



city council agenda

Agenda
March 5, 2019 * 6:30 PM
City Council Regular Session
City Hall Chambers, 1600 Nela Avenue

Lydia Pisano Mayor	Kurt Ardaman City Attorney	Bob Francis City Manager	Ed Gold District 1	Anthony Carugno District 2	Jeremy Weinsier District 3	Mike Sims District 4	Harv Readey District 5	Jim Partin District 6	Sue Nielsen District 7
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Welcome

Welcome to the City of Belle Isle City Council meeting. Agendas and all backup material supporting each agenda item are available in the City Clerk's office or on the city's website at cityofbelleislefl.org.

1. Call to Order and Confirmation of Quorum
2. Invocation and Pledge to Flag –Mike Sims, Commissioner District 4
3. Mayor for a Day Romeo Maxwell Shaw
4. Consent Items **(Est. 5 minutes)**
 - a. Approval of the City Council meeting minutes – January 15, 2019
 - b. Approval of the City Council meeting minutes – February 19, 2019
5. Presentation by Girl Scouts: Community Project – Storm Drain Marking **(Est. 10 minutes)**
6. Citizen's Comments **(Est. 10 minutes)**
Persons desiring to address the Council MUST complete and provide to the City Clerk a yellow "Request to Speak" form located by the door. After being recognized by the Mayor, persons are asked to come forward and speak from the lectern, state their name and address, and direct all remarks to the Council as a body and not to individual members of the Council, staff or audience. Citizen comments and each section of the agenda where public comment is allowed are limited to three (3) minutes. Questions will be referred to staff and should be answered by staff within a reasonable period of time following the date of the meeting. Order and decorum will be preserved at all meetings. Personal, impertinent or slanderous remarks are not permitted. Thank you.
7. Unfinished Business
 - a. **ORDINANCE 18-05 – (Est. 10 minutes) - AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA; AMENDING THE BELLE ISLE CODE OF ORDINANCES CONCERNING PLANNED DEVELOPMENT DISTRICTS; BY AMENDING PART II, CODE OF ORDINANCES; BY AMENDING SUBPART B, LAND DEVELOPMENT CODE; BY AMENDING CHAPTER 54, ZONING DISTRICTS AND REGULATIONS, ARTICLE III, ZONING CLASSIFICATIONS; BY AMENDING SECTION 54-77, PLANNED DEVELOPMENT DISTRICT PD; PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION AND AN EFFECTIVE DATE**
8. New Business
 - a. Lot Split Application – 7020 Seminole Drive **(Est. 20 minutes)**
 - b. Discussion on accessing a franchise fee to electric company **(Est. 10 minutes)**
 - c. Police Advisory Committee **(Est. 5 minutes)**
9. Attorney's Report **(Est. 10 minutes)**
 - a. State Attorney General Opinion Letter on Short Term Rentals **(Est. 10 minutes)**
10. City Manager's Report
 - a. Issues Log update **(Est. 5 minutes)**
 - b. Chief's Report **(Est. 10 minutes)**
11. Mayor's Report **(Est. 5 minutes)**
12. Council Reports **(Est. 3-5 minutes each)**
13. Adjournment

"If a person decides to appeal any decision made by the Council with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, for such purpose, he/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." (F. S. 286.0105). "Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office (407-851-7730) at least 48 hours in advance of the meeting."



city council minutes

MINUTES
January 15, 2019
Regular Session 6:30 pm

The Belle Isle City Council met in a regular session on January 15, 2019, at 6:30 p.m. at the City Hall Chambers located at 1600 Nela Avenue, Belle Isle, FL 32809.

Present was:

Mayor Lydia Pisano
Commissioner Gold
Commissioner Anthony Carugno
Commissioner Jeremy Weinsier
Commissioner Mike Sims
Commissioner Jim Partin
Commissioner Sue Nielsen

Absent was:

Commissioner Harv Readey

Also present were City Manager Bob Francis, Attorney Kurt Ardaman, Chief Houston and City Clerk Yolanda Quiceno.

CALL TO ORDER

Mayor Pisano called the City Council Regular Session to order at 6:30 pm and the City Clerk confirmed quorum. Mayor Pisano welcomed District Commissioner Mayra Uribe. Commissioner Gold gave the invocation and led the Pledge to the flag.

CONSENT ITEMS

- Approval of the City Council meeting minutes – December 4, 2018
- Approval of the City Council workshop minutes – December 14, 2018
- Approval of the City Council workshop minutes – December 28, 2018
- Approval of Line of Credit from the previous year

Mayor Pisano called for a motion to approve the consent item.

Comm Nielsen motioned to approve the consent agenda items as presented.

Comm Sims seconded the motion which passed 6:0.

CITIZEN COMMENT

Mayor Pisano opened for public comment.

- Gayle Bouck residing at 2205 Cross Lake shared her concern with the debris dumped on Cross Lake Beach. The debris has degraded to black muck and is going down to the water. She asked for the City's assistance to clean up the beach area.
- Karl Shuck residing at 1658 Wind Willow Road shared his frustration with the response to his public records request he submitted for the Mayor's personal phone records from June 7, 2018. He stated that he has not received any records for 2016 and gave a brief update of what he has received to date.

There being no further comments Mayor Pisano closed citizen comments.

UNFINISHED BUSINESS

City Manager Francis gave a brief explanation as to why the agenda was changed to remove the ordinances. Unfortunately, due to circumstances out of our control at the Orlando Sentinel, the ads were not published on time and according to State law and the Charter the Ordinances could not be read for second reading and adoption because they were not advertised in the required time frame. The ad will be published accordingly for the next scheduled meeting.

Reimbursement of Attorney Fees - Commissioner Nielsen

City Manager Francis gave an update on the reimbursement of attorney fees for Comm Nielsen and provided a copy of the attorney's itemized bill as previously requested by Council. He reported that the City had placed a claim with the City's insurance company for all three reimbursements (Gold, Readey, and Nielsen) and the insurance company will be able to pay 50% of the original submittals leaving the City to pay the other half.

Comm Gold moved to approve reimbursement of attorney's fees to Comm Nielsen for \$20,000.
Comm Partin seconded for discussion.

Comm Partin stated that he has received feedback from a resident who was concerned about the amounts and asked why the City is responsible for reimbursement if the members were acting on their own accord and the violations were outside of their official acts. He further stated that the report shows that Comm Nielsen knowingly broke the Sunshine Law.

Attorney Ardaman stated that there are two bases for reimbursement, (1) Statutory and (2) Case Law. Concerning 2007 Case Law in FL, he explained the litigation must arise out of, and in connection with the performance of official duties and must serve a public purpose. With Sunshine Law, there cannot be a violation if the individual was not serving in a capacity as a City Commissioner. He said the State Attorney concluded its evaluation and said the case is now closed and there will not be any further action. Complicating the matter, the previous City Attorney did recommend that the individual commissioners hire their private lawyer. Attorney Ardaman said that the requirements for reimbursement have been met.

Attorney Stuart was present to answer any questions.

Comm Gold explained his justification for approval of the reimbursement and said that the City made a promise to each Commissioner that if they were not found guilty, they would be reimbursed. Also, the commissioners did not have the opportunity to appear in court to access innocence or guilt and most importantly the City's word should be binding.

Comm Sims also received an email from a resident in opposition and explained his reason for approval. To deprive a Commissioner reimbursement based on hunches and emotions is not something he can defend. He believes his vote should be based on findings and State law guidance.

Comm Carugno shared his concerns and said he also received some calls in opposition. He said every year Council is required to attend an Ethics Course and are aware of what is right and wrong. He does not agree with the other Commissioners and strongly disagrees with the reimbursement of attorney fees.

Attorney Jacob Stewart with offices at 1521 Mt. Vernon Street, Orlando, FL spoke on the concerns voiced by the Council. He said mere allegations can be career ending. He can assure everyone that this was a very large investigation, very complex, and very expensive. In his experience, agencies do not spend this much on an investigation and then walk away from it unless something is extremely wrong with their case. He said the Council requested an itemized invoice but he said that he charges a flat fee retainer instead of billable hours and his statement had to be recreated over the two years. He further added that billing by flat fees is becoming preferred to hourly billing in the profession and in his practice. He stands by his price and fees. He also contends that Commissioner Nielsen is completely innocent. He reminded Council that mere allegation does not mean guilt.

Comm Carugno asked if there is any written document that the City was going to reimburse these Commissioners. Mr. Francis said these events occurred before his employment and he did not find any written document in the file. He said after speaking with Comm Readey, Gold and Nielsen, he was told by them that the then City Manager and City Attorney said the City would reimburse them for legal fees because he will not be able to represent them. Also, Mr. Francis said there was no process in place on how to handle this type of situation at that time.

Comm Weinsier said he is not sure if everyone would ever agree with what is true or false; however, there is State Law that states they should be reimbursed for their legal fees if there were no charges. He would like to move forward with the vote.

Mayor Pisano confirmed with the City Attorney that Comm Nielsen would be able to vote on this matter.

Attorney Ardaman referenced FS 112.3143(3) and FS 112.313(5).

Comm Nielsen said she does not mind recusing herself; however she will still be counter for a quorum.

Attorney Ardaman said it is safer if all Commissioners present vote on the motion and recommends Commissioner Nielsen vote on the motion.

Mayor Pisano called for a vote on the motion made by Comm Gold to approve reimbursement of attorney's fees to Comm Nielsen for \$20,000. The motion passed 4:2 with Comm Carugno and Comm Partin, nay.

Update on Cross Lake Purchase

Mr. Francis led the discussion on the Cross Lake purchase and gave a brief overview of the project. Due to Orange County's failure to notify the property owners of the first hearing, the project was put on hold. During that time, Orange County said they would not move forward until the adjacent property owner and the City came to some agreement in addressing the issues and concerns. In the meantime, the City has received an email from the adjacent property owner's attorney addressing several concerns known /unknown by the City. The City responded accordingly in a memorandum addressing the following concerns,

- Park is adjacent to the property owner's dock
- Park is 8-ft from the adjacent property owners house
- Ingress/egress
- Parking places
- Dirt road
- New boat ramp/dock at a location
- Cross Lake swimming and passive use
- Adjacent property owner's drain field issue
- Purchase of adjacent property owners property

In the January 2019 e-mail from the adjacent property owners' attorney, a three-way division of the Cross Lake Park property was proposed: 1/3 each to the two adjacent property owners and 1/3 to the City. The attorney stated that there were Council members on record at the April 17, 2018 City Council meeting who were supportive of the outcome the adjacent property owner sought. Commissioners were then polled to determine their position. They are in favor of providing an area of ingress/egress through Cross Lake Park to the neighboring land-locked property.

On April 17, 2018

- Comm Nielsen said she believes the City is required to provide ingress to a property owner who is landlocked adjacent to the land and would like the City to purchase the property and dedicate a piece of the park as a driveway for the applicant
- Comm Gold spoke in favor of working towards a solution to dedicate a piece of the park as a driveway
- Comm Readey said he is in favor of the City purchasing the property and have staff provide a plan to provide the applicant with a driveway

Mr. Francis asked the three Commissioners if they would like to provide a piece of the park for a driveway or continue with the purchase and extend the driveway down where the property owner will have access to a public right of way.

Comm Gold and Nielsen both agreed that they are looking for an amicable solution.

After discussion, Mr. Francis said once the City acquires the property, installs a surrounding fence and open/close access from dawn to dusk it will correct most of the concerns from the adjacent property owner. Discussion ensued on the fence height/style, mulch issue and clean-up of Cross lake Beach

NEW BUSINESS

Approval of Lance Settlement Agreement

Mr. Francis opened discussion on the Request for Relief on 7020 Seminole. The City has proposed a Settlement Agreement for approval. If the Council agrees to the Settlement Agreement, it will include the concessions to pay the City Attorney's fees totaling \$16,500. Mr. Francis noted that he received a concern from a resident that the Lance's should not be allowed to have a wall in the front.

Comm Nielsen said she has conflicted feelings but she fears that the development will look like McMansions on substandard lots. The request for variance does not meet the requirements of City code.

Comm Carugno said he had received many calls and emails in opposition. Also, there was a concern about the precedent set by the last lot split. He is in favor of lot splits depending on the area in the City. He asked if the City can change the Land Development Code to state that lot splits are allowed if they meet the code at the time and do not create a substandard lot. Attorney Ardaman said yes, discussion ensued on the definition of plotted lots. He further added that some residents concern is that applicants can appeal any vote and get approved.

Mr. Francis said the applicant has the right to file relief under section 70-51. The State law requires that the City throw a special magistrate negotiate mediation with the property owners to agree to a settlement agreement before moving to the next step. If a negotiated settlement cannot be agreed upon a lawsuit may follow.

Comm Gold said this is always going to be a non-compliant area because a vast majority of lots are 70 foot lots and a few are 55-foot flag lots. The only way to get to a point where this area can be compliant is to combine all of the homes in the area, in an overlay district.

Mayor Pisano opened for public comment and allowed for a 2-minute presentation from each speaker.

- William Haan residing at 2909 Trentwood Blvd spoke in opposition to the lot split and the settlement agreement and said it would set a bad precedent.
- Bob Harrell residing at 2800 Trentwood Blvd spoke in support of the lot split mainly because the majority of the lots on that street are small lots. At the time of the original request, those in proximity were in favor. Those opposed were not adjacent neighbors. Mr. Harrell clarified that the applicant has an accumulation of three lots that he wants to make into two. He does not believe the City should make a restriction on how big a house can be built.
- Anna Marie Fiola residing at 2493 Trentwood spoke in opposition of the lot split because it will affect the density and create a negative impact on the water quality.
- Charlene Kennedy residing at 2624 Homewood Drive spoke in opposition to the lot split because it will create a bad precedent and create a negative effect for the quality of the Lake.
- Beth Lowel said she would give her time to Emily Wakley.
- Emily Wakley residing at 3019 Indian Drive spoke in opposition to the lot split that does not meet the minimum zoning requirements. She provided an overview PowerPoint and said the City is slowly changing the zoning in the area without actually going through the proper channels to change the zoning.
- Debra Donham residing at 6904 Seminole Drive said she would like to see everyone follow the rules and protect the lake water quality.
- Greg Gent thanked the City for their partnership for making the Boat Parade a success.
Greg gent residing at 2924 Nela Avenue spoke in opposition to the lot split and gave a brief overview PowerPoint of the approval process. He said he would like to see the City review and follow the Code and procedures.

There being no further comment Mayor Pisano closed public comment for Board discussion.

Attorney Tom Callan with offices at 921 Bradshaw Terrace, Orlando FL representing the applicant spoke on the key points of the Settlement Agreement which included:

- Setback 70 ft from NHWM elevation
- Demolition of the house to occur within a certain period
- Regulate square footage
- Types of construction
- Swale in the back yard
- Fencing
- Boat Docks

Attorney Callan spoke on the following legal points,

- The City denied the variance and the Staff report had errors with the wrong code standards by the City Planner and the Planning Zoning Board which were covered in the Request for Relief
- Should the four variance standards each be met or weighted as whole
- Is there a conjunctive to meet all 4-criteria in Section 42-64
- There is no over development on the lake
- The city engaged on the improper plebiscite
- The city allowed impermissible Ex-parte communications referenced repeatedly in the record of June 2018

If there is a denial, the applicant can move forward with two homes on the two lots that meet the code without a variance each lot at 22,000 square feet meeting all setbacks.

In this juncture,

- the house has no value – it's a detriment
- it is a reasonable use of the property with no environment issues
- it is in harmony with the neighborhood
- it is geared towards new development, not infill
- will not create a precedent and it is supported by many of the neighbors, except by the Weinsiers
- it is an unnecessary hardship to have an oversized lot of 150ft in perpetuity when the surrounding homes are 70-75ft

Comm Sims said the intent of hardship is more to protect the applicant and never intended to mean if the hardship cannot be proven the request cannot be approved.

Comm Weinsier said he had not heard a clear statement of the hardship being met. If there are no requirements or standards for hardship, then everyone will get a variance. Comm Weinsier spoke on examples of change and said the City needs to stand behind the code. If the City is going to rezone by variance, then the City will need to change the code.

Discussion ensued on new development standards and substandard lots. Council discussed creating a precedent. Attorney Ardaman said the law is very clear, variances are considered on a case by case basis, and granting or denial for one property is not a precedent for any other property. Every parcel property is considered unique under Florida law; separate and apart.

Comm Nielsen said it is extremely frustrating for citizens to go through this process over and over. The question keeps coming up, why do we have a code. Attorney Ardaman said everyone has property rights and the right to pursue due process leaving the City to pay for defending the request.

Attorney Callan gave a comprehensive presentation of the case and reiterated all the reasons for approving the agreement and the variance. Further dialogue between Comm Weinsier and Attorney Callan ensued regarding the existence of a hardship.

Comm Carugno asked for a recommendation from the City Attorney or City Manager to continue the discussion or table the discussion and schedule for a workshop to revisit the Code. Attorney Ardaman said if the Council is going to consider changing the minimum lot size in this area is up to the applicant to agree for the delay. Attorney Callan said his client would like to move forward for a vote.

Mayor Pisano called for a motion to extend the City Council meeting to 9:30 pm.

Comm Weinsier motioned to extend the meeting to 9:30 pm.

