea to authorize the City Manager to**
5 **execute one-year contractual agreement with Little Linksters, LLC and Brendon**
6 **Elliott to operate a golf instruction program at the Sports Complex, seconded by**
7 **Deputy Mayor Brender and motion carried unanimously.**
8

9 Ms. Sova said in the packets is the Financial Report with an investment summary.
10

11 Ms. Sova said also in the packets is the letter from the Seminole County Public Schools
12 that they are going to discontinue paying our stormwater fee. They are doing that
13 throughout the County. There is a little of this going on throughout the state. The
14 League of Cities has two committees to work on legislation to solve this once and for all.
15 This has been going on basically since stormwater fees came into inception.
16

17 Ms. Sova said the City of Altamonte Springs in partnership with the Seminole County
18 Public School Board, Seminole County Regional Chamber of Commerce, Progress
19 Energy, the Adventist Health Systems and other sponsors are having a grand opening
20 of their science incubator tentatively for November 1st or November 2nd at the Lake
21 Lotus Parks Facility. Please let the City Clerk know if you want to attend.
22

23 Ms. Sova said the Food Truck Crave will be back September 30th at Central Park from
24 4:00 P.M. to 7:00 P.M. Bring your chairs, blanket and family and have a good time.
25

26 B. Mayor
27

28 Mayor Mealor said we were represented at a number of functions. Commissioner
29 Brender and Ms. Sova have been involved in Leadership Seminole Government Day
30 and thanked them.
31

32 Mayor Mealor said he had an opportunity with Greenwood Lake Middle School to
33 commemorate 9/11 with a Freedom Walk. He thanked the administrators and teachers,
34 especially Mr. Perry who heads up the Junior ROTC program for a remarkable morning.
35

36 Mayor Mealor thanked the Lake Mary Council and Commissioners for the community
37 update we were able to provide. We appreciate what they do for the community.
38

39 Mayor Mealor said he was invited to attend the Heathrow Women's Club's 25th
40 anniversary. The Lake Mary Women's Club celebrated their 50th in the spring. They do
41 a remarkable amount of work for the community and we thank them for that.
42

43 Mayor Mealor said as part of Constitution Week, earlier this week was able to address
44 students at Lake Mary High School and Deputy Mayor Brender would be doing that
45 tomorrow.
46

1 Mayor Meador said after he left Lake Mary High School he was at Seminole High
2 School. If the students he interacted with are any indication, we have a remarkable
3 future. They are incredibly talented and respectful. He expressed thanks for the
4 invitation from Lake Mary and Seminole High Schools.

5
6 C. Commissioners (4)
7

8 Commissioner Lucarelli said Leadership 21 was able to celebrate the grand
9 opening/ribbon cutting of the new dental center. It is very much needed in the
10 community. Last Thanksgiving she had an issue with her brother needing serious
11 dental care. She was proud her class was able to accomplish that.

12
13 Commissioner Lucarelli said she attended the BeFit Health Center ribbon cutting.

14
15 Commissioner Lucarelli said she attended Tri-County and talked about her stalking
16 initiative. She thanked Chief Bracknell for his support during her stalking situation and
17 invited him to be attendance at their September 27th press conference at the
18 courthouse. It will be inside at 2:00 P.M.

19
20 Chief Bracknell thanked Commissioner Lucarelli for the invitation and that he would be
21 there.

22
23 Commissioner Lucarelli asked if there was any provision to stop the Lake Jessup Basin
24 monitoring. We are why below she questioned why we needed to keep doing it.

25
26 Mr. Paster said he had that same question and have spoken to then about this. They
27 still want the data to put into the new model. When he first presented this the model
28 had a lot of uncertainties. They are going to redo the model at the five-year mark. We
29 are three and a half years in, they are working on a new model now, and they still want
30 all of this information. At the time they redo the model he thought it would be obvious to
31 say our portion is insignificant and maybe can get out entirely. He wanted to make sure
32 he gave them five years of data to prove it is not a pollute or seasonal item.

33
34 Deputy Mayor Brender said he would be at Lake Mary High School in the morning
35 talking about the Constitution and was looking forward to it.

36
37 Commissioner Duryea said there was a special meeting at the Events Center this
38 evening by Americans for Prosperity. They had a speaker, Dick Morris, a political
39 commentator who was involved in the Clinton Administration. It was very interesting
40 and was nice to see people get involved. He thought it was very helpful. There was
41 over 250 people there.

42
43 Commissioner Plank said he had occasion to represent the City and Mayor on a
44 SunRail dry run. We left from Deland and took the Amtrak train down to Kissimmee.
45 Along the way they showed us each of the stations and was happy to say all have
46 broken ground except one. There was a high level of enthusiasm among the cities

1 involved in the project. They took the time in Kissimmee to show us what is happening
2 with SunRail. There were representatives from Lynx, SunRail and Mayors'
3 Commission. It was very interesting trip. He was anxious to see this come back and
4 hopefully in the not too distant future will have the cars to sample the run and
5 scheduling.
6

7 D. City Attorney
8

9 Ms. Reischmann distributed a handout on public records and Sunshine Law issues.
10 There is a probe of Miami Beach officials. That probe by the state attorney was
11 launched because someone said they saw two commissioners speaking at a pause in
12 the meeting. She wanted the Commission to be aware that those things can happen
13 and suddenly the state attorney is involved looking into Sunshine Law violations.
14

15 Ms. Reischmann said we have been getting a lot of public records requests in other
16 cities for E-mails. It's such a hassle when they ask for E-mails for a year's time and you
17 are trying to find it on a particular subject. She wanted to be sure all commissioners are
18 forwarding anything they get on their personal computer to their City E-mail address.
19 That is crucial; otherwise, you could have your personal computer opened for review by
20 a judge and then it starts racking up a lot of costs for the City for attorney's fees.
21

22 XI. Adjournment
23

24 There being no further business, the meeting adjourned at 8:25 P.M.
25
26
27

28 _____
29 David J. Mealor, Mayor
30

_____ Mary Campbell, Deputy City Clerk
31

32
33 ATTEST:
34
35
36
37

38 _____
Carol A. Foster, City Clerk

The Central Florida Chapter
Florida Society
Sons of the American Revolution



September 12, 2012

Chief Steve A. Bracknell
Lake Mary Police Department
165 E. Crystal Lake Avenue
Lake Mary, FL 32746

Dear Chief Bracknell;

It is with a great deal of pride that I notify you that the Sons of the American Revolution's Public Service recognition program has selected **Sergeant Ronnie Gregory** as the recipient of a 2012 Law Enforcement Commendation Medal. His dedicated public service is a highly appreciated and exemplary inspiration for all within our community. The Sons of the American Revolution are most gratified that we can publicly and officially recognize the invaluable service demonstrated by this stellar law enforcement officer.

Please inform me as to the most convenient and appropriate time prior to the end of the year for us to make this special presentation at the Lake Mary Police Department.

Thank you for the department's participation in this important program and congratulations on the selection of your candidate as a medal recipient. I can be contacted with any questions at: (H) 407-359-7752, (C) 407-748-5956 or via email at: dandall@bellsouth.net.

Fraternally yours,



Dan Dall
LTC (ret) US Army
Chairman

Oct. 4th 7:00



CITY OF LAKE MARY POLICE DEPARTMENT

July 24, 2012

Dan Dall
Committee Chairman-Sons of the American Revolution
981 Belfast Pl
Chuluota, FL 32766

STEVE A. BRACKNELL
CHIEF OF POLICE

165 E. CRYSTAL LAKE
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LAKE MARY, FLORIDA
32746

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JOHN C. LITTON
CITY MANAGER



Accredited Since
2005

Dear Dan,

I am writing in response to your request for submittal of qualified candidates for the 2012 Law Enforcement Commendation Medal. I am proud to nominate Sergeant Ronnie Gregory for his outstanding efforts over the past year.

Sergeant Gregory worked this past year as the supervisor in charge of our traffic unit. While serving in this very important area of law enforcement he continuously kept our motorcycle officers motivated to produce high numbers of contacts with traffic violators month after month. He encouraged them to be productive during state-wide, zero tolerance seatbelt campaigns, yielding many citations and warnings to drivers and passengers who chose not to adhere to Florida's seatbelt laws.

He is also responsible for transitioning nearly every officer over to some form of automated ticket writer. This saves valuable time for the officers and affords them the ability to produce a legible citation to violators in a fraction of the time it would routinely take to produce a hand written version. This minimizes the time the officers spend interacting with motorists. This also allows them to return to the safety of their vehicles much faster and gets them back in service to be available for other calls as they occur.

Sergeant Gregory submitted an application to the Law Enforcement Motors Challenge on behalf of our agency. This is a program that judges the individual agencies on their accomplishments in traffic enforcement and education of motorists. The Lake Mary Police Department was awarded a portable radar speed sign trailer in recognition for the outstanding job by the traffic unit. This was in part due to the leadership and direction of Sergeant Gregory.

STATEMENT OF PURPOSE

THE LAKE MARY POLICE DEPARTMENT EXISTS TO PRESERVE LIFE AND PROPERTY; TO ENFORCE THE LAW; AND TO PROTECT THE RIGHT OF ALL CITIZENS TO LIVE IN PEACE.



CITY OF LAKE MARY POLICE DEPARTMENT

Sergeant Gregory did a great job organizing several large city wide events and was responsible for the safety of motorists and pedestrians during these events. In addition to all his duties as a traffic supervisor, he also supervises two Canine Officers, oversees our department Honor Guard Team and sits on the Police Officers' Pension Board.

Being in a relatively smaller police agency (39 sworn officers) often requires employees to take on various roles. Sgt. Gregory is always willing to take on any task that is placed before him. His continued dedication to his job allows our department to serve the citizens of our community to our fullest potential.

Thank You for taking the time to recognize the law enforcement professionals that do a great job making their agencies shine.

Sincerely,

Lieutenant Mike Biles

STEVE A. BRACKNELL
CHIEF OF POLICE

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JACKIE SOVA
CITY MANAGER



Accredited Since
2005

STATEMENT OF PURPOSE

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MEMORANDUM

DATE: October 4, 2012

TO: City Commission

FROM: Jackie Sova, City Manager

SUBJECT: Ordinance 1472 - Progress Energy Franchise Agreement - First Reading (Public Hearing) (Jackie Sova, City Manager)

The City's current ten year Progress Energy franchise agreement expires on June 5, 2013. All in all we have been pleased with the agreement and have not encountered any concerns or difficulties that were not handled in a manner agreeable to all parties. Our relationship with Progress Energy continues to be extremely cooperative. They have always been very responsive to our requests especially in the area of required tree trimming. The current agreement does allow for an extension of another twenty years, however, I am recommending that we enter into a new ten year agreement with some changes and updates to the terms of the agreement. Over 25 other cities have adopted similar agreements in the last few years reflecting a new policy direction by Progress Energy since deregulation has become less of an issue.

The first clarification is that this is a right-of-way utilization agreement. Also as technology changes rapidly, and more and more firms are entering into the various types of technology markets in so many differing forms, I feel it is in the city's best interest to acknowledge this changing environment. As can be seen in Section 4. Grant of Authority, language is included to allow for potential additional types of infrastructure than has typically been provided.

In Section 7. Favored Nations, clarification is provided should Progress Energy offer more favorable terms to another municipality the City would be entitled to those terms. The present and proposed Franchise Fee is 6%.

Responsibility for notification of annexations, work in rights-of-way, and requests to underground electric are also clarified within the proposed agreement.

Notably missing from the proposed agreement is the option to purchase the grantee's electric facilities and the methodology to do so. As the City has never expressed an interest in such a purchase, and in consideration that nearly 40% of the City is serviced by Florida Power & Light, the practicality that this clause would become necessary is minimal. It has been represented to me that the only possible way we can have these terms renewed is with a new 30 year agreement.

Recommendation:

That Ordinance No. 1472 be approved upon first reading.

FINAL

ORDINANCE # 1472

AN ORDINANCE GRANTING TO FLORIDA POWER CORPORATION d/b/a PROGRESS ENERGY FLORIDA, INC. A NON-EXCLUSIVE ELECTRIC UTILITY RIGHT OF WAY UTILIZATION FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS RELATED TO THE OCCUPANCY OF MUNICIPAL STREETS AND RIGHTS-OF-WAY IN THE CITY OF LAKE MARY, FLORIDA, FOR THE PURPOSE OF PROVIDING ELECTRIC SERVICE; PROVIDING FOR SEVERABILITY OF PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE COMMISSION OF THE CITY OF LAKE MARY, FLORIDA:

SECTION 1. Findings.

The City deems it necessary, desirable and in the interest of its citizens to establish by ordinance a right-of-way utilization franchise (sometimes referred to herein as the "Franchise") granting the Company permission to occupy the Rights-of-Way in the City of Lake Mary, Florida, for the purpose of providing electric services.

