



# **CITY COMMISSION**

## **REGULAR MEETING AGENDA**

**MONDAY, APRIL 11, 2022 - 6:30 PM**

CITY HALL - COMMISSION CHAMBERS

1126 EAST STATE ROAD 434, WINTER SPRINGS, FLORIDA

## **CALL TO ORDER**

Roll Call  
Invocation  
Pledge of Allegiance  
Agenda Changes

## **AWARDS AND PRESENTATIONS**

100. Commission Support of Academic Excellence
101. Legislative Update from Representative David Smith
102. Florida Turnpike Enterprise (FTE) - Seminole Expressway SR 417 Widening Presentation
103. Certificate of Achievement for Excellence in Financial Reporting  
[\*Excellence in Financial Reporting FY20 Press Release 020822.pdf\*](#)

## **INFORMATIONAL AGENDA**

200. Current Development Projects Summary  
[\*20220411 Agenda Item #200 Projects Summary.pdf\*](#)

## **PUBLIC INPUT**

*Anyone who wishes to speak during Public Input on any Agenda Item or subject matter will need to fill out a "Public Input" form. Individuals will limit their comments to three (3) minutes, and representatives of groups or homeowners' associations shall limit their comments to five (5) minutes, unless otherwise determined by the City Commission.*

## **CONSENT AGENDA**

300. Interlocal Agreement between Seminole County and the City of Winter Springs for American Rescue Plan Act Funding  
[\*ARPA - Interlocal between Seminole County and City of Winter Springs v3.pdf\*](#)  
[\*Exhibit A - Scope of Work \(City of Winter Springs\).pdf\*](#)  
[\*Exhibit B - ARPA Quarterly Progress Report Template.pdf\*](#)
301. Splash Pad Fee Update
302. Annual Review  
[\*City at Work 2022- Accomplishment List.pdf\*](#)
303. Solid Waste Disposal Fee Increase for Commercial Contracts  
[\*Resolution 2022-07 Solid Waste Disposal Fee Increase 040122.pdf\*](#)

304. Approval of the Minutes from the Monday, January 31, 2022 City Commission Special Meeting  
[Minutes](#)

## **PUBLIC HEARINGS AGENDA**

400. Hickory Grove Townhomes | 132 Townhomes (Single-Family Attached) - Continuance Requested
401. First Reading of Ordinance 2022-02  
[2022-02 Fertilizer Ordinance Amendment v.2.pdf](#)  
[20170814 Public Hearings 400 Ordinance 2017-08 2nd Reading Proper Use of Fertilizers.pdf](#)  
[20170710 Public Hearings 401 Ordinance 2017-08 1st Reading Proper Use of Fertilizers.pdf](#)

## **REGULAR AGENDA**

500. New Business

## **REPORTS**

600. City Manager Shawn Boyle  
601. City Attorney Anthony A. Garganese  
602. City Clerk Christian Gowan  
603. Seat One Commissioner Matt Benton  
604. Seat Two Commissioner/Deputy Mayor Kevin Cannon  
605. Seat Three Commissioner Ted Johnson  
606. Seat Four Commissioner TiAnna Hale  
607. Seat Five Commissioner Rob Elliott  
608. Mayor Kevin McCann

## **PUBLIC INPUT**

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## **ADJOURNMENT**

## **PUBLIC NOTICE**

This is a Public Meeting, and the public is invited to attend and this Agenda is subject to change. Please be advised that one (1) or more Members of any of the City's Advisory Boards and Committees may be in attendance at this Meeting, and may participate in discussions.

Persons with disabilities needing assistance to participate in any of these proceedings should contact the City of Winter Springs at (407) 327-1800 "at least 48 hours prior to meeting, a written request by a physically handicapped person to attend the meeting, directed to the chairperson or director of such board, commission, agency, or authority" - per Section 286.26 *Florida Statutes*.

"If a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based" - per Section 286.0105 *Florida Statutes*.



# AWARDS AND PRESENTATIONS ITEM 102

CITY COMMISSION AGENDA | APRIL 11, 2022 REGULAR MEETING

## **TITLE**

Florida Turnpike Enterprise (FTE) - Seminole Expressway SR 417 Widening Presentation

## **SUMMARY**

The Florida Turnpike Enterprise has a project to widen a six-mile section of SR 417 Seminole Expressway from Aloma Avenue (SR 426) to SR 434 in Seminole County. The widening project will increase the number of travel lanes from four to eight. Additional work includes pavement milling and resurfacing, new drainage ponds, bridge widening, bridge reconstruction and roadside safety enhancements.

## **RECOMMENDATION**

No action required.



# AWARDS AND PRESENTATIONS ITEM 103

CITY COMMISSION AGENDA | APRIL 11, 2022 REGULAR MEETING

## **TITLE**

Certificate of Achievement for Excellence in Financial Reporting

## **SUMMARY**

The City's comprehensive annual financial report (CAFR) for the fiscal year ended September 30, 2020 has been awarded the Government Finance Officers Association of the United States and Canada (GFOA) Certificate of Achievement for Excellence in Financial Reporting. The City's CAFR has been judged by an impartial panel, and determined to meet the high standards of the program, which includes demonstrating a constructive "spirit of full disclosure" to clearly communicate its financial story and motivate potential users and user groups to read the report. The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

This makes the City's 21st consecutive year to receive this prestigious award.

## **RECOMMENDATION**

Staff recommends the City Commission accept the Certificate of Achievement for Excellence in Financial Reporting for the preparation of the comprehensive annual financial report (CAFR) for the fiscal year ended September 30, 2020.



GOVERNMENT FINANCE OFFICERS ASSOCIATION  
**NEWS RELEASE**

**FOR IMMEDIATE RELEASE**

2/8/2022

**For more information contact:**  
**Michele Mark Levine, Director/TSC**  
**Phone: (312) 977-9700**  
**Fax: (312) 977-4806**  
**Email: [mlevine@gfoa.org](mailto:mlevine@gfoa.org)**

(Chicago, Illinois)—Government Finance Officers Association of the United States and Canada (GFOA) has awarded the Certificate of Achievement for Excellence in Financial Reporting to **City of Winter Springs** for its annual comprehensive financial report for the fiscal year ended September 30, 2020. The report has been judged by an impartial panel to meet the high standards of the program, which includes demonstrating a constructive "spirit of full disclosure" to clearly communicate its financial story and motivate potential users and user groups to read the report.

The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

*Government Finance Officers Association (GFOA) advances excellence in government finance by providing best practices, professional development, resources, and practical research for more than 21,000 members and the communities they serve.*



# INFORMATIONAL AGENDA ITEM 200

CITY COMMISSION AGENDA | APRIL 11, 2022 REGULAR MEETING

## **TITLE**

Current Development Projects Summary

## **SUMMARY**

Staff is advising the City Commission of the status of current development projects within the City.

## **RECOMMENDATION**

No action required.



### CURRENT DEVELOPMENT PROJECTS SUMMARY

PROJECT NAME	LOCATION	LAST ACTION ITEM	CURRENT STATUS
AITC Office Building	<a href="#">863 N US 17-92</a>	N/A	DA, Final Engineering & Aesthetic Plans are under Staff review.
Chase Bank	<a href="#">Town Center</a> Adjacent to Wendy's.	Community Workshop was held on 02/20/20 CUP and DA approved by the CC on 11/16/20. DA, Final Engineering, Waiver, & Aesthetic Plans approved by the CC 10/25/2021.	Building Permits approved as of 02/25/22.
Dream Finders Townhomes (Seminole Crossing) 114 Single-Family Homes (Attached)	<a href="#">Town Center</a> East side of Michael Blake Blvd.	DA, Final Engineering, Waivers, & Aesthetic Review approved by the CC on 12/09/2019. Final Plat approved by the CC on 09/28/20. Site acceptance complete on 07/12/2021.	Single-Family Homes are under construction.
Hickory Grove Townhomes 132 Single-Family Homes (Attached)	<a href="#">Town Center</a> Northeast of Bear Springs Drive and Blumberg Blvd.	A Non-Binding review was held at the CC on 02/25/2021. Community Workshop was held on 08/26/2021. DA, Final Engineering, Waivers, Variance, & Aesthetic Review PZB recommended approval on 02/10/22. Waivers 1 & 2, Variance, & Aesthetic Review approved by CC on 03/14/22.	DA, Final Engineering, & Waivers scheduled for CC on 04/28/22.
Iriye Suites Live Work Community	<a href="#">Town Center</a> 150 Tuskawilla Rd.	SE & DA approved by CC on 01/28/19.	*Final Engineering and Aesthetic Plans
Living Life Development (ILF)	<a href="#">West Side</a> North Side of W SR 434, north of Sun Lake Plaza.	N/A	Final Engineering is under Staff review.
The Studios at Tusawilla	<a href="#">Vistawilla Dr.</a> Adjacent to Seminole Trail Animal Hospital	Community Workshop was held on 07/19/19. DA approved by the CC on 01/13/20.	Final Engineering, Aesthetic, & Waivers are under staff review.



<p>Tuskawilla Crossings 379 Single-Family Homes (detached)</p>	<p><a href="#">Town Center</a> SE Side of SR 434 and Tuskawilla Rd.</p>	<p>DA, Final Engineering, Waivers, &amp; Aesthetics approved by CC on 04/24/17. Plat approved 08/13/18.  Site acceptance complete. 371 Single-Family Homes are complete as of 10/2021.</p>	<p>8 Single-Family lots conveyed to HOA by builder.</p>
<p>Winter Springs Medical Office (Chau Medical)</p>	<p><a href="#">403 E SR 434</a></p>	<p>Community Workshop was held on 08/13/19.  DA, Final Engineering &amp; Aesthetic Plans approved by the CC on 11/16/20.  Site acceptance complete on 03/14/22.</p>	<p>Chau Medical CO was issued on 03/22/22.</p>
<p>Winter Springs Marketplace Five (5) Building Commercial Shopping Center</p>	<p><a href="#">Town Center</a> SW Corner of SR 434 and Tuskawilla Rd.</p>	<p>Community Workshop was held on 05/28/20.  DA, Final Engineering, Waivers, &amp; Aesthetic Review approved by the CC on 02/22/2021.  Aesthetic Plans for Chipotle approved by the CC on 08/09/21. Partial Site Acceptance complete (Dollar Tree, Crunch Fitness, and Dental Office) on 02/14/22.  Dollar Tree CO was issued on 02/15/22.  Dental Office CO was issued on 03/11/22.</p>	<p>Aldi, Crunch Fitness, and Chipotle Buildings are under construction.</p>
<p>Retail Building (Ocean Bleu)</p>	<p><a href="#">Town Center</a> Adjacent to Starbucks</p>	<p>Final Engineering &amp; Aesthetic Plans approved by CC on 06/10/19.</p>	<p>*Preconstruction Meeting</p>

For more information please click the link below:

[City of Winter Springs Community Development Projects List/Locations](#)

- Notes: ADU = Accessory Dwelling Unit  
 CC = City Commission  
 CO = Certificate of Occupancy  
 CUP = Conditional Use Permit  
 DA = Development Agreement  
 PZB = Planning and Zoning Board  
 SE = Special Exception  
 \*Currently Inactive



# CONSENT AGENDA ITEM 300

CITY COMMISSION AGENDA | APRIL 11, 2022 REGULAR MEETING

## TITLE

Interlocal Agreement between Seminole County and the City of Winter Springs for American Rescue Plan Act Funding

## SUMMARY

Section 163.01, Florida Statutes, as may be amended, authorizes public agencies to enter into agreements with other public agencies in order to serve a public purpose. On March 11, 2021, President Biden signed the American Rescue Plan Act ("ARPA") into law. Treasury guidance authorizes local governments to transfer Fiscal Recovery Funds, under ARPA, to other local government to allow the flexibility needed to achieve the greatest impact on implementation.

It is in the best interest of the residents of Seminole County to have a single county-wide program, rather than multiple programs of similar type varying by City. The current program is outlined in Exhibit A , and is for the cost of a county-wide broadband study to evaluate the feasibility of broadband networking county wide. Beginning at the end of the first quarter in calendar year 2022, the County will provide the City Manager with quarterly reports to advise on the status of the project and to provide the public with transparency.

## RECOMMENDATION

City staff recommends the City Commission enter into and execute the attached interlocal agreement; authorize the City Manager and City Attorney to execute any and all documents to enter into this agreement.

**INTERLOCAL AGREEMENT BETWEEN SEMINOLE COUNTY AND THE CITY OF  
WINTER SPRINGS FOR AMERICAN RESCUE PLAN ACT FUNDING**

**THIS INTERLOCAL AGREEMENT** is dated as of the \_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_, by and between **SEMINOLE COUNTY**, a charter county and political subdivision of  
the State of Florida, whose address is Seminole County Services Building, 1101 E. 1<sup>st</sup> Street,  
Sanford, Florida 32771, in this Agreement referred to as “**COUNTY**,” and the **CITY OF  
WINTER SPRINGS**, a Florida municipal corporation, whose address is 1126 E. State Road 434,  
Winter Springs, Florida 32708, in this Agreement referred to as “**CITY**.”