Comm Gold seconded the motion which passed 6:0.

Comm Gold said he would like to see the Code changed to fit the neighborhood or area.

Comm Carugno motioned to deny the Mediated Settlement Agreement between the Lances and the City for 7020 Seminole Drive.

Comm Weinsier seconded the motion which passed 4:2 with Comm Sims and Comm Gold nay to deny.

Approval of Lot Split for 7020 Seminole (Lance Property)

Approval of the Lot Split will not be conserved due to the denial of the Settlement Agreement.

Approval of Landscape Bid

City Manager gave a brief overview of the landscaping services. The landscaping bid was re-advertised because the Council changed the chemical application frequency. The City received three bids, Dora Landscaping - \$84,349.10, Groundwerks - \$110,400 and Millennium Grounds & Water-\$175,400. In the past, the City has received complaints about Dora Landscaping, and we were going to consider them a non-responsible bidder; however, over the past few months they have had a change of staff and we were assured us that we would not have any further problems. He asked for approval of the Dora Landscaping bid for \$84,349.10.

Comm Sims motioned to approve the bid of Dora Landscaping for \$84,349.10.

Comm Nielsen seconded the motion which passed 5:0, Comm Gold was out of the room.

Appointments to MetroPlan Orlando Committees

City Manager Francis asked for Council appointment of an elected official to serve as the primary and alternate to the MetroPlan Orlando Municipal Advisory Committee (MAC) and the Transportation System, and Operations Committee (TSMO)

Comm Nielsen motioned to appoint Mayor Pisano as the primary representative to the MetroPlan Orlando Municipal Advisory Committee and Bob Francis as the primary representative to the Transportation System and Cooperation Committee (TSMO).

Comm Carugno seconded the motion which passed 6:0,

Alternates can be appointed at a future meeting.

Approval of Supervisor of Elections Use Agreement Contract for the March 12th, 2019 Municipal Election

City Manager Francis asked for approval of the 2019 Vote Processing Equipment Use Agreement and Elections Services Contract for Municipal Elections.

Comm Nielsen motioned to approve the Contract, not elect to pay return postage for Vote by Mail Ballots and not to elect the supervised voting process.

Comm Sims seconded the motion which passed 6:0

CITY MANAGER'S REPORT

Approval of the Wallace Field Use Agreement with CCA

City Manager Francis said the Agreement would be coming back to the Council for review and approval. He said he asked CCA not to provide renderings to Council until the Use Agreement is approved. Mr. Francis spoke on the concerns made by Council and addressed Section 3(a) Restrictions, 3(b) Non-Exclusive Use and 3(c) Parking and Traffic. The City will have priority of the field and will only need to notify CCA that they need the field. CCA will have to reserve the use of the field, or the field will be opened to the public. The only other change to be corrected in the Recitals is to designate the field an Open Space zoned parcel. Also, Mr. Francis pointed out the eight additional elements that CCA will have to incorporate into the plan which includes, 1-irrigation, 2-drainage, 3-fitness equipment around the track, 4-benches around the track, 5-bike racks, 6-bat houses, 7-gate between CCA property and Wallace Field (in the existing wall) and 8-defined parking area. Mr. Francis asked for approval of the Use Agreement as discussed.

**Comm Nielsen motioned to approve the Agreement for the use of Wallace field by CCA.
Comm Partin seconded the motion.**

Comm Carugno said he is not in agreement because the City has not reviewed the final plan or the design of the park. He does not want to limit the design to the school and their needs and not take into consideration the options for all the residents in the City.

Mr. Francis said before this agreement goes any further CCA will need to bring the site plan back to the City for review and approval. Discussion ensued.

Attorney Ardaman said the City has 120 days (four months) for both entities to approve the same concept, site plan and improvements for the property. If not approved the agreement terminates.

The motion passed 4:1 with Comm Carugno, nay and Comm Sims not present for the vote.

Mr. Francis said the City had been asked to schedule 2 candidate forums. The forum dates are as follows:

Feb 7th – Mayoral Forum
Feb 20th – District 3 Candidates
March 7th – Mayoral Forum

Mr. Francis reported that Orange County is going to place a concrete median at Hoffner/Conway intersection. The poles are cost prohibitive. They will still allow for left-hand turns into Cork & Fork and will also allow Wawa to construct a right-in, right-out pork chop intersection properly.

Comm Weinsier reminded everyone of the Chili Cook-off January 26th. Information for the event can be found at the pinecastlehistory.org.

ATTORNEY REPORT – no report

MAYOR'S REPORT – no report

COUNCIL REPORTS – no report

ADJOURNMENT

There being no further business Mayor Pisano called for a motion to adjourn. The motion was passed unanimously at 9:30 p.m.

Yolanda Quiceno, CMC, City Clerk



city council minutes

MINUTES
February 19, 2019
Regular Session 6:30 pm

The Belle Isle City Council met in a regular session on February 19, 2019, at 6:30 p.m. at the City Hall Chambers located at 1600 Nela Avenue, Belle Isle, FL 32809.

Present was:

Mayor Lydia Pisano
Commissioner Gold
Commissioner Anthony Carugno
Commissioner Jeremy Weinsier
Commissioner Mike Sims
Commissioner Harv Readey
Commissioner Jim Partin
Commissioner Sue Nielsen

Absent was:

Also present were City Manager Bob Francis, Attorney Kurt Ardaman, Chief Houston and City Clerk Yolanda Quiceno.

Mayor Pisano welcomed Hailey Bass from Cornerstone Charter Academy who is Mayor of the Day.

CALL TO ORDER

Mayor Pisano called the City Council Regular Session to order at 6:30 pm and the City Clerk confirmed quorum. Commissioner Weinsier gave the invocation and led the Pledge to the flag.

CONSENT ITEMS

- a. Approval of the City Council meeting minutes – January 15, 2019
- b. RESOLUTION 19-02 - A RESOLUTION OF THE CITY OF BELLE ISLE, FLORIDA, AMENDING THE BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2018 AND ENDING SEPTEMBER 30, 2019, PROVIDING AN EFFECTIVE DATE.
- c. RESOLUTION 19-03 - A Resolution declaring surplus certain personal property and directing the City Manager to dispose of the property for value through an open public process.

Mayor Pisano called for a motion to approve the consent item.

Comm Nielsen motioned to pull item a from the consent agenda for additional review.

Comm Gold seconded the motion which was unanimously approved.

Comm Weinsier motioned to approve Resolution 19-02 and Resolution 19-03 as presented.

Comm Sims seconded the motion which was passed unanimously.

Comm Nielsen motioned to have the minutes for January 15, 2019, on the next City Council meeting for approval.

Comm Gold seconded the motion which was unanimously approved.

Chief Houston presented and recognized Corporal Ferrioula as the Officer of the Year for 2018.

Mayor Pisano recognized Officer Gargano and presented him with a Certificate of Appreciation for his exceptional investigative skills in solving the residential burglary at the residence of a senior woman in the City of Belle Isle and bringing the suspect to justice.

Mayor Pisano and Mayor for the Day Hailey Bass read and presented Detective Jeremy Millis and Officer Burns a Proclamation declaring February 19th, 2019 as Jeremy Millis and Chris Burns Appreciation Day.

CITIZEN COMMENT

Mayor Pisano opened for public comment.

- Richard Weinsier residing at 6824 Seminole Drive asked the Council how does the City decide what information is sent out in an alert and on Facebook. City Manager Bob Francis said he would speak with Mr. Weinsier after the meeting.

There being no further citizen comments Mayor Pisano closed and public comments.

Mayor Pisano stated that she would rearrange the agenda items and open 7 (d) Approval of Settlement Agreement with Juan Carlos Gil for discussion and approval.

City Manager Francis stated that in November 2018, the City was notified it was being sued by Juan Carlos Gil. The complaint was that Mr. Gil, who is determined to be legally blind, could not successfully navigate our website or review any records because our system could not translate written text into voice. The City contacted the insurance carrier and negotiated a settlement agreement with Mr. Gil’s attorney for \$8,000. Since that time, the City has contacted other municipalities and companies that specialize in ADA compliance and is looking to review their bids.

After some research, we have found that Juan Carlos Gil has filed about 219 lawsuits in federal court. Of those, 32 have been against municipalities; 17 against counties and a couple against constitutional officers. There is another plaintiff (Joel Price) that has sued multiple municipalities with the same lawyer.

Attorney Eric Netcher from Dean Ringers Morgan & Lawton 201 East Pine Street Orlando FL representing the City said the settlement agreement is in line with other municipalities. Early settlement, typically, is the best resolution and then to move on and get the website accessible. Mr. Gil sued the City under the Americans with Disabilities Act passed in 1991.

Comm Readey asked how Mr. Gil’s complaint can be viable if he is not a Belle Isle resident. Attorney Netcher responded; Unfortunately, the Statute had noble goals but can be taken advantage of at times. . Part of the Settlement is to have a reader and ADA accessible services available moving forward.

Comm Weinsier stated that the agreement grandfathers in the older documents for this agreement; however, it still leaves the City open to being sued again for the same issue by others.

Attorney Ardaman said unfortunately similar kinds of lawsuits were prosecuted concerning the Public Records Law. The City’s insurer is recommending approval of the settlement, and he suggested that the City follow their advice and run the risk of additional legal fees.

After discussion, Comm Nielsen motioned to approve the Settlement Agreement with Juan Carlos Gil and have the Mayor sign the Agreement.

Comm Gold seconded the motion for discussion.

After discussion, Mayor Pisano called for a roll call,

Comm Nielsen, aye	Comm Partin, nay
Comm Sims, aye	Comm Gold, nay
Comm Readey, aye	Comm Carugno, nay
Comm Weinsier, aye	

The motion passed 4:3 with Comm Partin-nay, Comm Gold-nay, and Comm Carugno-nay.

UNFINISHED BUSINESS

ORDINANCE 19-02 FIRST READING AND CONSIDERATION - AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA, CREATING A NEW SECTION 1-14 IN CHAPTER 1, OF THE CITY CODE RELATING TO MINIMUM ORDINANCE ADOPTION PROCEDURE AND PROVIDING FOR PUBLIC COMMENT ON PROPOSED ORDINANCES DURING BOTH THE FIRST AND SECOND READING OF A PROPOSED ORDINANCE; PROVIDING FOR SEVERABILITY, CODIFICATION, CONFLICTS, AND AN EFFECTIVE DATE.

City Clerk read by title

City Manager Francis said in an effort to give ample time to the public to review and comment on a proposed ordinance this revision will allow for public comment at both the first and second readings.

Comm Nielsen moved to forward ordinance 19-02 to second reading and adoption.

Comm Gold seconded the motion which passed unanimously upon roll call.

NEW BUSINESS

An appeal of Citation #P0001180 by Ali Mohammed Mattar

City Manager Francis said Mr. Ali Mohammad Mattar residing at 5242 Chiswick Circle who is appealing the parking citation he received for parking on the street without a license tag on his vehicle. After speaking with Officer Rabeau, Mr. Mattar was given a warning before being issued a ticket.

Mr. Mattar said the car was parked in front of his house and he did not realize that he had lost the tag. He stated that he did not know it was illegal to have the car parked on the street with no tag. The tag was found in the subdivision and returned to him.

Council discussed HOA parking rules and 2018 Florida Statute 316.605 Licensing of Vehicles that states “Every vehicle, at all times while driven, stopped, or parked upon any highways, roads, or streets of this state, shall be licensed in the name of the owner and shall display the license plate securely fastened to the vehicle...”. Also, a warning was issued to Mr. Mattar on Dec 6th.

After discussion, Comm Readey motioned to reduce the current fine to \$75.00.

Comm Nielsen seconded the motion which passed unanimously

Approval of Lot Split Request made by Lawrence Elferdink 6320 Gibson Drive

City Manager Francis was Lawrence Elferdink is requesting a lot split of his property located at 6320 Gibson Drive. As a matter of clarification, this request does not have to go to the Planning & Zoning Board because the split results in two standard lots that meet the land development criteria.

Comm Sims motioned to approve the lot split for 6320 Gibson Drive

Comm Nielsen seconded the motion which passed unanimously

Approval of Bing Grant Application for Lake Conway Shores HOA

City Manager Francis said last year, Lake Conway Shores (LCS) HOA applied for a Bing Grant for \$8,750 to replace the pavilion at the lake lot destroyed by Hurricane Irma. Due to the large stormwater project that took place at LCS, the pavilion could not be built. Due to no fault of their own, they were not able to start their project and had to forfeit the funds. They are asking for \$8,000 to start the project. District 1 Comm Gold allocated \$7,000 in Bing Funds to this project, and Comm Nielsen and Comm Carugno agreed to contribute \$500 of their Bing Funds for the project.

Comm Gold motioned to approve the Lake Conway Shore Bing Grant application for the pavilion project for \$8,000 as discussed.

Comm Readey seconded the motion which passed unanimously.

ATTORNEY REPORT – no report

CITY MANAGER’S REPORT

Issues Log update

City Manager Francis provided the following updates,

- Gene Polk Park - Mr. Francis reported that he met with the FEMA representative and the need for the City’s request to increase the project amount from \$21, 000 to \$ 282,000. The inspectors thought the project was just a water feature and did not realize it was a major drainage system for the 12 block area. The City will know in 60 days the results of their reconsideration.
- Paving Around City Hall and Nela Avenue – The contractor is preparing a new estimate because the City is reducing the area in the event we need to install new curbs.

- Wind Drift Project – The plans are being finalized and will go out to bid within the next 30 days.
- Traffic Issues – The traffic consultant is finalizing the Transportation Plan. Mr. Francis said he met with the business owners on Conway and Hoffner regarding the changes for traffic safety. Although the business owners are not pleased with the proposal, they understand the problem.
- Fountain at Nela/Overlook – The transformer box in the area is at capacity and will need to be replaced by Duke Energy. Once that is completed the fountain will be ready to go.
- Wallace/Matchett – Waiting on renderings from the school to bring before Council.
- No Parking Signs – He is looking to install parking signs and poles on the dirt side of Matchett. He has a concern on the parking on the right side due to the stormwater pipes. He is looking at the possibility of putting parking inside of the fence at Wallace Field.
- Acquisition of Property – He spoke with Comm Uribe's office regarding Cross Lake, and he believes it is going to move forward. Also, he reported that he had been contacted by the Oak Island HOA about a piece of property off of Kissam Court. He also believes the bid process will be released for the BOA building fairly soon.
- Charter School – He has received a draft agenda for the joint meeting. The consultant asked to meet separately on the purchase of the property or the possibility of purchasing the buildings. Mr. Francis has informed the consultant that the City is not interested in selling the property.
- Strategic Planning – Looking to schedule a session in May.
- Storm Water Discharge – This issue is now closed because we do not have any further turbidity issues.
- Municipal and Comp Plan Updates – Ongoing. Looking to have community meetings in March to discuss Annexation with the residents along Matchett, Nela, and Waltham.
- Parking – Ordinance is being drafted and looking to present sometime in March.

Chief's Report

- Chief Houston reported that there is an increase in car break-ins due to unlocked car doors. She urges residents to lock their car doors and to make Belle Isle a hardened target. If we make it easy for criminals, that will be our reputation and more crime will follow.
- Chief Houston said the school still has some deficiencies but are working very hard with staff to correct.
- Active Assailant Drill at CCA went very well with Administration, staff, and students.
- Duck Dash – March 2, 2019. Roads will be closed from 9-11am.
- Chief Houston reported an increase in animal (dog) calls.

NAV Board update

- Mr. Francis provided a synopsis of the NAV Board meeting and spoke on the
 - Channel Markers
 - Debris Collection baskets in new catch basins on Jade Circle
 - Millage Increase of 20% from .1407 mil to .49284 mil
 -

MAYOR'S REPORT

Legislative update

Mayor Pisano reported that she met with Senator Stewart and discussed,

- Funding for Delia Beach.
- Historical Grants for the Green House
- Grants for installation of Septic Tanks
- Grants for Police Equipment
- Recycling may be going away
 - Mr. Francis reported that 60-70% of recycling loads are rejected in the landfills. Due to the circumstances, the business may go back to the basics. He has asked for a group of seven residents to participate in a Committee to meet in March to review an RFP for services

Mayor Pisano presented a special Proclamation proclaiming February 19th to Hailey Bass for Mayor for A Day.

COUNCIL REPORT

Comm Nielsen

- Comm Nielsen said Mr. Francis second anniversary is coming up in April and would like to know if any forms are available for the evaluation. After discussion, Mayor Pisano said she would forward an evaluation form after the meeting to Commissioners.
- Comm Nielsen shared her concerns with the flow of discussions and presentations during Council meetings. She asked that Council review the Rules for Council and pay close attention to making points at meetings. It is difficult for the City Clerk to follow discussions at times, and it would help if all of us would be more organized in our presentations.
- Comm Nielsen spoke on the short term rental ordinance. She asked if it would be possible to have the City Attorney request a legal opinion from the Attorney General's Office as to whether the ordinance would stand and the City will be able to retract if it is not right for Belle Isle. Council consensus was to move forward with the request.

Comm Partin – no report.

Comm Sims

- Comm Sims reported that he spoke with the General Manager at the H. Gregg store on Jetport. The business owner is willing to reconfigure his green parking lot lights so they will not conflict with the green traffic signals.