SECTION 2. Short Title.

This ordinance shall be known and may be cited as the "Progress Energy Florida Right of Way Utilization Franchise."

SECTION 3. Definitions.

For the purposes of this ordinance, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely permissive.

- (A) "Adversely Affected"- For the Company, a loss of one percent (1%) of Base Revenues within the corporate city limits due to Retail Wheeling. For the City, a loss of one percent (1%) of franchise fees due to Retail Wheeling.
- (B) "Base Revenues" means all Company's revenues from the retail sale of electricity, net of customer credits, to residential, commercial, and industrial customers and City sponsored street lighting all within the corporate limits of the City.
- (C) "Company" or "Grantee" – Florida Power Corp. d/b/a Progress Energy Florida Inc., its successors and assigns.
- (D) "City" or "Grantor" – The City of Lake Mary, Florida.

- (E) "Electric Energy Provider" means every legal entity or association of any kind (including their lessees, trustees or receivers), including any unit of state, federal or local government (including City herein), which owns, maintains, or operates an electric generation, transmission, or distribution system or facilities, or which otherwise provides, arranges for, or supplies electricity or electric energy to the public, or which supplies electricity to itself utilizing Company's distribution or other facilities. Without limitation of the foregoing, "Electric Energy Provider" shall also include every Electric Utility, electric power marketer, or electric power aggregator. It shall also include every entity providing such services as metering, customer billing, payment collection and processing, and customer information and data processing.
- (F) "Electric Utility" shall have the meaning set out in Section 366.02(2), *Florida Statutes* (2010), and shall also include every electric "Public Utility" as defined Section 366.02(1), *Florida Statutes* (2010). "Electric Utility" shall further include every investor owned, municipally or governmentally owned, or cooperatively owned electric utility (including their lessees, trustees or receivers), which owns, maintains, or operates an electric generation, transmission, or distribution system in any State or Country.
- (G) "Electric Utility System" means an electric power system installed and operated in the Franchise Area in accordance with the provisions of the Florida Public Service Commission establishing technical standards, service areas, tariffs and operating standards, which shall include but not be limited to electric light, heat, power, and energy facilities, and a generation, transmission, and distribution system, with such extensions thereof and additions thereto as shall hereafter be made.
- (H) "Franchise Area" means that area for which Company provides electric utility service within the corporate City limits of the City.
- (I) "Facilities" has the meaning as set forth in Section 4.
- (J) "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
- (K) "Public Service Commission" means the Florida Public Services Commission.
- (L) "Rights-of-Way" - All of the public streets, alleys, highways, waterways, bridges, sidewalks and parks, and any other public ways or places owned by the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.
- (M) "Retail Wheeling"- A customer/supplier arrangement whereby an Electric Energy Provider utilizes transmission and/or distribution facilities of Company to make energy sales directly to an end use customer located within the Franchise Area.

SECTION 4. Grant of Authority.

(A) This grant of authority is limited to the provision by Company to place its Facilities within the Rights-of-Way for its electric utility services. Accordingly, the City hereby grants to the Company, its successors and assigns the non-exclusive right, authority, and franchise to lay, erect, construct, maintain, repair and operate its Facilities in, under, upon, over and across the present and future Rights of Way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, including but not limited to conduits, cables, poles, wires, supports and such other structures or appurtenances as may be reasonably necessary for the construction, maintenance and operation of an electric generation, transmission and distribution system, including information, telecommunication, and video transmission used solely for the provision of electric service (collectively the "Facilities"), provided that all portions of the same shall conform to accepted industry standards, including but not limited to the National Electrical Safety Code. Nothing in this Ordinance shall require Grantee to remove, de-energize, or cease using any poles, wires, or other things or Facilities identified hereinabove that were in place under previous ordinances or permits prior to the Effective Date of this Ordinance, regardless of whether such poles, wires or other Facilities are located outside "Rights-of-Ways" as defined herein. Nor shall anything in this Ordinance prohibit Company from performing upgrades, replacements, maintenance or servicing of such poles, wires, or other Facilities after the Effective Date of this Ordinance. Rather, all such preexisting poles, wires, or other Facilities shall be authorized under this Ordinance. Because this Franchise is intended to grant Company the non-exclusive, but unrestricted right to place its Facilities within the Rights-of-Ways, the City expressly acknowledges and agrees that Company shall not be required to pull or pay for permits to perform any work maintenance activities on or related to its Facilities within the Rights-of-Ways. In the event Grantee desires to use its existing facilities, or construct new facilities, in order to provide retail public communications, leased fiber optic capacity, or video services to existing or potential consumers, Grantee must obtain additional and separate permission from Grantor for such activities. Company agrees to maintain contact with City and to communicate infrastructure improvements and system hardening activities within the city.

(B) Annexation or Contraction. City and Company agree that the Franchise Area is subject to expansion or reduction by annexation and contraction of municipal boundaries. If City approves any Franchise Area expansion or reduction by annexation or contraction, City will provide written notice to Company's Annexation Coordinator, at the address provided below, within sixty (60) days of such approval and this Franchise shall automatically extend to include any such annexed areas.

Additionally, within sixty (60) days of any such annexation or contraction, City shall provide to Company an updated list containing the new or removed street names, known street name aliases, street addresses, and zip codes associated with each street name. All notices of annexation or contraction and address listings shall be addressed to the Annexation Coordinator as follows with the address subject to change:

Progress Energy
Annexation Coordinator
P. O. Box 33199
St. Petersburg, FL 33733-8199
Or by email to : AnnexationRequests@pgnmail.com

Company must revise its payments due to any expansion or reduction by annexation within a reasonable time after Company has received such notice and updated list from City, but no later than sixty (60) days after receipt of notice and the list. City understands and affirmatively acknowledges that the Company will exclusively rely upon the City to provide timely and accurate information to the Company regarding any such annexations or contractions, and that failure to do so will impair, inhibit, and/or preclude the Company's ability to revise any payments due to the City that are impacted by such annexations or contractions. Further, City acknowledges that if such information is not timely furnished to Company as required herein, any related obligation to collect payments shall be suspended during the period of delay.

(C) Non-Exclusive Use. The Company's right to use and occupy Rights-of-Way for the purposes herein set forth shall be non-exclusive as to entities not engaged in the provision of electric energy and service, and the City reserves the right to grant to others the right to utilize the Rights-of-Way, to any person at any time during the period of this Franchise so long as such grant does not create an unsafe condition or unreasonably conflict with the rights granted to Company herein.

SECTION 5. Notice of Acceptance and Term of Franchise.

This ordinance shall become effective upon being legally passed and adopted ("Effective Date") by the City Council; and it is further agreed that Grantee shall accept this Franchise as of the date of the passage and adoption by the City Council and shall signify its acceptance in writing within thirty (30) days after the City Council's approval of this ordinance by filing its written acceptance with the City Clerk. If Grantee fails to accept this franchise within thirty (30) days of its date of passage, then this Ordinance shall be null and void, and of no force and effect of any kind. The term of the Franchise granted herein shall be for a period of ten (10) years commencing on the Effective Date.

SECTION 6. Payment to City.

(A) Effective the first day of the second month beginning after the Effective Date of this ordinance, City shall be entitled to receive from Company a monthly franchise amount that will equal six percent (6%) of Company's Base Revenues (the "Franchise Fee") for the preceding month, which amount shall be the total compensation due City for any and all rights, authority and privileges granted by this Franchise, including compensation for any required permits, parking fees, or any other fee or cost related to the rights granted hereunder or to do business within the Franchise Area. Any franchise amounts that will be paid to the City will be collected by the Company from Company's customers in the Franchise Area and

passed through to the City in the manner described herein. The City expressly acknowledges that no additional or other amounts shall be due or remitted by Company for the exercise of its rights granted hereunder except for the payment of all applicable taxes not related to the rights granted here in.

Payment shall be made to City for each month no later than the twentieth (20th) day of the following month. The monthly payment shall be made by wire transfer. Any monthly payment or any portion thereof made twenty (20) days after the due date without good cause shall be subject to interest calculated for each month of the underpayment period using the average monthly interest rate based on 30 day commercial paper.

(B) Only disputed amounts shall be allowed to be withheld by Company, and any such amounts shall not accrue any interest during the pendency of any such dispute.

(C) The City acknowledges that all classifications and categories of customers of Company shall be subject to the payment of the Franchise Fee due hereunder.

SECTION 7. Favored Nations.

(A) In the event Grantee shall hereafter accept an electric utility franchise ordinance from any municipality providing for the payment of a franchise fee in excess of that provided for in Section 6 above, or providing another municipality materially more favorable terms as to the Term of this franchise as set forth in Section 5 above, or the acquisition of Grantee's facilities located within the Rights-of-Way of Grantor Grantee shall notify Grantor, and Grantor reserves the right to amend this Franchise to increase the franchise fee payable under this ordinance to no more than the greater franchise fee that Grantee has agreed to pay to such other municipality. Grantee's obligation to pay such greater franchise fee to Grantor shall apply prospectively beginning with the next monthly franchisee fee payment following Grantor's timely notice of its exercise of its amendment right to which Grantee may collect such increased fee from its customers. Grantee's failure to notify Grantor of such additional payments does not limit Grantor's right to amend to require such additional franchise fees.

(B) It is the intent and agreement of Grantor and Grantee that Grantee shall not be required to pay Grantor a franchise fee under Section 6 of a percentage greater than that paid to Grantor by any other Electric Utility or Electric Energy Provider utilizing Grantor's Rights-of-Way on such Electric Utility's or Electric Energy Provider's revenues attributable to services that are the same or substantially the same as those performed by Grantee. It is further the intent and agreement of Grantor and Grantee that Grantee should not be placed at a competitive disadvantage by the payments required by Section 6 of this Ordinance in the event other Electric Utilities or Electric Energy Providers provide services in competition with Grantee without utilizing Grantor's Rights-of-Way.

(C) If Grantor imposes a lesser fee, or no fee, or is unable to impose a fee on another Electric Utility or Electric Energy Provider providing or seeking to provide services in competition with Grantee to customers within Grantor's municipal boundaries, whether utilizing Grantor's Rights-of-Way or not utilizing Grantor's Rights-of-Way, Grantee's fee under Section 6 for such services shall be automatically reduced to the lesser fee charged the other Electric Utility or Electric Energy Provider (or to zero, if no fee is charged such other Electric Utility or Electric Energy Provider). In all events, City shall not grant more favorable treatment to other

Electric Energy Providers than is granted to Company under this ordinance, it being the intent of the parties that no future provider of electric service, be it generation, transmission or distribution service, to customers within the corporate limits of City shall be given a competitive advantage over Company.

SECTION 8. Grantor Rights.

The right is hereby reserved to the City to adopt such regulations as it shall find necessary in the exercise of its police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and shall not be in conflict with the laws of the State of Florida or the lawful regulations of any state agency possessing the power to regulate the activities of the Company, or conflict with or otherwise interfere with the benefits conferred on the Company hereunder. In the event of a conflict between this Franchise Agreement and any other ordinance or regulation adopted by the City relating to Company's rights to perform work in and/or occupancy of the Rights-of-Way as permitted hereunder, the rights under this Franchise Agreement shall govern and control.

SECTION 9. Work In Rights-Of-Way.

(A) The Company is hereby granted the right, authority and privilege to perform all necessary work and excavations in said Rights-of-Way of the City related to its Facilities and necessary or incidental to carrying out such rights and obligations as permitted hereunder. The Company shall have the right to fasten and to stretch and lay along the lines of said poles, conduits, pipes and cables necessary for transmitting and conveying the electric current to be used in the Company's business, together with all the right and privileges necessary or convenient for the full use including the right to trim, cut and keep clear all trees and limbs near or along Company's Facilities that may in any way endanger the proper operation of same. Moreover, the Company shall have the right to construct, erect, operate and maintain within the City an electric system consisting of its Facilities for carrying on the Company's business; provided that, in accomplishing these purposes, the streets of said City shall not be unnecessarily obstructed for an unreasonable amount of time and work in connection therewith shall be done and carried on in conformity with such reasonable rules, standards, regulations and local ordinances with reference thereto as may be adopted by the City for the protection of the public and which are not in conflict with or otherwise interfere with the benefits conferred on the Company hereunder.

(B) Any request to underground electric utility facilities shall be performed in accordance with applicable public tariff sections as approved by the Florida Public Service Commission or other state agency as may have jurisdiction under the general laws of the State of Florida governing such underground work. All costs associated with such underground work shall be estimated and applied in accordance with the Company's standard public tariffs as approved by the Florida Public Service Commission or other state agency as may have jurisdiction under the general laws of the State of Florida.

SECTION 10. Indemnification.

