

# City Commission Meeting

(Approved)

12/21/2021 - Minutes

1. INVOCATION

Rob Quam gave the invocation.

2. PLEDGE OF ALLEGIANCE

3. CALL TO ORDER

Mayor Eugene Fultz called the meeting to order at approximately 6:00 p.m. after the invocation and the pledge of allegiance.

4. ROLL CALL

**Commission Members Present:** Mayor Eugene Fultz, Terrye Howell, Daniel Williams, Jack Hilligoss, Deputy Mayor Robin Gibson,

**Commission Members Absent:**

**Staff Present:** James Slaton, City Manager; Jennifer Nanek, City Clerk; Albert C. Galloway, Jr., City Attorney

5. COMMENTS AND PETITIONS

6. CONSENT AGENDA

Commissioner Howell made a motion to approve the Consent Agenda. Deputy Mayor Gibson seconded the motion.

By voice vote:

Commissioner Howell "YES"

Deputy Mayor Gibson "YES"

Commissioner Hilligoss "YES"

Commissioner Williams "YES"

Mayor Fultz "YES"

Motion passed 5-0

6.I. Minutes - December 7, 2021

## 6.II. Ditch Witch Purchase

[Begin Agenda Memo]

### **SYNOPSIS:**

Witch of Florida and Plant City for the purchase of a machine to locate underground utilities.

### **STAFF RECOMMENDATION**

It is recommended that the City Commission consider taking the following action:

1. Approve expending funding for \$28,814.12 for the purchase of a ditch witch-locating machine.
2. Authorize the City Manager to execute the appropriate documents, on the City's behalf.

### **BACKGROUND**

Locating utilities can avoid outages and disruptions. Unknowingly cutting a line could cause a home, neighborhood, or even an entire section of the city to lose the ability to have utilities.

While human safety is paramount, there is a significant risk of causing a service outage when digging without locating utilities. Accurate information regarding the existing underground utilities is required when excavation is planned. Lack of knowledge on this may result in fatality and catastrophic damages of existing underground utilities and disruption to utility services. The locater that staff is currently using will not locate utilities that are not marked with some type of metal locater wire. It will not locate clay pipe, which is the pipe that was typically installed for the sewer system. The ditch witch locates by using ground-penetrating radar. Staff recommends the commission approve to expend funds for \$28,814.12 for the purchase, and authorize the City Manager to execute any documents on the City's behalf. Staff did not chose the lowest cost machine, due to all types of city piping would not be able to be located using that particular locater.

### **OTHER OPTION**

The Commission could chose not to approve this purchase.

### **FISCAL IMPACT**

The 2021-2022 Capital Improvements Plan has budgeted \$181,500.00 for the purchase of miscellaneous equipment. The Ditch Witch locater will subtract \$28,814.12 from the amount referenced above.

[End Agenda Memo]

## 6.III. Infiltration And Intrusion Testing And Repair By USSI, LLC

[Begin Agenda Memo]

### **SYNOPSIS:**

LLC to perform infiltration and intrusion testing and repairs to various lift stations and their respective service areas.

## STAFF RECOMMENDATION

It is recommended that the City Commission consider taking the following action:

1. Approve expending funding for \$226,460.00 to perform infiltration and intrusion testing and repair on various lift stations and their respective service areas.
2. Authorize the City Manager to execute the appropriate documents, on the City's behalf.

## BACKGROUND

Infiltration and intrusion is when groundwater enters the sanitary sewer system through faulty pipes or manholes. These pipes might have cracks or leaks that let the water in. This can happen because of age, design, installation or maintenance issues or even tree root intrusion.

Inflow and infiltration water is referred to as "clear water" distinguishing it from sanitary sewage water. When clear water gets into the wastewater and sewer system, it gets treated. When it is treated, it cost the city money. It also takes up valuable capacity within the collection system and the wastewater treatment facility.

Several indicators indicate there is an infiltration problem within the sanitary system:

- Lift station pumps run for a long time after a rain event or it has a large number of starts

and stops after it rains. This means storm water has entered the sanitary sewer system and is on its way to be treated.

- Pipes back-up. Manholes spill wastewater onto roadways or green space.
- Significant spikes in flow is seen at the wastewater treatment plant corresponding to precipitation events or high groundwater conditions.

Staff is seeing some of these same indicators happening within the City sanitary sewer system. The Commission at the December 15, 2020 commission meeting approved entering into a piggyback agreement with USSI, LLC and approved the first phase of testing and repairs. Staff is ready to proceed with the second phase of infiltration and intrusion testing and repairs. Staff recommends the commission approve to expend funds for \$226,460.00 to perform infiltration testing and repairs on various lift stations and their respective service areas, and authorize the City Manager to execute any documents on the City's behalf.