Comm Readey

- Comm Readey shared his disappointment with the lot split previously approved on Seminole.

Comm Weinsier – Happy Birthday Comm Nielsen.

Comm Carugno

- Comm Carugno gave a brief overview of the Airport Noise Abatement meeting. He reported that the east runway would be closed in March and the departures will start taking off in the North. This change may cause some additional noise on the west complex. All complaints should be addressed to Judith Jarrett at the Airport Noise Abatement Committee.
- He has received complaints on parking around the City, at Cross Lake and complaints about political signs.

Comm Gold

- Comm Gold said he would like to invite the residents to participate in the City Managers evaluation.
- Comm Gold spoke on different safety camera/video options for homeowners.

ADJOURNMENT

There being no further business Mayor Pisano called for a motion to adjourn. The motion was passed unanimously at 8:05 p.m.

Yolanda Quiceno, CMC, City Clerk



Storm Drain Marking to Keep our Lakes Clean! We NEED YOU!

SATURDAY 9AM - 11AM
April 13, 2019
 Gilbert Park, Belle Isle Park on
 Homewood
 Bring Pop Tops & Kitchen Grease

SAVE OUR LAKES!

STORM DRAIN MARKING & RECYCLING

We NEED YOU !

Come join Girl Scout Troop 7002 in their *Silver Project* to mark Storm drains! Meet at Gilbert Park @ the point of Homewood & Nela Ave (2626 Nela Ave) Please park on Homewood or at Warren Park. Bring Pop Tops, Kitchen Grease, batteries & printer cartridges we will RECYCLE for YOU! Hands on FUN with water filters, Enviroscape model & travel in groups to mark storm drains. **All the supplies will be provided**

Thank our sponsors **Orange County Environmental Protection Division, Girl Scouts of Citrus, & Disney VoluntEARS!**



**CITY OF BELLE ISLE, FLORIDA
CITY COUNCIL AGENDA ITEM COVER SHEET**

Meeting Date: March 5, 2019

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Land Development Code Change for Commercial Planned Developments

Background: At April 24, 2018 P&Z meeting, the P&Z Board discussed changing the Land Development Code (LDC) to allow for Planned Development (PD) in the commercial zones and recommended that these changes be made to the LDC.

At the present, the code only addresses residential plan developments. If the City seeks to make a change with a commercial development the City is restricted to changes except in the variance process. It is common to have PD regulations for residential developments as well as commercial. The City cannot condition straight zoning but the City can condition Planned Development's which are tied to a development order.

The amendments provide the mechanism to do this and remove language regarding residential densities that is part of the City's Comprehensive Plan and do not belong in the LDC. Having comprehensive plan language also in the LDC could create internal conflicts between the documents if the text of the Comprehensive Plan, or LDC, is amended. These standards also appear elsewhere in the LDC.

At the November 18, 2018 Council meeting, the Council accepted the recommendations of the P&Z Board and directed the ordinance be moved to a first reading. At the first reading the Council had concerns about deleting the table that showed residential density and height, and tabled the reading until this could be resolved.

Staff Recommendation: Move to read the ordinance to a second reading.

Suggested Motion: I move that we move Ordinance 18-05 to a second reading and adoption at the March 19, 2019 Council Meeting.

Alternatives: Keep the current language which does not allow for Commercial PDs

Fiscal Impact: None

Attachments: City Planner Memo
Excerpts from BI LDC showing max. heights
Excerpt from Comprehensive Plan (highlighted)
Draft Ordinance 18-05



April Fisher, AICP
fisherpds@outlook.com
407-494-8789

February 28, 2019

To: Mayor and City Council

From: April Fisher, City Planner

Re: **Amendments to the Land Development Code to create commercial planned development zoning standards and remove antiquated and conflicting language regarding density standards**

The City of Belle Isle Land Development Code currently has standards for residential planned development but not for commercial. It is in the best interest of the City to have development flexibility with both residential and commercial projects when deemed appropriate. These amendments provide the mechanism to allow this, should there be a commercial development proposal not conforming to standard commercial zoning district requirements. City Council may utilize the contractual planned development district to benefit the City.

These amendments also remove language regarding residential densities inconsistent with the City's Comprehensive Plan. The Comprehensive Plan is the City's Policy document that, among other policies regarding land use, infrastructure and facilities, establishes Future Land Use designations with density ranges allowed. The Land Development Code effectuates these through the zoning districts that correspond to the Future Land Use designations such as low density residential (LDR) or medium density residential (MDR).

Future Land Use designations and densities must be established in the Future Land Use Element of the Comprehensive Plan as required by Section 163.3177, Florida Statutes. Any changes regarding these must go through the "State Coordinated Review Process" with the Florida Department of Economic Opportunity (DEO).

Having comprehensive plan language in a land development code may create internal conflicts between the documents if the text of the Comprehensive Plan is subsequently amended. This is the case currently in the City's Documents. Sections of the Land Development Code regarding densities have not been updated since 1992 and 2005. The Comprehensive Plan was updated in 2010. Additional clean-up of Chapter 54 will be forthcoming to make it consistent with the Comprehensive Plan.

As an example, the Land Development Code provides a high density residential (HDR) category of 10.01-12 dwelling units per acre. This future land use and its density range do not exist in the Comprehensive Plan and therefore are not permitted. An excerpt from the Comprehensive Plan that lists the residential densities in Future Land Use Policy 1.2.2 is attached here for your review.

It is not recommended for a jurisdiction to have future land use and density language in its land development code due to this internal inconsistency scenario. Doing so may lead to land use entitlement legal challenges.

Staff Recommendation

Staff recommends approval of the proposed Planned Development District standards amendments and Ordinance 2018-05.

Sec. 54-32. - Low-density residential.

The low-density residential land use allows for residential development at less than five and five-tenths (5.5) units per acre. The most appropriate type of residential development in this land use classification is single-family detached dwellings. The zoning categories that are most consistent with this land use classification are R-1-AAA, R-1-AA, R-1-A, and R-1. One of the most important functions of this land use is to preserve existing and future neighborhoods from the encroachment of nonresidential uses and the stress of over-development on the city's roads, parks, and other services.

(Ord. No. 92-6, ch. II, art. A, § 1, 12-15-1992; Ord. No. 05-09, § 1, 5-7-2005)

Sec. 54-33. - Medium-density residential.

The medium-density residential land use allows for residential development at 5.5 to ten units per acre. The most appropriate types of residential development for the medium-density residential land use are detached and attached single-family dwellings, such as duplexes, and mobile homes. Townhouses, apartments and multiplexes are also appropriate uses. The two zoning categories consistent with the medium-density residential land use are R-2 and R-3. One function of this land use classification is to provide a transition between more intense uses, such as a shopping center, and less intense uses, such as single-family dwellings.

(Ord. No. 92-6, ch. II, art. A, § 2, 12-15-1992)

Sec. 54-76. - Multiple-family dwelling districts R-2, R-3.

(a) *Intent and purpose of district.* The multiple-family dwelling districts are composed of certain limited areas where it is desirable, because of an established trend, to recognize a more intensive form of residential use than in the single-family districts. Provision is made for the erection of duplex dwelling structures in the R-2 district. Residential uses are permitted at high population densities in the R-3 district. Certain structures and uses required to serve public, educational, religious, utilities, and noncommercial recreational needs of such areas are permitted as special exceptions.

(2) Only the following uses shall be permitted within any R-3 district:

- a. Any use permitted in the R-2 district.
- b. Multiple-family dwellings.
- c. Boardinghouses and lodging houses.

(c) *Special exceptions.* These uses shall be permitted as special exceptions provided that any review and hearing of an application for a special exception shall consider the character of the neighborhood in which the proposed use is to be located and its effect on the value of surrounding lands, and further, the area of the site as it relates particularly to the required open spaces and off-street parking facilities. The following uses may be permitted as a special exception:

- (9) Buildings in excess of 30 feet in height. (R-3 district only.)

Sec. 50-73. - Site and building requirements.

(a) *Basic requirements.* The basic site and building requirements for each zoning district are established as follows:

Zoning	Building Setback			Minimum Lot		Minimum	Maximum	
	Front	Rear*	Side	Width	Size**	Floor Area**	Building Height	
A-1	35'	50'	10'	100'	21,780	425	none	
A-2	35'	50'	10'	100'	21,780	425	none	
R-1-AAA	30'	35'	10'***	100'	32,670	2,000	35'	
R-1-AA	30'	35'	7.5'***	85'	10,000	1,500	35'	
R-1-A	25'	30'	7.5'***	75'	7,500	1,200	35'	
R-1	25'	25'	6'	60'	6,000	900	35'	
R-2	25'	25'	6'	60'	7,500	600	35'	
R-3:								
1—4 units	25'	30'	6'	60'	6,000	600	35'	
5+ units	25'	30'	10'##	85'	10,000##	500	35'	
PD	To be determined as part of the PD process.							

P-O	25'	30'	10'#	85'	10,000	500	35'
C-1	25'	20'	5'###	80'	6,000	500	30'
C-2	25'	20'	5'###	100'	6,000	500	50'
C-3	25'	20'	5'###	100'	6,000	500	50'
PUB	25'	25'	6'	60'	6,000	500	35'

Notes:

*

The setback from Lake Conway shall be 50 feet from normal high-water elevation (86.9 contour line).

**

In square feet

Any lot of record less than 60 feet shall require a side setback of six feet.

#

For one-story and two-story buildings, plus two feet for each additional story.

##

Plus 2,000 square feet for each additional unit over four.

###

Side setback of 15 feet when abutting residential district.

(b) *Location of dwellings in residential districts.*

- (1) There shall be a minimum of 20 feet between any two dwelling structures on the same lot.
- (2) No dwelling shall be erected on a lot which does not abut on a street for a distance of at least 15 feet.

POLICY 1.2.1:

The City of Belle Isle shall continue to adopt LDC's that contain specific ways to implement the Comprehensive Plan, including but not limited to:

- a) Update the City's Subdivision Regulations;
- b) Regulate areas subject to seasonal or periodic flooding;
- c) Regulate use of land and lakes consistent with the Comprehensive Plan;
- d) Ensure compatibility of adjacent land uses;
- e) Maintain the level of service standard for recreation areas and open space;
- f) Regulate signage;
- g) Ensure safe and convenient ingress/egress via interlocal agreements, and parking for all developments;
- h) Protect identified historical sites;
- i) Ensure that development orders and permits shall not be issued which lower the level of service for public facilities and service below the standards adopted in this Comprehensive Plan;
- j) Develop a landscape ordinance, including an arbor section, which requires the use of Xeriscaping.

POLICY 1.2.2:

The Residential land use categories shown on the Future Land Use Map shall have the following maximum densities for both development and redevelopment:

- a) Low Density Residential: 0 to 5.5 units per acre;
- b) Medium Density Residential: 5.6 to 10 units per acre;

* Density shall be defined as the total number of units divided by the number of acres suitable for development (not including wetlands, lakes, muck, etc).

POLICY 1.2.3:

In January 1992, the City of Belle Isle established an Interim Wellhead Protection Program in conjunction with Orange County and St. John's River Water

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ORDINANCE No.: 18-05

AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA; AMENDING THE BELLE ISLE CODE OF ORDINANCES CONCERNING PLANNED DEVELOPMENT DISTRICTS; BY AMENDING PART II, CODE OF ORDINANCES; BY AMENDING SUBPART B, LAND DEVELOPMENT CODE; BY AMENDING CHAPTER 54, ZONING DISTRICTS AND REGULATIONS, ARTICLE III, ZONING CLASSIFICATIONS; BY AMENDING SECTION 54-77, PLANNED DEVELOPMENT DISTRICT PD; PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, Part II of Chapter 163 of the Florida Statutes requires the City's local planning agency to review proposed land development regulations and make recommendations to the City's governing body as to their consistency with the City's Comprehensive Plan; and

WHEREAS, the City of Belle Isle Planning and Zoning Board serves as local planning agency for the City; and

WHEREAS, the City of Belle Isle Planning and Zoning Board, acting in its capacity as the City's Local Planning Agency, has been presented with the proposed revised planned development district regulations incorporated by reference in this Ordinance; and

WHEREAS, the City of Belle Isle Planning and Zoning Board, acting in its capacity as the Local Planning Agency, held a duly noticed and advertised public hearing on April 24, 2018; and

WHEREAS, the City of Belle Isle Planning and Zoning Board, acting in its capacity as the Local Planning Agency, at the April 24, 2018, public hearing, found the revised regulations to be consistent with the City of Belle Isle

1 Comprehensive Plan and recommended that the City Council adopt the revised planned development district
2 regulations; and

3
4 **WHEREAS**, the City Council held two (2) public hearings on _____, and _____, to receive public
5 comments, and considered the recommendation of the Planning and Zoning Board and the proposed planned
6 development district regulations; and

7
8 **WHEREAS**, the Board has found and determined that the adoption of the proposed revised planned
9 development district regulations will foster and preserve the public health, safety and welfare and aid in the
10 harmonious, orderly and progressive development of the City, and thus serve a valid public purpose.

11
12 **NOW, THEREFORE BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF BELLE ISLE, FLORIDA, AS FOLLOWS,**

13 **Section 1. Recitals**

14 The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part
15 of this ordinance.

16
17 **Section 2. Land Development Code Amendment**

18 Chapter 54, Article III of the City Land Development Code Section 54-77 is hereby amended, as follows:

19 **Sec. 54-77. - Planned development district PD.**

20 (a) *Intent and purpose of district.* The intent and purposes of the planned development district are
21 as follows:

22 (1) To provide for planned residential or commercial development communities, compatible with
23 surrounding areas, consistent with the density or intensity permitted under the comprehensive plan,
24 containing a variety of ~~residential~~ structures and diversity of building arrangements. Under no
25

1 circumstances does this district permit ~~residential~~ densities or intensities greater than that available
2 under the land use classification for that property.

3 (2) To allow diversification of uses, structures and open spaces in a manner compatible with existing
4 and permitted uses on abutting properties.

5 (3) To reduce improvement costs through a more efficient use of land and smaller networks of
6 utilities and streets than is possible through application of conventional zoning districts.

7 (4) To ensure that development will occur according to limitations of use, design, density, coverage
8 and phasing as set forth on an approved final development plan.

9 (5) To preserve the natural amenities and environmental assets of the land by encouraging the
10 preservation and improvement of scenic and functional open areas.

11 (6) To encourage an increase in the amount of usability of open space areas by permitting a more
12 economical and concentrated use of building areas than would be possible through conventional
13 ~~subdivision~~ development practices.

14 (7) To provide maximum opportunity for application of innovative concepts of site planning in the
15 creation of aesthetically pleasing ~~living~~ environments on properties of adequate size, shape and
16 location.

17 (b) *Definitions.* For the purposes of the planned development district, the following definitions shall
18 apply:

19 (1) *Open space* means the gross acreage exclusive of buildings, vehicular accessways and parking
20 areas.

21 (2) *Recreation space* means any open space having a minimum size of 10,000 square feet, a
22 minimum average dimension of 100 feet and a minimum dimension of 50 feet, and improved for
23 recreational use. Improved trails and paths may also qualify as recreation space.

1 (c) *Uses permitted.* The following uses shall be permitted in the planned development district if
2 designated on an approved final development plan:

- 3 (1) Attached and detached single-family dwelling units.
4 (2) Attached multifamily dwelling units.
5 (3) Public areas ~~compatible to residential uses and limited to the use only, of the residences of the~~
6 ~~proposed district.~~
7 (4) Communication towers and antennas.
8 (5) Commercial uses consistent with the C-1 or C-2 zoning district.

9 (d) *Site development standards.* Site development standards in the planned development district
10 shall be as follows:

11 ~~(1) The criteria for establishing the densities and height of structures based upon land use~~
12 ~~classification are as follows:~~

13 Maximum Units per Net Acre

14 Net Density 15 (units/acre)	Maximum Height 16 (feet)	Land-Use Classification
17 3.5 or less	35	Low-Density Residential
18 3.6 to 5.5	35	Low-Density Residential
19 5.6 to 10.0	30	Medium-Density Residential
20 10.0 or more	30	High-Density Residential

21 -
22
23 ~~(2)~~ The following site development standards shall apply, unless specifically waived by finding of the
24 board and the council that the unique characteristics of the development in question make
25

1 unnecessary the application of one or more of these provisions in order to carry out the intent and
2 purposes of the planned development district:

3 a. The natural topography, soils and vegetation should be preserved and utilized, where possible,
4 through the careful location and design of circulation ways, buildings and structures, parking areas,
5 recreation areas, open space and drainage facilities. Removal of mature trees shall be compensated
6 through regulations in the tree section.

7 b. All planned development districts shall conform to chapter 50, article III, for landscaping, parking
8 and other development standards.

9 c. In residential planned developments, a A minimum of 25 percent of the gross area of the project
10 shall be designated for recreation and open space. Recreation areas shall include, by way of example
11 not by way of limitation, swimming pools, tennis courts, playgrounds and fitness courses. Open space
12 shall include, by way of example not by way of limitation, lakes, wetlands, fields, and picnic areas.
13 Open space shall not include areas required to meet setbacks, retention ponds and parking areas. All
14 recreation and open space areas used to meet the 25 percent shall be located in areas retained in
15 common ownership. Adequate provisions shall be made to eliminate problems of noise and lights to
16 adjacent property.