(A) The acceptance of this Franchise by Company shall be deemed an agreement on the part of Company to indemnify City and hold it harmless against any and all direct damages, claims, expenses, reasonable attorneys' fees (including appellate fees) and costs that City may incur to the extent arising out of or resulting from the negligence or willful misconduct of Company, its contractors and agents in the construction, repair, operation, or maintenance of its electric utility Facilities hereunder. Both City and Progress Energy each agree to be responsible for their own negligent acts, errors, or omissions in the performance of this Agreement. The parties acknowledge and agree that the City's performance under this Agreement is subject to the provisions and limitations of section 768.28, Florida Statutes. Nothing herein shall be construed as (1) a waiver of sovereign immunity of the City beyond the waiver provided in section 768.28, Florida Statutes; or (2) a waiver of any defenses of either party under Florida law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. In no event shall either party be liable to the other for any consequential damages, lost profits or other business interruption damages, by statute, in tort (including negligence or strict liability), in contract, or under any indemnity provision or otherwise.

(B) Company shall maintain throughout the term of this Franchise sufficient financial resources to provide self-insurance insuring City and Company with regard to all damages set forth in Section 8(A) in the minimum amounts of:

- (i) \$1,000,000 for bodily injury or death to a person;
\$3,000,000 for bodily injury or death resulting from any one accident.
- (ii) \$50,000 for property damage resulting from any one accident.
- (iii) \$1,000,000 for all other types of liability.

(C) City acknowledges that Company provides its own liability insurance (self-insured).

SECTION 11. Records and Reports.

(A) Company Rules and Regulations. The following records and reports shall be available to City upon City's reasonable request: copies of rules, regulations, terms and conditions adopted by Company that relate to Company's use of City's Rights-of-Way.

(B) Accounting. Company shall use the system of accounts and the form of books, accounts, records, and memoranda prescribed by the Florida Public Service Commission or such other applicable governing agency having jurisdiction over Company.

(C) Reports. Company will submit monthly a statement of its estimated Base Revenues for the period on which such payment is based. The acceptance of any statement or payment shall not prevent the City from asserting that the amount paid is not the amount due, or from recovering any deficit by any lawful proceeding, including interest to be applied at the rate set forth in Section 6(A).

(D) Availability of Records and Reports. Company shall supply information that City or its representatives may from time to time reasonably request relative to the calculation of

franchise fees. Such records shall, on written request of City, be open for examination and audit by City and City's representatives at Company's headquarters in St. Petersburg, Florida, during ordinary business hours and such records shall be retained by Company for a period of three (3) years.

(E) Audit. City may require, upon prior written notice and during Company's normal business hours, an audit of Company's books related to this Agreement not more than once every five (5) years and then only for the preceding three years. Company will reimburse City's audit costs if the audit identifies errors in Company's franchise Base Revenues of five percent (5%) or more for the period audited. If an underpayment of franchise fees has occurred due to the Company's error, interest will be calculated for each month of the underpayment period using the average monthly interest rate of 10% per annum. Both the underpayment and interest shall be paid within ninety (90) days from completion of the audit.

(F) Customer Report. In addition to City's obligations in Section 4(B), within 90 days of the Effective Date of this Agreement, City shall provide to Company a report in a format acceptable to Company setting forth a listing of all addresses within the corporate limits of the City and annually thereafter a report identifying any changes to the address listing provided the previous year.

SECTION 12 Retail Wheeling.

In the event the appropriate governmental authorities authorize Retail Wheeling, then either party, if Adversely Affected thereby, may reopen this ordinance upon thirty (30) days written notice to the other for the sole purpose of addressing the Franchise Fee payments between The Company and The City.

SECTION 13. Severability.

Should any section or provision of this Franchise ordinance or any portion thereof, the deletion of which would not adversely affect the receipt of any material benefits or, substantially increase the burden of any party hereunder, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid. In the event of any such partial invalidity, City and Company shall meet and negotiate in good faith to obtain a replacement provision that is in compliance with the judicial authority's decision.

SECTION 14. Governing Law and Venue.

(A) This Franchise ordinance shall be construed and interpreted according to the laws of the State of Florida.

(B) In the event that any legal proceeding is brought to enforce the terms of this Franchise, the same shall be brought in Pinellas County, Florida, or, if a federal claim, in the U.S. District Court in and for the Middle District of Florida, Tampa Division.

SECTION 15. Merger.

This Franchise agreement is the full, complete and entire understanding and agreements of the parties as to its subject matter, and the written terms supersede all prior contemporaneous representations, discussions, negotiations, understanding and agreements relating to the subject matter of this agreement. The parties shall not be bound or liable for any statement, prior negotiations, correspondence, representation, promise, draft agreements, inducements, or other understanding of any kind or nature not set forth or provided herein.

SECTION 16. Notices.

Except in exigent circumstances, all notices by either City or Company to the other shall be made by depositing such notice in the United States Mail, Certified Mail return receipt requested or by recognized commercial delivery, e.g. FedEx, UPS or DHL or facsimile. Any notice served by certified mail return receipt shall be deemed delivered five (5) days after the date of such deposit in the United States mail unless otherwise provided. Any notice given by facsimile is deemed received by next Business Day. "Business Day" for purposes of this section shall mean Monday through Friday, with Saturday, Sunday and City and Company observed holidays excepted. All notices shall be addressed as follows:

To City: _____

City Clerk
100 N. Country Club Rd
Lake Mary, FL 32795-8445
Phone: (407) 585-1415
Facsimile No.: (407) 585-1498

City Manager
City of Lake Mary
100 N. Country Club Rd
Lake Mary, FL 32795-8445
Phone: (407) 585-1419
Facsimile No.: (407) 585-1498

To Company:

External Relations Department
Progress Energy Services Company, LLC
P.O. Box 14042
St. Petersburg, FL 33733-4042
Facsimile No.: (727) 820-5715

SECTION 17. Non-Waiver Provision.

The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

SECTION 18. Repealer And Superseding Provision.

This ordinance shall supersede, as to the rights, privileges and obligations between City and Company, all ordinances and parts of ordinances in conflict with the terms of this ordinance. Ordinance Documentary No. 1094 and any amendments thereto, are hereby deemed null and void and/or repealed upon the effective date of this ordinance, and none of the provisions of such repealed Ordinance Documentary No. 1094 and any amendments thereto shall have any further force and effect.

SECTION 19. Dispute Resolution.

The parties to this Franchise agree that it is in each of their respective best interests to avoid costly litigation as a means of resolving disputes which may arise hereunder. Accordingly, the parties agree that prior to pursuing their available legal remedies, they will meet in an attempt to resolve any differences. If such informal effort is unsuccessful, then the Parties may exercise any of their available legal remedies.

ADVERTISED _____, 20__.

READ FIRST TIME _____, 20__.

READ SECOND TIME AND ADOPTED _____, 20__.

CITY OF LAKE MARY, FLORIDA

Mayor, David J. Mealor

ATTEST:

City Clerk, Carol A. Foster

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Lake Mary, Florida, only.

City Attorney

Vincent M. Dolan, President & CEO
Progress Energy Florida, Inc.

RED-LINED

ORDINANCE # _____

AN ORDINANCE GRANTING TO FLORIDA POWER CORPORATION d/b/a PROGRESS ENERGY FLORIDA, INC. A NON-EXCLUSIVE ELECTRIC UTILITY RIGHT OF WAY UTILIZATION FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS RELATED TO THE OCCUPANCY OF MUNICIPAL STREETS AND RIGHTS-OF-WAY IN THE CITY OF LAKE MARY, FLORIDA, FOR THE PURPOSE OF PROVIDING ELECTRIC SERVICE; PROVIDING FOR SEVERABILITY OF PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE COMMISSION OF THE CITY OF LAKE MARY, FLORIDA:

SECTION 1. Findings.

The City deems it necessary, desirable and in the interest of its citizens to establish by ordinance a right-of-way utilization franchise (sometimes referred to herein as the "Franchise") granting the Company permission to occupy the Rights-of-Way in the City of Lake Mary, Florida, for the purpose of providing electric services.

SECTION 2. Short Title.

This ordinance shall be known and may be cited as the "Progress Energy Florida Right of Way Utilization Franchise."

SECTION 3. Definitions.

For the purposes of this ordinance, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely permissive.

- (A) "Adversely Affected"- For the Company, a loss of one percent (1%) of Base Revenues within the corporate city limits due to Retail Wheeling. For the City, a loss of one percent (1%) of franchise fees due to Retail Wheeling.
- (B) "Base Revenues" means all Company's revenues from the retail sale of electricity, net of customer credits, to residential, commercial, and industrial customers and City sponsored street lighting all within the corporate limits of the City.
- (C) "Company" or "Grantee" – Florida Power Corp. d/b/a Progress Energy Florida Inc., its successors and assigns.

- (D) "City" or "Grantor" – The City of Lake Mary, Florida.
- (E) "Electric Energy Provider" means every legal entity or association of any kind (including their lessees, trustees or receivers), including any unit of state, federal or local government (including City herein), which owns, maintains, or operates an electric generation, transmission, or distribution system or facilities, or which otherwise provides, arranges for, or supplies electricity or electric energy to the public, or which supplies electricity to itself utilizing Company's distribution or other facilities. Without limitation of the foregoing, "Electric Energy Provider" shall also include every Electric Utility, electric power marketer, or electric power aggregator. It shall also include every entity providing such services as metering, customer billing, payment collection and processing, and customer information and data processing.
- (F) "Electric Utility" shall have the meaning set out in Section 366.02(2), *Florida Statutes* (2010), and shall also include every electric "Public Utility" as defined Section 366.02(1), *Florida Statutes* (2010). "Electric Utility" shall further include every investor owned, municipally or governmentally owned, or cooperatively owned electric utility (including their lessees, trustees or receivers), which owns, maintains, or operates an electric generation, transmission, or distribution system in any State or Country.
- (G) "Electric Utility System" means an electric power system installed and operated in the Franchise Area in accordance with the provisions of the Florida Public Service Commission establishing technical standards, service areas, tariffs and operating standards, which shall include but not be limited to electric light, heat, power, and energy facilities, and a generation, transmission, and distribution system, with such extensions thereof and additions thereto as shall hereafter be made.
- (H) "Franchise Area" means that area for which Company provides electric utility service within the corporate City limits of the City.
- (I) "Facilities" has the meaning as set forth in Section 4.
- (J) "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
- (K) "Public Service Commission" means the Florida Public Services Commission.
- (L) "Rights-of-Way" - All of the public streets, alleys, highways, waterways, bridges, sidewalks and parks, and any other public ways or places owned by the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.
- (M) "Retail Wheeling"- A customer/supplier arrangement whereby an Electric Energy Provider utilizes transmission and/or distribution facilities of Company to make energy sales directly to an end use customer located within the Franchise Area.

SECTION 4. Grant of Authority.

(A) This grant of authority is limited to the provision by Company to place its Facilities within the Rights-of-Way for its electric utility services. Accordingly, the City hereby grants to the Company, its successors and assigns the non-exclusive right, authority, and franchise to lay, erect, construct, maintain, repair and operate its Facilities in, under, upon, over and across the present and future Rights of Way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, including but not limited to conduits, cables, poles, wires, supports and such other structures or appurtenances as may be reasonably necessary for the construction, maintenance and operation of an electric generation, transmission and distribution system, including information, telecommunication, and video transmission used solely for the provision of electric service (collectively the "Facilities"), provided that all portions of the same shall conform to accepted industry standards, including but not limited to the National Electrical Safety Code. Nothing in this Ordinance shall require Grantee to remove, de-energize, or cease using any poles, wires, or other things or Facilities identified hereinabove that were in place under previous ordinances or permits prior to the Effective Date of this Ordinance, regardless of whether such poles, wires or other Facilities are located outside "Rights-of-Ways" as defined herein. Nor shall anything in this Ordinance prohibit Company from performing upgrades, replacements, maintenance or servicing of such poles, wires, or other Facilities after the Effective Date of this Ordinance. Rather, all such preexisting poles, wires, or other Facilities shall be authorized under this Ordinance. Because this Franchise is intended to grant Company the non-exclusive, but unrestricted right to place its Facilities within the Rights-of-Ways, the City expressly acknowledges and agrees that Company shall not be required to pull or pay for permits to perform any work maintenance activities on or related to its Facilities within the Rights-of-Ways. In the event Grantee desires to use its existing facilities, or construct new facilities, in order to provide retail public communications, leased fiber optic capacity, or video services to existing or potential consumers, Grantee must obtain additional and separate permission from Grantor for such activities. Company agrees to maintain contact with City and to communicate infrastructure improvements and system hardening activities within the city.