## OTHER OPTION

The delay in testing the specified area will continue to allow groundwater to continue to infiltrate the sanitary sewer system causing extended wear and tear on all sanitary sewer system components.

## FISCAL IMPACT

The 2021-2022 Capital Improvements Plan has budgeted \$223,000 to address this problem system wide.

The total for the areas identified in the attachments is \$226,460.00. A budget transfer for \$3,460.00 would be required to be able to fund the project totally.

[End Agenda Memo]

#### 6.IV. Contract Award - Titan Aviation Fuels

[Begin Agenda Memo]

#### **SYNOPSIS:**

Staff is requesting Commission approval of the vendor selection of Titan Aviation Fuels for the purchase and delivery of aviation fuel.

#### **RECOMMENDATION**

It is recommended that the City Commission take the following action(s):

1. Approve the contract with Titan Aviation Fuels.
2. Authorize the City Manager to execute the contract on behalf of the City.

#### **BACKGROUND**

City staff advertised a Request for Proposals (RFP# 21-496) for the purchase and delivery of aviation fuel and received five proposals: Campbell Oil Company, EPIC Fuels, Ascent Aviation Group, Titan Aviation Fuels, and Avfuels.

Titan Aviation Fuels was the highest ranked firm after independent evaluations were conducted by members of City staff and Aviation Consultant from Hoyle Tanner. Titan Aviation Fuels received a score of 270 out of 300 possible points.

In the past, the City only marginally benefitted from the sale of aviation fuel as the Airport received a \$0.10 per gall Fuel Flowage Fee from the previously contracted Fixed Base Operator, Lake Wales Aviation, Inc.

Once the City assumes responsibility of the fuel sales, the City will receive 100 percent of the proceeds from all sales. The average amount of fuel delivered to the airport over the last five-year period is 48,920 gallons per year, with 35,550 gallons already delivered in 2021 (as of November). The actual amount of fuel delivered to the airport over the last five-year period is as follows:

Year	Gallons Delivered
2021 (as of November)	35,550
2020	45,100
2019	43,250
2018	68,100
2017	52,600

#### **OTHER OPTIONS**

The City Commission may choose not to award the contract to Titan Aviation Fuels and may award the contract to one of the other Proposers.

#### **FISCAL IMPACT**

Based on the most recent five-year average, the Lake Wales Municipal Airport can conservatively expect to generate an estimated \$40,000 in revenue from the sale of aviation fuel during FY2022.

[End Agenda Memo]

#### 6.V. Agreement With The Lake Wales Arts Council (LWAC)

[Begin Agenda Memo]

##### **SYNOPSIS:**

Council granting \$50,000 to provide enhanced performing arts programs for the City of Lake Wales and its surrounding areas for the benefit of the community.

##### **RECOMMENDATION**

It is recommended that the City Commission consider the following action(s):

1. Approve the agreement with the Lake Wales Arts Council
2. Authorize the City Manager to execute the appropriate documents on the City's behalf

##### **BACKGROUND**

The LWAC has expressed a willingness to provide enhanced performing arts programs for the City of Lake Wales and its surrounding areas for the benefit of the community and its citizens. Staff has determined that a public purpose would be met by providing public funds to facilitate the operation of the LWAC for the purpose of providing enhanced performing arts programming.

The LWAC shall present reports to the City at the request of the City Commission or the City Manager identifying completed activities and the related expenditure of public funds and shall maintain books and records in a form that may be reviewed and audited by the City.

##### **OPTIONS**

1. The City Commission may choose not to grant the funds to the LWAC

##### **FISCAL IMPACT**

The agreement calls for the City to pay:

? An initial grant of \$50,000

[End Agenda Memo]

#### 7. OLD BUSINESS

##### 7.I. Ordinance D2021-15 – Amendments To The Comprehensive Plan –2nd Reading And Public Hearing

[Begin Agenda Memo]

**SYNOPSIS:** Development Services Staff requests the approval of City Commission to amend the City of Lake Wales Comprehensive Plan to include a revised Future Transportation Network Map, and a proposed Property Rights Element.

## RECOMMENDATION

Staff recommends adoption at second reading, following a public hearing, for the following:

A revised Future Transportation Network Map Proposed Property Rights Element

Following approval at first reading, the proposed amendments were transmitted to DEO for review. The review was completed with no objections.