17 d. The proposed lighting, access points or activities resulting in high noise levels, and location or
18 arrangement of structures should not be detrimental to existing or future adjacent land uses or to the
19 existing or future development of the neighborhood.

20 e. Streets to be dedicated to the public shall be designed and built in accordance with the
21 appropriate sections of the subdivision regulations. Streets and driveways shall be constructed in
22 accordance with adopted road construction specifications and designed to provide for the free
23 movement and safety of vehicular traffic, and to provide safe, efficient and convenient access to land
24 uses within the development and to roadways adjacent to the development. The local, collector and
25

1 arterial street system must provide adequate access to the development, and properly accommodate
2 traffic generated by the development. Local streets shall provide access within the planned
3 development district in a manner that will discourage through traffic and provide for convenient
4 accessibility to parking areas serving each group of units.

5 f. Wherever practicable, vehicular and pedestrian passageways shall be separated. A system of
6 walkways and bicycle paths between buildings, common open spaces, recreation areas, community
7 facilities and parking areas shall be distinctively designed and adequately lighted where appropriate
8 for nighttime use.

9 g. Central water, sewage, and stormwater management systems, and utility lines and/or easements
10 shall be provided in accordance with the appropriate sections of the subdivision regulations.

11 h. All land shown on the final development plan as common open space, private parks and
12 recreation facilities shall be subject to deed restrictions which ensure the payment of future taxes and
13 the maintenance of areas and facilities for a safe, healthful and attractive living environment.

14 i. In order to protect the lakes and canals from destructive activities, no roadways, buildings or other
15 permanent structures shall be permitted within 50 feet of the normal high-water elevation (~~86.9~~) of
16 the lakes or canals. Nature walkways, benches and tables are not considered permanent for these
17 purposes.

18 (e) *Approval procedure.* The review and approval procedure for a planned development district shall
19 be as follows:

20 (1) *Preapplication conference.* The applicant shall confer with a panel of appropriate city
21 departments prior to submitting an application for a zoning change to the PD district. The conference
22 is intended to give the applicant an opportunity to discuss the proposed development and to benefit
23 from comment by city officials before undertaking the required work program. The panel shall include
24 the following: planning and development, city manager, mayor and administrative services personnel.
25

1 The city engineer and city attorney shall also be included on the panel. Other local governments
2 and/or state agencies may also be asked to serve on the panel on an as-needed basis. The planning
3 and development department shall coordinate the conference, and ensure all other departments and
4 the applicant are notified of the time and place of the conference.

5 (2) *Preliminary concept plan.* Applications for PD districts shall be accompanied by a preliminary
6 concept plan and supporting documents that properly present necessary basic data:

- 7 a. Location and size of entire proposed development.
- 8 b. Existing topographic character of the land.
- 9 c. Existing and proposed land use classifications.
- 10 d. Table showing existing and proposed use by type, density and building sizes.
- 11 e. Location of existing and proposed streets and roadways.
- 12 f. Identification of areas to be dedicated to the public.
- 13 g. Identification of areas for recreation and open space.
- 14 h. Typical examples of each building type proposed.
- 15 i. Location of proposed buildings.
- 16 j. Surrounding zoning.
- 17 k. Other information from the preapplication conference.

18 The applicant shall also identify the present ownership of all land included in the development, the
19 expected sequence of development, and define the objectives and intent of the PD district. The
20 concept plan should provide enough detail to enable all reviewers to understand the way in which the
21 proposed development will function.

22 Since the review of the concept plan is conducted in a similar manner as proposed subdivision plats,
23 the concept plan may serve as the preliminary plat when platting is required, so the review can be
24 done simultaneously.

1 (3) *Approval of preliminary concept plan and PD district.* The board and the council shall review the
2 PD district concept plan the same as a rezoning. Specifically, the notice requirement for a concept plan
3 shall adhere to the same public hearing requirements as a zoning change. If a PD district concept plan
4 is approved by the council, the city manager shall change the zoning map to designate the property as
5 PD district, and indicate the date of approval.

6 (4) *Development plan.* Within nine months after preliminary concept plan approval, the applicant
7 shall submit a development plan and supporting documents. The review is conducted in the same
8 manner as proposed subdivision plats. If platting is required, the final plat shall be submitted
9 simultaneously with the development plan. Development plans shall include the following
10 information:

11 a. Provisions for necessary improvements such as water, sewer, and drainage facilities as well as
12 systems for firefighting and street lighting.

13 b. The location and dimensions of all rights-of-way or easements for streets, pedestrian ways,
14 utilities, watercourses, and greenways, as well as proposed subdivision of land.

15 c. The relationship of building locations, arrangements, uses and heights to open areas, streets,
16 pedestrian ways, landscaping, property lines and adjacent uses.

17 d. Areas proposed to be conveyed, dedicated, or reserved for recreation and open space, and/or
18 public uses.

19 e. Covenants/restrictions, conditions, agreements, and grants which govern the use, maintenance,
20 and continued protection of the PD district and common areas.

21 f. Specified design standards applicable to various portions of the PD district as approved by the
22 council.

23 If the applicant fails to obtain approval of the development plan within one year after approval of the
24 concept plan, the zoning classification shall revert to its previous zoning classification. However, if the
25

1 previous zoning classification is not compatible with the existing and/or future land use classification
2 for that property, the city shall administratively rezone the property to an appropriate zoning
3 classification. The applicant may apply to the council once for an extension of this deadline for a time
4 period not to exceed one year.

5 (5) *Approval of the development plan.* The council shall review the development plan for substantial
6 compliance with the concept plan and other designated requirements. Upon approval by the council
7 at a public hearing, the city manager shall designate said approval and date on the official zoning map
8 for the PD district included in the approved development plan. After the effective date of such
9 approval, the use of land and the construction, modifications, or alterations of any buildings,
10 structures or other improvements within the planned development will be governed by the approved
11 development plan rather than other standards.

12 (6) *Amendments to concept or development plans.* Substantial proposed changes in requested uses,
13 densities, development sequences or other specifications of the concept or development plan may be
14 allowed only after a public hearing and an approval from the council based upon a recommendation of
15 the board. Any changes shall be noted on the official zoning map. Minor proposed changes,
16 alterations, or modifications that do not change the requested uses, densities, or development
17 sequences shall be reviewed and approved by the mayor based upon a recommendation of the
18 director of planning and development.

19 (7) *Construction requirements.* Approved development plans shall remain in full force and effect for
20 as long as the applicant carries on substantial, continuous development. The term "substantial" shall
21 mean that physical improvements are visible and continuous shall mean that the developer
22 commences construction in accordance with approved plans within 12 months of approval, and does
23 not cease development for a period longer than 60 days. The council shall have the authority to grant
24 an extension of this time period for up to 12 months, provided a written request is filed with the
25

1 mayor at least 30 days prior to the expiration of the time period. If the applicant either fails to carry on
2 substantial, continuous development or obtain an extension from the council within one year after
3 approval of the development plan, the zoning classification shall revert to its previous zoning
4 classification. If the previous zoning classification is not compatible with the existing and/or future
5 land use classification for that property, the department shall administratively rezone the property to
6 an appropriate zoning classification.

7 (8) *Breach of agreement.* An unapproved deviation from the accepted development plan shall in
8 addition to all other violations under the Land Development Code and Code of Ordinances constitute a
9 breach of agreement between the applicant and the city. Such deviation may cause the city to
10 suspend construction until such time as the deviations are corrected or the development plan is
11 appropriately modified by the applicant and approved by the council. Failure to correct unauthorized
12 deviations shall be cause for the development plans to be revoked. Construction shall cease and no
13 certificate of occupancy shall be issued until a modified development plan is approved or the
14 deviation is corrected.

15
16 **SECTION 3. Severability**

17 If any section, subsection, sentence, clause, phrase, word, provision or portion of this Ordinance is held by a
18 court of competent jurisdiction to be invalid, unlawful or unconstitutional, such shall not invalidate or impair
19 the validity, force or effect of any other section or portion of a section or subsection of this Ordinance.
20

21 **SECTION 4. Conflicts**

22 In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this
23 Ordinance controls to the extent of the conflict, as allowable under the law.

24 **SECTION 5. Codification**
25

1 This Ordinance shall be incorporated into the Land Development Code of the City of Belle Isle, Florida. Any
2 section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate
3 the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions,
4 alterations, and omissions not affecting the construction or meaning of this ordinance or the Land
5 Development Code may be freely made.

6
7 **SECTION 6. Effective date**

8 This Ordinance shall take effect immediately upon its final passage and adoption by the City Council of the City
9 of Belle Isle, Florida.

10
11 First Reading held this _____ day of _____, 2018

12 Second Reading held this _____ day of _____, 2019

13 Advertised for Second Reading on the _____ day of _____ 2019.

	YES	NO	ABSENT
16 Ed Gold	_____	_____	_____
17 Anthony Carugno	_____	_____	_____
18 Jeremy Weinsier	_____	_____	_____
19 Mike Sims	_____	_____	_____
20 Harvey Readey	_____	_____	_____
21 Jim Partin	_____	_____	_____
22 Sue Nielsen	_____	_____	_____

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LYDIA PISANO, MAYOR

ATTEST:

Yolanda Quiceno, CMC-City Clerk

Approved as to form and legality

Kurt Ardaman, City Attorney

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STATE OF FLORIDA

COUNTY OF ORANGE

I, **Yolanda Quiceno, CITY CLERK** of the City of Belle Isle do hereby certify that the above and foregoing document ORDINANCE 18-05 was duly and legally passed by the Belle Isle City Council, in session assembled on the _____ day of _____ 2018, at which session a quorum of its members were present.

Yolanda Quiceno, CMC-City Clerk



**CITY OF BELLE ISLE, FLORIDA
CITY COUNCIL AGENDA ITEM COVER SHEET**

Meeting Date: March 5, 2019

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Lot Split for 7020 Seminole

Background: The City received an application for a lot split for 7020 Seminole Drive from Bobby and Cindy Lance. This lot split application cites the BIMC 50-35(b)(3) for minimum lot width. The City Attorney will have to give an opinion if this is the correct reference since it appears to apply for subdivisions. The requirement of 85' width to make this a standard size lot is under BIMC Section 50-33: With the prior approval of the city council, any lot or parcel not located within a planned unit development may be divided by lot split so long as the two resulting lots or parcels meet in every respect the Land Development Code's requirements for newly created lots or parcels.

Under the LDC, lot width is defined as ***the horizontal distance between the side lot lines, measured at right angles to the depth.*** Lot Depth is defined as ***the distance measured from the midpoint of the front line to the midpoint of the opposite rear line of the lot.*** Therefore it can be interpreted that, at the very least, width would be measured at both the front and rear lines to determine whether minimum width is met since it is measured at right angles to the depth and depth is determined by both the front and rear lot lines. If the Council, on the advice of the City Attorney, uses this interpretation, then the lots are still considered substandard lots and therefore a variance is needed prior to the Council approving this application.

Staff Recommendation: Review the application and consider the City Attorney's opinion on the measurement of the lot width to determine if the lots in the current configuration meet the criteria of a standard lot. If so, then approve the application. If not, then deny the application.

Suggested Motion: If the Council determines that the application meets the LDC criteria for a lot split by creating two standard lots, then the motion would be: **I move to approve the lot split application of Bobby and Cindy Lance for the property located at 7020 Seminole Drive.**

If the Council determines that the application does not meet the LDC criteria for a lot split by creating two standard lots, then the motion would be: **I move to deny the lot split application of Bobby and Cindy Lance for the property located at 7020 Seminole Drive.**

Alternatives: Continue to move forward with the next steps in the Request for Relief process.

Fiscal Impact: \$18,500 attorney fees and approximately \$300 in Mediator fees

Attachments: Cover Letter from Lance Attorney
Lot split application



Callan Law Firm, P.A.

Bob Francis
City Manager
City of Belle Isle
1600 Nela Ave.
Belle Isle, FL 32809

*Via Electronic Mail to:
bfrancis@belleislefl.gov*

Re: Application of Lot Split – 7020 Seminole Drive

Dear Mr. Francis,

As you are aware, my clients Bobby and Cindy Lance (“Lance’s”) have submitted to the City of Belle Isle (“City”) an Application of Lot Split (“Application”) of their property located at 7020 Seminole Drive, Belle Isle, FL 32812 (“Property”).

The approval by the City of the Lance’s Application is a ministerial action, and not discretionary. All Application requirements have been satisfied under Sections 50-33(6) and 50-35(b)(3) of the City Code. (See copy of Application of Lot Split Attached hereto). As such, the Lance’s are entitled to Board Approval of their Application as a matter of right.

The Application of Lot Split was submitted to you on the morning of January 31, 2019. The Application of Lot Split was also submitted to the City Clerk by the Lance’s on the afternoon of January 31, 2019. Despite my clients’ written request to you that the Application be placed on the Tuesday, February 5, 2019 Agenda, as they were entitled to, the City has failed to place same on the Agenda, instead indicating it could not hear the Application for some weeks later.

Nonetheless, the Lance’s have received confirmation from you that their Application will be placed on the Agenda for the March 5, 2019 Board Meeting. As all requirements for a lot split are satisfied, and approval of same is a ministerial function, the Lance’s fully anticipate that the Board Approve their request at the March 5, 2019 Board Meeting. Therefore, any denial of the Lance Request, whether conditional or otherwise, is grounds for legal action against the City. Thank you and I look forward to finalizing this matter soon.

Very Truly Yours,



Logan J. Opsahl, Esq.

Encl: (as stated)
Cc: Dan Langley

January 31, 2019

For the
File
P.R.L.

Dear Bob Francis,

Cindy and I desire to split the lot located at 7020 Seminole Drive into two lots. This split is a matter of right as each lot will have portions that are 85' in width.

Under (6) of Section 50-33 of the City Code, an applicant is only required to submit a (1) a survey and legal description both certified by a registered state surveyor of the property to be divided (2) payment as set forth in the Land Development Code and (3) the proof of ownership of the property. The City clerk has indicated that there is no lot split fee and no lot split application. This was also stated by you earlier.

Enclosed are: the (1) Survey Legal Description dated January 21, 2019 by Mr. Blankenship of Atlantic Surveying LLC, and (2) a copy the deed of ownership into Cynthia G. Lance and Paul Robert Lance, husband and wife, recorded in OR BK 7750 PG 0857, Public Records, Orange County, FL, which is our proof of ownership.

Each of the lots are not located within a planned unit development. Each of the proposed lots meet the requirements for an 85' wide lot width and all other requirements of the land development code. Each lot will contain over 24,000 SF of land above the Ordinary High-Water Line of Lake Conway. This greatly exceeds the 10,000 SF minimum contained in the code. Each lot satisfies the definition of lot width within the code, as portions of each lot are 85 feet in width. The only requirement for a minimum lot width is in Section 50-35(b)(3) which states "each lot, for a minimum distance of 15 feet, shall abut a public street." Lot width is defined as "the horizontal distance between the side lot lines, measured at right angles to the depth." Each of the two lots Parcel A and B, meet the 85-foot requirement.

And, the final document included (3) is a notice of no further lot split executed by the owner of the property for the lot split.

The approval by the City is an administrative action, not discretionary. Please set this on the agenda for the next Belle Isle City Council meeting to be held on Tuesday February 5, 2019.

Respectfully Submitted,


Paul R., Bobby Lance

JAN 31 10:04 AM '19

preliminary plat, the director shall forward a composite report of the findings to the applicant. The composite report shall reference the specific sections of the applicable regulations or the portions of the approved preliminary plat to which the proposed final plat does not conform. The applicant may revise the proposed plat and resubmit or withdraw the proposed plat. The applicant will have up to 180 days from the date of the original submittal to resubmit a revised proposed final plat. After 180 days the proposed final plat shall be deemed to be withdrawn, and if the one year from approval date of the preliminary plat has lapsed, the approved preliminary plat shall become null and void. If one year has not lapsed, the preliminary plat shall be valid until the year has lapsed, after which time it shall be null and void.

4. *Approval of final plat.* If the proposed plat is found to conform to the above requirements, the applicant shall be required to submit 16 copies of the proposed final plat to the city. The proposed final plat shall then be reviewed by the board for compliance with this article. The board shall recommend to the council the approval, approval with conditions, or denial of the proposed final plat. The council shall uphold or reverse the recommendation of the board. In denying any proposed final plat, the council or the board shall provide reasons for such action, making reference to specific sections in these regulations.
 5. *Time limit.* Approved preliminary and final plats shall be automatically voided if a construction conference has not commenced within one year from the date of final plat approval. The council may grant a time extension of up to one year upon a written request from the applicant.
- (4) *Recording of final plat.* The applicant shall have the approved final plat recorded with the county comptroller. The applicant shall provide the director with a copy of the recorded plat. No plat in the city subject to these regulations shall be recorded, whether as an independent instrument or by attachment to another instrument entitled to record, unless and until such plat has been approved by the council. In addition, all fees related to the recording of the plat shall be paid by the applicant.
- (5) *Fees.* All fees associated with the review of a proposed subdivision shall be due at the time of application and are payable to the city. Said fees shall be in accordance with chapter 54, article IV, division 4.
- (6) *Lot split.*
- a. *Submission requirements.* The applicant shall submit a survey and legal description both certified by a registered state surveyor of the property as it is to be divided, payment as set forth in this Land Development Code and proof of ownership acceptable to the city.
 - b. *Requirements.* With the prior approval of the city council, any lot or parcel not located within a planned unit development may be divided by lot split so long as the two resulting lots or parcels meet in every respect the Land Development Code's requirements for newly created lots or parcels. No lot or parcel nor any portion of any lot or parcel which has been created by a lot split shall be further divided by lot split.
 - c. *Notice.* A notice of no further lot split shall be fully executed by the owner of the property submitted for lot split which notice must be approved by the city and such notice shall be recorded in the public records of the county prior to the issuance of any building permit for lots or parcels created by lot split. The form of the notice shall be in recordable form and in substance substantially in accordance with the following: "The property described on the attached Exhibit 1 was the subject of a lot split within the City of Belle Isle, Florida, and no further division of all or any portion of the property described on the attached Exhibit 1 by the lot split procedure in the City of Belle Isle shall be allowed. Further subdivision by other methods may or may not be allowed."