**W I T N E S S E T H:**

**WHEREAS**, Section 163.01, Florida Statutes, as may be amended, authorizes public  
agencies to enter into agreements with other public agencies in order to serve a public purpose;  
and

**WHEREAS**, Congress passed the American Rescue Plan Act (“ARPA”) and President  
Biden signed the ARPA into law on March 11, 2021; and

**WHEREAS**, the ARPA, in part, amends Title VI of the Social Security Act by establishing  
the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund,  
together the Fiscal Recovery Funds; and

**WHEREAS**, the Fiscal Recovery Funds provide three hundred fifty (\$350) billion dollars  
in emergency funding for eligible state, local, territorial, and Tribal governments; and

**WHEREAS**, the COUNTY’s total allocation is in the amount of \$91,646,669.00, with  
COUNTY only having received its’ initial 50% allocation in the amount of \$45,823,334.50; and

**WHEREAS**, ARPA, Treasury guidance, and/or the Interim Final Rule to the ARPA authorizes local governments to transfer Fiscal Recovery Funds to other local governments in order to allow the flexibility needed to achieve the greatest impact in implementing programs; and

**WHEREAS**, CITY agrees that the transfer of certain Fiscal Recovery Funds to the COUNTY for COUNTY’s implementation of the broadband program county-wide, as specified in this Agreement, will best serve the residents of Seminole County in recovering from the public health and economic impacts of the COVID-19 pandemic; and

**NOW, THEREFORE**, for and in consideration of the promises, mutual covenants and agreements contained in this Agreement by and between the Parties and for the mutual benefit of the Parties, the Parties agree as follows:

**Section 1. Recitals.** The foregoing recitals are true and correct and form a material part of the Agreement upon which the Parties have relied.

**Section 2. Definitions.**

- (a) “ARPA” means the American Rescue Plan Act of 2021; P.L. 117-2.
- (b) “Cause” includes, but is not limited to, misuse of funds, fraud, lack of compliance with applicable rules, laws, regulations, and guidance, failure to perform on time, failure to comply with the express terms of this Agreement, or refusal to permit public access to any public record, defined by and subject to disclosure under Chapter 119, Florida, as amended.
- (c) “Fund” means the Fiscal Recovery Funds under ARPA.
- (d) “Party” means COUNTY or CITY; “Parties” mean COUNTY and CITY.
- (e) “Treasury” means the United States Department of Treasury.

**Section 3. Term.** The effective date of this Agreement is the date the County executes this Agreement, and expires on December 31, 2024 (“Term”), unless terminated earlier in accordance with this Agreement.

**Section 4. American Rescue Plan Act Funding.**

(a) COUNTY will implement certain broadband programs, in its sole discretion, within Seminole County to address the public health and economic impacts caused by the COVID-19 pandemic. As the program specified in this Agreement is also for the benefit of the residents of CITY, it is agreed to by the Parties to be in the best interest of the residents of Seminole County to have a single county-wide broadband program, rather than multiple programs of similar type. The implementation by COUNTY of a single county-wide broadband program will serve the public purpose in providing immediate economic stabilization and will address the systemic public health challenges. As such, upon an invoice to CITY, no more frequently than monthly, CITY will provide COUNTY Funds for the program, as specified in and in accordance with Exhibit A, Scope of Work, attached to and incorporated in this Agreement. No other Funds will be provided to the COUNTY by the CITY under this Agreement except as explicitly stated in Exhibit A unless the CITY agrees to provide such additional Funds in writing. For the avoidance of doubt, COUNTY may establish and implement the broadband program specified in Exhibit A with or without input from CITY, in COUNTY's sole discretion. The COUNTY shall only expend the Funds provided by the CITY for the broadband study stated in Exhibit A. At the end of the Term, COUNTY will return to CITY any unused Funds provided by CITY under this Agreement.

(b) The COUNTY's performance under this Agreement is contingent upon an appropriation by the Federal Government, and is subject to any modification, including the cancellation of the program and services specified in this Agreement, in COUNTY's sole discretion.

**Section 5. Indemnification.**

(a) Each Party is solely responsible to third parties with whom they may contract in carrying out the terms of this Agreement and will hold each other harmless against all claims of

whatsoever kind or nature by such third parties arising out of the performance of work under any such contract with a third party. This provision is not to be construed as a waiver by any Party of its sovereign immunity, except to the extent waived pursuant to Section 768.28, Florida Statutes, as may be amended. Furthermore, no part or provision within this Agreement may be interpreted as requiring one Party to indemnify or insure the other Party for the other Party's negligence or to assume any liability for the other Party's negligence in contravention of Section 768.28(19), Florida Statutes.

(b) The Parties further agree that nothing contained in this Agreement may be construed or interpreted as denying to any Party any remedy or defense available to such Parties under the laws of the State of Florida.

**Section 6. Default.** If any of the following Events of Default occur, the Parties have the option to exercise any of its remedies set forth in Section 7, Remedies. Events of Default, including:

(a) If any warranty or representation made by CITY or COUNTY in this Agreement related to ARPA is or becomes false or misleading in any respect, or if CITY or COUNTY fail to keep or perform any of the obligations, terms or covenants in this Agreement and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement; or

(b) If CITY or COUNTY has failed to perform and complete on time any of its obligations under this Agreement.

**Section 7. Remedies.** If an Event of Default occurs, then the non-defaulting Party may, after thirty (30) days written notice to the defaulting Party and upon defaulting Party's failure to cure within those thirty (30) days, exercise any one or more of the following remedies, either concurrently or consecutively:

(a) Terminate this Agreement in accordance with Section 10, Notice;

(b) Begin an appropriate legal or equitable action to enforce performance of this Agreement;

(c) Withhold or suspend the contribution or allocation of all or any part of the Funds;

(d) The non-defaulting Party may require corrective or remedial actions, which may include, but may not be limited to:

(1) requesting additional information from the defaulting Party to determine the reasons for or the extent of non-compliance or lack of performance,

(2) the issuance a written warning to advise that more serious measures may be taken if the situation is not corrected,

(4) requiring the defaulting Party to reimburse the non-defaulting Party for the amount of costs incurred, or

(e) The non-defaulting Party may exercise any other rights or remedies which may be available under law or in equity. If non-defaulting Party waives any right or remedy in this Agreement or fails to insist on strict performance of defaulting Party, it will not affect, extend or waive any other right or remedy of the non-defaulting Party, or affect the later exercise of the same right or remedy by non-defaulting Party for any other default by defaulting Party.

**Section 8. Termination.**

(a) The COUNTY or CITY may terminate this Agreement in the Event of a Default pursuant to Section 7(a), Remedies.

(b) The COUNTY may terminate this Agreement immediately for convenience when it determines, in its sole discretion, that continuing the Agreement would not produce beneficial results in line with the further expenditure of Funds, by providing CITY with written notice.

(c) The Parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of this Agreement.

**Section 9. Employee Status.** Persons employed by CITY or COUNTY in the performance of this Agreement are deemed not to be the employees or agents of the other Party, nor do these employees have any claims to pensions, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to their respective officers and employees either by operation of law or by CITY or COUNTY, as applicable.

**Section 10. Notice.** Any notice delivered with respect to this Agreement must be in writing and will be deemed to be delivered (whether or not actually received) when (i) hand-delivered to the persons designated below, or (ii) five (5) business days after deposit in the United States Mail, postage prepaid, certified mail, return-receipt requested, addressed to the person at the address for the Party as set forth below, or such other address or to such other person as the Party may have specified by written notice to the other Party delivered according to this Section:

**As to COUNTY:**

Attention: Resource Management Director/CFO  
Seminole County Resource Management Office  
1101 E. 1st Street  
Sanford, Florida 32771-1468

**With a COPY to:**

Attention: Tricia Johnson, Deputy County Manager  
Seminole County, County Manager's Office  
1101 E. 1st Street  
Sanford, Florida 32771-1468

**As to CITY:**

Attention: City Manager  
City of Winter Springs  
1126 E. State Road 434

Winter Springs, Florida 32708

**Section 11. Parties Bound.** This Agreement is binding upon and inures to the benefit of the Parties, and their successors and assigns.

**Section 12. Conflict of Interest.**

(a) The Parties shall not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the other Party or that would violate or cause third parties to violate the provisions of Part III, Chapter 112, Florida Statutes, as may be amended, relating to ethics in government.

(b) Each Party hereby certifies that no officer, agent, or employee of that Party has any material interest (as defined in § 112.312(15), Florida Statutes), as may be amended, as over 5% ownership either directly or indirectly, in the business of the other Party to be conducted here, and that no such person will have any such interest at any time during the Term.

(c) Each Party has the continuing duty to report to the other Party any information that indicates a possible violation of this Section.

**Section 13. Dispute Resolution.**

(a) In the event of a dispute related to performance under this Agreement, the Parties shall exhaust COUNTY administrative dispute resolution procedures prior to filing a lawsuit or otherwise pursuing legal remedies.

(b) In the event that COUNTY administrative dispute resolution procedures are exhausted, a Party to this Agreement may notify the other Party in writing that it wishes to commence formal dispute resolution with respect to any unresolved problem under this Agreement. The Parties agree to submit the dispute to a Florida Certified Circuit Court Civil Mediator for mediation, within sixty (60) days following the date of this notice. In the event that any dispute cannot be resolved by mediation, the dispute may be filed as a civil action in the Circuit

Court of the Eighteenth Judicial Circuit of Florida, in and for Seminole County, Florida, which is the sole venue for any such civil action. The Parties further agree that any such action will be tried before the Court, and the Parties hereby waive the right to jury trial as to such action.

**Section 14. Reports.**

(a) Beginning at the end of the first quarter in calendar year 2022, COUNTY will provide the City Manager with quarterly reports, by completing Exhibit B – ARPA Quarterly Progress Report Template, attached to and incorporated in this Agreement. COUNTY reserves the right to revise Exhibit B in order for COUNTY to provide the public with transparency and to comply with requirements set forth by Treasury, while still providing CITY the information needed for CITY’s reporting requirements.

(b) COUNTY will provide CITY quarterly reports within ten (10) business days of the end of each calendar quarter and will be submitted prior to the end of each calendar quarter until the termination, expiration, or the completion of the program or services under this Agreement, whichever comes first. The ending dates for each quarter of the program year are March 31, June 30, September 30, and December 31.

**Section 15. Equal Opportunity Employment.** The Parties shall not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, disability, sexual orientation, gender identity or national origin. The Parties shall take steps to ensure that applicants are employed, and employees are treated equally during employment, without regard to race, color, religion, sex, age, disability, sexual orientation, gender identity or national origin. Equal treatment includes, but is not limited to, the following: employment; upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**Section 16. Governing Law, Jurisdiction, and Venue.** The laws of the State of Florida govern the validity, enforcement, and interpretation of this Agreement. The sole jurisdiction and venue for any legal action in connection with this Agreement will be, if in state court, in a court of competent jurisdiction located in Seminole County, Florida, or, if in federal court, the Florida Middle District, Orlando Division.

**Section 17. Compliance with Laws and Regulations.** The Parties must abide by all statutes, ordinances, rules, regulations, and executive orders pertaining to or regulating the provision of this Agreement, including, but not limited to, ARPA, regulations adopted by Treasury, guidance adopted by Treasury pertaining to ARPA, and 2 C.F.R. Part 200, entitled “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards,” as any one of the foregoing may be amended.

**Section 18. Entire Agreement.**

(a) It is understood and agreed that the entire agreement of the Parties is contained in this Agreement, which supersedes all oral agreements, negotiations, and previous agreements between the Parties relating to the subject matter of this Agreement.

(b) Any alterations, amendments, deletions, or waivers of the provisions of this Agreement will be valid only when expressed in writing and duly signed by the Parties, except as otherwise specifically provided in this Agreement.

**Section 19. Assignment.** This Agreement may not be assigned by either Party without the prior written approval of the other Party.

**Section 20. Severability.** If any provision of this Agreement or the application of this Agreement to any person or circumstance is held invalid, it is the intent of the Parties that the invalidity will not affect other provisions or applications of this Agreement that can be given effect

without the invalid provision or application, and to this end the provisions of this Agreement are declared severable.

**Section 21. Counterparts.** This Agreement may be executed in any number of counterparts each of which, when executed and delivered, constitutes an original, but all counterparts together constitute one and the same instrument.

**Section 22. Headings and Captions.** All headings and captions contained in this Agreement are provided for convenience only, do not constitute a part of this Agreement, and may not be used to define, describe, interpret, or construe any provision of this Agreement.

**IN WITNESS WHEREOF**, the Parties have made and executed this Agreement for the purposes stated above.

ATTEST:

CITY OF WINTER SPRINGS

\_\_\_\_\_  
CHRISTIAN GOWAN, City Clerk

By: \_\_\_\_\_  
KEVIN MCCANN, Mayor

Approved as to form and  
legal sufficiency.

Date: \_\_\_\_\_

\_\_\_\_\_  
ANTHONY A. GARGANESE  
City Attorney

*[Signatures and attestations continue on the following page.]*

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

ATTEST:

\_\_\_\_\_  
GRANT MALOY  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
BOB DALLARI, Chairman

Date: \_\_\_\_\_

For the use and reliance  
of Seminole County only.

As authorized for execution by the Board of  
County Commissioners at its \_\_\_\_\_  
20\_\_\_\_, regular meeting.

Approved as to form and  
legal sufficiency.