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Annexation Coordinator
P. O. Box 33199
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Or by email to : AnnexationRequests@pgnmail.com

Company must revise its payments due to any expansion or reduction by annexation within a reasonable time after Company has received such notice and updated list from City, but no later than sixty (60) days after receipt of notice and the list. City understands and affirmatively acknowledges that the Company will exclusively rely upon the City to provide timely and accurate information to the Company regarding any such annexations or contractions, and that failure to do so will impair, inhibit, and/or preclude the Company's ability to revise any payments due to the City that are impacted by such annexations or contractions. Further, City acknowledges that if such information is not timely furnished to Company as required herein, any related obligation to collect payments shall be suspended during the period of delay.

(C) Non-Exclusive Use. The Company's right to use and occupy Rights-of-Way for the purposes herein set forth shall be non-exclusive as to entities not engaged in the provision of electric energy and service, and the City reserves the right to grant to others the right to utilize the Rights-of-Way, to any person at any time during the period of this Franchise so long as such grant does not create an unsafe condition or unreasonably conflict with the rights granted to Company herein.

SECTION 5. Notice of Acceptance and Term of Franchise.

This ordinance shall become effective upon being legally passed and adopted ("Effective Date") by the City Council; and it is further agreed that Grantee shall accept this Franchise as of the date of the passage and adoption by the City Council and shall signify its acceptance in writing within thirty (30) days after the City Council's approval of this ordinance by filing its written acceptance with the City Clerk. If Grantee fails to accept this franchise within thirty (30) days of its date of passage, then this Ordinance shall be null and void, and of no force and effect of any kind. The term of the Franchise granted herein shall be for a period of ten (10— years commencing on the Effective Date.

SECTION 6. Payment to City.

(A) Effective the first day of the second month beginning after the Effective Date of this ordinance, City shall be entitled to receive from Company a monthly franchise amount that will equal six percent (6%) of Company's Base Revenues (the "Franchise Fee") for the preceding month, which amount shall be the total compensation due City for any and all rights, authority and privileges granted by this Franchise, including compensation for any required permits, parking fees, or any other fee or cost related to the rights granted hereunder or to do business within the Franchise Area. Any franchise amounts that will be paid to the City will be collected by the Company from Company's customers in the Franchise Area and passed through to the City in the manner described herein. The City expressly acknowledges that no additional or other amounts shall be due or remitted by Company for the exercise of its

rights granted hereunder except for the payment of all applicable taxes not related to the rights granted here in.

Payment shall be made to City for each month no later than the twentieth (20th) day of the following month. The monthly payment shall be made by wire transfer. Any monthly payment or any portion thereof made twenty (20) days after the due date without good cause shall be subject to interest calculated for each month of the underpayment period using the average monthly interest rate based on 30 day commercial paper.

(B) Only disputed amounts shall be allowed to be withheld by Company, and any such amounts shall not accrue any interest during the pendency of any such dispute.

(C) The City acknowledges that all classifications and categories of customers of Company shall be subject to the payment of the Franchise Fee due hereunder.

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(A) In the event Grantee shall hereafter accept an electric utility franchise ordinance from any municipality providing for the payment of a franchise fee in excess of that provided for in Section 6 above, or providing another municipality materially more favorable terms as to the Term of this franchise as set forth in Section 5 above, or the acquisition of Grantee's facilities located within the Rights-of-Way of Grantor Grantee shall notify Grantor, and Grantor reserves the right to amend this Franchise to increase the franchise fee payable under this ordinance to no more than the greater franchise fee that Grantee has agreed to pay to such other municipality. Grantee's obligation to pay such greater franchise fee to Grantor shall apply prospectively beginning with the next monthly franchisee fee payment following Grantor's timely notice of its exercise of its amendment right to which Grantee may collect such increased fee from its customers. Grantee's failure to notify Grantor of such additional payments does not limit Grantor's right to amend to require such additional franchise fees.

(B) It is the intent and agreement of Grantor and Grantee that Grantee shall not be required to pay Grantor a franchise fee under Section 6 of a percentage greater than that paid to Grantor by any other Electric Utility or Electric Energy Provider utilizing Grantor's Rights-of-Way on such Electric Utility's or Electric Energy Provider's revenues attributable to services that are the same or substantially the same as those performed by Grantee. It is further the intent and agreement of Grantor and Grantee that Grantee should not be placed at a competitive disadvantage by the payments required by Section 6 of this Ordinance in the event other Electric Utilities or Electric Energy Providers provide services in competition with Grantee without utilizing Grantor's Rights-of-Way.

(C) If Grantor imposes a lesser fee, or no fee, or is unable to impose a fee on another Electric Utility or Electric Energy Provider providing or seeking to provide services in competition with Grantee to customers within Grantor's municipal boundaries, whether utilizing Grantor's Rights-of-Way or not utilizing Grantor's Rights-of-Way, Grantee's fee under Section 6 for such services shall be automatically reduced to the lesser fee charged the other Electric Utility or Electric Energy Provider (or to zero, if no fee is charged such other Electric Utility or Electric Energy Provider). In all events, City shall not grant more favorable treatment to other Electric Energy Providers than is granted to Company under this ordinance, it being the intent of the parties that no future provider of electric service, be it generation, transmission or distribution

service, to customers within the corporate limits of City shall be given a competitive advantage over Company.

SECTION 8. Grantor Rights.

The right is hereby reserved to the City to adopt such regulations as it shall find necessary in the exercise of its police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and shall not be in conflict with the laws of the State of Florida or the lawful regulations of any state agency possessing the power to regulate the activities of the Company, or conflict with or otherwise interfere with the benefits conferred on the Company hereunder. In the event of a conflict between this Franchise Agreement and any other ordinance or regulation adopted by the City relating to Company's rights to perform work in and/or occupancy of the Rights-of-Way as permitted hereunder, the rights under this Franchise Agreement shall govern and control.

SECTION 9. Work In Rights-Of-Way.

(A) The Company is hereby granted the right, authority and privilege to perform all necessary work and excavations in said Rights-of-Way of the City related to its Facilities and necessary or incidental to carrying out such rights and obligations as permitted hereunder. The Company shall have the right to fasten and to stretch and lay along the lines of said poles, conduits, pipes and cables necessary for transmitting and conveying the electric current to be used in the Company's business, together with all the right and privileges necessary or convenient for the full use including the right to trim, cut and keep clear all trees and limbs near or along Company's Facilities that may in any way endanger the proper operation of same. Moreover, the Company shall have the right to construct, erect, operate and maintain within the City an electric system consisting of its Facilities for carrying on the Company's business; provided that, in accomplishing these purposes, the streets of said City shall not be unnecessarily obstructed for an unreasonable amount of time and work in connection therewith shall be done and carried on in conformity with such reasonable rules, standards, regulations and local ordinances with reference thereto as may be adopted by the City for the protection of the public and which are not in conflict with or otherwise interfere with the benefits conferred on the Company hereunder.

(B) Any request to underground electric utility facilities shall be performed in accordance with applicable public tariff sections as approved by the Florida Public Service Commission or other state agency as may have jurisdiction under the general laws of the State of Florida governing such underground work. All costs associated with such underground work shall be estimated and applied in accordance with the Company's standard public tariffs as approved by the Florida Public Service Commission or other state agency as may have jurisdiction under the general laws of the State of Florida.

SECTION 10. Indemnification.

(A) The acceptance of this Franchise by Company shall be deemed an agreement on the part of Company to indemnify City and hold it harmless against any and all direct damages, claims, expenses, reasonable attorneys' fees (including appellate fees) and costs that City may

incur to the extent arising out of or resulting from the negligence or willful misconduct of Company, its contractors and agents in the construction, repair, operation, or maintenance of its electric utility Facilities hereunder. Both City and Progress Energy each agree to be responsible for their own negligent acts, errors, or omissions in the performance of this Agreement. The parties acknowledge and agree that the City's performance under this Agreement is subject to the provisions and limitations of section 768.28, Florida Statutes. Nothing herein shall be construed as (1) a waiver of sovereign immunity of the City beyond the waiver provided in section 768.28, Florida Statutes; or (2) a waiver of any defenses of either party under Florida law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. The acceptance of this Franchise by Company shall be deemed an agreement on the part of Company to indemnify City and hold it harmless against any and all direct damages, claims, expenses, reasonable attorneys' fees (including appellate fees) and costs that City may incur to the extent arising out of or resulting from the negligence, default, or misconduct of Company, its contractors and agents in the construction, repair, operation, or maintenance of its electric utility Facilities hereunder. In no event shall Company be liable to City for any consequential, incidental, punitive, exemplary, multiple, or indirect damages, lost profits or other business interruption damages, by statute, in tort (including negligence or strict liability), in contract, or under any indemnity provision or otherwise. In no event shall either party be liable to the other for any consequential damages, lost profits or other business interruption damages, by statute, in tort (including negligence or strict liability), in contract, or under any indemnity provision or otherwise.

(B) Company shall maintain throughout the term of this Franchise sufficient financial resources to provide self-insurance insuring City and Company with regard to all damages set forth in Section 8(A) in the minimum amounts of:

- (i) \$1,000,000 for bodily injury or death to a person;
\$3,000,000 for bodily injury or death resulting from any one accident.
- (ii) \$50,000 for property damage resulting from any one accident.
- (iii) \$1,000,000 for all other types of liability.

(C) City acknowledges that Company provides its own liability insurance (self-insured).

SECTION 11. Records and Reports.

(A) Company Rules and Regulations. The following records and reports shall be available to City upon City's reasonable request: copies of rules, regulations, terms and conditions adopted by Company that relate to Company's use of City's Rights-of-Way.

(B) Accounting. Company shall use the system of accounts and the form of books, accounts, records, and memoranda prescribed by the Florida Public Service Commission or such other applicable governing agency having jurisdiction over Company.

(C) Reports. Company will submit monthly a statement of its estimated Base Revenues for the period on which such payment is based. The acceptance of any statement or payment shall not prevent the City from asserting that the amount paid is not the amount due, or from recovering any deficit by any lawful proceeding, including interest to be applied at the rate set forth in Section 6(A).

(D) Availability of Records and Reports. Company shall supply information that City or its representatives may from time to time reasonably request relative to the calculation of franchise fees. Such records shall, on written request of City, be open for examination and audit by City and City's representatives at Company's headquarters in St. Petersburg, Florida, during ordinary business hours and such records shall be retained by Company for a period of three (3) years.

(E) Audit. City may require, upon prior written notice and during Company's normal business hours, an audit of Company's books related to this Agreement not more than once every five (5) years and then only for the preceding three years. Company will reimburse City's audit costs if the audit identifies errors in Company's franchise Base Revenues of five percent (5%) or more for the period audited. If an underpayment of franchise fees has occurred due to the Company's error, interest will be calculated for each month of the underpayment period using the average monthly interest rate ~~based on 30 day commercial paper of 10% per annum.~~

Both the underpayment and interest shall be paid within ninety (90) days from completion of the audit.

(F) Customer Report. In addition to City's obligations in Section 4(B), within 90 days of the Effective Date of this Agreement, City shall provide to Company a report in a format acceptable to Company setting forth a listing of all addresses within the corporate limits of the City and annually thereafter a report identifying any changes to the address listing provided the previous year.

SECTION 12 Retail Wheeling.

In the event the appropriate governmental authorities authorize Retail Wheeling, then either party, if Adversely Affected thereby, may reopen this ordinance upon thirty (30) days written notice to the other for the sole purpose of addressing the Franchise Fee payments between The Company and The City. ~~If the parties are unable to agree within ninety (90) days of reopening, either party may declare an impasse and may file an action in the Circuit Court in Pinellas County, Florida for declaratory relief as to the proper Franchise Fee in light of Retail Wheeling.~~

SECTION 13. Severability.

Should any section or provision of this Franchise ordinance or any portion thereof, the deletion of which would not adversely affect the receipt of any material benefits or, substantially increase the burden of any party hereunder, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid. In the event of any such partial invalidity, City and Company shall meet and negotiate in good faith to obtain a replacement provision that is in compliance with the judicial authority's decision.

SECTION 14. Governing Law and Venue.

(A) This Franchise ordinance shall be construed and interpreted according to the laws of the State of Florida.

(B) In the event that any legal proceeding is brought to enforce the terms of this Franchise, the same shall be brought in Pinellas County, Florida, or, if a federal claim, in the U.S. District Court in and for the Middle District of Florida, Tampa Division.

SECTION 15. Merger.

This Franchise agreement is the full, complete and entire understanding and agreements of the parties as to its subject matter, and the written terms supersede all prior contemporaneous representations, discussions, negotiations, understanding and agreements relating to the subject matter of this agreement. The parties shall not be bound or liable for any statement, prior negotiations, correspondence, representation, promise, draft agreements, inducements, or other understanding of any kind or nature not set forth or provided herein.

SECTION 16. Notices.