(Ord. No. 92-6, ch. IV, art. A, § 2, 12-15-1992; Ord. No. 95-5, §§ 2, 3, 5-16-1995)

Land Development Code



Prepared by:
BARBIE BECKETT
 Internet Title Services, Inc.
 660 Palm Springs Drive
 Altamonte Springs, Florida 32701

File Number: 13206

INSTR 20040816578
 OR BK 07750 PG 0857 PGS=1
 MARTHA O. HAYNIE, COMPTROLLER
 ORANGE COUNTY, FL
 12/22/2004 02:13:20 PM
 DEED DOC TAX 2,999.50
 REC FEE 10.00
 LAST PAGE

JAN 31 11 19 AM '05

General Warranty Deed

Made this November 24, 2004 A.D. By Edward P. Hale, an unmarried man, whose address is: 2131 Majestic Woods Blvd. Apopka FL 32712, hereinafter called the grantor, to Cynthia G. Lance and Paul Robert Lance, husband and wife, whose post office address is: 3401 Trentwood Blvd., Orlando, FL. 32812, hereinafter called the grantees:

(Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of Ten Dollars, (\$10.00) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Orange County, Florida, viz:

The East 45 feet of Lot 15, all of Lot 16 and the West 35 feet of Lot 17, Block B, Lake Conway Park, according to the Plat thereof as recorded in Plat Book G, Page 138, Public Records of Orange County, Florida; including all rights, title, interest, claim and demand which the grantor has in and to the lands to lake as recorded in Deed Book 752, Page 446, Public Records of Orange County, Florida, insofar only as said lands lie between the above described property and the lake aforesaid.

Parcel ID Number: 29-23-30-4389-02150

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2004.

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

Barbie A. Beckett
 Witness Printed Name BARBIE A. BECKETT

Edward P. Hale (Seal)
 Edward P. Hale
 Address:

Bruce C. Myrick
 Witness Printed Name Bruce C. Myrick

_____(Seal)
 Address:

State of Florida
 County of Seminole

The foregoing instrument was acknowledged before me this 24th day of November, 2004, by Edward P. Hale, an unmarried man, who is/are personally known to me or who has produced driver's license as identification.

Barbie Beckett
 Notary Public
 Print Name: BARBIE BECKETT
 My Commission Expires: _____

DEED Individual Warranty Deed - Legal on Face
 Clovers' Choice



*COPY
Tom Callan has
the original*

Prepared by and return to:
Callan Law Firm, P.A.
Thomas P. Callan, Esq.
921 Bradshaw Terrace
Orlando, FL 32806

Property Appraisers Parcel Identification
Folio Number(s): 29-23-30-4389-02-150

NOTICE OF LOT SPLIT

The described property, Parcel A and B from the survey, on the attached Exhibit 1 was the subject of a lot split within the City of Belle Isle, Florida, and no further division of all or any portion of the property described on the attached Exhibit 1 by the lot split procedure in the City of Belle Isle shall be allowed. Further subdivision by other methods may or may not be allowed.

Signed, sealed and delivered
in the presence of:

[Signature]
Print Witness Name: Logan Oprea

By: *[Signature]*
Paul Robert Lance

[Signature]
Print Witness Name: Katherine Ewing

Address of Owner:
7020 Seminole Drive
Belle Isle, FL 32812

STATE OF FLORIDA
COUNTY OF orange

The foregoing instrument was acknowledged before this 30 day of Jan, 2019, by Paul Lance who is personally known to me or who has produced _____ as identification, and who did/did not take an oath.



[Signature]
Notary Public Signature
Print Notary Name: _____
My Commission Expires: _____

[Affix Notary Seal]

Signed, sealed and delivered
in the presence of:

[Signature]
Print Witness Name: Logan Opsahl


By: [Signature]
Cynthia G. Lance

[Signature]
Print Witness Name: Katherine Ewing

Address of Owner:
7020 Seminole Drive
Belle Isle, FL 32812

STATE OF FLORIDA
COUNTY OF orange

The foregoing instrument was acknowledged before this 30 day of Jan, 2019, by
Cynthia Lance, who is personally known to
me or who has produced _____ as identification, and who
did/did not take an oath.

 Katherine Ewing
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF980541
Expires 5/9/2020

[Signature]
Notary Public Signature
Print Notary Name: _____
My Commission Expires: _____
[Affix Notary Seal]

JAN 31 '19 PM 4:00

PLAT OF BOUNDARY SURVEY

PARENT TRACT:

The East 45 feet of Lot 15, all of Lot 16, and the West 35 feet of Lot 17, and land to Lake, Block B, LAKE CONWAY PARK, according to the Plat thereof, as recorded in Plat Book G, Page 138, of the Public Records of Orange County, Florida.

Parcel A:

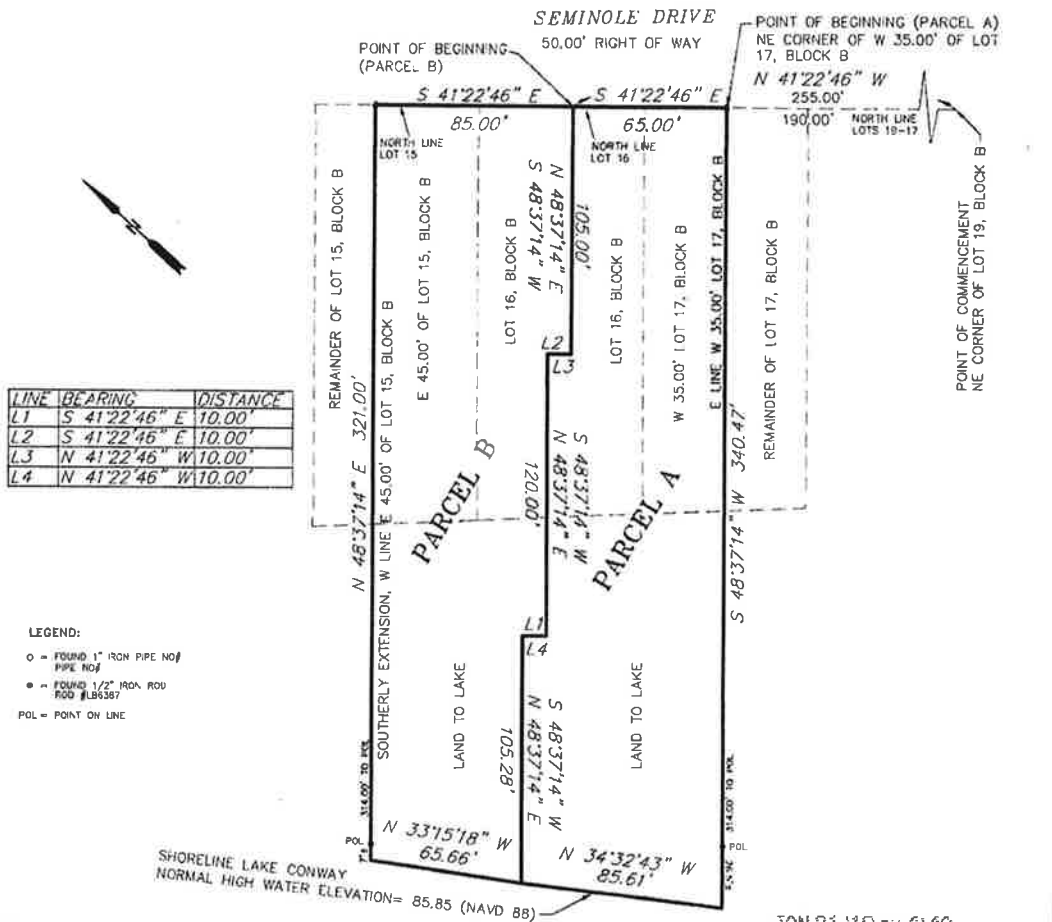
That part of the Lot 16, and the West 35.00 feet of Lot 17, and land to Lake, Block B, LAKE CONWAY PARK, according to the Plat thereof, as recorded in Plat Book G, Page 138, of the Public Records of Orange County, Florida, more particularly described as follows: Commence at the Northeast corner of Lot 19, Block B, of said LAKE CONWAY PARK, thence run N 41°22'46" W along the North line of Lots 19 through 17, Block B of said LAKE CONWAY PARK 190.00 feet to the Northeast corner of aforesaid West 35.00 feet of Lot 17 and the extension thereof 340.47 feet more or less to the shoreline of Lake Conway; thence N 34°32'43" W along said shoreline 85.61 feet; thence N 48°37'14" E 105.28 feet; thence S 41°22'46" E 10.00 feet; thence N 48°37'14" E 120.00 feet; thence S 41°22'46" E 10.00 feet; thence N 48°37'14" E 105.00 feet to the North line of aforesaid Lot 16; thence S 41°22'46" E 65.00 feet to the Point of Beginning.

Containing 25,207 square feet (0.579 acres), more or less.

Parcel B:

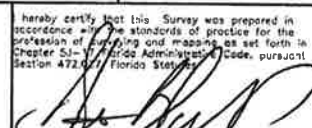
The East 45.00 feet of Lot 15 and that part of Lot 16, and land to Lake, Block B, LAKE CONWAY PARK, according to the Plat thereof, as recorded in Plat Book G, Page 138, of the Public Records of Orange County, Florida, more particularly described as follows: Commence at the Northeast corner of Lot 19, Block B, of said LAKE CONWAY PARK, thence run N 41°22'46" W along the North line of Lots 19 through 16, Block B of said LAKE CONWAY PARK 255.00 feet to the Point of Beginning; thence S 48°37'14" W 105.00 feet; thence N 41°22'46" W 10.00 feet; thence S 48°37'14" W 10.00 feet; thence N 41°22'46" W 10.00 feet; thence S 48°37'14" W 105.28 feet more or less to the shoreline of Lake Conway; thence N 33°15'18" W along said shoreline 65.66 feet to the Southerly extension of the West line of aforesaid Lot 15; thence N 48°37'14" E along said West line 321.00 feet to the North line of said Lot 15; thence S 41°22'46" E 85.00 feet to the Point of Beginning.

Containing 24,477 square feet (0.562 acres), more or less.



SURVEYOR'S NOTES:

1. THE SURVEYOR DID NOT PERFORM AN ABSTRACT OF TITLE. THE ABOVE REFERENCED PROPERTY MAY BE SUBJECT TO ADDITIONAL EASEMENTS, RIGHTS-OF-WAY AND RESTRICTIONS OF RECORD, IF ANY.
2. PARCELS A AND B SHOWN HEREON FOR A PROPOSED LOT SPLIT.
3. REPRODUCTIONS OF THIS SKETCH ARE NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
4. BEARINGS SHOWN HEREON ARE BASED ON THE NORTH LINE OF LOT 15, AS BEING S41°22'46"E (ASSUMED).
5. NO IMPROVEMENTS LOCATED THIS DATE.

DATE: 1-21-19	SCALE: 1" = 60'	CAL. BY: SEB	DRAWN BY: SEB	JOB NO. 119001B
Date	Revisions	<p>ATLANTIC SURVEYING 308 S. DILLARD STREET WINTER GARDEN, FLORIDA 34787 (407) 656-4993/FAX (407) 877-9983</p> <p>hereby certify that this Survey was prepared in accordance with the standards of practice for the profession of Surveying and Mapping as set forth in Chapter 53-117 Florida Administrative Code, pursuant to Section 472.07, Florida Statutes.</p>  STEVEN E. BLANKENSHIP P.S.M. #5361 STATE OF FLORIDA		

PLAT OF BOUNDARY SURVEY

PARENT TRACT:

The East 45 feet of Lot 15, all of Lot 16, and the West 35 feet of Lot 17, and the West 138, of the Public Records of Orange County, Florida, according to the Plat thereof, as recorded in Plat Book G, Page 138, of the Public Records of Orange County, Florida.

Parcel A:

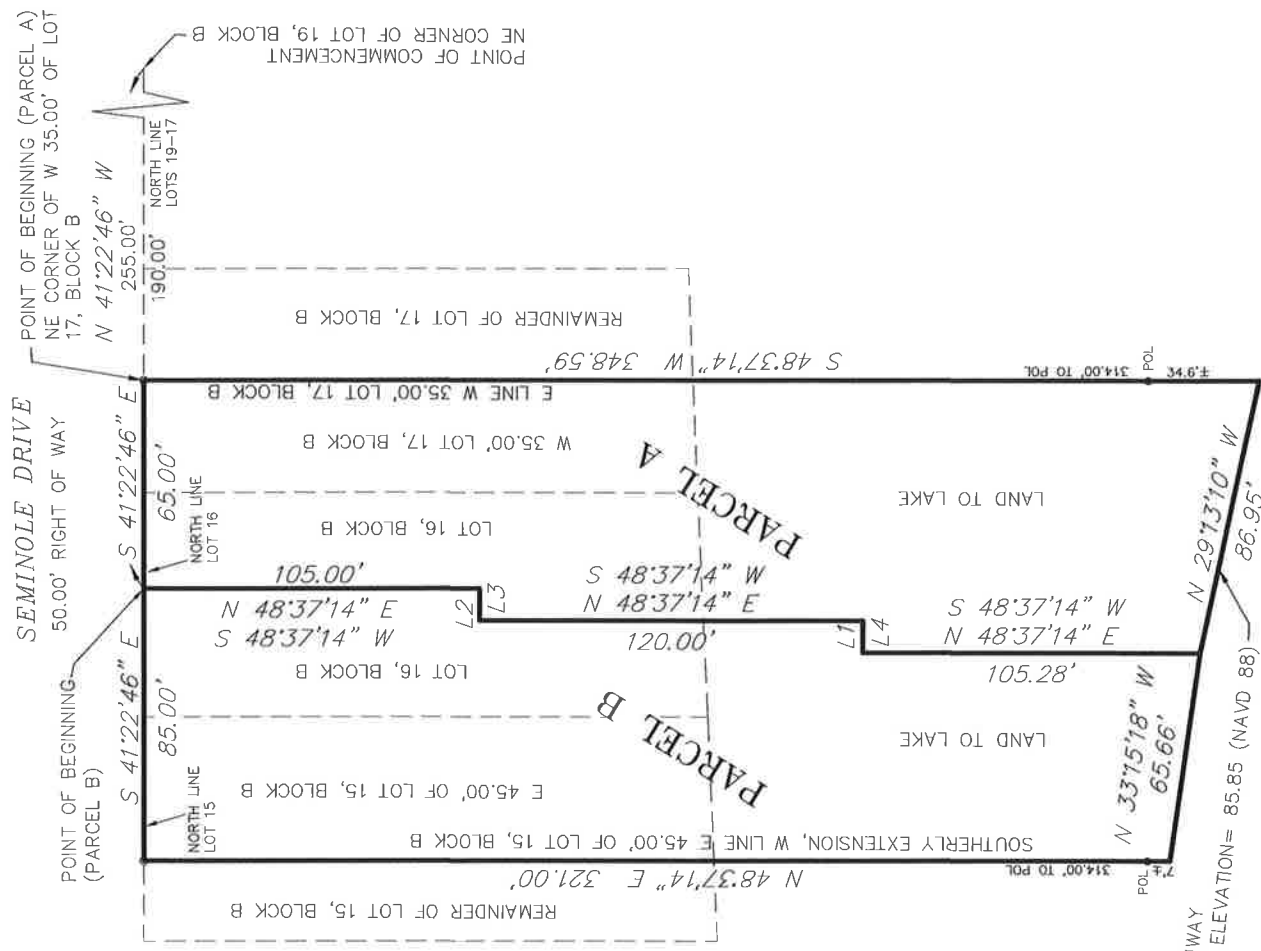
That part of the Lot 16, and the West 35.00 feet of Lot 17, and land to Lake, Block B, LAKE CONWAY PARK, according to the Plat thereof, as recorded in Plat Book G, Page 138, of the Public Records of Orange County, Florida, more particularly described as follows: Commence at the Northeast corner of Lot 19, Block B, of said LAKE CONWAY PARK, thence run N 41°22'46" W along the North line of Lots 19 through 17, Block B of said LAKE CONWAY PARK 190.00 feet to the Northeast corner of aforesaid West 35.00 feet of Lot 17 for the Point of Beginning; thence S 48°37'14" W along the East line of said West 35.00 feet of Lot 17 and the extension thereof 348.59 feet more or less to the shoreline of Lake Conway; thence N 29°13'10" W along said shoreline 86.95 feet; thence N 48°37'14" E 105.28 feet; thence S 41°22'46" E 10.00 feet; thence N 48°37'14" E 10.00 feet; thence S 41°22'46" E 10.00 feet; thence N 48°37'14" E 105.00 feet to the North line of aforesaid Lot 16; thence S 41°22'46" E 65.00 feet to the Point of Beginning.