\_\_\_\_\_  
County Attorney

BP/

3/24/22

T:\Users\bpatel\Special Projects\American Rescue Plan\Municipalities\ARPA - Interlocal between Seminole County and City of Winter Springs v3.docx

Attachments:

Exhibit A – Scope of Work

Exhibit B – ARPA Quarterly Progress Report Template

## EXHIBIT A SCOPE OF WORK

### Seminole County and the City of Winter Springs Consolidated Assistance Program for the American Rescue Plan Act

<b>ARPA PROGRAM</b>	<b>CITY PARTICIPATION (Paid by City to County)</b>	<b>FIRST TRANCHE PAYMENT</b>	<b>SECOND TRANCHE PAYMENT</b>	<b>CITY JURISDICTION ONLY OR COUNTYWIDE</b>
Seminole County Sheriff's Office	N/A	N/A	N/A	Countywide
Countywide Mental Health Partnerships	N/A	N/A	N/A	Countywide
Non-Profit Grants	N/A	N/A	N/A	Countywide
Individual Assistance Grants <sup>1</sup>	N/A	N/A	N/A	City Jurisdiction Only
Seminole State College Workforce Training	N/A	N/A	N/A	Countywide
Homelessness Diversion/Rescue Outreach Mission <sup>2</sup>	N/A	N/A	N/A	Countywide
Broadband Study <sup>3</sup>	Up to \$15,800	N/A	\$15,800	Countywide
<b>TOTAL:</b>	\$15,800	N/A	\$15,800	

<sup>1</sup> County will invoice cities on a monthly basis. Amount will include a 10% administrative fee

<sup>2</sup> A portion of the funds allocated towards Homelessness Diversion will support the \$3,025,000 apportionment for Rescue Outreach Mission

<sup>3</sup> Not to exceed reflected amount. Cities will be invoiced once final costs are determined as part of the broadband study

**Exhibit B**  
**ARPA - Quarterly Progress Report**



Project Title:

Date

Contact Name:

Reporting Period:

Telephone:

**Project Objective:**

**Plan: a summary of project accomplishments for the reporting period; a comparison of actual accomplishments to goals for the period; if goals were not met, provide reasons why; provide an update on the estimated time for completion of the task and an explanation for any anticipated delays and identify by task.**

**Plans for Next Quarter:**

**Authorized Agent Signature: \_\_\_\_\_**



# CONSENT AGENDA ITEM 301

CITY COMMISSION AGENDA | APRIL 11, 2022 REGULAR MEETING

## TITLE

Splash Pad Fee Update

## SUMMARY

For several years, the City's has collected a \$3.00 daily fee for non-residents to utilize City Splash Pads. Last fiscal year, the splash pads took in only \$2,800 (total from both splash pads). Of that, the City had to pay the 1 percent sales tax to Seminole County and 6 percent sales tax to the State.

In addition, there is substantial expense to staff the splash pad and account for the incoming payments. Accounting staff spends about 1.5 hours, weekly, to account for and reconcile the payments (approx. 40 hours annualized).

Park Ranger costs are also substantially increased by an escalation in wages and staffing requirements at both splash pads. The expenses associated with administration of the fees significantly exceed the actual amount received from non-resident utilization of the splash pads.

## RECOMMENDATION

Staff recommends Commission to approve the elimination of the non-resident daily fee of \$3.00 for use of the City splash pads and to authorize the City Manager and City Attorney to prepare and execute any and all documents consistent with this agenda item.



## CONSENT AGENDA ITEM 302

CITY COMMISSION AGENDA | APRIL 11, 2022 REGULAR MEETING

### **TITLE**

Annual Review

### **SUMMARY**

The employment agreement between the City of Winter Springs and the City Manager, Shawn Boyle, provides for an annual evaluation of the City Manager. City Commission completed individual evaluations of Mr. Boyle for the 2021/2022 review year. The evaluations reveal that Mr. Boyle meets expectations for this year, even under continued external stressors such as aging infrastructure and an ongoing global pandemic. Additionally, the City Commission unanimously voted for a Vote of Confidence in the City Manager at the February 14 regular commission meeting.

### **RECOMMENDATION**

Commission has recommended an increase of 4% for cost of living adjustment.

# Accomplishments Review Year 2021-2022



**“Winter Springs jumped up two spots this year on the list to come in at #4” on the 2021 Safewise 10 Safest Cities in Florida (previously #6).**

\*\*\*\*\*

**Areavibes.com ranks Winter Springs with an exceptional livability rating #17 out of 884 in Florida.**

## Parks and Recreation

### Status of Goals

1. Complete courses on Florida building rules and regs to include ADA requirements and safety rules on work sites. **Completed**
2. Learn to design and erect board walks over the City ponds. **Ongoing. Practice is ongoing. Waiting for structural engineering drawing for design and erecting. Received and built a barge for this task.**

### Training

- ✓ Spray Licensed additional team members for fertilizer and pesticides
- ✓ Wind Mitigation Methodology- Retrofits
- ✓ Employer’s Guide to a Drug Free Workplace
- ✓ Florida Laws and Rules 61G4 FAC
- ✓ Asbestos in the Construction Industry
- ✓ Advanced Florida Building Code
- ✓ Building for Energy Efficiency

### Additional Accomplishments

- In house construction and remodels
  - Built new Pickle Ball and Shuffle Board Courts at Senior Center
  - Renovated outside restrooms at Sunshine Park
  - Renovated Men’s and Women’s restroom at PD
  - Refurbished the Dog Park (added a dog wash)
  - Remodeled the Kitchen at the Senior Center
  - Remodeled both Men’s and Women’s Restrooms in Senior Center
  - Remodeled entrance to Trotwood Park (Northern Way) including additional artwork

- Renovated Ranchlands Park. New Pavilion, Corn Hole, Dock, Ping Pong
  - Renovated Restrooms at City Hall
  - Built two offices out of Kitchen East side of City Hall
  - New roof and refurbished Pavilion A at Central Winds passive area
- Asphalted/Resurfaced/Restriped
  - Senior Center Parking Lot
  - Central Winds Baseball Parking Lot
  - Central Winds Playground Parking Lot
- Created a Trotwood Parking Lot extension (parallel parking between the pond and soccer fields/roundabout)
- Installed new Asphalted Parking Lot at Hicks in Central Winds
- Built new Trailhead Restroom at Hicks in Central Winds (across from Choices in Learning)
- Cleared out brush between baseball fields Passive area and built a wooden fence
- Extended Community Gardens in Central Winds to 13 units.
- Switched Parking Lot lights in Central Winds Baseball parking to LED and Painted Poles
- Removed old fence and columns at Trotwood Park (Trotwood Blvd) in preparation for new landscaping
- Installed Electronic gates at both water treatment plants for enhanced security
- Installed Knox keys to both WTP for emergency entry
- Repaired and sealcoat of PD parking lot (front and back)
- Installed a 2400 S.F. Metal Storage building at public works compound for additional equipment storage
- Rebuilt baseball fields at Central Winds
- Installed Dirt/Sand storage bins at Central Winds
- Demolished old public works building on Flamingo
- Torcaso Cove Pavilion- 1000 sq ft themed pavillion
- Torcaso Cove Wooden Deck 800 sq ft deck
- Added new sidewalks in Torcaso Park for additional accessibility and inclusion of all residents
- Demolished 120 Flamingo home (new city property for park expansion)
- Demolished 310 Wagner home (new city property for park expansion)
- Trotwood Splash Pad refurbished- added features and painted the surface with a theme
- Winter Wonderland Event/Drive through in combination with Winter Wonderland Parade. Added additional days and a walk through option. Re-routed the drive through to allow for better traffic flow.
- Refurbished and Painted numerous office at City Hall
- Trotwood splash pad recoated in preparation for new features and themed surface painting
- Installed electronic gate of parks maintenance facility
- Handicap electronic door openers for City Hall lobby doors for additional accessibility and inclusion of all residents

- Handicap electronic door openers for City Hall restrooms for additional accessibility and inclusion of all residents
- Enhanced major irrigation pump at Central Winds
- Install new entrance signage at Bear Creek Nature Trail
- Provided additional structural support to Senior Center Canopy (entrance from parking lot)

## Shared Services

### Status of Goals

1. Substantially complete Pickle ball courts for the residents by December 2021.  
**Completed at Senior Center, in process of design for Central Winds**
2. Replace City's current GPS system with an enhanced GPS system that will provide automation for additional processes (such as vehicle maintenance, relevant alerts/reminders, etc.) Summer 2021. **Completed. Late due to manufacturer delay and difficulties getting vehicles into fleet shop**
3. Create a City tree farm- including the marketing plan Fall 2021. **Rescheduled. This project was taken out of priority for this year. Due to the acquisition of new land, in December.**
4. Bring Resolution 2008-24 before the Commission for their review, after discussing with City Attorney's Office. I would seek a change to adhere to the State retention schedule and avoid costs associated with cassette conversion and staff time related to potential public records requests. **Rescheduled for 2024**
5. Comprehensive update of the Board/Committee orientation packet and development of training to ensure that new Board Members are fully equipped to serve at their first meeting. **Complete**
6. Coordinate with the City Attorney Office and Human Resources to update Confidentiality Form/Exemption List and develop a process for annual updates.  
**Ongoing**
7. Implement an internal Network Monitoring system to detect and alert in real-time any hardware failures or City outages. **Complete**
8. Become ITIL Foundation Certified. **Delayed due to COVID**
9. Clean out and organize City network closets and do proper cable management.  
**Complete**

### Training

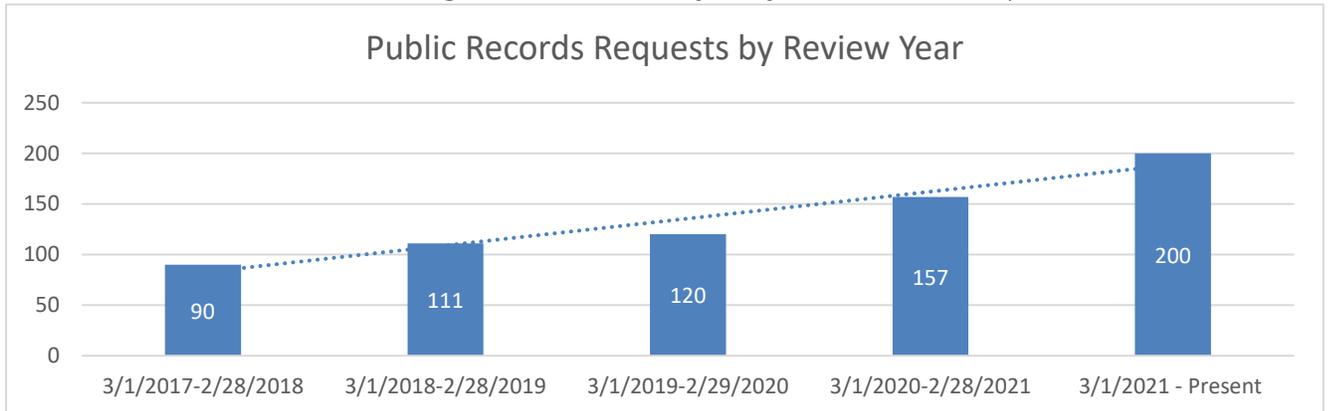
- ✓ Fred Pryor training for all employees- Harrassment, Diversity, and Inclusion Training
- ✓ Fred Pryor supervisory training
- ✓ Winter Springs University Training- Supervisor Safety Development
- ✓ Retention through Engagement
- ✓ HR: Victim, Villain, or Hero
- ✓ Navigating the ADA Minefield
- ✓ Ending the Acronym: South African Experience
- ✓ Budget Monitoring and Performance Measures in the field of Finance
- ✓ HR Ethics Certification (10 classes)
- ✓ The False Promise of Equality: Systemic Bias and the New Focus on Equity
- ✓ Easily Engaging Staff Who Seem Un-engagable

- ✓ Debt Management Best Practices
- ✓ ARPA Funds: Non-Entitlement Units
- ✓ SHRM Update: Omicron Variant
- ✓ The Hard Truth About Soft Skills
- ✓ Attended Florida Association of City Clerks Summer Academy. This event is part of the process of becoming a Certified Municipal Clerk (CMC)
- ✓ Florida Institute of Government Legal Advertisement Webinar
- ✓ FLC- Social Media and Public Records Training
- ✓ Conducting the Interactive Process under Americans with Disabilities Act
- ✓ HR 101 – What All employers need to know about it
- ✓ Cybersecurity: Risk and Ransomware – Florida League of Cities
- ✓ Alchemizing HR: How HR Leaders can build a leadership development culture – HRCI
- ✓ Alchemizing HR: Betting on You – Take control of your career – HRCI
- ✓ From Engagement to Inspiration: The Myth of Employee Engagement and How to Inspire Employees Instead – HRCI
- ✓ Higher Standard: How HR leadership in accessibility, competency, and strategic thinking supports business outcomes – HRCI
- ✓ 2021 FMIT Human Resources and Risk & Safety Management Webinar Series