Except in exigent circumstances, all notices by either City or Company to the other shall be made by depositing such notice in the United States Mail, Certified Mail return receipt requested or by recognized commercial delivery, e.g. FedEx, UPS or DHL or facsimile. Any notice served by certified mail return receipt shall be deemed delivered five (5) days after the date of such deposit in the United States mail unless otherwise provided. Any notice given by facsimile is deemed received by next Business Day. "Business Day" for purposes of this section shall mean Monday through Friday, with Saturday, Sunday and City and Company observed holidays excepted. All notices shall be addressed as follows:

To City: _____

City Clerk
100 N. Country Club Rd
Lake Mary, FL 32795-8445
Phone: (407) 585-1415
Facsimile No.: (407) 585-1498

City Manager
City of Lake Mary
100 N. Country Club Rd
Lake Mary, FL 32795-8445
Phone: (407) 585-1419
Facsimile No.: (407) 585-1498

To Company:

External Relations Department
Progress Energy Services Company, LLC
P.O. Box 14042
St. Petersburg, FL 33733-4042
Facsimile No.: (727) 820-5715

SECTION 17. Non-Waiver Provision.

The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to

have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

SECTION 18. Repealer And Superseding Provision.

This ordinance shall supersede, as to the rights, privileges and obligations between City and Company, all ordinances and parts of ordinances in conflict with the terms of this ordinance. Ordinance Documentary No. 1094 and any amendments thereto, are hereby deemed null and void and/or repealed upon the effective date of this ordinance, and none of the provisions of such repealed Ordinance Documentary No. 1094 and any amendments thereto shall have any further force and effect.

SECTION 19. Dispute Resolution.

The parties to this Franchise agree that it is in each of their respective best interests to avoid costly litigation as a means of resolving disputes which may arise hereunder. Accordingly, the parties agree that prior to pursuing their available legal remedies, they will meet in an attempt to resolve any differences. If such informal effort is unsuccessful, then the Parties may exercise any of their available legal remedies.

ADVERTISED _____, 20__.

READ FIRST TIME _____, 20__.

READ SECOND TIME AND ADOPTED _____, 20__.

CITY OF LAKE MARY, FLORIDA

Mayor, David J. Mealor

ATTEST:

City Clerk, Carol A. Foster

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Lake Mary, Florida, only.

City Attorney

Vincent M. Dolan, President & CEO
Progress Energy Florida, Inc.

CURRENT-ADOPTED 6/5/03

ORDINANCE NO. 1094

AN ORDINANCE OF THE CITY OF LAKE MARY, FLORIDA, GRANTING TO FLORIDA POWER CORPORATION d/b/a PROGRESS ENERGY FLORIDA, INC., A NON-EXCLUSIVE ELECTRIC UTILITY FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR SEVERABILITY OF CERTAIN PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

IT IS HEREBY ENACTED BY THE CITY OF LAKE MARY, FLORIDA, AS FOLLOWS:

SECTION 1. Findings.

Grantor deems it necessary, desirable and in the interest of its citizens to enact an ordinance granting to Grantee a non-exclusive electric utility franchise within the Rights-of-Way in the City of Lake Mary, Florida.

SECTION 2. Short Title.

This ordinance shall be known and may be cited as the "Progress Energy Florida Electric Franchise."

SECTION 3. Definitions.

For the purposes of this ordinance, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely permissive.

"Base Revenues" means Grantee's revenues from the retail sale of electricity, net of customer credits, to residential, commercial, and industrial customers and City sponsored street lighting all within the corporate limits of the City.

"Electric Energy Provider" means every legal entity or association of any kind (including their lessees, trustees or receivers), including any unit of state, federal or local government (including Grantor herein), which owns, maintains, or operates an electric generation, transmission, or distribution system or facilities, or which otherwise provides, arranges for, or supplies electricity or electric energy to the public, or which supplies electricity to itself utilizing Grantee's distribution or other facilities. Without limitation of the foregoing, "Electric Energy Provider" shall also include every Electric Utility, electric power marketer, or electric power aggregator. It shall also include every entity providing such services as metering, customer billing, payment collection and processing, and customer information and data processing.

"Electric Utility" shall have the meaning set out in Section 366.02(2), *Florida Statutes (2002)*, and shall also include every electric "Public Utility" as defined Section 366.02(1), *Florida Statutes (2002)*. "Electric Utility" shall further include every investor owned, municipally or governmentally owned, or cooperatively owned electric utility (including their lessees, trustees or receivers), which owns, maintains, or operates an electric generation, transmission, or distribution system in any State or Country.

"Electric Utility System" means an electric power system installed and operated in the Franchise Area in accordance with the provisions of the Florida Public Service Commission establishing technical standards, service areas, tariffs and operating standards, which shall include but not be limited to electric light, heat, power, and energy facilities, and a generation, transmission, and distribution system, with such extensions thereof and additions thereto as shall hereafter be made.

"Franchise Area" means that area for which Grantee provides electric utility service, which is within the corporate city limits of Grantor.

"Grantee" means Florida Power Corporation dba Progress Energy Florida, Inc., its successors and assigns.

"Grantor" means the City of Lake Mary, Florida.

"Person" means any person, firm, partnership, association, corporation, company or organization of any kind.

"Rights-of-Way" means all of the public streets, alleys, highways, waterways, bridges, easements, sidewalks and parks owned by the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.

SECTION 4. Grant of Authority.

(A) There is hereby granted by Grantor, to Grantee, the right and privilege to construct, erect, operate, own and maintain, in, upon, along, across, above, over and under Rights-of-Way now laid out or dedicated, and all extensions thereof, and additions thereto in the corporate city limits, poles, wires, cables, underground conduits, manholes, fiber optic cable for its own use and other fixtures necessary or proper for the maintenance and operation of its Electric Utility System, provided that all portions of the same shall conform to the National Electrical Safety Code. This grant of authority is limited to the provision of electric utility services. Grantee agrees that, unless otherwise required by law, without the prior written permission of Grantor, Grantee will not allow any entity providing a wireless communication system to acquire rights to occupy Rights-of-Way under this Franchise. In the event Grantee desires to use its existing facilities, or construct new facilities, in order to provide public communications, leased fiber optic

capacity, or video services to existing or potential consumers, Grantee must obtain additional and separate permission from Grantor for such activities.

(B) Annexation or Contraction. Grantee agrees that the Franchise Area is subject to expansion or reduction by annexation and contraction of municipal boundaries. If Grantor approves any Franchise Area expansion or reduction by annexation or contraction, Grantor will provide written notice to Grantee, in accordance with Section 16 herein, within sixty (60) days of such approval. Grantee must revise its payments due to any expansion or reduction by annexation within a reasonable time after notice to Grantee, but no later than sixty (60) days after receipt of notice.

(C) Non-Exclusive Use. The right to use and occupy Rights-of-Way for the purposes herein set forth shall be non-exclusive, and Grantor reserves the right to grant a similar use of said Rights-of-Way, to any person at any time during the period of this Franchise so long as such grant does not materially and adversely impact Grantee's right to use and occupy Rights-of-Way as aforesaid.

SECTION 5. Term of Franchise.

(A) Except as otherwise provided herein, the Franchise and rights herein granted shall take effect and be in force from and after the final passage hereof, as required by law and upon the filing of an acceptance by Grantee of all the terms thereof with Grantor and shall continue in force and effect for a term of ten (10) years after the effective date of this Franchise ordinance. Grantor shall have the absolute right, but not the obligation, at its sole discretion, to extend the term of this Franchise for an additional twenty (20) years. In the event of such an extension, at the end of such extended term (30 years from the effective date of this Franchise), Grantor may elect to purchase Grantee's electric distribution facilities and "Associated Facilities" located within Grantor's municipal boundaries, except high tension transmission lines, generating plants, and facilities used to provide service to communities other than Grantor as provided in Section 12 below. "Associated Facilities" shall mean those portions of the substations in the City necessary to receive wholesale bulk service from the City's provider. Grantor must give notice of its desire to extend the term of this Franchise no later than six (6) months prior to the expiration of the initial term of this Franchise. If Grantor does not give such timely notice, Grantor's right to extend the term of this Franchise shall expire and be of no further force and effect.

SECTION 6. Payment to Grantor.

(A) Effective the first day of the second month beginning after the effective date of this ordinance, Grantor shall be entitled to receive from Grantee a monthly franchise amount that will equal six percent (6%) of Grantee's Base Revenues for the preceding month, which amount shall be the total compensation due Grantor for the rights, authority and privileges granted by this Franchise.

(B) Payment shall be made to Grantor for each month no later than the twentieth (20th) day of the following month. The monthly payment may be made by wire transfer. Any monthly payment or any portion thereof received twenty (20) days after the due date shall be subject to interest at the rate of ten percent (10%) per annum until all payments are paid in full.

SECTION 7. Favored Nations.

(A) In the event Grantee shall hereafter accept an electric utility franchise ordinance from any municipality providing for the payment of a franchise fee percentage in excess of that provided for in Section 6 above or which contains materially more favorable terms as to the subject matter of Section 6 above, Grantee shall notify Grantor, and Grantor reserves the right to amend this Franchise so that this Franchise will contain the same provision for increased franchise fee payment and/or materially more favorable terms as to the subject matter of Section 6. Also, if a court of law in Florida with jurisdiction over the Grantor issues a final, non-appealable order (or order that is not appealed) holding that, during the term of a written, mutually agreed franchise (not including any claimed hold over, extended time period or attempted unilaterally imposed ordinance) Grantee is required to pay a franchise fee percentage under such mutually agreed franchise in excess of 6%, Grantor reserves the right to amend this Franchise to increase the franchise fee percentage payable under this ordinance to no more than the greater franchise fee percentage ordered by such Court. Nothing herein shall be interpreted to mean that Grantee agrees or admits that such a ruling would be correct or lawful or to impair Grantee's arguments in any such lawsuit. Grantee's obligation to pay a greater franchise fee percentage to Grantor shall apply prospectively beginning with the next monthly franchise fee payment following Grantor's timely notice of its exercise of its amendment right to which Grantee may collect such increased fee from its customers. Grantee's failure to notify Grantor of the circumstances which would cause Grantee to pay a greater franchise fee percentage does not limit Grantor's rights to amend to require such additional franchise fees or limit Grantee's liability with respect thereto. However, in the event Grantee does not provide timely notice as required by this paragraph, Grantor's amendment right shall, if exercised, relate back to the time at which Grantor could have first exercised that right hereunder if Grantor had been timely notified. Grantor shall notify Grantee whether Grantor will exercise its amendment rights within sixty (60) days of Grantee's giving notice of such other franchise terms or the date on which Grantee has actual knowledge of such other franchise terms.

(B) Notwithstanding Section 7(A) above, it is the intent and agreement of Grantor and Grantee that Grantee shall not be required to pay Grantor a franchise fee under Section 6 of a percentage greater than that paid to Grantor by any other Electric Utility or Electric Energy Provider utilizing Grantor's Rights-of-Way on such Electric Utility's or Electric Energy Provider's revenues attributable to services that are the same or substantially the same as those performed by Grantee. It is further the intent and agreement of Grantor and Grantee that Grantee should not be placed at a competitive disadvantage by the payments required by Section 6 of this Ordinance in the event other Electric Utilities or Electric Energy Providers provide services in competition with

Grantee without utilizing Grantor's Rights-of-Way. Grantee agrees that Grantor shall have the right and the sole responsibility, to the fullest extent permitted by law, to enforce and collect a franchise fee under Section 6 from other Electric Utilities or other Electric Energy Providers which utilize Grantee's facilities located in Grantor's Rights-of-Way.

(C) In the event Grantee voluntarily enters in to a new, mutually agreed to franchise with another municipality after the effective date of this franchise as provided in Section 19 of this franchise ("new franchise"), which new franchise includes (1) a term shorter than thirty (30) years, and (2) an option to purchase Grantee's electric distribution system at the expiration of such term, then Grantor shall have the option to reduce the term of this franchise to such shorter term; provided the term of the new franchise is less than the remaining term of this franchise at the time Grantee provides notice to Grantor that it has entered in to the new franchise. Grantee shall notify Grantor that it has entered in to such a new franchise within sixty days of the effective date of the new franchise. Grantor shall have thirty (30) days from the date of Grantee's notice to notify Grantee that Grantor is exercising its option to select the shorter term. If Grantor fails to timely notify Grantee, Grantor shall be deemed to have waived its right to elect such shorter term, and such option shall expire and have no further force and effect. If Grantor timely notifies Grantee that Grantor is exercising its option to select the shorter term, Grantee and Grantor shall amend this franchise to reflect such shorter term within thirty (30) days of the date of Grantor's notice to Grantee that Grantor is exercising its option to select the shorter term.

SECTION 8. Indemnification.