## BACKGROUND

Future Transportation Network Map

The City of Lake Wales recently updated the Comprehensive Plan based on the Evaluation and Appraisal Report (EAR), with a new planning timeline to the year 2040. During the compliance review of the updated Plan, the Florida Department of Economic Opportunity (DEO) staff identified a need for Future Transportation Network Map.

While the adopted map identified collector and arterial roadways, it did not show the lane types (2 lane vs 4 lane, divided vs. undivided). DEO found the updated amendment to be in compliance. However, to address their concerns, the proposed change to the Future

Transportation Network Map is suggested.

Property Rights Element

House Bill 59 became law on June 29, 2021, adding Section 163.3177(6)(i), Florida Statutes. Effective July 1, 2021, each local government must adopt a property rights element in its comprehensive plan by its next plan amendment initiated after July 1, 2021. Staff has opted to utilize the following Property Rights Element language prepared by the Regional

Planning Council:

POLICY: Consistent with Section 163.3177(6), Florida Statutes, the City of Lake Wales shall consider the following private property rights in local decision making:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.
2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.
3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.
4. The right of a property owner to dispose of his or her property through sale or gift.

On August 31, 2021, the Planning Board recommended approval of the amendments.

## FISCAL IMPACT

None.

[End Agenda memo]

Jennifer Nanek, City Clerk, read **ORDINANCE D2021-15** by title only.

**ORDINANCE D2021-15**

**AN ORDINANCE OF THE CITY OF LAKE WALES, FLORIDA, PROPOSING AMENDMENTS TO THE COMPREHENSIVE PLAN; INCLUDING AN UPDATE TO THE TRANSPORTATION ELEMENT TO PROVIDE A REVISED FUTURE TRANSPORTATION NETWORK MAP AND INCLUSION OF A PROPERTY RIGHTS ELEMENT PURSUANT TO HOUSE BILL 59; AND PROVIDING FOR AN EFFECTIVE DATE.**

OPENED PUBLIC HEARING

CLOSED PUBLIC HEARING

Deputy Mayor Gibson made a motion to adopt **ORDINANCE D2021-15** after 2nd reading and public hearing. Commissioner Howell seconded the motion.

By voice vote:

Deputy Mayor Gibson "YES"

Commissioner Howell "YES"

Commissioner Hilligoss "YES"

Commissioner Williams "YES"

Mayor Fultz "YES"

Motion passed 5-0

7.II. Scenic Bluff Phase II Final Plat Approval

[Begin Agenda Memo]

**SYNOPSIS:** Clayton Properties Group, Inc., owner, requests approval of the Scenic Bluff Phase II Final Plat.

**RECOMMENDATION**

Staff recommends approval of the Final Plat. Neither a recommendation from the Planning Board, nor a public hearing is necessary for approval of a final plat. Provided the plat meets all of the requirements of state statutes and local ordinances, approval by the City Commission is a formality.

**BACKGROUND**

The subject property is located on the south side of City Limits Road, just west of Lake Wales High School, and adjacent to Scenic Bluff Phase I which was platted in 2018. Homes in Phase I are under construction.

The Scenic Bluff Phase II 55-lot preliminary subdivision plat was approved by the Planning and Zoning Board on February 25, 2020 as a standard subdivision that does not deviate from the R-1D zoning district requirements. In September of 2020, site construction plans were submitted to the

City, and were approved in March of 2021.

Pursuant to Section 23-223.4 of the City's Land Development Code, the City accepted a performance bond in July of 2021 in lieu of constructing certain improvements prior to approval of the final plat. The performance bond was reviewed by the City Attorney in October, prior to acceptance.

### **FISCAL IMPACT**

Approval of the final plat enables the construction of 55 new single-family homes. Conservatively estimating a taxable value of \$200,000 per unit, it could potentially result in over \$11 million in taxable value, and generate \$74,000 in ad valorem taxes.

\*Adjusted values for potential homesteaded properties have not been factored into this estimate.

[End agenda memo]

Mark Bennett, Development Services Director, reviewed this item.

Commissioner Howell made a motion to approve the Scenic Bluff Phase II Final Plat. Commissioner Hilligoss seconded the motion.

By voice vote:

Commissioner Howell "YES"

Commissioner Hilligoss "YES"

Commissioner Williams "YES"

Deputy Mayor Gibson "YES"

Mayor Fultz "YES"

Motion passed 5-0

## **8. NEW BUSINESS**

### **8.I. Ordinance 2021-28 Vacation Of A Portion Of Gibson Avenue Right-Of-Way**

[Begin Agenda Memo]

**SYNOPSIS:** Peterson & Myers, P.A., agent for Hunt Bros Inc., has petitioned for the vacation of a portion of Gibson Avenue located south of 249 West State Road 60.