Containing 25,552 square feet (0.587 acres), more or less.

Parcel B:

The East 45.00 feet of Lot 15 and that part of Lot 16, and land to Lake, Block B, LAKE CONWAY PARK, according to the Plat thereof, as recorded in Plat Book G, Page 138, of the Public Records of Orange County, Florida, more particularly described as follows: Commence at the Northeast corner of Lot 19, Block B, of said LAKE CONWAY PARK; thence run N 41°22'46" W along the North line of Lots 19 through 16, Block B of said LAKE CONWAY PARK 255.00 feet to the Point of Beginning; thence S 48°37'14" W 105.00 feet; thence N 41°22'46" W 10.00 feet; thence S 48°37'14" W 10.00 feet; thence N 41°22'46" W 10.00 feet; thence S 48°37'14" W 105.28 feet to the Southernly extension of the West line of aforesaid East 45.00 feet of Lot 15; thence N 33°15'18" W along said shoreline 65.66 feet to the Southernly extension of the West line of aforesaid East 45.00 feet of Lot 15; thence N 48°37'14" E along said West line 321.00 feet to the North line of said Lot 15; thence S 41°22'46" E 85.00 feet to the Point of Beginning.

Containing 24,477 square feet (0.562 acres), more or less.



SURVEYOR'S NOTES:

1. THE SURVEYOR DID NOT PERFORM AN ABSTRACT OF TITLE. THE ABOVE REFERENCED PROPERTY MAY BE SUBJECT TO ADDITIONAL EASEMENTS, RIGHTS-OF-WAY AND RESTRICTIONS OF RECORD, IF ANY.
2. PARCELS A AND B SHOWN HEREON FOR A PROPOSED LOT SPLIT.
3. REPRODUCTIONS OF THIS SKETCH ARE NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
4. BEARINGS SHOWN HEREON ARE BASED ON THE NORTH LINE OF LOT 15, AS BEING S41°22'46"E (ASSUMED).
5. NO IMPROVEMENTS LOCATED THIS DATE.

DATE: 2-27-19 SCALE: 1" = 60'

CAL. BY: SEB DRAWN BY: SEB

JOB NO.: 19001B

Date Revisions

LAKE CONWAY

ATLANTIC SURVEYING
 308 S. DILLARD STREET
 WINTER GARDEN, FLORIDA 34787
 (407) 656-4993/FAX (407) 877-9983

I hereby certify that this Survey was prepared in accordance with the standards of practice for the profession of surveying and mapping as set forth in Chapter 5J-17 Florida Administrative Code, pursuant to Section 472.027, Florida Statute.

STEVEN E. BLANKENSHIP P.S.M. #5361
 STATE OF FLORIDA



**CITY OF BELLE SLE, FLORIDA
CITY COUNCIL AGENDA ITEM COVER SHEET**

Meeting Date: March 5, 2019

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Franchise Agreement with Duke Energy

Background: In reviewing the City's budget since becoming City Manager, I have questioned why the City does not collect franchise fees from Duke Energy. I spoke with Debbie Clements, the Government and Community Relations Manager from Duke and she stated that the City never wanted to do a franchise, but Duke would not object to a franchise agreement. A utility franchise is a contract between a city and a utility company that outlines certain requirements for the utility to use the city's public rights of way. The establishment of franchise agreements between cities and utilities is a customary business practice and legal process outlined by the state statutes. The City sets the structure of any proposed franchise fee and can only apply the franchise fee for customers within the jurisdiction of the City.

The franchise fees are a pass-through cost, from the customers within the city's jurisdiction to the City. These fees are listed as a separate item on customers' bills, showing the amount and the city's name to which the fee is payable. The company does not make any money on the franchise fee.

The City currently does not receive any form of compensation from Duke in exchange for use of public rights-of-way.

In 2003, the City of Belle Isle was interested in charging a franchise fee for electric; however, it did not happen.

According to Ms. Clements, Belle Isle is the only city in Orange County that Duke serves which is not having them collect and remit franchise fees. She calculated fees at 5% and 6%. The Council directed that the City staff investigate other revenue sources for this next budget year. This is one of several that the staff will be introduced.

Staff Recommendation: Move for with a 5% franchise fee.

Suggested Motion: I move that we approve a franchise agreement with Duke Energy with a 5% fee and direct the City Attorney to work with the City Manager to prepare the necessary documents.

Alternatives: Do not approve the agreement.

Fiscal Impact: 5% - \$375,857; 6% - \$451,028

Attachments: Calculations at 5% and 6%
 Article on Franchise Fees
 Draft Ordinance

Franchise Fee Estimate

City of Belle Isle

January 3, 2019

Estimate based on 2017 year end statistics

	Calendar '17 Revenue**	Projected Oct18-Sep19 Revenue	Amount for fee calculation*
Revenue Class			
01 - Residential	\$6,141,384	\$6,525,034	\$6,525,034
03 - Commercial	\$657,052	\$693,722	\$693,722
05 - Industrial	\$464,529	\$495,321	\$495,321
06 - Public Lighting	\$0	\$0	\$0
Electric Service Rev.	\$7,262,966	\$7,714,077	\$7,714,077
Streetlights Only	\$6,579		\$6,579
Revenue for Calculation			\$7,720,656
Franchise Fee Percentage			5.00%
Franchise Amount due (includes Gross Receipts Tax and Regulatory Assessment Fee paid to state)			\$386,033
Amount Due			\$386,033
Less Gross Receipts Tax and Regulatory Assessment collected and paid to State			(10,176)
Franchise Net Liability to City			\$375,857

* Based on Franchise Agreement

** Includes Gross Receipts Tax, Franchise Fees and Regulatory Assessment Fees

NOTES:

1. This is a high level estimate that does not factor in specific characteristics of customers within each revenue class. For example, while this does consider overall customer mix within the jurisdiction, it does not consider specific rates that may be applicable within the revenue class. These are blended averages for each revenue class.

2. This estimate is based on current rates filed with the Florida Public Service Commission. Specific components of the bill including the fuel factor, nuclear construction costs, environmental and other cost factors may change for the fiscal year depending upon filings that are typically made each year for these components. Actual franchise fees will vary based on any changes in these cost factors that are approved by the PSC during the fiscal time period.

Franchise Fee Estimate

City of Belle Isle

January 3, 2019

Estimate based on 2017 year end statistics

	Calendar '17 Revenue**	Projected Oct18-Sep19 Revenue	Amount for fee calculation*
Revenue Class			
01 - Residential	\$6,141,384	\$6,525,034	\$6,525,034
03 - Commercial	\$657,052	\$693,722	\$693,722
05 - Industrial	\$464,529	\$495,321	\$495,321
06 - Public Lighting	\$0	\$0	\$0
Electric Service Rev.	\$7,262,966	\$7,714,077	\$7,714,077
Streetlights Only	\$6,579		\$6,579
Revenue for Calculation			\$7,720,656
Franchise Fee Percentage			6.00%
Franchise Amount due (includes Gross Receipts Tax and Regulatory Assessment Fee paid to state)			\$463,239
Amount Due			\$463,239
Less Gross Receipts Tax and Regulatory Assessment collected and paid to State			(12,211)
Franchise Net Liability to City			\$451,028

* Based on Franchise Agreement

** Includes Gross Receipts Tax, Franchise Fees and Regulatory Assessment Fees

NOTES:

1. This is a high level estimate that does not factor in specific characteristics of customers within each revenue class. For example, while this does consider overall customer mix within the jurisdiction, it does not consider specific rates that may be applicable within the revenue class. These are blended averages for each revenue class.
2. This estimate is based on current rates filed with the Florida Public Service Commission. Specific components of the bill including the fuel factor, nuclear construction costs, environmental and other cost factors may change for the fiscal year depending upon filings that are typically made each year for these components. Actual franchise fees will vary based on any changes in these cost factors that are approved by the PSC during the fiscal time period.

FERNANDINA OBSERVER DAILY NEWS

What the heck is a franchise fee anyway?

Submitted by Suanne Z. Thamm

Reporter – News Analyst

People understand terms like sales tax, gas tax and property tax better than they understand the term franchise fee. In general, a municipal franchise fee is the “rent” that a utility company pays the city to use the right-of-ways (ROW) for its lines, pipes, poles, etc. While the utility company collects this fee, it is turned over to the city, which uses it as a revenue stream. Laws governing municipal franchise fees vary from state to state. The Fernandina Beach City Attorney helped clarify the situation in Florida to better help *Fernandina Observer* readers understand the recent budget controversy over the role of franchise fees in the city of Fernandina Beach.



CITY ATTORNEY,
TAMMI BACH

According to Fernandina Beach City Attorney Tammi Bach, “First, it is important to understand the difference between franchise fees and utility taxes. Utility taxes are taxes on utilities [like electric] that cap at 10% and can only be applied to certain parts of the sale. ([Click here for the link to Florida Statutes.](#))

Local and state communications services taxes are taxes on telecommunications based upon Florida state law, not municipal law, and replace municipal franchise fees on telecommunications.”

So what about franchise fees? Bach added, “Franchise fees are entirely different and are not a tax but a fee negotiated by electric utilities (no cap) by agreement with municipalities for the right to use the public rights-of-way. Cable and telephone franchise fees are no longer allowed in Florida ([Click here for further information.](#)) Franchise fees are required to be “passed through” to customers since 1976 based upon a court case involving City of Plant City, FL.”

ORDINANCE # _____

AN ORDINANCE GRANTING TO DUKE ENERGY FLORIDA, LLC. d/b/a DUKE ENERGY, A NON-EXCLUSIVE ELECTRIC UTILITY RIGHTS OF WAY UTILIZATION FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS RELATED TO THE OCCUPANCY OF MUNICIPAL STREETS AND RIGHTS OF WAY IN THE CITY OF **TOWN/CITY**, FLORIDA, FOR THE PURPOSE OF PROVIDING ELECTRIC SERVICE; PROVIDING FOR SEVERABILITY OF PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY **COMMISSION/COUNCIL** OF **TOWN/CITY**, FLORIDA:

SECTION 1 - Findings

The City deems it necessary, desirable and in the interest of its citizens to establish by ordinance a rights 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 **Town/City**, Florida, for the purpose of providing electric services.

SECTION 2 - Short Title

This ordinance shall be known and may be cited as the “Duke Energy Rights 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” – 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” – Duke Energy Florida, LLC d/b/a Duke Energy, its successors and assigns.

(D) “City” or “Grantor” – The City of **Town/City**, Florida.

(E) “Electric Energy Provider” – 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 or 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 in 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 County.

(G) "Electric Utility System" – 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 to limited to electric light, heat, power and energy facilities, and a generation, transmission, and distribution system, with such extensions thereof and additions hereto as shall hereafter be made.

(H) "Franchise Area" – That area for which Company provides electric utility service within the corporate City limits of the City.

(I) "Facilities" – The meaning as set forth in Section 4.

(J) "Person" – Any person, firm, partnership, association, corporation, company or organization of any kind.

(K) "Public Service Commission" – The Florida Public Service 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 have, maintain, or 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 Way” 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 Way, the City expressly acknowledges and agrees that Company shall not be required to pull or pay for permits to place its Facilities or perform any work maintenance activities on or related to its Facilities within the Rights of Way.

(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 shall 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:

Duke Energy
Tax Team DT02-V
9700 David Taylor Drive
Charlotte NC 28262
Or by email to: TaxTeam@duke-energy.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 Commission; 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 (30) 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 and adoption, then this Ordinance shall be null and void, and of no force and effect of any kind. Commencing on the Effective Date, the term of the Franchise granted herein shall be for a period of xx (xx) years.

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. 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.

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 at the rate of ten percent (10%) per annum.

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

(C) The City acknowledges that all classifications and categories of retail 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, 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 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 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 (0), 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

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 rights 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.

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. 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.

(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 10 (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 documents shall be available to City upon City's reasonable request: copies of rules, regulations, and procedures 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 as determined by 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 (3) 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 at the rate of ten percent (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 ninety (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 Alachua 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 enter County, Florida, or, if a federal claim, in the U.S. District Court in and for the Middle District of Florida, Ocala 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
P.O. Box xx
City, FL Zip
Phone: (xxx) xxx-xxxx
Facsimile: (xxx) xxx-xxxx

To Company:
Gov't and Community Relations
Duke Energy
P.O. Box 14042
St. Petersburg, FL 33733-4042
Phone: (727) 820-5474
Facsimile: (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 No. xx 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 No. xx 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.

FIRST READING AND PUBLIC HEARING:

20XX.

SECOND READING, ADOPTION, AND PUBLIC HEARING:

20XX.

ATTEST:

xxxxxx, City Clerk

xxxxxxx, Mayor

Approved as to form and legality
for the use and reliance of the
City of Town/City, Florida, only.

xxxxx, City Attorney

Catherine Stempien, State President
Duke Energy Florida, LLC d/b/a Duke Energy



**CITY OF BELLE SLE, FLORIDA
CITY COUNCIL AGENDA ITEM COVER SHEET**

Meeting Date: March 5, 2019

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Police Advisory Committee (PAC)

Background: The Chief of Police came to me and requested that the City Council consider creating a Police Advisory Committee. Under Section 2-54 of the BIMC, the city council has the power to create any advisory committee which is not identified within the City Charter. The primary function of the PAC is to act in an advisory capacity to the Police Department by bringing to their attention feed-back from the community concerning public safety issues and law enforcement needs and actions. To this end the Police Advisory Council is devoted to facilitating the flow of ideas relative to police services for the continued improvement of the quality of life of its citizens.

Staff Recommendation: To create a Police Advisory Committee

Suggested Motion: I move that we adopt Resolution 19-04 creating a Police Advisory Committee.

Alternatives: Do not approve the Resolution.

Fiscal Impact: None

Attachments: Resolution 19-04
Advisory Committee Application
Article from IACP

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Section 2. Membership

The City Police Advisory Committee shall consist of no less than five members and no more than seven (7), at large, to be appointed by the City Council. The members of said Committee shall be residents of the municipality. Members shall not be employees or elected officials; however, a City Council member may be appointed to the Committee as a nonvoting member to act as a liaison between the Committee and the City Council. Appointments to the Committee and shall be on the basis of experience, interest and level of commitment.

Section 3. Term of Office

The initial appointments to the City Police Advisory Committee shall be as follows to create staggered terms,

- a. Two members appointed for a term of one year
- b. Two members appointed for a term of two years
- c. One member appointed for a term of three years
- d. If the City Council appoints seven members to the initial terms, then those two remaining members will be appointed for a term of three years.

- b. Thereafter members shall be made for a period of three (3) years;
- c. Members may be appointed for one (1) additional term
- d. After the completion of the second term the member will have a waiting period for one year before being reappointed.

1 e. Appointments to fill any vacancy shall be for the remainder of the unexpired
2 term of office;

3 f. Any member who fails to attend three successive meetings without cause and
4 without proper approval of the Committee shall automatically forfeit his or
5 her appointment and the Council shall promptly fill such vacancy.

6 g. Members may be removed at the discretion of the City Council.
7

8 **Section 4. Compensation**

9 Members of the Committee shall serve without compensation.
10

11 **Section 5. Meetings**

12 The City Police Advisory Committee shall establish a regular meeting schedule.
13 Minutes shall be kept of all Committee proceedings and all Committee meetings
14 shall be open to the public.
15

16 **Section 6. Officers**

17 Members of the City Police Advisory Committee shall annually elect a chairman,
18 vice-chairman, and secretary by majority vote to preside over the Committee's
19 meetings.
20

21 **Section 7. Rules**

22 The Committee will establish its own rules for election of officers, terms of
23 officers, and meetings.
24
25

1 **Section 8. Duties and Responsibilities**

2 The City Police Advisory Committee shall have the following duties and
3 responsibilities:

- 4 a) To acquaint citizens with the operation of the Belle Isle Police Department
5 and its varied activities; and
- 6 b) To generate community interest and involvement in crime prevention, to
7 include community oriented policing and other areas of community relations;
8 and,
- 9 c) To advise the Chief of Police on issues in the community.
- 10 d) To discuss ways to manage various operational challenges and prioritize
11 delivery of police services.
- 12 e) To review, at the discretion of the Chief of Police, policies and
13 procedures, citizen complaints and response to resistance investigations.

14
15 **Section 9.** This Resolution shall take effect upon its adoption.

16
17 ADOPTED this ____ day of _____, 2019

18
19 ATTEST: _____
20 **Yolanda Quiceno, CMC-City Clerk** **Lydia Pisano, Mayor**

21
22 STATE OF FLORIDA

23 COUNTY OF ORANGE

24

25

1 I, Yolanda Quiceno, City Clerk of the City of Belle Isle do hereby certify that
2 the above and foregoing document RESOLUTION _____ was duly and legally passed by
3 the Belle Isle City Council, in session assembled on the _____ day of
4 _____, 2019, at which session a quorum of its members were present.