(A) Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its facilities thereunder, and the acceptance of this Franchise by Grantee shall be deemed an agreement on the part of Grantee to indemnify Grantor and hold it harmless against any and all direct damages that Grantor may incur directly resulting from the sole negligence, default, or misconduct of Grantee in the construction, operation, or maintenance of its electric utility facilities thereunder.

(B) Grantee shall maintain throughout the term of this Franchise sufficient financial resources to provide self-insurance insuring Grantor and Grantee with regard to all damages set forth in Section 8(A) in the minimum amounts of:

- (i) \$1,000,000 for bodily injury or death to a person;
\$3,000,000 for bodily injury or death resulting from any one accident.
- (ii) \$50,000 for property damage resulting from any one accident.
- (iii) \$1,000,000 for all other types of liability.

(C) Grantor acknowledges that Grantee provides its own liability insurance (self-insured). On an annual basis, Grantee must submit its annual audited financial report as documentation that clearly demonstrates that it has accumulated sufficient

financial resources in order to provide insurance coverage as indicated in Section 8(B) above.

SECTION 9. Grantor Rights in Franchise.

The right is hereby reserved to Grantor to adopt such additional regulations as it shall find necessary in the exercise of its police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and shall not be in conflict with the laws of the State of Florida or the lawful regulations of any state agency possessing the power to regulate the activities of Grantee or interfere with the benefits conferred on Grantee hereunder.

SECTION 10. Work in Rights-of-Way.

(A) Grantee is hereby granted the right, authority and privilege to make all necessary excavations in said square, streets, avenue, alleys, thoroughfares, public grounds and other parts of Grantor. Grantee shall have the right to fasten and to stretch and lay along the lines of said poles, conduits, pipes and cables necessary for transmitting and conveying the electric current to be used in Grantee's business, together with all the right and privileges necessary or convenient for the full use including the right to trim, cut and keep clear all trees and limbs along said lines that may in any way endanger the proper operation of same.

(B) Moreover, Grantee shall have the right to construct, erect, operate and maintain in said City an electric system consisting of necessary substations, lines and related facilities for carrying on Grantee's business; provided that, in accomplishing these purposes, the streets of said City shall not be unreasonably obstructed and work in connection therewith shall be done and carried on in conformity with such reasonable rules, standards, regulations and local ordinances with reference thereto as may be adopted by Grantor for the protection of the public.

SECTION 11. Records and Reports.

(A) Grantee Rules and Regulations. The following records and reports shall be available to Grantor upon Grantor's reasonable request: copies of rules, regulations, terms and conditions adopted by Grantee that relate to Grantee's use of Grantor's Rights-of-Way. In addition, Grantee shall submit to Grantor's Clerk's Department annually, Grantee's audited financial report upon Grantee's issuance of its audited financial report.

(B) Accounting. Grantee shall use the system of accounts and the form of books, accounts, records, and memoranda prescribed by the Florida Public Service Commission ("FPSC"), or as mutually agreed to by Grantor and Grantee.

(C) Reports. Grantee will attach to each payment a statement of its estimated Base Revenues by revenue account for the period on which such payment is based, signed by an authorized representative of Grantee sufficient to show the source and method of computation of Base Revenues.

(D) Availability of Records and Reports. Grantee shall supply information that Grantor or its representatives may from time to time reasonably request relative to the calculation of franchise fees. All of these records shall, on written request of Grantor, be open for examination and audit by Grantor and Grantor's representatives during ordinary business hours, and such records shall be retained by Grantee for a period of five (5) years.

(E) Audit. Grantor may require an audit of Grantee's books not more than once every five (5) years. Grantee will reimburse Grantor's audit costs if the audit identifies errors in Grantee's franchise Base Revenues of five percent (5%) or more for the period audited. Errors identified during the audit process shall be projected for any additional time periods not covered during the audit if there is a reasonable probability these errors occurred during the unaudited period, but not for more than five (5) years. If an underpayment of franchise fees has occurred, interest will be computed at a rate of ten percent (10%) per annum. Both the underpayment and interest shall be paid within thirty (30) days after receipt of demand therefor from Grantor

SECTION 12. Option To Purchase Grantee's Electric Facilities.

In the event that, as provided in Section 5 above, Grantor elects to extend this Franchise for an additional twenty (20) years, at the end of such extended term (thirty years from the effective date of this Franchise), Grantor, as provided in Section 5 above, shall have the right to purchase Grantee's electric distribution facilities and "Associated Facilities" located within Grantor's municipal boundaries, except high tension transmission lines, generating plants, and facilities used to provide service to communities, other than the Grantor, as provided in this Section. "Associated Facilities" shall mean those portions of the substations in the City necessary to receive wholesale bulk service from the City's provider. Any exercise by Grantor of the purchase rights under this Section shall require Grantor to purchase all facilities subject to purchase and not a portion thereof.

(A) Initiation of Purchase Procedures. Grantor must give notice of its desire to initiate purchase procedures for a possible purchase no later than three (3) months prior to the expiration of this franchise. If Grantor does not give such timely notice, Grantor's right to purchase shall expire and be of no further force and effect.

(B) Attempts to Agree on Purchase Price. If such notice is timely given, the parties shall first meet and attempt to negotiate an agreed purchase price for such facilities. As part of the negotiations Grantee shall provide Grantor with Grantee's estimate of any stranded costs to which Grantee will claim entitlement if Grantor purchases the facilities.

(C) ***Demand for Arbitration.*** If the parties do not agree on a purchase price, including any stranded costs, within 180 days after the date of the notice in subparagraph (A), either party may demand that the purchase price be established in arbitration pursuant to the Florida Arbitration Code, presently Chapter 682, Florida Statutes, or such other similar law as may exist at the time of arbitration.

(D) ***Selection of Arbitrators.*** The arbitration shall be conducted before three (3) arbitrators mutually agreed to by the parties. If the parties cannot agree on three arbitrators, but have agreed on two, the two arbitrators shall mutually select the third arbitrator. If the parties cannot agree on at least two arbitrators, or if the two arbitrators cannot agree on a third arbitrator, either party may apply to a court of competent jurisdiction to appoint the arbitrator(s) necessary to constitute the three arbitrator panel. Each party may suggest candidate arbitrators to the Court. Absent the parties' agreement, the Court may not appoint an arbitrator who is a resident of the City of Lake Mary or who is an owner or manager of a business located within the City of Lake Mary.

(E) ***Arbitration Rules and Discovery.*** The arbitration shall be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association (AAA), or such similar rules of the AAA as may exist at the time of the arbitration. The parties may mutually modify or waive any such AAA rules at any time and substitute additional or new rules of procedure. The parties shall not be required to utilize the services of the AAA.

(F) ***Scope of Arbitration, and Governing Methodology For Setting Purchase Price.*** The arbitration submission shall be limited to (a) establishing the purchase price of the facilities subject to purchase and the reasonable costs to Grantee of separating and reintegrating Grantee's distribution system located outside Grantor's municipal boundaries; (b) establishing a method for adjusting that price for post-arbitration changes to the facilities. Valuation shall be accomplished consistent with Florida law. The arbitrators may consider and apply any valuation methodology that is consistent with Florida Law including, without limitation, the comparable sales approach and the income approach to valuation. The award shall establish a methodology consistent with the above methodology for increasing the amount of the award for additional improvements or additions made to the system between the date of the award and the date of any actual purchase pursuant to these provisions.

(G) ***Stranded Costs Subject To Arbitration.*** Stranded costs shall be subject to the arbitration. This paragraph (G) shall not be construed as a waiver of Grantor's right to argue that Grantee is not entitled to an award of stranded costs.

(H) ***Form of Arbitration Award.*** The award shall identify the amounts awarded as to each category of the methodology set out in paragraphs (F) and (G) above.

(I) ***Attorney's Fees and Costs.*** Each party shall bear its own attorney's fees and costs.

(J) **Confirmation of Award.** The award of the arbitrators may be confirmed in any court of competent jurisdiction, and may be vacated, modified or denied confirmation only on grounds provided by the Florida Arbitration Code or as provided by Florida case law.

(K) **Grantee Notice of Intent to Seek an Award of Stranded Costs by FERC.**

- (1) Within sixty (60) days after the arbitration award is confirmed and not subject to further judicial action, Grantee shall notify Grantor whether it will seek recovery of stranded costs from FERC. If Grantee notifies Grantor that Grantee will seek stranded cost recovery, then Grantee shall have 180 days from the date of Grantee's notification to file a request for stranded cost recovery with FERC. If Grantee fails to file such a request, Grantee shall waive its right to seek any such stranded cost recovery. If Grantee waives its right to seek stranded cost recovery, within 180 days from the date of waiver, Grantor shall notify Grantee whether Grantor will purchase Grantee's facilities at the full amount of the arbitration award and further including any future escalation in the award required by the methodology established in the award for taking into account post-arbitration changes in the facilities, subject to purchase or Grantor shall waive its right to purchase Grantee's facilities. If Grantor timely notifies Grantee that Grantor will purchase Grantee's facilities, Grantor shall be obligated to purchase such facilities in accordance with paragraph (L) below.
- (2) If Grantee fails to notify Grantor within sixty (60) days after the arbitration award is confirmed and not subject to further judicial action, whether Grantee intends to seek stranded cost recovery, Grantee shall waive its right to seek stranded costs. If Grantee notifies Grantor that Grantee does not intend to seek recovery of stranded costs, then Grantor shall have 180 days from the date of such notice to notify Grantee whether Grantor will purchase Grantee's facilities at the full amount of the arbitration award and further including any future escalation in the award required by the methodology established in the award for taking into account post-arbitration changes in the facilities, subject to purchase. If the Grantor fails to notify Grantee within the 180 day period, Grantor's right to purchase shall expire and be of no further force and effect. If Grantor timely notifies Grantee that Grantor will purchase Grantee's facilities, Grantor shall be obligated to purchase such facilities in accordance with paragraph (L) below.

This paragraph (K) shall not be construed as a waiver of Grantor's right to argue that Grantee is not entitled to an award of stranded costs.

(L) Grantor Obligation to Purchase Upon FERC or Similar Award Becoming Final. Extinguishment of Purchase Option. Within 180 days after any FERC proceeding becoming final and not subject to judicial review, or if no stranded costs are claimed by Grantee as set out in paragraph (K) above, Grantor shall notify Grantee whether Grantor will purchase Grantee's facilities. If Grantor fails to timely notify Grantee, Grantor's right to purchase shall expire and have no further force and effect. If Grantor timely notifies Grantee of Grantor's intent to purchase, Grantor shall pay the full amount of the arbitration award, plus any escalation for post-arbitration changes in the facilities, plus any stranded costs awarded by FERC to Grantee and shall consummate such purchase, including making full payment therefor, within 180 days of such notice by Grantor. If Grantor fails to consummate the purchase within 180 days, Grantor's right to purchase Grantee's facilities shall expire and be of no further force and effect.

(M) No waiver or abrogation of regulatory reviews. Any such purchase shall be subject to the receipt of any necessary regulatory approvals.

SECTION 13. Severability.

Except as hereafter provided, should any section or provision of this Franchise ordinance or any portion thereof (other than that part of Section 5 hereof, which, if exercised grants Grantee a franchise term of thirty (30) years), the deletion of which would not adversely affect (in the general sense) the receipt of any material benefits or, substantially increase the burden of any party hereunder, be declared by a court of competent jurisdiction (or such other legal body, if any, having such final authority at the time of any such declaration of invalidity) to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid. Provided, however, that should the effect of any such declaration of invalidity, whether partial or total, be to shorten the term of the franchise as provided in that portion of Section 5, which allows this Franchise to be extended to thirty (30) years, to a term less than a total of thirty (30) years herein, then Grantor's option to purchase Grantee's facilities under Section 12 hereof, and all other provisions of Section 12, shall not be severable and Section 12 shall be of no further force or effect.

SECTION 14. Acceptance.

This ordinance shall become effective upon being legally passed and adopted by the City Commission of the City of Lake Mary, as provided by law; and it is further agreed that Grantee shall accept this Franchise as of the date of the passage and adoption by the City Commission and shall signify its acceptance in writing within thirty days after the City Commission's approval of this ordinance by filing its written acceptance with the City Clerk. If Grantee fails to accept this franchise within thirty (30) days of its date of passage, then this Ordinance shall be null and void, and of no force and effect of any kind.

SECTION 15. Venue.

In the event that any legal proceeding is brought to enforce the terms of this Franchise, the same shall be brought in Seminole County, Florida, or, if a federal claim, in the U.S. District Court in and for the Middle District of Florida, Orlando Division.

SECTION 16. Notices.