### **Additional Accomplishments**

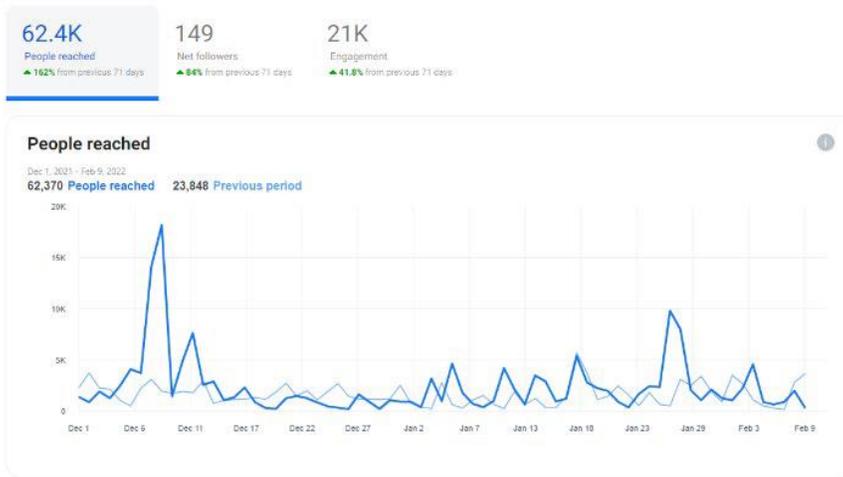
- Negotiated a substantial decrease in health insurance premiums, approximately \$200,000 annually (during a time a record high increases industry wide) while also being able to present a competitive buy-up option that was not previously offered
- Created a paperless new hire form; implemented and now in use
- Created uniform inventory tracking
- Implemented personality assessment to incorporate behavior assessment methodology into hiring and employee relations.
  - This, along with other initiatives, has led to a reduction in turnover this review period from 30% to 21%; well below the industry average of 49%
- Enhanced employee engagement initiatives
  - Sending New Hire Notifications to staff
  - Supplying water, Gatorade and popsicles to field crew
  - Winter Holiday Spirit Week
  - Door Decorating Contest and snacks during voting
- Updated all City Job Descriptions to accurately reflect
- Revised Harassment Policy for review
- Revised Safety Incentive Plan for review
- Created Covid19 Protocols for City employees and buildings (3 separate times) to provide with no interruption of essential services to residents
- Created new temp agency relationship to supplement staffing needs during a nationwide staffing shortage
- Temp Agency on call during Hurricane Season
- Created City Hall Security Policy
- Created City Hall Parking Passes and Policy to deal with the growing demand

- Created GPS Key fob Policy to assist IT, which creates a cost savings due to proper tracking and evaluation of staff time on projects
- Streamlined SOP for entering new hires into Paylocity for HR Assistant position

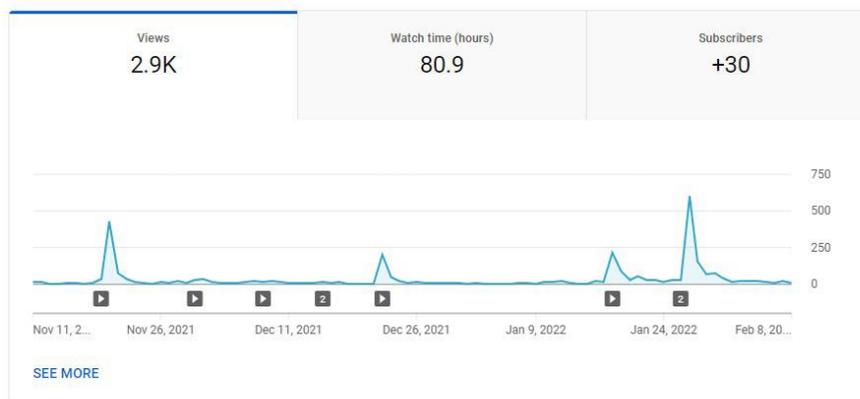


- Responded to 1,177 lien search requests, providing results for all requests within established timelines (1-2 days for rushes; 3-5 days standard). This is a ~46% increase over last year.
- Timely distribution of 90 agendas/notices and completion of 51 sets of minutes for the City Commission and the City's ten (10) active Boards and Committees.
- Three (3) new Boards and Committees came on line during the period of March 1, 2021 to present, the Auditor Selection Committee, Veterans and Veteran Families Advisory Committee, and the Youth Council.
- oversaw disposition of 400+ cubic feet (boxes) of records in compliance with state retention schedules.
- Successfully transitioned phone and network configuration for police communications to the county; provided a more efficient use of tax payer dollars.
- Complete a America's Water Infrastructure Act (AWIA) cyber security evaluation at the water plants.
- Replaced dilapidated GPS system and implemented a new GPS system for City vehicles
- Implemented a new backup system for our core virtual systems
- Upgraded Cisco phone system to new and final version available
- Replaced our Barracuda appliances with Barracudas Cloud Hosted system for e-mail archiving and protection
- Implemented a documented procedure by which we can update New World check signatures without New World support involvement
- Removed old antivirus system, Carbon Black, and replaced with new system SentinelOne
- Laserfiche Form - Implemented a shift trade request form for Police Department
- Laserfiche Form – Implemented HR forms such as personnel authorization and improved take home vehicle, and new employee onboarding.
- Laserfiche Form – Implemented a death investigation form for Police Department
- Implemented a reCAPTCHA system for our City website forms
- Implemented a workstation alerting and communication system, Desk Alerts.
- Implement a database collector that will archive and display all City Jabber chats
- GIS – Completed a curated GIS online portal for City staff and residents

- GIS - Created a Streetlights map for Public Works. Verification stage was put on hold.
- GIS – Created a golf course easements map for Public Works
- GIS – Created a multitude of FLU and zoning maps for Community Development for Comp Plan
- GIS – Created a water consumption and CUP map for Public Works
- GIS – Created a landscape zone map for Public Works
- GIS – Added the City's sewer and waste data into our online ESRI portal
- GIS – Assisted Community Development with an interactive parcel map from old Laserfiche records
- Created procedures for GIS to do address grabs based on area or radius when mailing lists are needed
- Implemented a new City Hall SAN appliance, Synology, for housing backup jobs
- Implemented a new virtual server system, SCALE, to replace previous system as was end of life
- Removed old access control system at Police Department and replaced with new one, AxTrax.
- Implemented a digital signage system with 2 TV's outside City Hall front entrance
- Implemented a dedicated killdisk computer that will be used to wipe old hard drives before recycling.
- Implemented a dedicated network route between the Police Department and FDLE for CJNet communication
- Upgraded the Police Department to a new Crossmatch Fingerprint system
- Removed old security cameras and implemented a new Meraki system for City Hall, Police and Public Works
- Increased staff requirement for 2-Factor authentication
- Implemented a mandatory sign in sheet for all individuals who enter into an IT server room
- Maintained a helpdesk satisfaction score of 95% or more
- Completed over 3,600 helpdesk tickets in past 12 months
- Created a City Hall floorplan for patch panel and office drop layouts
- Implemented a new password expiration notification e-mail system for City staff when their password is getting old
- Installed over 15,000 shrubs and flowers
- Installed over 150 trees
- 950 tree to residents during the City's Tree Giveaway Arbor Event
- Redesign of Winter Springs Insider newsletter. Realized a 5-6% gain in email clicks and a 4-15% increase in opens. As well as increased the amount of marketing emails sent from constant contact. 82 New subscribers since December.
- Redesign and rebrand City assets for smaller events. Such as Father Daughter Dance, Babe Ruth Opening, Egg hunt, Arbor Day Giveaway and Fish Winter Springs event.
- Over 62,000 Facebook profiles reached and 149 followers gained since December 2021. 21K engagement on post a 41% increase from previous quarter.



- Implemented internal communications email (broadcast@winterspringsfl.org) with IT to streamline content creation and spread details.
- Produced 3 water video updates and other misc. video content for the YouTube channel. Over 3k views on YouTube alone and 30 new subscribers in the last 2 months. Facebook has seen about 7k views on videos.



## Community Development

### Status of Goals

1. Updated and Transmitted the following Comprehensive Elements (3); **Complete**
  - a. Property Rights Element (new)
  - b. Recreation and Open Space Element
  - c. Capital Improvements Element
2. Updated the following elements (2), awaiting Water Supply Plan; **Delayed**
  - a. Conservation Element
  - b. Infrastructure Element
3. Updated the following elements (2), awaiting ILA resolution; **Delayed**
  - a. Housing Element
  - b. Public School Facilities Element
4. Update Stormwater and Floodplain Ordinances **Complete**
5. Engergov Implementation **Ongoing**

## **Training**

- ✓ Permit Technician Certification- training and certification
- ✓ Completed Veytec (Phone System) User Training

## **Additional Accomplishments**

- Cleaned out CDD portion of long term storage of historical records
- Issued 314 Non-Residential Permits.
- Issued 4336 Residential Permits.
- Reviewed 15,039 Building Permits. (Reviewers include, Building, Engineering, and Planning)
- Completed 15,938 Building Inspections.
- Reviewed and Issued 3,066 Business Tax Receipts (BTR).
- Updated BTR application, process, and issuance to provide shorter turnaround times and better data.
- Updated BTR Exemption letter, following State Statute.
- Assessed BTR Late Fees Letters.
- Updated Arbor application, process, and issuance to provide shorter turnaround times and better data.
- Improved Building Permit Review time from 30 days to 12 business days
- Integrated Business Tax Receipt applications into the Building Division.
- Integrated Arbor Permit applications into the Building Division.
- Assisted in City Employee Appreciation/Involvement Initiative w/ HR.
- Collaborated with Police/Code Enforcement with Garage Sale and Solicitation Permits.
- Maintained sites, per City Code, with active site work and vertical permitting which includes the following approved project(s);
  - Chau Medical (± 10,000 sq. ft. medical office)
  - Seminole Crossing Townhomes ( 114 SF, attached subdivision)
  - The Savoy ( 145 unit, 55 plus ILF)
  - Tuskawilla Crossings (379 SF, detached subdivision)
  - Wendy's (± 2,100 sq. ft. fast food restaurant)
  - Winter Springs Marketplace (± 60,000 sq. ft. / 5 building, commercial shopping center)
- Reviewed and Issued 119 Right-Of-Way Permits.
- Provided services without a Civil Engineer since September 2021 for ROW Permits, Building Permits, Site Acceptance, and Site release.
- Facilitated and Managed Contract with engineering contractors for Development Permits and NPDES/MS4 permit.
- Completed year 4 of 5 of NPDES/MS4 Permit.
- Facilitated and completed Traffic Warrant- Michael Blake and 434
- Facilitated and completed MBB light project to 100% percent design and submittal to FDOT.

- Completed Site Acceptance (FDEP/FDOT, Bonding, DA requirement, and Easements) for the following project(s);
  - Seminole Crossing Townhomes ( 114 SF, attached subdivision)
  - The Savoy ( 145 unit, 55 plus ILF)
  - Wendy's (± 2,100 sq. ft. fast food restaurant)
  - WS Marketplace Phase I (Dollar Tree, Crunch Fitness, and Dental Office)
- Completed Site Release for the following project(s);
  - Tuskawilla Crossings (379 SF subdivision)
- Incorporated sustainability as focus on the Planning and Zoning Board (PZB) so that sustainability is focused on for all future development
- Reassess parking, greenspace, and stormwater in land development codes- Require LID Techniques
- Reviewed and completed the following Ordinances (4);
- Updated Ordinances to be in line with County and State
  - Stormwater Ordinance
  - Floodplain Ordinance
  - Property Rights Ordinance
- Completed twenty-one (21) pre-application meetings.
- Reviewed and completed nine (9) alcohol licenses.
- Reviewed and completed one (1) lot split.
- Reviewed and issued eleven (11) zoning verification letters.
- Reviewed and completed three (3) development plans/final engineering plans.
- Reviewed and completed three (3) aesthetic reviews.
- Reviewed and completed ten (10) waivers/variances.
- Reviewed and completed three (3) plat reviews.
- Created, reviewed, and completed one hundred and forty-three (143) City addresses and updated to Seminole County.
- Prepared and completed nine (9) public hearings which includes notices/postings/mailings/ads.
- Updated Future Land Use Map (with Legal Review) Schrimsher properties along the Town Center Border.
- Updated Planner's Guide 2021 Version.
- Updated Future Land Use Map
- Created Town Center Transect Map to clarify the different transects
- Updated Zoning Map
- Update/Revise the Winter Springs Water Plan for submittal to SJRWMD (S. Fitzgibbons) for review comments.
- Began Implementation of City "Green" initiative with Car Wraps of two (2) Chevy Bolts.
- Completed Electric Charging Stations project within three (3) City Locations.
- Completed City Lighting Study.
- Updated City Economic Development Webpage and updated information

- Updated UCF Incubator Annual Contract to include more Economic Initiatives for local Winter Springs Businesses; began quarterly update presentation to regular commission meetings
- Updated Oviedo/Winter Springs Chamber business relationship to include more Economic Initiatives for local Winter Springs Businesses
- Provided technical assistance on Westgate/Orange Ave settlement which resulted in the City receiving \$84,000 to the City Tree Bank and twelve (12) five-inch (5) live oaks along Orange Ave ROW.
- Completed Parks Master Plan (first one in City History).
- Completed design of the following project(s);
  - Lake Jessup Overlook Pickle ball
  - Lake Jessup Overlook (phased approach).
  - Torcaso Pavilion.
  - Toraso Bathroom.
  - WSPD Shooting Range.
- Reviewed and issued 390 Arbor Permits.
- Provided funding to the tree bank through the following project(s);
- Chau Medical (\$65,700)
- Westgate/Orange Ave (\$84,000)
- WS Marketplace (\$112,800)
- Reviewed and completed City Streets Study and delivered to City Commission.
- Secured \$125,000 for the Tuskawilla Crossings Subdivision Reclaim connection.
- Updated and Transmitted the following Comprehensive Elements (3)
  - Property Rights Element (new)
  - Recreation and Open Space Element

## Finance

### **Status of Goals**

1. AP/Check processing to paperless changes. Set up and implement ideas for process improvement to eliminate the printing and scanning of invoices. **In process**
2. Accounting Dept. SOPs **Partially complete**
3. Implement kiosks to facilitate customer engagement **In review**

### **Training**

- ✓ Procurement Training

### **Additional Accomplishments**

- Reconnected the City with the Seminole Co Resiliency Group (Storm/Flooding Issues) opening the door for potential grant funding. (No one from the City had been involved for approximately 7 years.)
- Implemented TracEz (Waste Pro Work Orders).