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7 Yolanda Quiceno, CMC-City Clerk

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BELLE ISLE POLICE DEPARTMENT POLICE ADVISORY BOARD

1521 Nela Avenue, Orlando, FL 32809 * 407-240-2473 * Fax 407-850-1616

PLEASE TYPE OR PRINT: Complete the entire pre-application. You may attach a resume, but you must still complete all questions.

Date: _____

Last First M/Initial

Address City State Zip

Phone Cell Email Address

_____-_____-_____*Used for criminal Background Check ONLY
Social Security Number *

- 1. ___ Yes ___ No Are you a U.S Citizen?
- 2. ___ Yes ___ No Have you ever been convicted of any crime?
- 3. ___ Yes ___ No Have you ever been arrested?

If yes, explain When/Where _____

- 4. ___ Yes ___ No Do you agree to a background check?

I certify that the information contained in this application and its supporting documents are accurate and complete. I understand and agree that failure to fully complete the form, or misrepresentation or omission of facts, represents grounds for elimination from consideration for employment, or termination after employment if discovered at a later date. I authorize the Belle Isle Police Department to investigate, without liability, all statements contained in this application and supporting materials. I authorize former employers, without liability to make a full response to any inquiries in connection with this application for employment. If requested, I agree to submit to a physical exam, criminal and credit background investigation, and/or screening for illegal substances upon conditional offer of employment. I understand that this document is NOT an offer of employment and that an offer of employment if tendered, does not constitute a contract for continued guaranteed employment. I understand that staff employees of the Belle Isle Police Department serve at the offer of the employment relationship may be terminated at any time by either party or any or no reason other than a reason prohibited by law. If employed, I will be required to furnish proof of eligibility to work in the United States and to comply with company and departmental regulations. I understand that if employed temporarily, I would be paid for hours worked only, and would be ineligible for benefits including paid time off. I understand that the first six months of regular employment represent a provisional period, during which I would not be eligible to apply for transfer or promotion and during which I may be terminated without right of appeal.

I acknowledge that I have read and understood the above statement.

Print Name Date

Please forward completed pre-application via email to jstewart@belleislepolice.org or mail to Belle Isle Police Department, 1521 Nela Avenue, Belle Isle, FL 32809

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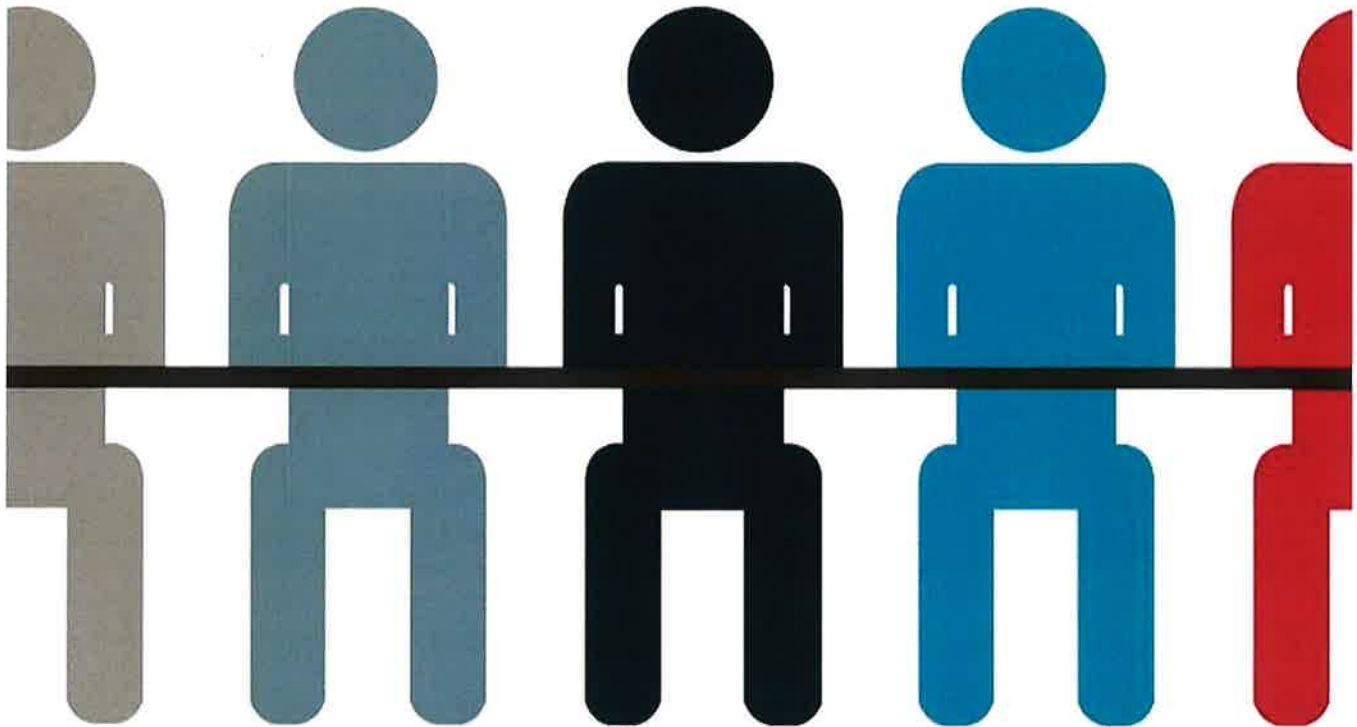


Criminal Justice Reform

Police Chief Magazine | Topics | Criminal
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Contemporary Practice: A Practical Approach in
Policing

Citizen Advisory Boards in Contemporary Practice: A Practical Approach in Policing

John G. Reece, PhD, Colorado Mesa University **Judy Macy, Chief of Police,
Fruita, Colorado, Police Department**



Introduction

Democracy is a core value of U.S. society, and citizens have a fundamental right to participate. In addition, it has been widely argued that citizen participation in governmental policy making produces many benefits, and because citizen participation promotes trust in governmental operations, it has continued to be a long-standing value of U.S. public administration. However, historically, the value has not been embraced by law enforcement in a meaningful manner.

The notion of citizen participation is an elusive ideal. Participation efforts in government have continued to evolve without a general consensus of the meaning, and conflict can arise between the types of citizen involvement and the traditional principles of public administration theory and practice. Some researchers have argued that the overarching administrative ethos of the state can create barriers to citizen participation in governance.¹

An intellectually honest discussion about citizen involvement is particularly relevant in the post-Ferguson, post-New York, post-Baltimore environment of policing, in which community involvement has become the de facto mandate for law enforcement. Early on, the U.S. federal government provided the primary impetus to citizen participation programs. For example, the Environmental Protection Agency (EPA) developed efforts to incorporate more citizen involvement in environmental protection projects, pushing for national as well as regional improvements to environmental decision making throughout the 1990s. However, such efforts have not been limited to the EPA or the federal government. Public entities at all levels of government have increasingly launched public participation measures.

Local administrative agencies have a long history of seeking out citizen participation via public meetings and hearings, public workshops, feedback surveys, and steering committees. Empirical evidence has underscored the limitations of such practices in terms of reaching true consensus. The practice of deciding upon a policy and then introducing it to citizens in a public hearing format has proven to be a poor technique and a grossly inadequate persuasion tool.² In the late 1980s and early 1990s, in order to improve upon the one-way flow of information that takes place in the public meeting forum, citizen advisory boards started to surface, which can overcome several limitations inherent in traditional citizen participation efforts.

The recently released *Final Report of the President's Task Force on 21st Century Policing* emphasized the importance of citizen involvement in policing as a strategy to improve trust between law enforcement and the public. Within the study, citizen advisory boards or community involvement were specifically recommended as action items for local law enforcement, as well as support and collaboration with the federal government, training and education, improved technologies, and officer wellness and safety programs.³ Today, it is critically important for all police organizations to promote and cultivate citizen involvement with their agencies. However,

implementing boards and commissions must be done thoughtfully and purposefully in order to establish a meaningful, effective relationship.

What follows is an analysis regarding the role of citizen advisory boards and some examples of citizen advisory boards that proved to be beneficial to administrative functions. A recommended approach to appointing, organizing, and conducting a citizen advisory board is also presented.

The Role of Citizen Advisory Boards

A citizen advisory board can be defined as a group of individuals appointed for the purpose of examining a public issue or set of issues, who meet over an extended period, and develop alternative solutions and new ideas through comprehensive interaction. Rather than being open to all members of the public, a citizen advisory board is restricted to a small number of individuals who are expected to represent the interests of the public.⁴ A law enforcement organization can utilize a citizen advisory board for advice and input on a myriad of issues. A board may be asked to conduct research, generate new ideas or solutions, or provide informed recommendations on public policies and practices. What a citizen advisory board should not be is a policy-making body; otherwise, the ability of the police executive to do his or her job will be compromised.

Law enforcement leaders cannot transfer their administrative accountability and legal responsibilities to a citizen board—there are statutory rules that must be followed and observed. Although some are cynical about citizen advisory boards because of this lack of formal power, public administration by definition should be done by professional administrators. These individuals have been appointed or elected and are ultimately accountable for the decisions that are made. Police executives have the managerial, legal, and political responsibility to lead their organization. On the other hand, establishing citizen advisory boards for specific policy or project recommendations, strategic planning, or the review of personnel practices

can be useful. The implementation of body-worn cameras is an ideal example of a project that might greatly benefit from the perspective of a citizen board. A citizen advisory board can be a critical component to establishing an open culture between a public agency and the community.

Examples of Citizen Advisory Boards

Example 1: La Plata County, Colorado, Sheriff's Office

In 1987, Bill Gardner ran for the position of La Plata County Sheriff and made a campaign pledge to rebuild the eroding trust between the sheriff's office and the public. After being elected, Gardner was the first Colorado sheriff to implement a formal citizen advisory board. Gardner's overall mission for the board was to restore trust with the community, have policy oversight, raise personnel standards, and create transparency.

Gardner had no particular individuals in mind as he embarked upon creating the new advisory board. However, he did have a seemingly simplistic mandate—board members had to reflect the diversity of the La Plata County community. La Plata County is a primarily a college and resort community, but it is also home to many hardworking ranchers. To encompass these diverse sectors of the community, Gardner appointed representatives from the local college, the Latino community, local businesses, school board, and a ski resort, as well as the incumbent president of the Cattleman's Association and a Colorado State Patrol major.

The board members were credible and well-known people within the La Plata County community and the residents supported their involvement and representation. With the community's support, the board made significant progress in achieving the fundamental goal of restoring trust. Gardner commented on the success of the advisory board by saying, "What would have taken several years to build was accomplished in less than a year. That is a home run."⁵ The La Plata County case demonstrates how a well-designed citizen advisory board can assist a public administrator with

agency functions and practices as well as build positive relations with the community.

Example 2: City of Fruita, Colorado

The City of Fruita, a relatively small city in western Colorado, adopted bylaws in 1999 to establish a Police Commission, following several controversial police actions that eroded community trust. The commission was given investigatory powers, albeit with limited authority. The stated purpose of the commission was to serve as an advisory committee reporting to the city council. The commission was comprised of five members: four citizens nominated by the mayor and one member of the city council. In addition, the Fruita chief of police served as an ex-officio member of the commission with no voting power. The members were selected by the mayor based on their “ability to perform the prescribed duties.”⁶

The duties outlined in the bylaws were primarily advisory in nature, including advising on matters involving police department activities, policies, personnel, and planning. However, the board also served as a Citizen Complaint Review Board with the power to investigate citizens’ complaints and make recommendations based on their investigations to the chief of police, the city manager, and city council. While the commission did not have authority to administer corrective actions to department personnel, the investigative authority included the ability to request a review of the (initial) police investigation with the assigned investigator, the questioning of the complainant and associated witnesses while in executive session, and the ability to designate an outside law enforcement jurisdiction to conduct an internal affairs investigation.

This additional authority proved problematic for Fruita. Specifically, members of the Citizen Complaint Review Board lacked the skills, expertise, and training required to properly interview witnesses and officers. Additionally, the board was privy to confidential information, which potentially could have been compromised with civilian involvement.

The problem was essentially resolved in 2005 when city charter revisions addressed the powers and duties of the Police Commission. The makeup of the commission remained the same; however, the duties were revised and limited to recommending policies, standards, procedures, and limitations for the police department, upon the direction of city council and receiving public comment on the operations and management of the agency. In addition, the commission provides input to the city manager on the appointment of the police chief, and, upon the request of the police chief, the commission can assist in the selection of members of the department.⁷

Since 2005, the commission has been instrumental in decisions to implement equipment (e.g., Tasers and body-worn cameras), as well as taking part in the oral board assessment for the police chief and new police officers. In the role of an advisory board to city council, the city manager, and the police chief, the Police Commission has proven to be a valuable asset to all entities and an effective sounding board for the community.

Recommendations

Police executives and elected officials should decide upon the amount of authority the new board will have while remaining open to the importance of having citizen input and oversight. Effective government is based on trust; thus, a central tenet of a citizen advisory board should be to build trust and two-way communication between the government (police) and the community.

A citizen advisory board should be limited in scope and purpose. There will always be a certain tension between accountability and the notions of community trust and transparency. The operational needs of the agency and the authority given to the board should be based on the situation or the issues being addressed. If too much power and authority is delegated to the citizen advisory board, the ability of the agency head to be an effective leader will no doubt be questioned.

Once the purpose and mission of the citizen advisory board are established, membership selection should take place. The agency head should retain some limited authority in the appointment of the board, accomplished through an established and transparent search process. Ultimately, each applicant should pass a rigorous litmus test prior to becoming a sitting member of the advisory board.

The agency should widely advertise that the board is being formed and notify the community when applications are being accepted. The optimal size will depend on the purpose and mission of the board, which should be large enough to represent a variety of interests yet small enough for each member to be involved without decision making dragging on interminably.⁸ Establishing a term limit should be considered, and having the members approved by elected representatives is another consideration. The priority should be to establish a diversified board and to balance the interests and expertise found within the community as a whole.

To be effective, the advisory board cannot be political. Each member must genuinely represent the community or the fundamental objective of the board will be lost. Board members are only a small segment of a community—they should clearly represent a constituency in order to be influential and supported by the population. Because board members volunteer their time, the agency head must ensure that the board does not become dominated by partisan members or overpopulated with participants who have the economic means to donate time. The advisory board should be culturally diverse and have broad geographical representation.

When creating a citizen advisory board for the complex law enforcement incidents U.S. communities have experienced in the recent past, it would be wise to utilize the talents of the academic community in terms of organizing the internal processes of a citizen review. Garnering the organizational and facilitation skills of an expert who can teach the advisory board about

problem analysis and decision making will positively influence the overall process and outcome. The outside facilitator should be concerned with the board's process, not the content of the issues being addressed by the board. Advisory board members should mutually agree upon a consensus process in the development and approval of the recommendations. Transparency in the decision-making process will build trust among the participants.

For some communities, cost can be a barrier to implementation. The per-decision cost of a citizen advisory board is arguably more expensive than a single administrator. A citizen advisory board will have significant time commitments, whereas an astute agency administrator can make some decisions in less than a month, within a day, or even within an hour. However, what cannot be measured when utilizing a citizen advisory board is the social capital gained.

Determining if citizen advisory boards truly work is difficult because of limited empirical studies and the diversity in criteria for success. Furthermore, success is difficult to define. Researchers and practitioners have historically measured success within two broad categories: (a) the success of the process and (b) the success of the outcome.[9] The evaluation of the process is characterized by analyzing the means that were used, rather than focusing solely on results. When evaluating the outcomes, it is important to be cognizant of the fact that an effect could be due to the citizen participation process or some other variables. A balance between process and outcome goals should be met.

Conclusion

Citizen advisory boards are becoming important components of most law enforcement organizations and, when handled appropriately, will result in more democratic and effective organizations. Police leaders should encourage an engaged citizenry. With citizens participating actively in the organization, the public may be less critical of the difficult decisions often

required of public administrators. Effective governmental programs can improve legitimacy and trust, and the best public programs and policies usually emerge from the collaborative efforts of the community and government together. The design and implementation of citizen advisory boards can be vital to accomplishing these goals.♦

John Reece is an associate professor of criminal justice and the former director of the Western Colorado Peace Officers Academy (WCPOA) at Colorado Mesa University. Dr. Reece was employed with the Grand Junction, Colorado, Police Department (GJPD) for nearly 20 years. During his tenure at the GJPD, Dr. Reece served as a patrol officer, K-9 handler, field training officer, rifle team member, and detective. Dr. Reece holds a bachelor's degree in criminal justice from Colorado Mesa University, a master's degree in public administration from the University of Colorado, and a PhD in Public Administration from Northcentral University.

Judy Macy has worked in law enforcement for 27 years. She began her career with the Douglas County Sheriff's Office in Colorado in 1988, serving in detention, patrol, and investigation units during her time there. In 2002, she joined the Fruita, Colorado, Police Department and was appointed chief of police in 2014. Chief Macy has a bachelor's degree in public administration from Colorado Mesa University.