Except for notices under Section 12, all notices by either Grantor or Grantee to the other shall be made by either depositing such notice in the United States Mail, Certified Mail return receipt requested or by facsimile. All notices required under Section 12 shall be made, in writing, and served by Certified Mail return receipt requested. Any notice served by certified mail return receipt shall be deemed delivered five (5) days after the date of such deposit in the United States mail unless otherwise provided. Any notice given by facsimile is deemed received by next Business Day. "Business Day" for purposes of this section shall mean Monday through Friday, with Saturday, Sunday and Grantor and Grantee observed holidays excepted. All notices shall be addressed as follows:

To Grantor:

City Manager
City of Lake Mary
P.O. Box 958445
Lake Mary, FL 32795-8445
Facsimile No.: (407) 585-1498

To Grantee:

Vice President, Corporate Relations
and Administrative Services
Progress Energy Florida, Inc.
P. O. Box 14042
St. Petersburg, FL 33733-4042
Facsimile No.: (727) 820-5940

Notice shall be given as required by this Franchise and for all other emergencies. Notice shall be provided to the above-named addressees unless directed otherwise in writing by Grantor or Grantee.

SECTION 17. Non-Waiver Provision.

Except for the failure of Grantor to provide written notice to Grantee as set forth in Section 4(B) herein, the failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

SECTION 18. Merger.

This franchise agreement is the full, complete and entire understanding and agreements of the parties as to its subject matter, and the written terms supersede all prior or contemporaneous representations, discussions, negotiations, understandings and

agreements relating to the subject matter of this agreement. The parties shall not be bound by or be liable for any statement, prior negotiations, correspondence, representation, promise, draft agreements, inducement, or other understanding of any kind or nature not set forth or provided for herein.

SECTION 19. Effective Date.

This Franchise shall take effect immediately upon adoption by the City and approval and acceptance by Grantee as provided in Section 14 above.

SECTION 20. Repealer And Superseding Provision.

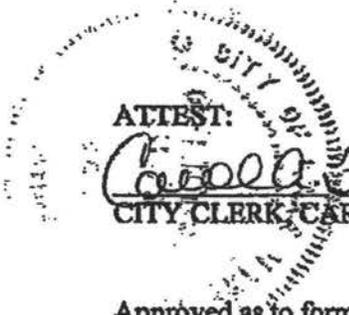
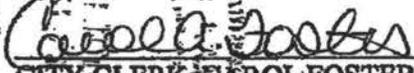
This ordinance shall supersede as to the rights, privileges and obligations between Grantor and Grantee all ordinances and parts of ordinances in conflict herewith and all existing ordinances affecting electric utilities are hereby repealed upon the effective date of this ordinance.

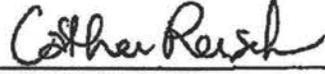
FIRST READING May 15, 2003
SECOND READING: June 5, 2003

PASSED AND ADOPTED this 5 day of June, A.D., 2003


CITY OF LAKE MARY, FLORIDA

MAYOR, THOMAS C. GREENE


ATTEST:

CITY CLERK, CAROL FOSTER

Approved as to form and legality:


CITY ATTORNEY

I HEREBY CERTIFY that a true and correct copy of the foregoing Ordinance No. 1094 was by me, on the 16 day of May, A.D., 2003, posted at City Hall, 100 North Country Club Road, Lake Mary Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of the City of Lake Mary, Florida, this 6 day of June, A.D., 2003.

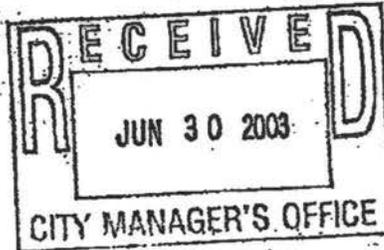

Carol Foster, City Clerk of the City of
Lake Mary, Florida



I:\NAH\FILES\CDR\Lake Mary\FPC\lm franchise 5_2_03.doc



Progress Energy



Vincent M. Dolan
Vice President
Corporate Relations & Administrative Services
Progress Energy Florida, Inc.

June 13, 2003

The Honorable Thomas C. Greene
and City Commission
City of Lake Mary
P.O. Box 958445
Lake Mary, Florida 32795-8445

RE: Electric Franchise Ordinance No. 1094 and Supplementary Agreement
granted by the City of Lake Mary to Progress Energy Florida, Inc.
on June 5, 2003.

Dear Mayor Greene and City Commission:

Progress Energy hereby accepts the above referenced franchise ordinance and supplementary agreement and each of the stated terms of both agreements. On behalf of the entire Progress Energy team, I commend everyone that has been involved in finalizing this franchise ordinance.

We at Progress Energy are proud of our 30 years of service to the community and ongoing partnership with the City of Lake Mary.

Please file this acceptance letter in the official record of the City so that it may be a matter of record along with the Progress Energy Electric Franchise Ordinance No. 1094 passed and adopted on June 5, 2003.

Respectfully,

Vincent M. Dolan

VMD:jfw

cc: Billy Raley
Gail Simpson
Sophia O'Keefe

P.O. Box 14042
MAC - C2D
St. Petersburg, FL 33733

T > 727.820.5001
F > 727.820.5940

STAFF REPORT

Community Development Department



TO: City Commission
FROM: Stephen Noto, Planner
VIA: Jackie Sova, City Manager
DATE: October 4, 2012

SUBJECT: 2012-LU-04, Request for a large scale amendment to the Future Land Use Element, related to GOP-1, Policy 1.4, to increase the total number of dwelling units permitted within the High Intensity Planned Development – Target Industry (HIP-TI) Land Use Designation

APPLICANT: Colonial Realty Limited Partnership

REFERENCE: Florida Statutes, Chapter 163; City of Lake Mary Comprehensive Plan

REQUEST: The applicant proposes the following amendments to the Future Land Use Element of the City's Comprehensive Plan:

Revise text related to the Third Amended and Restated Development Order outlined in the HIP-TI land use designation; and,
Increase the total number of dwelling units permitted within the HIP-TI land use designation from 340 to 472.

DISCUSSION:

On March 16, 2006, the City entered into a Pre-Annexation Agreement with Colonial Realty Limited Partnership (Colonial) in conjunction with the annexation of 46.3+/- acres of land owned by Colonial that was situated in Seminole County. The Agreement, among other things, stipulated that certain parcels of the overall Colonial Center Heathrow (f.k.a. "HIBC") Master Plan could be developed residentially. More specifically, there could be 340 residential units within the City's portion of the Development of Regional Impact (DRI). That number, 340, was memorialized in the aforementioned Pre-Annexation Agreement, as well as the City's Comprehensive Plan as part of the HIP-TI land use designation.

Since 2010, Colonial Properties has worked to amend the Pre-Annexation Agreement, the PUD Agreement, and DRI. Currently, the 340 units are under construction through a two phased development known as Colonial Grand at Lake Mary.

Due to the success of the first two phases, the applicant is requesting an increase in the total number of residential units within the PUD/DRI from 340 to 472 in order to build a third phase. The 132 unit increase must also be reflected in the Comprehensive Plan. That said, the following text amendments look to achieve that goal:

FUTURE LAND USE ELEMENT, GOP-1

Policy 1.4: Revise existing Policy 1.4, as follows:

High Intensity Planned Development- Target Industry (HIP-TI): This land use designation permits a wide range of uses including offices, technology research and development, communication, government uses, colleges and universities consistent with the Industrial/High Tech overlay, manufacturing/wholesale/distribution uses consistent with the Industrial/High Tech overlay designation, helicopter landing facilities, health related uses, sports complexes and support industries, retail, restaurants, services, lodging, residential and mixed use developments involving two or more of the listed uses. The development must be designated as a development of regional impact (DRI). It must have a functioning property owner's association and a Planned Unit Development (PUD) zoning classification. The DRI must be located adjacent to and west of Interstate 4. Development within the HIP-TI land use designation shall comply with the ~~First Amendment to the~~ Third Amended and Restated Development Order , **as amended** . The number of dwelling units and/or the total square footage for nonresidential development may occur without triggering a land use amendment as long as they comply with the land use exchange matrix and the minimum and maximum thresholds, per the DRI.

Nonresidential development has a maximum impervious coverage of 65% and minimum open space of 35%. The HIP-TI land use designation shall permit up to ~~340~~ **472** dwelling units throughout the entire City, at a density not to exceed 18 DU/A, a maximum impervious coverage of 65% and a minimum open space of 35%. Proposed residential development shall be infill development, shall reduce urban sprawl and promote bicycle/pedestrian trips for recreation and shopping. All new development shall irrigate with reuse water if available. If reuse water is not available, new development shall install reuse water lines and, within 60 days of availability, connect to reuse water. At such time as existing development redevelops and such development results in an intensification of use, irrigation shall be by reuse water. If reuse water is not available at the time of development, within 60 days of such time that reuse water becomes available; such uses shall connect to reuse water, unless the DRI agreement specifically exempts the use from connecting to reuse water.

RECOMMENDATION: Staff finds that the request for a large scale amendment to the Future Land Use Element, related to GOP-1, Policy 1.4, to increase the total number of dwelling units permitted within the High Intensity Planned Development – Target Industry (HIP-TI) Land Use Designation meets the intent of the City of Lake Mary Comprehensive Plan and F.S. Chapter 163, and recommends approval.

ATTACHMENTS:

Ordinance No. 1473

September 19, 2012 Local Planning Agency Minutes

ORDINANCE NO. 1473

AN ORDINANCE OF THE CITY OF LAKE MARY, FLORIDA, AMENDING THE FUTURE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN OF THE CITY OF LAKE MARY, FLORIDA, PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 163.3161 et seq., Florida Statutes established the Community Planning Act; and

WHEREAS, Section 163.3184, Florida Statutes, establishes a process for adoption of comprehensive plans or plan amendments; and

WHEREAS, the Colonial Realty Limited Partnership, as applicant, is desirous of amending the Future Land Use Element of the City of Lake Mary's Comprehensive Plan to allow for additional residential units within the High Intensity Planned Development – Target Industry (HIP-TI) land use; and

WHEREAS, the applicant proposes to amend the City of Lake Mary Comprehensive Plan to address the above issues in the attached goals, objectives and policies (see Exhibit A);

WHEREAS, Section 163.3184(3) allows the City to revise the text of the City's Comprehensive Plan through expedited State review; and

WHEREAS, the City of Lake Mary is complying with such requirements under Section 163.3184, F.S.; and

WHEREAS, on September 19, 2012, the City of Lake Mary Local Planning Agency held a public hearing and recommended that the City Commission approve the proposed amendments to the City of Lake Mary Comprehensive Plan; and

WHEREAS, on October 4, 2012 and _____, 2012 the City of Lake Mary City Commission held public hearings on this Comprehensive Plan amendment after due public notice and upon thorough and complete consideration and deliberation, adopted the proposed Comprehensive Plan amendments; and

WHEREAS, the Comprehensive Plan amendment adopted by this Ordinance complies with the requirements of the Community Planning Act, the State Comprehensive Plan as set forth in Chapter 187, Florida Statutes, as well as other applicable law, and is consistent with the City's Comprehensive Plan.

IT IS HEREBY ENACTED BY THE CITY OF LAKE MARY AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are true and correct, and incorporated herein.

Section 2. Authority. This Ordinance is adopted in compliance with, and pursuant to, the Community Planning Act.

Section 3. Purpose and Intent. It is hereby declared to be the purpose and intent of this Ordinance to clarify, expand, correct, update, modify and otherwise further the provisions of the City of Lake Mary Comprehensive Plan.

Section 4. Adoption of Text Amendment. In compliance with Section 163.3187, F.S., the City of Lake Mary Comprehensive Plan is hereby amended to include the underlined language and to delete the stricken-through language as indicated for each provision, as set forth in Exhibit "A" attached hereto and incorporated herein by reference.

Section 5. Severability. If any section, sentence, word or portion of this ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect or any other section, sentence, phrase, word or portion of this ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

Section 6. Conflicts. All ordinances or sections or part of ordinances or resolutions in conflict herein are hereby repealed to the extent of any conflict.

Section 7. Effective Date. This ordinance may not become effective until 31 days after adoption. If challenged within 30 days after adoption, small scale development amendments may not become effective until the state land planning agency or the Administrative Commission, respectively, issues a final order determining that the adopted small scale development is in compliance.