- Created 5 year residential consumption for report to SJRWMD & DEP for PW/UT Director.
- Created a Business Analytics report for the Meter Universe to provide PW/UT with information about the types, approximate ages and service address for the meters. A first step in potential replacement program.
- Beginning in Sept, issues with Pinnacle bill print continued to get worse. I worked with Creative Printing in the short term and Arista, our other print vendor for a long term solution. This included working with Arista to update the scan line on both the remittance and reminder stubs so both could be scanned in the Retail Lock Box file
- Updated internal documentation: 10 topics (Customer Care) - Desk Top Procedures
- Reinstated signed/notarized payment plans.
- Increased pension funding to 105%; reduced City funding \$1,000,000 per year
- Reconciled 3rd Gen to bring City up to current
- Centralized project tracking, aligning with budget spend and scope
- Completed an S&P Global Rating. Maintained our AA- rating with a stable outlook
- Auditor Selection Committee: Resolution 2021-06 dated May 10, 2021 – established the auditor selection committee which resulted in the selection of our new auditors effective for fiscal year 2021 year end audit.
- Land purchases – The City purchased two properties for the purpose of park expansion. These properties were acquired on July 19 and 23, 2021.
- Revised - Investment Policy Statement: Resolution 2021-21 dated August 9, 2021
- Developed a procurement placemat- an easy to follow flow chart for procurement

## Public Works and Utilities

### **Training**

- ✓ FDEP Erosion and Sedimentation control inspector certification
- ✓ OSHA Confined Space Training
- ✓ Field Specific Harrassment Training (bullying)

### **Additional Accomplishments**

- Replaced approximately 75,000 sq. ft. of sidewalk.
- Design Complete: Reclaimed expansion: Project will involve installation of 12" reclaimed water main
- Water Treatment Plant #1 – Water Quality/Capacity improvement. Supply Header has been upgraded increasing throughput capacity by 30%. Control and chlorine system automation optimized to improve disinfection efficiency, and balancing injection ratios to match demand. Chlorine consumption reduced by 50%.
- Design Complete. WTP #3 Electrical Improvements. Back-up power generator and VFD will be installed to increase resiliency and efficiency
- Potable Water Flushing Plan completed. Automatic flushers have been deployed. Water quality is continuously monitored. Flushing is ongoing to ensure water quality is maintained

- Replaced portions of air header at West WWTP. Improved airflow and distribution to aeration basins, reducing odor and optimizing Dissolved Oxygen (DO) levels.
- Developed and implemented procedures to isolate and flush the City's reclaimed water system. These procedures to systematically re-direct public access reuse water flow from customers to Rapid Infiltration Basins (RIB) to accommodate maintenance and repair activities, and in the event of a treatment plant upset ensure continued regulatory compliance while recovering and retiring the reclaimed water system to service.
- Removed and installed new sewage-holding tank and lift station at Central Winds Park Restroom Facility.
- Stabilized bar screen assembly/personnel platform and repaired ruptured air piping at the East Sewer Plant. Enabling uninterrupted operations during rehabilitation.
- Reconfigured Central Winds Park irrigation system, enabling installation of new booster pump station and uniform irrigation of grounds and sports fields.
- Roadway resurfacing 11.33 miles of streets resurfaced.
- Reconfigured stormwater drainage and conveyance on Chokecherry Court – rerouted surface water drainage to prevent residential flooding.
- GIS Stormwater mapping – comprehensive inventory and spatial mapping of City stormwater infrastructure.
- Point and grout structural repair training. Enables organic capability for repair of catchment and conveyance structures.
- 11, 151 meter services work orders: 1,792 meter replacements 371 new installations.

## **Police Department**

### **Training**

- ✓ Training in de-escalation and crisis handling for all officers
- ✓ Training in mental health awareness for police department personnel

### **Additional Accomplishments**

- 32% reduction in overall crime
- Revived and completed our recent Citizens Police Academy class
- Hosted a “COVID-friendly” Shop with a Cop program at the police department
- Hired eight new police officers, two Records Clerks, one Forensic Specialist, and the department’s first ever Crime Analyst
- Completed a full transition of Communications services to SCSO
- Redesigned the patrol fleet to reflect a more modern appearance

# Previous Years' Accomplishments

## Review Year 2020-2021



### **“Winter Springs ranked #3 this year among the safest small cities in Florida”**

- Created a Hurricane Comprehensive Emergency Management Plan
  - This process included leading a team of Essential Personnel throughout the process the review current and needed processes, document, and assign responsibilities during a Hurricane.
  - The result was documented procedural guidelines for Hurricane preparations and operational activities prior to, during and after a storm
- Received a \$200,000 grant for the Trailhead bathroom at Central Winds
- Negotiated a health insurance renewal that was 13% below market
- Coordinated a diversity council and workshop
- Created and interviewed applicants for the Youth Council
- Established a Veteran's Advisory Board
- Created daily vehicle logs to put in blue collar vehicles
- Installed a new filtration system at Torcaso park splashpad
- Repainted/renewed Oak Forest entrance signage
- Torcaso Park Improvements
  - New Playground
  - Sandbox
  - New lights
  - New sidewalks (replaced old and added a new plan for ease of access around the park)
  - Remodeled splashpad (new flooring and structures)
  - Two new parking lots
  - Landscaping for park (including design and treescape)
  - Cleared overgrown field in front of new parking lot
  - Designed banners and park entrance signs
- Designed and ordered City Hall Wayfinding Signs
- Designed and ordered Wayfinding signs for the Trail by Town Center
- Designed, created a reusable template for City project signs (Water Works projects)
- Cleared passive area at Central Winds
- Created and Marketed a Community Garden
- Facilitated and responded to 154 open records requests, a 30% increase over last year
- Responded to 806 lien search requests, providing results for all requests within established timelines (1-2 days for rushes; 3-5 days standard)
- Timely distribution of agendas and completion of minutes for the City Commission and the City's seven (7) active Boards and Committees with a 97% accuracy rate; two (2) of sixty-three (63) agendas, required revised agendas to be sent out.
- Designed a new process by which all contracts, agreements, etc. that come before the Commission are immediately scanned into Laserfiche upon receipt of executed copy. All paper copies of contracts found in the previous Clerk's office have been scanned into Laserfiche
- Created consistent naming conventions in Laserfiche and began the process of moving documents to appropriate folders, and deleting redundant documents to make searching and finding records easier
- Deployed Granicus for City Commission and Board meetings. This provides for a better resident experience during and after the meeting for live audio, agenda management and commissioner communication

- Created a new agenda submit/review process for Director's to follow (utilizing Granicus) for submission of meeting items
- Successfully updated Qualifying Forms for the 2020 General Municipal Election, coordinated with Supervisor of Elections Office and all candidates to ensure a smooth election process.
- Painted tips of Tuscawilla Road medians
- COVID
  - Created safety measures for employees that could not be separated to different offices (i.e. plastic windows for customer service teams, and for the commission)
  - Created a Work from Home process and accountability form
  - Created sanitation and social distancing procedures for employees
  - Coordinated a COVID friendly annual health screening
  - Coordinated a COVID friendly and social distanced BINGO event at the senior center
  - Implemented GoToMeeting for City board meetings, council concerns, and internal staff meetings
  - Completed the tri-annual FDLA CJI Security Audit on the Police Department
- Created Winter Springs University in conjunction with Florida League of Cities training
- Simplified the open enrollment process for employee ease. This allowed employees to elect benefits and ask questions via phone rather than group and/or individual meetings.
- Transitioned City GIS responsibilities in house (was previously outsourced)
  - Created Stormwater map
    - Implemented ESRI Fieldmap system for Stormwater with dedicated iPads
  - Created several zoning and parcel maps for Community Development
  - Created Christmas Lights Around Town map
  - Created address map for police department
- Performed 3 separate New World version upgrades throughout the year
- Upgraded the City's door system to the latest release
- Created and implemented Laserfiche Forms for internal City workflows and paperless forms (This replaced the old Sharepoint Forms)
- Upgraded the City's phone systems and desk phone to the latest version (this was never done on our current phone system 5+ years)
- Changed our Wi-Fi access points to a Meraki system- this will simplify the transition to a new camera system
- Upgraded all police Verizon hotspots to the newer model
- Implemented a new time/attendance and payroll system
  - Including training to employees and supervisors on entering and approving time
  - Implemented iPad timeclocks for Paylocity
    - This was new to PWU and the police department and a replacement to the old system at City Hall
- Created an internal IT Department Change Management Log to track critical system changes
- Created firm new hire procedures, termination procedures and workstation setup procedures (for new/departing user IT setup)
- Maintained a helpdesk satisfaction score of 95% or more
- Changed the helpdesk call procedure to a hunt group that includes helpdesk technician cell phones and auto roll over to Eola Tech if no answer
- Implemented a monthly newsletter providing status updates on the IT Department
- Cleaned up and painted the City Hall helpdesk area
- Refurbished Ranchland Park- City savings of approx. \$70k. Includes a new pavilion, parking lot, dock, ping pong table, grill, and corn hole
- Redesigned and overhauled current landscaping at Trotwood roundabout including artistic structures to match theme of the Pam Carroll Pavilion

- Also designed and created new wayfinding signage at Trotwood Park
- Completed pavilion overlook at Trotwood park
- Remodeled City Hall west restrooms
- Remodeled City Hall east restrooms
- Remodeled Senior Center
  - Kitchen- new tile on walls and floor
  - Remodeled bathrooms
  - Painted the rooms
  - Replaced interior doors
  - Installed a mobile generator
- Replaced Bear Creek walkway into park
- Installed a walking bridge over the creek in Bear Creek Nature Trail
  - Added new entrance signage
- Created and posted fishing ordinance signage at city parks and lakes
- New storage bins at Central Winds Park
- Created and implemented daily parks maintenance checklists
- Grand opening of Field of Dreams park at Central Winds
- Updated Arbor ordinance to include relevant tree and sizing requirements
- Redesigned and installed new landscaping for the Police Department
- 0 recorded landscape accidents for the year (includes work comp, vehicle, and property)
- Trained landscape team on small tools safety, operations and maintenance (chainsaws, string trimmer, hedge shears, blowers etc.)
- Trained select landscape team members on large equipment safety, operations and maintenance (skid steer, loader, forklift, etc.)
- Trained all team members on proper horticulture practices
- Updated city hall landscaping including new plantings and crowded trees
- Trained all team members in proper tree fellings
- Installed over 18,000 shrubs
- Installed over 250 trees
- Prepared a COVID friendly Arbor Day Tree Pickup/delivery event
  - Purchased and assisted in the delivery of over 420 trees for City's Tree giveaway (130% more tree giveaways than last year)
  - Innovated and executed an efficient drive-through experience. Created a brand new process for this and utilized CivicRec for registration.
- Trimmed City parks palm trees in-house rather than using the budgeted contractor (resulted in a 50% savings to the City)
- Designed and install of new landscaping for west 434 medians
- Designed and install of new landscaping for Tusawilla road medians
- Internalized 30+ acres of mowing and maintenance that was previously subbed out
- Developed and implemented monthly contractor checklists
- Created a sponsorship guide for Movie in the Park
- Modified and created new events during this past year because of COVID-19 restrictions:
  - Drive-in Movies in the Park- June (the first one we did) sold out within 24 hours of it being posted.
  - Fourth of July Parade and Spirit Week
  - Take-Out Winter Springs (supporting local businesses)
  - Park Scavenger Hunts- Over 100 children participated in the park scavenger hunts
- Covid-19 Communication:
  - Built a COVID-19 information page on the website and updated it regularly.