### **RECOMMENDATION**

Approval at first reading, following a public hearing, to vacate the Gibson Avenue right-of-way (ROW) described in Ordinance 2021-28.

### **BACKGROUND**

The subject ROW is located south of State Road 60 West, and southeast of Lime Avenue and Sharp Street. Petition for vacation was initially received by the City in 2019; however, it was placed on hold by the petitioner until this year.

The ROW was originally platted to provide an additional East-West ROW between Miami Street and Sharp Street prior to the Development of state Road 60. Since the completion of the state highway, this ROW has created a complex intersection among State Road 60, Twin Lake Boulevard, and Gibson Avenue. Hunt Bros Inc. is the owner of all land abutting to the north and south of the ROW; therefore, the ROW is no longer necessary to afford access to the properties it serves. No Impacts of Closure have been identified.

Documentation of approval from public and private utilities has been provided, and no property will be deprived of public access by its vacation.

#### **FISCAL IMPACT**

Vacation of the ROW would enable the future development of this property and the potential increase in property value.

[End Agenda Memo]

Jennifer Nanek, City Clerk, read **ORDINANCE 2021-28** by title only.

#### **ORDINANCE 2021-28**

##### **(Vacation of Right-of -Way – Gibson Avenue)**

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, CLOSING, VACATING, RENOUNCING AND DISCLAIMING ANY RIGHTS OF THE CITY AND THE PUBLIC IN AND TO A PORTION OF RIGHT-OF-WAY LOCATED BETWEEN PARCELS 273002903500011100 AND 273002903500009307 OWNED BY HUNT BROS INC., AS SHOWN ON “ATTACHMENT A” AND SPECIFICALLY DESCRIBED HEREIN; AND PROVIDING FOR AN EFFECTIVE DATE.**

Commissioner Hilligoss made a motion to approve **ORDINANCE 2021-28** after first reading. Commissioner Howell seconded the motion.

By roll call vote:

Commissioner Hilligoss "YES"

Commissioner Howell "YES"

Commissioner Williams "YES"

Deputy Mayor Gibson "YES"

Mayor Fultz "YES"

Motion passed 5-0

#### 8.II. Legal Action Against Dixie-Walesbilt, LLC

[Begin Agenda Memo]

#### **SYNOPSIS:**

The City Commission will consider the attached letter of legal opinion received from Kevin Ashley with Peterson & Myers, P.A. and determine a course of action.

## **RECOMMENDATION**

Staff recommends Commission consideration of the attached legal opinion letter and direct City's legal counsel to file suit against Dixie-Walesbilt, LLC.

## **BACKGROUND**

During a past City Commission work session, the City Commission requested the City Manager to investigate the status of the Grand Hotel. This memorandum and attached letter of legal opinion contain the findings ascertained thus far:

1. Currently, the City has no active building permits, building permit applications, or plans under review related to redevelopment of the Grand Hotel. Additionally, no outstanding Code Enforcement violations or fines exist related to the Grand Hotel.
2. As indicated in Mr. Ashley's letter of opinion, Dixie-Walesbilt, LLC has committed multiple, material breaches of the original Redevelopment Agreement and a factual basis for bringing a lawsuit against Dixie-Walesbilt appears to be solid.

If the City desires to take action against Dixie-Walesbilt, LLC, any claims to be made must first be noticed to the LLC with an opportunity to cure, as provided in the original Redevelopment Agreement.

On March 16, 2021, the City Commission voted in favor of noticing Dixie-Walesbilt, LLC of its event of default on the terms and conditions set forth in the Agreement and provided an opportunity to cure. Dixie-Walesbilt has made no progress in curing the outstanding default(s) to date.

## **FISCAL IMPACT**

None at this time, but costs will be incurred if the Commission elects to file suit.

[End Agenda Memo]

James Slaton, City Manager, reviewed this item.

Ray Brown, Dixie Walesbilt, LLC, said he has made efforts to meet with City staff and the meeting got canceled. There's a lot of hostility towards this project that he doesn't understand. Mr. Brown said he has not signed a waiver to a statute of limitations. This suit will waste a lot of the City's time and money and will achieve nothing. They want to sit down and talk. He has bankers, architect and attorney to help.