PASSED AND ADOPTED this ____ day of _____, 2012

FIRST READING: October 4, 2012

SECOND READING: _____, 2012

CITY OF LAKE MARY FLORIDA

MAYOR, DAVID J. MEALOR

ATTEST:

CITY CLERK, CAROL A. FOSTER

FOR THE USE AND RELIANCE OF THE CITY
OF LAKE MARY ONLY. APPROVED AS TO FORM
AND LEGALITY:

CITY ATTORNEY, CATHERINE D. REISCHMANN

EXHIBIT "A"

High Intensity Planned Development- Target Industry (HIP-TI): This land use designation permits a wide range of uses including offices, technology research and development, communication, government uses, colleges and universities consistent with the Industrial/High Tech overlay, manufacturing/wholesale/distribution uses consistent with the Industrial/High Tech overlay designation, helicopter landing facilities, health related uses, sports complexes and support industries, retail, restaurants, services, lodging, residential and mixed use developments involving two or more of the listed uses. The development must be designated as a development of regional impact (DRI). It must have a functioning property owner's association and a Planned Unit Development (PUD) zoning classification. The DRI must be located adjacent to and west of Interstate 4. Development within the HIP-TI land use designation shall comply with the ~~First Amendment to the~~ Third Amended and Restated Development Order , as amended . The number of dwelling units and/or the total square footage for nonresidential development may occur without triggering a land use amendment as long as they comply with the land use exchange matrix and the minimum and maximum thresholds, per the DRI.

Nonresidential development has a maximum impervious coverage of 65% and minimum open space of 35%. The HIP-TI land use designation shall permit up to **340 472** dwelling units throughout the entire City, at a density not to exceed 18 DU/A, a maximum impervious coverage of 65% and a minimum open space of 35%. Proposed residential development shall be infill development, shall reduce urban sprawl and promote bicycle/pedestrian trips for recreation and shopping. All new development shall irrigate with reuse water if available. If reuse water is not available, new development shall install reuse water lines and, within 60 days of availability, connect to reuse water. At such time as existing development redevelops and such development results in an intensification of use, irrigation shall be by reuse water. If reuse water is not available at the time of development, within 60 days of such time that reuse water becomes available; such uses shall connect to reuse water, unless the DRI agreement specifically exempts the use from connecting to reuse water.

MINUTES OF THE CITY OF LAKE MARY, FLORIDA, LOCAL PLANNING AGENCY
MEETING HELD ON SEPTEMBER 19, 2012, 6:00 P.M., CITY HALL, 100 N. COUNTRY
CLUB ROAD

TAPE 1, SIDE A

I. Call to Order

The meeting was called to order at 6:11 p.m.

II. Moment of Silence

III. Pledge of Allegiance

IV. Roll Call - Determination of a Quorum

Vice Chairman Jeff Bales (Acting Chairman)
Member Brian Hess
Member David Wickham

Chairman Robert Foley and Member Blair Harle were absent.

City staff present were Juan (John) A. Omana, Jr., Community Development Director;
Stephen Noto, Planner; and Diana T. Adams, Administrative Secretary.

Also present was James Johnston.

V. Approval of Minutes - July 18, 2012

MOTION:

Member Hess moved to approve the Minutes of the July 18, 2012, Local Planning Agency meeting, as presented. Member Wickham seconded the motion, which carried unanimously 3-0.

VI. Old Business

None

VII. New Business

- A. 2012-LU-04: Recommendation to the City Commission for a large scale amendment to the Future Land Use Element related to GOP-1, Policy 1.4, to increase the total number of dwelling units permitted within the High Intensity Planned Development - Target Industry (HIP-TI) land use designation; Colonial Realty Limited Partnership/Ed Wright

Stephen Noto, Planner, presented Item A. and the related Staff Report. A map depicting a portion of the PUD and DRI for the overall Colonial Center Heathrow project

was on the overhead projector. He said, just some really quick history, the parcel we're sort of talking about tonight is in this area here (indicating to overhead projector). The reason I say that is this is not a map amendment. This is a Large-Scale Text Amendment. It is a bit unique in that when the City annexed portions of the development several years ago, there was a cap put on the number of residential units that could be within the DRI/PUD and overall development. That number was set at 340. That was memorialized in a Pre-Annexation Agreement as well as the Comprehensive Plan and it has been that way for several years.

Mr. Noto stated, well, over the last couple of years, the Applicant has been in to amend that Pre-Annexation Agreement, as well as the PUD, to allow for two apartment complex communities known as Colonial Grand at Lake Mary. The first phase has been completed, if I am not wrong, and they are leasing like hotcakes. There is a waiting list, to the best of my knowledge, to even get in the place, which led to the creation of Phase II just to the southwest and the eventual proposal for Phase III.

Mr. Noto said, I will emphasize that the request before you this evening has nothing to do with the site plan layouts, anything like that. This is just for informational purposes. This is Phase II here (indicating to overhead projector), and you can see the way it was designed. It is only logical to continue to the south into this Phase III (indicating to overhead projector).

Mr. Noto stated, the issue with Phase III unfortunately is that with Phases I and II, they have maxed out the number of dwelling units they could have per the Pre-Annexation Agreement and the Comprehensive Plan and the land use HIP-TI. Phase III contemplates an additional 132 units. The Comprehensive Plan allowed for 340 and the HIP-TI land use.

Mr. Noto said, so, the request before you this evening is to amend that text in the Comprehensive Plan to allow an additional 132 units, which will be 472, in the HIP-TI land use designation. Now, by all means, these are most likely going to be the only projects that take advantage of this, especially considering that the Pre-Annexation Agreement only allowed for these two properties to be residential in nature. And, we will be reviewing the engineering and other general impacts through the site plan process, the Planning and Zoning Board and the City Commission for the PUD Amendments.

Mr. Noto stated, there is also one minor amendment in the first paragraph as you can see on page 2 of your Staff Report a few lines down where it references the First Amendment to the Third Amended and Restated Development Order. The First Amendment to the has been scratched and replaced with as amended. This just makes it easier paperwork-wise and future amendment-wise to just leave it as that as is proposed when amendments come forward in the future.

Mr. Noto said, having said that, staff finds that this request meets the intent of the Comprehensive Plan, the Land Development Code and we do recommend approval. This will be going to City Commission for a transmittal hearing. It will be reviewed by the State. They have a new process. It will be expedited through their process and then it will be adopted by the Commission at a future hearing. The Applicant's Representative is present this evening, if you have any questions for him. Otherwise, I am also available for questions.

Juan (John) A. Omana, Jr., Community Development Director, announced this item is legislative in nature; that a Legislative Sign-In Sheet (see attached) was located at the back of the chambers for any interested party to sign in order to be kept abreast of this matter.

Member Wickham asked, does this still meet the DUA's requirements within the City codes? There is no conflict there?

Mr. Noto answered, no. No.

Vice Chairman Bales stated, I read the Staff Report and the impact studies and everything that had been done and I didn't see anything that I saw to be concerned about. I mean, staff is usually very thorough about what they do and they certainly do need more rental units there, I know that, because of my line of business.

Member Hess said, I don't have any additional questions or comments.

Acting Chairman Bales requested the Applicant to come forward and address the Board.

James Johnston, Attorney-at-Law/Applicant Representative with the law firm of Shutts & Bowen, LLP, 300 S. Orange Avenue, S. 1000, Orlando, Florida 32801, appeared on behalf of Colonial Realty Limited Partnership and addressed the Agency in favor of the proposed large scale amendment. He stated that he was just present to answer any questions; that they agree with staff.

Acting Chairman Bales questioned Mr. Johnston, so, you don't have any further input other than to answer questions?

Mr. Johnston answered, that's right.

Acting Chairman Bales opened the hearing to public comment. Hearing none, he closed that portion and entertained board discussion and/or a motion.

MOTION:

Member Hess moved to recommend approval to the City Commission the request by Colonial Realty Limited Partnership/Ed Wright for a large scale amendment to the Future Land Use Element related to GOP-1, Policy 1.4, to increase the total number of dwelling units permitted within the High Intensity Planned Development - Target Industry (HIP-TI) land use designation consistent with staff's Recommendation listed in the Staff Report. Member Wickham seconded the motion.

Acting Chairman Bales requested a roll call vote on the motion, and was taken as follows:

Member Hess - Yes

Member Wickham -Yes

Acting Chairman Bales - Yes

The motion carried unanimously 3-0.

VIII. Other Business

None

IX. Reports of Other Members

None

X. Adjournment

The meeting was adjourned at 6:21 p.m.

Jeff Bales, Acting Chairman

Diana T. Adams, Administrative
Secretary



CITY MANAGER'S REPORT

DATE: October 4, 2012
TO: City Commission
FROM: Jackie Sova, City Manager
SUBJECT: City Manager's Report

ITEMS FOR COMMISSION ACTION:

1. Reappointment of Jeanne Miller to Parks & Recreation Advisory Board.
(ATTACHMENT #1)
2. Reappointments to Sanford Aviation Noise Abatement Committee (SANAC).
(ATTACHMENT #2)



CITY MANAGER'S REPORT

DATE: October 4, 2012
TO: City Commission
FROM: Carol Foster, City Clerk
SUBJECT: Reappointment of Jeanne Miller to Parks & Recreation Advisory Board.
(ATTACHMENT #1)

Jeanne Miller was notified that in accordance Ordinance No. 592, which was later amended by Ordinance No. 1118, she had been removed from the Parks and Recreation Advisory Board due to missing 3 consecutive meetings.

The ordinances provide that if a member desires to be reappointed, he/she shall provide circumstances for missing the meetings, which the Commission will consider in addition to the member's attendance record for the prior one-year period. Ms. Miller has informed us that she does desire to continue serving and that she missed 2 of the meetings due to traveling required for her job and 1 for being out of town attending a wedding. Over the past year, she has missed 3 out of 5 meetings.

RECOMMENDATION:

The Commission reappoint Ms. Miller to the Parks and Recreation Advisory Board to complete her term.



CITY MANAGER'S REPORT

DATE: October 4, 2012
TO: City Commission
FROM: Jackie Sova, City Manager
SUBJECT: Reappointments to Sanford Aviation Noise Abatement Committee (SANAC). (ATTACHMENT #2)

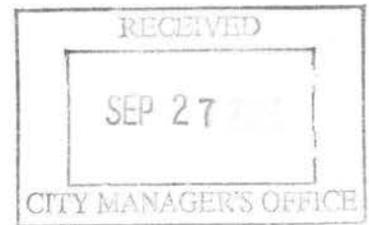
As can be seen from the attached letter, the Sanford Airport Authority is asking us to make reappointments or select new members to serve on the above-referenced committee as the terms of our current members expired on 9/30/12.

Mr. Wilkes - impacted voting member - has been serving since 1999, and Mr. Omana - non-voting advisory member - has been serving since 2001. Both members have expressed interest in being reappointed.

RECOMMENDATION:

Request Commission reappoint Mr. Wilkes and Mr. Omana to the Sanford Aviation Noise Abatement Committee (SANAC).

Attachment



September 25, 2012

**SANFORD AIRPORT
AUTHORITY**
Board of Directors

Tim Donihi
Chairman

Stephen P. Smith
Vice Chairman

U. Henry Bowlin
Secretary/Treasurer

Tom Ball
Board Member

David L. Cattell
Board Member

Whitey Eckstein
Board Member

William R. Miller
Board Member

Clayton D. Simmons
Board Member

Tim M. Slattery
Board Member

A.K. Shoemaker
Chairman Emeritus

Kenneth W. Wright
Counsel

Larry A. Dale, C.M.
President & CEO

City of Lake Mary
Attn: City Manager Jacqueline B. Sova
100 North Country Club Road
Lake Mary, FL 32746

Dear Mrs. Sova:

The Sanford Airport Authority, owner and operator of the Orlando Sanford International Airport, created the Sanford Aviation Noise Abatement Committee (SANAC) in 1996. As stated in the SANAC Bylaws, "The purpose of this committee is to make recommendations to the Sanford Airport Authority for establishing noise abatement procedures and for monitoring their implementation at Orlando Sanford International Airport."

SANAC is comprised of seven voting members and six non-voting members. The City of Lake Mary is responsible for the appointment of one voting member, which is to be an impacted citizen member (meaning that they live under or near a flight path). The City of Lake Mary is also responsible for the appointment of one non-voting member from the City of Lake Mary Planning Department. All members, whether voting or non-voting, serve four year terms. Currently, the voting position is held by Mr. James Wilkes, of Red Sky Ct, Lake Mary, Florida. Mr. Wilkes has served the Committee and the City of Lake Mary for over a decade now and has done an excellent job during that time. He has indicated to us that he would like to continue serving this Committee. Similarly so, we have been very happy with the participation of Mr. John Omana, who has served as the non-voting member.

Both members' terms end on September 30, 2012, and therefore the Sanford Airport Authority is requesting that the City of Lake Mary reappoint the current members or select new, if that is the City's desire. In either case, all appointees are subject to final confirmation by the Sanford Airport Authority Board. We respectfully request that you forward your appointments to the Sanford Airport Authority by October 31, 2012.

Should you have any questions about the contents of this letter or the function of SANAC, feel free to contact me at 407-585-4006.

Sincerely,

George D. Speake, Jr., C.M.
Vice President of Operations and Maintenance