- Communicated closures and cancellations with the public in a timely manner.
  - Created new graphics and shared information from the county as needed on Social Media.
  - Adjusted events and event communication / registration (waivers, social distancing messaging, etc.) and printed new signage for the guidelines.
- Created and executed Winter Wonderland of Lights over a very short period of time (about 4 weeks).
  - Obtained \$15,000 in sponsorship dollars.
  - One of the most attended events ever! The team adjusted to the turnout after the first night and the residents loved the display.
  - Created new signage and banners
- Created for the first time a hybrid virtual event for Veteran's Day. We had to adapt quickly to a change of venue due to weather at the last minute.
- Created universal wayfinding signs for events. This will save money in the future because event specific wayfinding signage was budgeted and purchased for each event
- Created Food Truck Grab N' Go events held in Torcaso Park and Trotwood Park.
- Provided an (COVID friendly) inauguration event for our newest commissioners.
- Perk up Parks Initiative:
  - Created teaser project signs for construction projects
  - Created signage for the new parks
  - Managed several ribbon cutting ceremonies.
  - 1,200 people viewed the Torcaso Park ribbon cutting on Facebook Live.
- Updated sponsorship guides:
  - Created a Movie in the Park sponsorship guide.
  - Updated the main events guide to include an introduction and updated information.
  - Created an Egg-citing Egg Hunt sponsorship guide (this is a new event this year)
  - Built multi-year contract for Budget Tree to sponsor Explore Outdoors and other events
- Engaged on Social Media platforms:
  - Started an Instagram page and the Police Department Facebook page.
  - Engaged through the creation of hashtags such as:
    - #FreedomSpiritWeek
    - #ReadyWinterSprings
    - #TakeOutWinterSprings
  - Created a series of #StoryTime videos that have been viewed over 1,800 times.
  - Posted photo albums from the events and ribbon cuttings this past year.
  - Created Facebook events for our community events to provide details and thanks to our sponsors.
- Water Works Program:
  - Created the logo and graphics for the Water Works Program
  - Worked closely with our partners to create content for social media and the website.
  - Recorded and edited videos of presentations for the website
  - Started the "Wastewater Daily Download" to inform residence of the progress on the projects
- Director of Operations received CPFO certification (self-study) after successfully completing all 5 exams
- Retention Through Engagement Course

- HR: Victim, Villain, or Hero Course
- Navigating the ADA Minefield Course
- Budget and Performance Management Course (2 day course)
- City Clerk attended Florida Association of City Clerks Virtual Fall Academy. This event is part of the process of becoming a Certified Municipal Clerk (CMC)
- Clerk attended the Florida Institute of Government Public Records Management Training- Part of the training required to become a Florida Certified Records Manager
- Claims and Risk Mgmt Specialist became E-Verify Certified
- Claims and Risk Mgmt Specialist attend FMLA training course
- Claims and Risk Mgmt Specialist attended HR's Role in COVID Vaccination Initiative in the Workplace course
- Claims and Risk Mgmt Specialist attended Employment Law training course
- Claims and Risk Mgmt Specialist attended Worker's Compensation Training Course
- Claims and Risk Mgmt Specialist attended Payroll Law Training Course
- Claims and Risk Mgmt Specialist coordinated and attended Sexual Harassment/Diversity Training course
- Claims and Risk Mgmt Specialist coordinated and attended Winter Springs University Supervisor Safety Development Training course (2 day course)
- IT Manager completed training to become the City's LASSO (re: FDLE CJIS)
- Three parks employees attended Landscape University- Turf Grass Best Practices (a prerequisite for spray licensure)
- One maintenance worker attended Green Industry Best Management Practices (another prerequisite for spray licensure)
- Maintenance Worker completed training course and received CDL license
- Maintenance Worker completed training course and receive Aquatic Facility Operators License
- Three parks employees are attending weekly internal Spray License training. Training includes coaching and study materials include "Applying Pesticides Correctly" and "Ornamental Turf Grass Pest Management". This is due to limited external training opportunities available
- Parks Manager attended Winter Springs University Supervisor Safety Development Training course (2 day course)
- Landscape Manager attended Winter Springs University Supervisor Safety Development Training course (2 day course)
- Landscape Manager gained MOT certification
- Events coordinator completed InDesign training
- All employees attended Sexual Harassment and Diversity Training
- 2020 W&S Refunding Note; – consolidated and refinanced two outstanding notes totaling \$3.2M for a lower rate saving \$218k over the life of the loan.
- Seasonalized Monthly Financial Reporting – established the reporting package to share at director's meeting.
- Fitch Ratings survey
- Guided Aneta to update Capital Projects workbook for Veolia tracking to budget
- Waste Pro contract extension (short term)
- 2020 Water Consumption Analysis
- Established process for monthly consumption reporting (high consumption users) to aid in conservation/code enforcement effort.
- Coordinated ideas to streamline the process for bench test work orders.
- Completed the Arbor Tree Ordinance with approval through the City Commission.
- Completed the Streetscape Ordinance with approval through the City Commission.
- Completed the Mobile Food Vendors Ordinance with approval through the City Commission.

- Completed the Dr. Chau's Medical Office through the public hearing approval process with a \$65k contribution to the City Tree Mitigation Bank.
- Completed the Winter Springs Marketplace through the public hearing approval process with a \$112 contribution to the City Tree Mitigation Bank.
- Completed the Matthews ADU through the public hearing approval process.
- Completed the Venetian Square Aesthetic Review through the public hearing process.
- Completed the purchase, with City Commission approval, of the first two (2) electric vehicles with pending charging stations (in line with the Comprehensive Plan)
- Secured a \$50k grant to complete the Parks and Rec Master Plan (this has never been done)
- Conducted two (2) Community Workshops during the pandemic.
- Completed the remaining eight CP Elements in conjunction with the ECFRPC. Two are with Legal for review (Conservation, Parks and Rec)
- Updated the Planning and Zoning Guide for residents, businesses, and contractors. This guide provides valuable information from simple fence permits to commercial building setbacks.
- Maintained the Arbor City designation from the Arbor Foundation (32 Years).
- Updated Front Counter (permitting) to include plexiglass and social distancing due to the pandemic.
- BPCA meetings restarted, set up new schedule for 2021.
- Parks and Rec meeting held, during the pandemic with a new schedule for 2021.
- 2,516 citations
- 5,685 warnings
- 7,096 traffic control events
- Littering violations: 3

# Previous Years' Accomplishments

## Review Year 2019-2020



### “Winter Springs ranked #6 this year among the top 50 safest cities in Florida”

- Trees – 395
- New 100 gal oaks and crape at Torcaso Park
- 30 new crape myrtles on 434 (in front of Starbucks)
- Shrubs 22,074
- Created a weeklong- 4<sup>th</sup> of July celebration “Freedom Spirit Week”
- Celebration of freedom Labor Day event
- Arbor Day - Will be online/virtual. Free tree giveaway form will be in Civic Rec. July 11
- June 27- Fish Winter Springs- Working on social distancing logistics
- July 18- Fish Winter Springs- Working on social distancing logistics
- August 15- Fish Winter Springs- Working on social distancing logistics
- September 19- Fish Winter Springs- Working on social distancing logistics
- Drive in Movie- June 30<sup>th</sup>- Central Winds
- Drive in Movies – July 23<sup>rd</sup> Central Winds
- Grand reopening of New and Updated basketball courts at Torcaso
- Grand Opening of Phase 1 Torcaso Park
- Grand reopening of Trotwood Park Playground
- Grand opening of new Trotwood pavilion
- Remodeling of the Senior Center kitchen and bath
- Addition of emergency power at the Senior Center
- Construction and Landscaping for new parking lot (in town center)
- Refurbing medians on Tuscawilla Road (in June/July) at the WS Blvd intersection
- Rolled out Granicus internally and externally
- Updated the City Comprehensive Plan and it is now complaint with the State. The State found the City out of compliance several years ago that prevented Text, Small, and Large Scale Amendments. The Comprehensive Plan elements had not been updated in 7 -10 years.
- Development Projects approved
  - **Ocean Blue** (commercial shopping/food)
  - **WS Townhomes** includes a 125k contribution to the City and dedication of 3.1 acres of passive parks.
  - **Wendy’s** (fast food restaurant)
- Implemented a Maintenance Program (ex. Tuskawilla Crossings), which was previously required by Code, but not enforced.
- Released the first ever Planning and Zoning Guide for residents, businesses, and contractors. This guide will provide valuable information from simple fence permits to commercial building setbacks.
- Created new processes for the 2019 Zoning Code changes to help facilitate applicants through the public hearing process.
- Created the Community Workshop venue and process from the 2019 Zoning Code Changes. We held seven community workshops.
- Maintained the Arbor City designation from the Arbor Foundation. (We were out of date prior)
- Restarted the BPAC which had been on hiatus for 3 years.

- Created Development Permit related administrative processes (or updated previous process that were not maintained) for the following;
  - Bill of Sale
  - LOC
  - Maintenance Bond
  - ROW Permit
  - Site Acceptance
- Completed the following County/State/Federal Requirement's for the following;
  - 2020 Census – Initial Boundary Validation Program (BVP)
  - 2020 Census – Validation of City data provided by the Federal Government
  - 2020 Annual Department of Revenue submission
  - 2020 – County Addressing Validation
- Transition water and wastewater treatment operations and lift stations to Veolia (\$3.3M budgeted for these services FY19/20)
- Establish a Sidewalk Replacement Program:
  - \$369K (A)/\$386K (B) FY18/19
  - \$224K (A)/\$435K (B) FY19/20
- Complete Street Resurfacing Program:
  - \$700K FY18/19
  - \$1.45M FY19/20
- Storm Water - Completed NRCS grant projects:
  - Debris removal within Gee, Sheoah, and Howell Creeks
    - Total of 24,135 linear feet of channel cleaned; 100 CY of debris disposed
  - Gee Creek Bank Stabilization (Hacienda Village)
    - Installed 16,860 SF of steel sheet pile
  - Sediment removal in Gee Creek (Moss Rd and Edgemon Rd crossings) and Howell Creek (Winter Springs Blvd crossing)
    - Combined 1,838 CY of sediment removed
  - Obtained reimbursement for \$1.2M from NRCS
- Remained in compliance with federal and state water quality standards (see 2019 Annual Water Quality report for City-system)
- Launched Water Works program for improving facilities and infrastructure related to water
  - Taste and smell improvement projects currently underway at WTP #1
  - Priority repairs to the East and West WWTPs designed and currently out to bid for construction
    - Construction projected to start in late August/early September
- Completed City Hall Improvement Projects (Kitchen, Restrooms, Offices)
- Completed Installation of Emergency Generator at Police Dept. and City Hall
- Installed six Digital Speed Signs and 14 Blinking Stop Signs at Trail Crossings to promote Traffic Safety throughout City
  - SR434 Traffic Study (Tuskawilla to SR417) currently in progress and expected to be completed by 6/15; presentation of findings and recommendations at 7/13 Commission meeting



# CONSENT AGENDA ITEM 303

CITY COMMISSION AGENDA | APRIL 11, 2022 REGULAR MEETING

## TITLE

Solid Waste Disposal Fee Increase for Commercial Contracts

## SUMMARY

In August 2021, Seminole County agreed through Resolution 2021-R-116 to amend Section 20.40 – Solid Waste Landfill and Transfer Station – of the Seminole County Administrative Code. This amendment increased solid waste disposal fees by four and one-half percent (4.5%). Wastepro of Florida, Inc. has requested to increase the applicable rates included in the attached table accordingly due to increase costs in landfill tipping fees. This increase is a one-hundred percent pass through cost pursuant to the Solid Waste Franchise Agreement.

## RECOMMENDATION

Staff recommends the City Commission approve Resolution 2022-07 which increases the rates of solid waste disposal as approved by Seminole County in Seminole County Resolution 2021-R-116.

**RESOLUTION NO. 2022-07**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS, SEMINOLE COUNTY, FLORIDA, AMENDING THE SOLID WASTE RATE TABLES ADOPTED PURSUANT TO RESOLUTION 2006-06, AS AMENDED BY RESOLUTIONS 2006-08 AND 2006-16; PROVIDING FOR REPEAL OF PRIOR INCONSISTENT RESOLUTIONS, SEVERABILITY, AND AN EFFECTIVE DATE.**

WHEREAS, the City is granted authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the City Commission adopted solid waste rates pursuant to Resolution 2006-06, as amended by Resolutions 2006-08 and 2006-16; and

WHEREAS, the City Commission adopted solid waste rates pursuant to Resolution 2006-06, as amended by Resolutions 2006-08 and 2006-16, and such rates have been increased since 2006 due to CPI adjustments as permitted by the Solid Waste Franchise Agreement adopted pursuant to Ordinance 2006-01; and

WHEREAS, WastePro of Florida, Inc. has requested and is entitled to increase the applicable rates included in the attached table due to the increase in disposal costs upon changes in land fill tipping fees adopted by Seminole County, pursuant to Section 5.2 of the Solid Waste Franchise Agreement adopted pursuant to Ordinance 2006-01, ; and

WHEREAS, Seminole County has increased its land fill tipping fees via Resolution **2021-R-116** on August 10, 2021, which shall be a one-hundred percent pass through cost pursuant to the Solid Waste Franchise Agreement; and

WHEREAS, the City Commission of the City of Winter Springs, Florida hereby deems that it is in the best interest of the public health, safety, and welfare of the citizens of Winter Springs to amend the solid waste rate table as set forth herein.

NOW THEREFORE, THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS, FLORIDA, HEREBY RESOLVES, AS FOLLOWS:

Section 1. Amendment to Solid Waste Tables. The solid waste rate table II adopted under Resolution 2006-16 is hereby repealed and substituted with a new table II that is attached hereto. The attached solid waste rate table II is hereby fully incorporated herein by this reference. The solid waste rate tables I, III, IV, and V adopted under Resolution 2006-06 and 2006-16 shall remain in full force and effect.

Section 2. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Resolution.

Section 3. Effective Date. This Resolution shall become effective on April 11, 2022.

ADOPTED by the City Commission of the City of Winter Springs, Florida, this 11<sup>th</sup> day of April, 2022.

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Kevin McCann, Mayor

ATTEST

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Christian Gowan, City Clerk

Approved as to legal form and sufficiency for  
The City of Winter Springs only:

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ANTHONY A. GARGANESE, City Attorney

**Table II**  
**Solid Waste Collection Rates**  
**Commercial Bulk Container Service**

<u>Front-Load Containers:</u>	Current Rate	Disposal Adjustment
Contractor Collection Rate	\$ 3.94	\$ 3.94
County Disposal Rate	1.41	1.47
Franchise Fee	<u>0.54</u>	<u>0.54</u>
Customer Rate	\$ 5.89	\$ 5.95
<u>Commercial Cart:</u>		
Contractor Collection Rate	\$ 7.11	\$ 7.11
County Disposal Rate	0.77	0.80
Franchise Fee	<u>0.79</u>	<u>0.79</u>
Total Customer Rate	\$ 8.67	\$ 8.70
Additional Cart (Optional):		
Contractor Collection Rate	\$ 6.52	\$ 6.52
County Disposal Rate	0.77	0.80
Franchise Fee	<u>0.73</u>	<u>0.73</u>
Total Additional Cart Rate	\$ 8.02	\$ 8.05

- (1) Front-Load Container rates are stated per cubic yard.  
(x container size x pick-ups per month = total monthly charge).  
Front-Load Additional Charges: Wheels on Containers: \$19.69 per month; Locks & Locking Bars: \$19.69 per month; Gates Opening & Closing: \$19.69 per month.
- (2) Commercial Cart Rates are stated per pick-up, per month.
- (3) Beginning March 1, 2007 an annual CPI adjustment not to exceed 2.5% will be applied to the Contractor Collection Rate upon request of the Contractor.
- (4) Disposal Rates are 100% pass through and shall be adjusted accordingly upon changes in Landfill Tipping fees.
- (5) Customer Rates may be amended from time to time as required.