Daniel Greenberg, Blue Chip Commercial Capital, he said that we are brokers trying to help get Ray Brown funding for this project. He has preapproval for a construction loan. The final steps are getting with the City and working as a team. The hotel would be a good component to the downtown plan. We have feasibility studies to show that this project will bring money to our downtown. The meeting planned with the City manager got canceled. They have a hospitality group to manage this project. They are ready to go. He recommended that the suit gets taken off the agenda and we can move together in a partnership.

Rick Gonzalez, REG Architects in West Palm Beach, shared his credentials in Historic Preservation. These projects are difficult to accomplish. They can take many years. He shared some examples. He has worked with Victor Dover on many projects. Mr. Dover will vouch for him. It's hard to get financing in this area for these projects. Mr. Brown is knowledgeable in historic preservation. We are ready to proceed but we need a partnership with the City. The lawsuit should be set aside and move forward some workable alternatives. This could be an anchor hotel for downtown. He shared some conceptual drawings of the hotel and surrounding area.

9. CITY ATTORNEY

9.I. Seminole Hotel Settlement

[Begin memo]

As directed, I engaged in follow up discussion and negotiation with Mr. Kebabjian's attorney, Christian Waugh, Esquire. The following modification to the mediated settlement was reached:

The City of Lake Wales and Mr. Kebabjian will equally divide the outstanding taxes due for the years 2020 and 2021 in the amount of \$5,945.60, with each party paying \$2,972.80.

The City will provide funds for payment of the amounts due for the City's fire assessment fee and the asbestos study which the City had performed on the property in the sum of \$6,699.45.

These amounts are set forth in the Real Estate Settlement Statement prepared by Mr. Waugh's law firm which will serve to finalize the matter.

Mr. Waugh will pay the amounts due to the Polk County Tax Collector. The Tax Collector will then remit the City's portion of the taxes, together with the fire fee and the asbestos survey payment to the City in the sum of \$7,363.03.

The City's net additional payment over and above the amount set forth in the Mediated Settlement Agreement will be the sum of \$2,309.22.

Mr. Waugh's firm will subsequently issue the Owner's Policy of Title Insurance to the City insuring marketable title as required.

[End Agenda Memo]

Albert Galloway, Jr., City Attorney, reviewed this item.

Deputy Mayor Gibson said this is a good precedent for handling hotels.

Deputy Mayor Gibson made a motion to approve the settlement. Commissioner Howell seconded the motion.

By voice vote:

Deputy Mayor Gibson "YES"

Commissioner Howell "YES"

Commissioner Williams "YES"

Commissioner Hilligoss "YES"

Mayor Fultz "YES"

Motion passed 5-0.

10. CITY MANAGER

10.I. Commission Meeting Calendar

James Slaton, City Manager, reported that there will be no Work Session meeting on the 29th and the Commission agenda on the 4th will be very light.

10.II. Tracking Report

10.III. YMCA Letter Swim Program

Stephanie Edwards, Support Services/Recreation Manager, shared to letters from a child and grandparent thanking the YMCA for their We Swim program. She distributed copies of the letters to the Commission Members.

11. CITY COMMISSION COMMENTS

Commissioner Howell reported that she got panini sandwiches from the new Cheese and Deli shop downtown and enjoyed them.

Commissioner Howell asked about the possibility of allowing restaurants in Lake Wales to serve drinks besides beer and wine such as scotch. Mark Bennett, Development Services Director, said he would look into this.

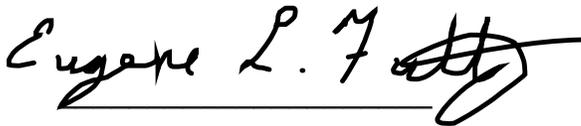
Commissioner Williams said he has seen the deterioration of the hotel over the years. He is excited that the City is willing to partner with this group to do what they say they are going to do. Commissioner Hilligoss agreed. Mayor Fultz said this is exciting and he is glad to move forward on this. This needs to be on paper in black and white.

12. MAYOR COMMENTS

Mayor Fultz read a letter from the Florida Department of State congratulating Lake Wales Main Street on its designation of Main Street Program of the month. This speaks loudly about what the City and CRA are doing. This City has been recognized. He commended the Commission and staff for their efforts with the downtown redevelopment.

13. ADJOURNMENT

The Meeting was adjourned at 7:07 p.m.

A handwritten signature in black ink, appearing to read "Eugene L. Fultz", with a stylized flourish at the end. The signature is written over a horizontal line.

Mayor

ATTEST

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City Clerk