Notes:

¹ Terry L. Cooper and Pradeep Chandra Kathi, "Democratizing the Administrative State: Connecting Neighborhood Councils and City Agencies" *Public Administration Review* 65, no. 5 (2005): 559–567.

² Renee A. Irvin and John J. Stansbury, "Citizen Participation in Decision Making: Is It Worth It?" *Public Administration Review* 64, no. 1 (2004): 55–65.

³ President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing* (Washington, D.C.: Office of Community Oriented Policing Services, 2015), http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf (accessed June 10, 2015).

⁴ John Clayton Thomas, *Public Participation in Public Decisions: New Skills and Strategies for Public Managers* (San Francisco, CA: Jossey-Bass Publishing,

2008).

⁵ William "Bill" Gardner (sheriff (ret.), La Plata County; police chief (ret.), Grand Junction Police Department), personal interview by John Reece, 2010.

⁶ City of Fruita Charter, *Fruita Police Commission By-Laws*, 1-4, June 1, 1999, <http://org.coloradomesa.edu/~joreece/Fruita%20Police%20Commission%20By-laws%201999.pdf> (uploaded on June 25, 2015).

⁷ City of Fruita Charter Resolution 2011-33, *Fruita Police Commission By-Laws, revised*, 1-2, 2-38-2-39, August 2, 2011, (uploaded on June 25, 2015).

⁸ *Ibid.*, 4

⁹ Caron Chess and Kristen Purcell, "Public Participation and the Environment: Do We Know What Works?" *Environmental Science and Technology* 33, no. 16 (1999): 2685–2692.

Please cite as

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**CITY OF BELLE ISLE, FLORIDA
CITY COUNCIL AGENDA ITEM COVER SHEET**

Meeting Date: March 5, 2019

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Draft Letters to State Attorney General regarding Short Term Rentals

Background: The Council directed the City Attorney to write a letter to the Attorney General regarding vacation rental prohibitions, state preemptions, and grandfather status.

Staff Recommendation: None Needed

Suggested Motion: None Needed

Alternatives: None

Fiscal Impact: None

Attachments: Letter to AG
Memorandum outlining the issues

February 26, 2019

Via U.S. Mail

The Honorable Ashley Moody
Attorney General of Florida
c/o Department of Legal Affairs
The Capital PL01
Tallahassee, Florida 32399-1050

Re: Vacation Rental Prohibitions, State Preemption, and Grandfather Status

Dear Madam Attorney General:

In my capacity as City Attorney of the City of Belle Isle, Florida (“City”), and in accordance with section 16.01(3), Florida Statutes, I hereby request an advisory opinion as to the legal questions enumerated in the enclosed Memorandum of Law. This request arises out of the ambiguity in the law regarding the authority of local governments to prohibit vacation rentals by ordinance that predates the legislative deadline set forth in section 509.032(7)(b), Florida Statutes. City officials need to understand whether modifications to such grandfathered ordinances either by allowing certain vacation rentals on a trial or pilot program period or allowing certain owner-occupied vacation rentals permanently would cause the City to lose the ability to continue to prohibit vacation rentals not expressly allowed and after the expiration of any trial period or pilot program.

Please find enclosed a Memorandum of Law, which sets forth specific legal questions and provides legal analysis for each. Also enclosed is a proposed ordinance regarding a temporary trial or pilot program for allowance of certain owner-occupied vacation rentals. We recognize that previous opinions by the Attorney General’s Office have addressed issues relating to the extent to which municipalities may lawfully regulate vacation rentals; however, for the reasons discussed in the memorandum, the City needs further clarification regarding whether the City’s prohibition against vacation rentals must remain frozen so as to avoid the loss of grandfathering under section 509.032(7)(b), Florida Statutes.

Very truly yours,

A. Kurt Ardaman, City Attorney
City of Belle Isle, Florida
Fishback Dominick Law Firm
1947 Lee Road
Winter Park, FL 32789-1834
(407) 262-8400
(407) 262-8402 (Fax)
ardaman@fishbacklaw.com

Enclosures

MEMORANDUM OF LAW

TO: Florida Attorney General's Office

FROM: A. Kurt Ardaman, City Attorney, City of Belle Isle, Florida

DATE: February 20, 2019

RE: Advisory Opinion re: Vacation Rental Prohibition and Pilot Program

ISSUES:

1. May the City of Belle Isle, Florida ("City") enact an ordinance establishing a pilot program for the allowance of certain owner-occupied vacation rentals and upon the expiration of such pilot program revert back to the lawfully enacted prohibition against vacation rentals within the City in light of section 509.032(7)(b), Florida Statutes?
2. In the event that the City adopted an ordinance that allowed only certain owner-occupied vacation rentals without a trial period or pilot program period, would the prohibition under the City's lawfully enacted prior ordinance remain in effect as to all vacation rentals that were not allowed pursuant to the new ordinance?

DISCUSSION:

Issue 1. May the City of Belle Isle, Florida ("City") enact an ordinance establishing a pilot program for the allowance of certain owner-occupied vacation rentals and upon the expiration of such pilot program revert back to the lawfully enacted prohibition against vacation rentals within the City in light of section 509.032(7)(b), Florida Statutes?

Section 509.032(7)(b), Florida Statutes, relating to preemption authority, provides:

A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

The City passed Ordinance No. 08-03 on or about March 4, 2008, which is codified in Chapter 7, Article II, Section 7-30, City Code of Ordinances ("City Code"), relating to regulation of

residential rental property. Section 7-30, City Code, states: "Short-term rentals, i.e., rentals for a term of less than seven months, are prohibited." Accordingly, the existing City prohibition against vacation rentals was duly adopted on or before June 1, 2011.

At this time, the City is considering allowing owner-occupied vacation rentals as part of a temporary pilot program allowing a feasibility and experimental trial of same. The City is concerned that such a pilot program may subject the City to potentially not being able to enforce existing Section 7-30, City Code, upon the expiration of the pilot program. Stated differently, would the enactment of a pilot program allowing certain owner-occupied vacation rentals in accordance with the terms and conditions of such pilot program cause the City to forever lose its authority to prohibit vacation rentals in the future upon expiration of the pilot program in accordance with the preemption provisions of Section 509.032(7)(b), Florida Statutes. A copy of the proposed City Ordinance establishing the pilot program is attached as Exhibit "A."

The City Ordinance states the following relevant provisions regarding the pilot program and the effect of the sunset of same:

Sec. 7-78. Sunset.

- a. This ordinance shall Sunset 364 days after it becomes effective unless it is extended by an ordinance adopted by the City Council prior to the Sunset period.
- b. The City Staff will present a report to the City Council three (3) months prior to the date this Ordinance is to Sunset. The report will provide data on the affects that this Ordinance has on the City.
- c. After the presentation of the report, the City Council may adopt a permanent ordinance, allow this Ordinance to Sunset, adopt modifications to this Ordinance or take other actions relating to the matters referenced in this Ordinance. If the ordinance is allowed to Sunset, Vacation Rentals will be prohibited in the City of Belle Isle, including, without limitation, those Vacation Rentals for which a Vacation Rental License was issued under this Ordinance.

* * *

Section 5. PRESERVATION OF CODE SECTION 7-30. This Ordinance and the City Code amendments effected hereby shall not be construed to override, repeal, waive, eliminate, suspend, recede from, or in any way invalidate or make

ineffective the prohibition on short-term rentals provided for in Ordinance No. 08-03 creating Section 7-30 of the City Code, and such provision remains in full force and effect and shall continue to apply without interruption to the extent that a vacation rental or short-term rental is not allowed under the new Article III, Chapter 7 of the City Code created by this Ordinance. Without in any way limiting or restricting or in any way compromising the foregoing prohibition, the issuance of Vacation Rental Licenses and the opening, operation and use of any Vacation Rental during or pursuant to this Ordinance, and any other actions carried out in furtherance of Vacation Rentals, do not constitute any basis for the continuation of the operation, or use of such after this Ordinance Sunsets, and the prohibition on short-term rentals provided for in Ordinance No. 08-03 creating Section 7-30 shall continue in full force and effect for all Vacation Rentals and short-term rentals.

The Florida Attorney General, citing the Florida Supreme Court, has observed that “[w]hen there is any doubt as to whether a municipal ordinance may impair the operation of a statute, the doubt must be resolved in favor of the statute and against the ordinance.” Fla. Att’y Gen. Op. 2016-12 (citing *Metro. Dade County v. Chase Fed. Hous. Corp.*, 737 So. 2d 494, 504 (Fla. 1999)). However, such rule should not apply where, as here, a municipality has a regulation that is grandfathered under a preemption statute, but the municipality desires to allow a probationary and pilot program to determine if a repeal of the otherwise lawful prohibition should occur. To find otherwise would eviscerate the municipality’s clear legislative intention that the allowance for certain owner-occupied vacation rentals be temporary. Further, it appears that Congress has placed in legislation sunset provisions that allow specific provisions to revert back to the pre-amendment status. See *In re Loving*, 269 B.R. 655, 660 (Ind. Southern Bankr. Ct. 2001); see also *In re: Pedro T.*, 8 Cal. 4th 1041, 1056-57 (Cal. 1994).

Issue 2. In the event that the City adopted an ordinance that allowed only certain owner-occupied vacation rentals without a trial period or pilot program period, would the prohibition under the City’s lawfully enacted prior ordinance remain in effect as to all vacation rentals that were not allowed pursuant to the new ordinance?

Section 509.032(7)(b), Florida Statutes, allows for the complete prohibition of vacation rentals so long as such grandfathered prohibition was passed pursuant to any local law, ordinance, or regulation adopted on or before June 1, 2011. See Fla. Att’y Gen. Op. 2014-09. Notwithstanding the preceding, would a municipality lose the ability to prohibit vacation rentals generally if certain owner-occupied vacation rentals were subsequently allowed by the municipality while the bulk of vacation rentals would still be prohibited under the previous grandfathered prohibition. In Florida Attorney General Opinion 2014-09, the office of the

Florida Attorney General advised “that a local zoning ordinance for single-family homes adopted prior to June 1, 2011, could not now be interpreted to restrict the rental of such homes as vacation rentals, when the ordinance did not restrict the rental of such property and the county had no regulations governing vacation rentals prior to June 1, 2011.” Here, the question becomes whether the grandfathered prohibition would be lost simply upon allowing some vacation rentals for homes that are owner-occupied and otherwise meet other certain regulations relating to vacation rentals that does not prohibit such vacation rentals outright or regulate the frequency of rental of vacation rentals in contravention of section 509.032(7)(b), Florida Statutes.

The allowance of certain owner-occupied vacation rentals does not necessarily repeal or lead to a conclusion that the existing prohibition is unenforceable. Ordinances are police regulations, and “it is elementary that the failure to enforce a valid police regulation in one case, or in many cases, does not affect the power to enforce it in other cases.” *See Miami Beach v. State*, 145 Fla. 716, 726 (Fla. 1941). Otherwise, Florida municipalities with valid vacation rental prohibitions would appear to have prohibition ordinances that are “frozen” and any future amendments to same would cause a loss of the “grandfather” protection. *See Florida League of Cities, Inc., 2018 Legislative Issue Briefs, Short-Term Rentals*, available at https://www.floridaleagueofcities.com/docs/default-source/advocacy/issue-briefs-talking-points/2018-ib---short-term-rentals5584b5c41a9e6c4e8be5ff0000e8da5f.pdf?sfvrsn=821dd9d5_6 (last visited February 21, 2019).

**Belle Isle Issues Log
3/5/19**

<u>Issue</u>	<u>Description</u>	<u>Start Date</u>	<u>POC</u>	<u>Expected Completion Date</u>	<u>Completed Action</u>	<u>Next steps</u>
Gene Polk Park (Delia Beach)	Drainage issue at Gene Polk Park caused erosion problems and makes the park unattractive. At least 3 plans have been developed for the drainage and Council allocated \$180,000 to correct the problem.	4/3/2017	CM/CE	9/30/2019	CM met with neighbors to go over plan. Neighbors will review plan as a group and then present their comments to City.	FEMA is reviewing the project damages with the City to determine what the final payment may be and if this project will be funded under a FEMA mitigation program. FEMA mitigation reviewing project
Street Paving	Council approved project for paving several streets in the City. Middlesex Paving is the contractor	8/12/2017	PW/CM	9/30/2017 Completed for 2017	CM to consider change in the Scope of the Project to look at curb replacement.	Paving contractor preparing new estimate for reduced area.
Storm Drainage	Several individual projects are being looked at to complete. St. Partens, Nela , Wind Drift, and Seminole/Daetwyler.	4/3/2017	PW/ENG	8/31/2018		Wind Drift Project plans finalized. Should be out for bid in 30 days
Traffic Studies	Council allocated funds for traffic study at Trentwood/Daetwyler Rd. Council directed city-wide traffic study to improve traffic flow.	4/3/2017	CM/Eng.	12/31/2018	Trentwood issues completed except for repair of chicane. Community Meeting on TMP held on June 21, 2018. 20 residents attended. Community Survey was put on line. Consultant created proposed of goals and objectives. CM, DC met with OCPW to discuss city taking jurisdiction of several roads adjacent to city limits.	Traffic consultant finalizing plan; OC should start with changes on Hoffner at the Conway/Hoffner intersection;
Fountain at Nela/Overlook	Council approved funding to convert the planter at Nela/Overlook to a fountain.	4/3/2017	CM	8/31/2018	G'Werks to do fountain. Centerpiece is here. Should see demo of roundabout soon after Perkins Ramp is complete.	Waiting a power to be run to fountain. .
Wallace/Matchett Area	City purchased large area at Wallace/Matchett for open space. Issues with Wallace Street Plat in this area with people trespassing on private property. District 2 Comm. And CM met with residents to discuss solutions. Council met on June 14 and issues was discussed.	6/14/2017	Dist.2 Comm and CM	9/30/2018	Fence installed. Zoning changed to OS. Agreement for CCA use of the field being reviewed by school. Trees planted as part of Arbor Day Celebration. Workshop held on development. CCA and City to review CCA draft plan.	Waiting on plan from CCA.

**Belle Isle Issues Log
3/5/19**

	Council directed that a fence would be erected around property. Dist. 2 Comm. and CM to meet with residents to discuss					
City acquisition of Property	Council discussed possibility of acquiring parcels within the City and directed City	3/20/2018	CM	8/31/2018	Staff is identifying possible parcels for purchase or other means of acquiring property. Cross lake purchase is on hold until County reschedules PH	Mayor/CM to meet with Commissioner Uribe and Adjacent property owner on Cross Lake on March 4. CM/Comm. Gold met with Oak Island HOA for property off Kissam Court. Looking at FDEP property at east end of Cross Lake. <u>City still waiting for information on BOA</u>
Charter School (CCA)	There has been infrastructure issues at Cornerstone for some time. The City owns the property and leases it to CCA. The City is responsible for replacing major systems at CCA according to the lease.	4/3/2017	CM	Ongoing	Capital Facility Plan complete. HVAC equipment to be here in July. CCA considering purchase of property. Roofs are being patched, not replaced at this time. Letter was sent to CCA Board asking for joint meeting and other Board issues.	CCA Board and City Council to hold joint meeting (TBD). CCA Consultant to meet with CM on a land lease idea week of March 11-15.
Strategic Plan	The City currently has no Strategic Plan. Strategic planning is the process to develop a vision of what the City would like in 10, 15, or 20 years, based on forecasted needs and conditions. It defines goals and objectives to achieve	4/3/2017	Council/CM	Ongoing	Council to decide if it wants a Strategic Plan and then to set up a process for developing the plan. If Council moves forward, an outside consultant should be hired to contact the meetings, gather the information, conduct the surveys and develop the draft plan.	Strategic Planning Session tentatively scheduled for May after City election.
Municipal Code Update	The City Council contracted with a planner to update the municipal code. This process was not completed and needs to be completed. There have been significant code changes in the past few years that need to be in the code.	4/3/2017	CM/CC	Ongoing	Meet with consultant to determine what was done and what is left to do.	On-going

Comp Plan Updates	The comp plan is reviewed every 7 years to see if it needs to be updated. The City Council contracted with a planner to update the comprehensive plan.	3/1/2017	Council Planner CM	Ongoing	Meet with consultant to determine what was done and what is left to do.	On-going
Annexation	Council discussed the desire to annex contiguous property in order to build the tax base and possibly provide more commercial development in Belle Isle.	4/3/2017	Council CM	12/31/2017	Council determined the priority to annex.	CM to set up a series of community meetings to discuss annexations with residents.
Sustainability	Council discussed sustainability and energy initiatives.	4/3/2017	CM	12/31/2107	Look at LED lighting and Solar power for city facilities. Look at Community Garden	Quotes received for solar on BIPD. Information requested from CCA.

**Belle Isle Issues Log
3/5/19**

					(possibly at Wallace/Matchett)	
Forensic Audit	Council directed a forensic audit be conducted	17-Oct	CM/FD	9/30/2018	Auditor has list of questions for staff to answer. Conducted interviews. Delay in getting information from old system.	Staff reviewing recommendations.
Parking	Council directed review and possible changes to parking ordinance. Focus on parking on grass and in front yards	6/19/2018	CM Code Enf Police	9/30/2018	Staff to review parking ordinances and BIMC.	Changes discussed at 2/5/19 meeting. Ordinance being drafted.