# CITY COMMISSION SPECIAL MEETING MINUTES

MONDAY, JANUARY 31, 2022 AT 6:30 PM

CITY HALL - COMMISSION CHAMBERS  
1126 EAST STATE ROAD 434, WINTER SPRINGS, FLORIDA

## CALL TO ORDER

Mayor Kevin McCann called the Special Meeting of Monday, January 31, 2022 of the City Commission to order at 6:33 p.m. in the Commission Chambers of the Municipal Building (City Hall, 1126 East State Road 434, Winter Springs, Florida 32708).

### Roll Call:

Mayor Kevin McCann, present  
Deputy Mayor Kevin Cannon, present  
Commissioner Matt Benton, present  
Commissioner Ted Johnson, present  
Commissioner TiAnna Hale, present  
Commissioner Rob Elliott, present  
City Manager Shawn Boyle, present  
City Attorney Anthony A. Garganese, present  
City Clerk Christian Gowan, present

**\*AGENDA NOTE\* A FULL TRANSCRIPT OF THE PROCEEDINGS IS ATTACHED TO THE END OF THESE MINUTES.**

Commissioner Elliott provided the Invocation followed by the Pledge of Allegiance.

No changes were made to the agenda.

Mayor McCann noted the same rules of procedure as were discussed at the previous meeting regarding this topic (September 20, 2021) would be in place.

## AWARDS AND PRESENTATIONS

100.) Not Used

## INFORMATIONAL AGENDA

200.) Not Used

## PUBLIC INPUT

*Mayor McCann opened Public Input*

*No one spoke*

*Mayor McCann closed Public Input*

## CONSENT AGENDA

300.) Not Used

## PUBLIC HEARINGS AGENDA

400.) Not Used

## REGULAR AGENDA

500) Pursuant to Resolution No. 2021-09 and Section 4.11 of the City Charter, City Commission Investigation Proceeding Related to the City's Existing Consumptive Use Permits Issued by St. Johns River Water Management District and the Multi-Phase Expansion of the City's Reclaimed Augmentation Plant at Lake Jesup and Related Distribution System.

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Mr. Frank Hamner, Esquire was present representing the following subpoenaed individual:

- Mr. David Gierach, President, CPH Engineering

Mr. Gierach was sworn in by the City Clerk and provided testimony to the Commission.

Discussion followed on next steps and Attorney Garganese agreed to continue to communicate with CPH's representatives to try and set up the appearance, in person or via telephone, of Mr. Terry Zaudtke. The Commission agreed to give Attorney Garganese thirty (30) days and make a decision on closing the investigation at the February 28, 2022 City Commission meeting.

## PUBLIC INPUT

*Mayor McCann opened Public Input*

*Mr. Art Gallo, 199 Nandina Terrace, Winter Springs* noted he thought it was time to end the investigation and move forward.

*Ms. Sheila Benton, 414 Cedarwood Court, Winter Springs* encouraged the Commission to review Comprehensive Plan requirements, specifically in the Conservation Element.

*Mayor McCann closed Public Input*

## ADJOURNMENT

Mayor McCann adjourned the meeting at 9:06 PM.

*RESPECTFULLY SUBMITTED:*

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CHRISTIAN GOWAN  
CITY CLERK

*APPROVED:*

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MAYOR KEVIN McCANN

UNAPPROVED

NOTE: These Minutes were approved at the \_\_\_\_\_, 2022 City Commission Regular Meeting.

CITY COMMISSION SPECIAL MEETING

(Corrected Transcript.)  
Monday, January 31st, 2022  
6:30 p.m. to 8:58 p.m.

City Hall Commission Chambers  
1126 East State Road 434  
Winter Springs, Florida 32807

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INDEX

AGENDA ITEM	PAGE
Regular Agenda	
500. Pursuant to Resolution No. 2021-09 and section 4.11 of the City Charter, City Commission Investigation proceeding Related to the City's existing Consumptive Use Permits Issued by the St. John's River Water Management District and the multi-phase expansion of the City's Reclaimed Augmentation Plant at Lake Jesup and Related Distribution System.	
Public input	108
Adjournment	115
Certificate of Reporter	116
Certificate of Correction	117

P R O C E E D I N G S

- - - - -

1  
2  
3 MR. MCCANN: And good evening, everyone. I would  
4 like to call the January 31st, 2022, Special Meeting in  
5 the City of Winter Springs City Commission to order.  
6 And Christian can you call the roll, please.

7 MR. GOWAN: Kevin McCann.

8 MR. MCCANN: Present.

9 MR. GOWAN: Deputy Kevin Cannon.

10 MR. CANNON: Present.

11 MR. GOWAN: Commissioner Matt Benton

12 MR. BENTON: Here.

13 MR. GOWAN: Commissioner Ted Johnson.

14 MR. JOHNSON: Here.

15 MR. GOWAN: Commissioner Tiana Hale.

16 MS. HALE: Here.

17 MR. GOWAN: Commissioner Rob Elliot.

18 MR. ELLIOT: Here.

19 MR. GOWAN: City Manager, Shawn Boyle.

20 MR. BOYLE: Here.

21 MR. GOWAN: Thank you. City Attorney Anthony,  
22 Garganese.

23 MR. GARGANESE: Here.

24 MR. GOWAN: For the record we do have a court  
25 reporter, ordered by the City, retained just like we did

1 for the last special meeting, just for the record, thank  
2 you.

3 MR. MCCANN: And Commissioner Elliot, if you would  
4 not mind doing the invocation.

5 MR. ELLIOT: Sure. Please, bow our heads in  
6 prayer. Lord, we gather again to do the People's  
7 business remembering that we are your people. Please,  
8 give us insight, understanding and enlightenment in  
9 these proceedings here this evening. I ask your  
10 presence be here in this room to keep our conversations  
11 civil and professional, remembering to reflect you,  
12 Lord, in all that we say and do. Amen.

13 MR. MCCANN: And now the Pledge.

14 (Pledge of Allegiance.)

15 MR. MCCANN: Okay. So -- bare with me for a  
16 second. Okay. We have no more awards or presentations  
17 or informational agenda. We will jump straight to  
18 public input, during this session. We do believe that  
19 if time allows out before and after, it is traditional,  
20 I do it after every commission meeting. And so at this  
21 time if there is anyone that wishes to speak during  
22 public input on an Agenda item subject matter, will be  
23 allowed to fill out a blue public input form. And  
24 individual will be limited to comments of three minutes  
25 and representatives of groups or homeowner's

1 associations shall limit their comments to five minutes,  
2 until otherwise determined by the city commission. I  
3 would like to remind you of no foul language to speak to  
4 the entire dais and not to any individual member.

5 Having said that would anyone like to have this first  
6 opportunity to make any comments at the dais. Seeing  
7 none. We'll move right on to the single item on the  
8 Agenda. This is a special meeting of the City  
9 Commission which is being helped to conduct the one  
10 specific item of business on July 12th, 2021.

11 The City Commission adapted resolution 2021-09  
12 invoking it's investigatory powers under Section 4.11 of  
13 the City Charter to initiate and conduct a formal  
14 investigation of the form business affairs of this city.  
15 Related to the city's septic use and water permit and  
16 Lake Jesup reclaimed augmentation plant. The first --  
17 was held on September 20th, a number of -- or a couple  
18 of individuals were here and a number of others were  
19 represented by legal counsel and this is simply a  
20 reminder and an attempt, this is not a meeting in an  
21 attempt to point blame at anyone. We're simply here to  
22 gather facts. We're going to ask that both the  
23 commission and anyone speaking before the dies please  
24 stay on topic. As we did have -- during the last  
25 meeting, I read through a lengthy list of guidelines for

1 this meeting and it is the dies present and has heard  
2 those guidelines. It is my understanding that those  
3 that were asked to come before us today, were provided  
4 those same guidelines in advance. So I won't take the  
5 time to read through them. Again, I believe it was  
6 Commissioner Elliot at the last meeting -- again, I  
7 think I can almost quote him, but basically we're here  
8 not to point fingers. We're simply here to ask  
9 questions and find out what the facts are. Maybe a  
10 timeline of how things happened, why they happened, so  
11 that we can have a better understanding of what's going  
12 on. Okay. And so with that, it is my understanding  
13 that for this evening there were to be two  
14 representatives from CPH engineering here it's my  
15 further understanding that one of them is present, if  
16 I'm not mistaken. Mr. David Gierach is present; is that  
17 right? If you wouldn't mind, sir, step forward, you can  
18 take a seat forward. And is it safe to say that you  
19 brought counsel with you or are you --

20 MR. GIERACH: I did. No, no. Terry is -- Terry is  
21 retired, so he's been living out in Colorado.

22 MR. MCCANN: Okay.

23 MR. GIERACH: Yeah, so he's only here part-time.  
24 He was not available on this date so.

25 MR. MCCANN: Okay. And as we have done in the past

1 to be sworn for testimony. Christian, if you could take  
2 care of that for us.

3 MR. GOWAN: Sorry, you just sat down, but if you  
4 could stand.

5 MR. GIERACH: Absolutley.

6 MR. GOWAN: You if you can stand and raise your  
7 right hand. Do you swear or affirm to tell the truth,  
8 the whole truth and nothing but the truth?

9 MR. GIERACH: I do.

10 MR. GOWAN: Thank you.

11 MR. HAMNER: And, Mr. Mayor, I'm Frank Hamner, I'm  
12 counsel for CPH, Mr. Gierach. Just to clear the record,  
13 Mr. Zacky was not scheduled tonight and for my  
14 understanding, as my conversations with Anthony, we just  
15 scheduled David for tonight.

16 MR. MCCANN: Thank you and it was my understanding  
17 that a subpoena was sent to him, however, he was not  
18 scheduled; is that correct?

19 MR. HAMNER: Correct.

20 MR. MCCANN: Okay. Just for the record. Okay. So  
21 having said that, I believe that we can open the  
22 discussion before the commission and so the first name  
23 on my list here, do -- do either of you gentlemen have  
24 any questions before we begin -- get started?

25 MR. HAMNER: None right now.

1 MR. MCCANN: Okay. Deputy Mayor Cannon, You're  
2 first up.

3 BY MR. CANNON:

4 Q Hello, Mr. Gierach, thank you for coming tonight.  
5 Mr. Hamner, it's nice to meet you, sir.

6 As I have been trying to kind of piece things together,  
7 there is a lot of documents obviously that the clerk has been  
8 going through and at last that I have been looking through  
9 and I think my fellow commissioners too. It looks like CPH  
10 has had a contractual relationship for like close to 40  
11 years, 38 years going back to like the late 80's. Right?  
12 Early 80's?

13 A 1974, yes.

14 Q All right. So a long time. And I didn't realize  
15 that it went back that far but when I was looking at --

16 A Well, just to clarify --

17 Q Yes.

18 A That before was before we were CPH or before we  
19 became Conklin, Porter and Holmes, so it was actually Clark  
20 Gieson and Associates at that time. Cal Conklin, Walt Porter  
21 and Bill Holmes formed CPH in 1981 actually Conklin Porter  
22 Holmes engineers. So it was them back then.

23 Q and it was -- when I was looking through the some  
24 of the paperwork here and I saw that back in 2002 the city  
25 commission in July 8th of 2002 contracted for your company to

1 do a feasibility study in reclaimed water systems  
2 supplementation and augmentation. And in that contract is  
3 where I saw like Amendment Number 73, you know, and I was  
4 like, wow, that goes way back.

5 A Yes, sir.

6 Q And so I think we, as a city, have for many years  
7 relied upon CPH to do design and engineering work for us on a  
8 number of different projects, whether it's utilities or other  
9 projects in the city. Is that your understanding?

10 A Yes, sir.

11 Q And your -- what is your position with CPH?

12 A I'm president of CPH.

13 Q And how long have personally been with CPH?

14 A I have been with CPH for 35 years.

15 Q Oh, so the whole time? Okay. And so basically, it  
16 looks like in 2002 the study was done, the feasibility study  
17 and in that study what was contemplated was augmenting the  
18 reuse water in the city taking into consideration future  
19 growth and population, future demands, with the desired goal  
20 being to use less potable drinking water for irrigation. Was  
21 that your understanding as well?

22 A Yeah, I think I need to clarify a little bit. So  
23 CPH we've got about 250 employees. You know, so I have -- I  
24 was not directly involved with the studies, you know, with  
25 the work that was done here, but you know, Terry Zodky was

1 obviously the main representative for the city, you know, and  
2 dealing with the city. But he had other people working with  
3 him Dole Goutcher and other engineers that worked on this.  
4 So a lot of the things that I know of, I may know of some of  
5 the information from discussions from my -- with my staff and  
6 that type of thing. But I will not know a lot of the details  
7 and specifics because I was not the engineer that actually  
8 worked on these projects

9 Q Okay. So --

10 MR. MCCANN: If I could just interrupt for just one  
11 moment, I apologize. And just as a reminder for the  
12 dais. During this last meeting we asked that each  
13 commissioner be afforded ten minutes of questioning  
14 before we move on to the next and then we'll bring him  
15 back as many times as we need to. Just so that everyone  
16 is aware, I'm going to do two cycles on the -- my  
17 apologies.

18 MR. CANNON: You're going to reset it twice, is  
19 that what --

20 MR. MCCANN: I got it. My apologies.

21 MR. CANNON: Oh, you got it?

22 MR. MCCANN: Yeah, I got it. My apologies.

23 BY MR. CANNON:

24 Q So William Goutcher, I saw his name on a lot of the  
25 design documents and so forth. He was -- he and Mr. Zodky

1 would have had more hands on knowledge about the specific  
2 Lake Jesup reuse water augmentation plant?

3 A Yes.

4 Q Is he still associated -- is Mr. Goutcher still  
5 associated with CPH?

6 A He's been retired for many years now.

7 Q Do you know where he lives presently?

8 A I believe he's still located in Central Florida.  
9 I've seen him at UCF games before?

10 Q Okay.

11 A So yeah. Yeah. So I do believe the he's still --  
12 you know, he's still local, like -- I know I saw him late  
13 last year at a UCF game, so.

14 Q Okay. And so since we have had our last meeting,  
15 myself and I think others were using a dollar figure of 3.5  
16 million for the Lake Jesup plant. We have since learned that  
17 the correct dollar that was -- that was a combined figure for  
18 the reuse plant plus the storage tank, you know, that was  
19 going to be over behind Oak Forest. So I have talked with  
20 the -- our CFO, our finance director and it's about 2.7  
21 million dollars of tax payer money that's in this particular  
22 plant at Lake Jesup. Okay. So I just wanted to clarify that  
23 because when these questions were typed up quite some time  
24 ago, it was before we had that available information. But  
25 generally speaking, do you -- has it been the policy of CPH

1 that if it's retained by the city or any client to design a  
2 system that the design should be done in order for the system  
3 to perform in accordance with the specifications that -- to  
4 perform the specifications of the system?

5 A Yes, sir.

6 Q Okay. So here, I believe, back in 2019 you were  
7 given a report from of CDM, I think the manager gave you a  
8 report from CDM that came from the outside and evaluated the  
9 Lake Jesup plant, do you remember seeing that report?

10 A I have not read that report, but I do believe that  
11 we have provided you with a report --

12 Q So basically, that it was around that time that the  
13 city was communicating with you that, Hey, we think there is  
14 a problem with this plan and it's not performing.

15 Do you recall generally that that was the nature of the  
16 conversation with you and then City Manager Shawn Boyle and  
17 others?

18 MR. HAMNER. When you say, "Communications", do you  
19 mean communications in general because the only  
20 communication that I'm aware of is a single conversation  
21 between CPH and with your present City Manager.

22 MR. CANNON: Yeah, that's what I'm talking about.

23 They had a meeting --

24 MR. GIERACH: We had lunch.

25 BY MR. CANNON:

1 Q Okay. And that this was discussed and then I think  
2 the former City manager Kevin Smith said that he had also  
3 maybe talked with you. But in any event -- maybe not. But  
4 in any event, that's the first time that you learn of there  
5 maybe a performance problem with the Lake Jesup Plant; is  
6 that fair to say?

7 A That's the first time we were made aware of any  
8 concerns.

9 Q Okay. Now, part of the problem is that the plant  
10 as it was permitted and designed, it was supposed to produce  
11 a certain amount of water. It was permitted as a -- that the  
12 application that Mr. Goutcher, from your company, filed with  
13 the city to DEP said that the scope of or the objective of it  
14 on paragraph five, page 2A-2, that it was going to be a two  
15 million gallon per day facility with a 240,000 gallon storage  
16 tank right there by the lake. And then of course pumping  
17 more water to a storage tank behind Oak Forest. So you  
18 understood generally that was purpose or CPH would have  
19 understood that; fair enough?

20 A Yeah, sounds reasonable.

21 Q Okay. So the performance criteria for this plant,  
22 it was suppose to take Lake Jesup water, filter it, add some  
23 bleach to the water to knock out any biologicals and the --  
24 or the output from the plant was suppose to have total  
25 suspended solids of less than five milligram per liter, which

1 is a DEP standard. Did you understand that generally?

2 MR. HAMNER: Sir, this is understanding of record,  
3 his understanding is largely irrelevant, but I mean is  
4 there a point to whether Mr. Gierach individually  
5 understood that's what the document says?

6 BY MR. CANNON:

7 Q So let me put it this way: So in the application  
8 signed by Mr. Goutcher, CPH employee, it represented that the  
9 affluent -- the out-put from the plant, would be total  
10 suspended solids of less than 5.0 milligrams per liter. CPH  
11 understood that; fair enough?

12 MR. HAMNER: Assuming that you're reciting it  
13 correctly -- I haven't seen this document. But assuming  
14 that you're reciting it correctly, if that was CPH's  
15 submission, of course.

16 A Yeah, that's the standard. In order for -- in  
17 order to blend the water, you know, for -- you know,  
18 basically, advance secondary standards requires that -- you  
19 know, five milligrams per liter. You know, and then you've  
20 got the chlorine reserve requirements.

21 Q Right.

22 A And so that's basically a requirement to be able to  
23 blend the treatment water.

24 Q Okay. And then this was an irrigation plant, so in  
25 my prior life, my family had a cattle ranch, and down in

1 Okeechobee a lot of ranchers and farmers had irrigation  
2 pumps, right? And they didn't use them every day of the  
3 year, but from time to time, when needed, they would kick on  
4 the irrigation pump and use it to irrigate their crops or  
5 their fields. And so CPH understood that this was an  
6 irrigation augmentation pump to augment the reused water for  
7 irrigation throughout the city?

8 A That was the purpose of the pump --

9 Q Okay. So kind of a kin to when you buy a  
10 multi-million dollar fire engine and the fire engine is  
11 supposed to pump, say, 1500 gallons a minute. It doesn't get  
12 hooked up to the hydrant and pump 1500 gallons a minute, but  
13 when you have a fire or when you it, it has to pump 1500  
14 gallons a minute, fair enough?

15 A Fair enough.

16 Q And the same thing with irrigation-type pumps, when  
17 you have -- when you have your crops or your lawns are drying  
18 and dying and your plants are dying, you need that  
19 irrigation. And that was the purpose of this plant was to be  
20 able to augment your irrigation.

21 A Augment -- my understanding is, augment means  
22 irrigation in part but also to potentially blend with the  
23 reclaimed water.

24 Q Right. And my time has run out, I just want to ask  
25 one more. So basically, when this was all being designed

1 going all of the way back to 2002 with that feasibility  
2 study, CPH was projecting the future needs of reused water  
3 based on my future growth of the city, because that was 2002,  
4 20 years ago, and also based upon the requirement that  
5 utilized more, and we reuse less potable water.

6 Did you understand that or did CPH understand that?

7 MR. HAMNER: I think the only missing element would  
8 be that they would not have come up with those  
9 representations out of thin air. It would have to have  
10 had some input from the city as to what the expectations  
11 were --

12 MR. CANNON: Oh, absolutely. And I'm not  
13 suggesting otherwise. The city and your engineer worked  
14 collaboratively to project future growth and the future  
15 demands of reused water based on future growth, based on  
16 our declining cup, which concurrently required an  
17 increase amount of utilization of reuse. And that would  
18 have been a general understanding of CPH, fair enough?

19 MR. GIERACH: Yeah, we would have worked together  
20 with the city staff. They would have given us  
21 projections and we would have worked together. Longwood  
22 we used, like, you know, numbers from the University of  
23 Florida but you know we worked with the planners and  
24 came up with those numbers and that's what we would  
25 typically do, so I would assume --

1 MR. CANNON: And that's what it kind of looked like  
2 from the report. Now, I'm going to stop now to give my  
3 fellow commissioners an opportunity.

4 MR. GIERACH: Okay.

5 MR. MCCANN: Commissioner Elliot.

6 BY MR. ELLIOT:

7 Q Good evening, Mr. Gierach. Am I pronouncing your  
8 name correct?

9 A Gierach.

10 Q Gierach.

11 A A good german name.

12 Q Would it be ok if I called you David.

13 A David is perfectly fine.

14 Q So, David, I want to assure you that I have a very  
15 informed understanding of the situation surrounding the Lake  
16 Jesup reclaimed water or augmentation facility. I understand  
17 what went right. I understand what went wrong, what needs to  
18 be done. What studies have been done. The involved parties.  
19 The actions on the of the city employees, actions on the part  
20 of former elected officials. Actions on the part of state  
21 licensing and regulatory entities. actions on the part of  
22 various vendors. I understand all of that pretty well now,  
23 as we have been going through this for quite a while. And I  
24 have no intention pf asking any questions related to any of  
25 these issues, as I believe at this point we're beyond those

1 types pf questions. It's my goal and I believe the goal of  
2 the commission to learn what happen and why and to make sure  
3 that we don't repeat any mistakes that were made. I do have  
4 a few questions for you though and I would appreciate if you  
5 could answer and if counsel is okay with that. If counsel  
6 tells you not to answer, I'm okay with that.

7 A Okay.

8 Q We have never met before, correct, David?

9 A We have not.

10 Q All right. Could you describe for me what your job  
11 responsibilities were at CPH engineering in and around the  
12 time the design and construction of this facility?

13 And I think this would be around the time of 2010, 2011?

14 A It's -- we're going back aways.

15 Q We're going back aways.

16 A Yeah, so we -- I took over as president -- it would  
17 have been 22 years ago. So I probably recently had assumed  
18 those duties.

19 Q Okay. And as we sit here today, what are your job  
20 responsibilities as president?

21 A Uh, I basically run the overall organization.  
22 We've got about 250 employees. We've got a significant  
23 number of engineers, architects, you know -- so I run the  
24 overall management of the company and -- uh, that would be my  
25 primary roles.

1 Q Okay. I know that every company is different.  
2 would you have direct input of say, hiring or firing? Or is  
3 that done at a level that reports to you?

4 A Both. I have -- many of my employees have been  
5 with us for many, many years, and so they interview them,  
6 they recommend the employees and I don't do all of the  
7 interviews. Typically, I am asked about adding any new  
8 employees and the approval of any new employees are from  
9 me or my partner.

10 Q Okay. And from a fiduciary standpoint, do you sign  
11 checks?

12 MR. HAMNER: I don't mind the background questions,  
13 Commissioner Elliot, but I mean that's really not --  
14 CPH's inner-workings are not really part of the subpoena  
15 here. I'm happy to go to some extent. You know,  
16 there's going to have to be a point where we're getting  
17 to the inside of CPH, it's really not --

18 MR. ELLIOT: I'm just trying to figure out what  
19 level of authority and what insight David had when all  
20 of this was going on, that's my reasoning so --

21 MR. GIERACH: Yes, absolutely I had authority in  
22 signing checks.

23 BY MR. ELLIOT:

24 Q Okay. So you could make financial decisions and  
25 things like that, correct?

1 A Absolutely.

2 MR. HAMNER: I hope he signs my bills.

3 Q Right. There you go.

4 A Typically, I just approve the payments, I don't  
5 sign.

6 Q Well, that was kind of my next question. Is it  
7 actually your signature or other folks have authority to make  
8 those --

9 A Other folks have the authority to sign.

10 Q Okay. And were they basically the same  
11 responsibilities in 2010, 2011?

12 A I would say that they were basically the same.  
13 same responsibilities.

14 Q Just a couple more questions.

15 A Uh-huh.

16 Q Do you know of any prior or existing insurance  
17 coverage that could assist in rectifying the current  
18 situation at this plant?

19 MR. HAMNER: That's way outside of the scope of the  
20 subpoena.

21 MR. ELLIOT: Okay. Okay.

22 MR. HAMNER: There has been no claim against CPH as  
23 I understand it, from what we were talking about here in  
24 the beginning. This is not about placing blame or  
25 making claims. And insurance coverage is grossly

1           irrelevant, I think.

2   BY MR. ELLIOT:

3           Q     Okay. And if and when it comes to that down the  
4   road, would CPH be willing to assist in figuring out exactly  
5   what needs to be done at this plant?

6           A     Well, yeah. We -- we have had a very long term  
7   relationship with the City of Winter Springs. We're no  
8   longer employed by the City of Winter Springs. If it was a  
9   continued plant, we would typically work with them. I know I  
10   think at this point, we were essentially fired and dismissed  
11   by the city. So I don't think we really have a working  
12   relationship if we were to come in and assist. You know at  
13   the time, Shawn notified us, you know, we would immediately  
14   call the supplier and -- you know, and have them go out and  
15   take a look at the facility and they had done pilot testing  
16   on the unit. They were the ones that, you know, that  
17   gathered with the city and did the pilot test and they're the  
18   one that said that the systems work and we went through the  
19   start ups and we were asked to go look at it. We didn't hear  
20   anything back. And from my understanding they went out there  
21   and my guys went out there. And then we didn't really hear  
22   anything back from the city after they had gone out there so.

23           MR. HAMNER: And just to be clear, this is after  
24           the lunch with the new city manager. CPH got the filter  
25           manufacturer to go out there and take a look at it, take

1 a look at the plant and then they never heard anything  
2 back. so I think to answer your question it illustrates  
3 that if asked, they are willing to assist, but they have  
4 to contractual relationship with the city right now.

5 MR. ELLIOT: Makes total sense. I appreciate your  
6 time, thank you.

7 MR. MCCANN: And that brings us to Commissioner  
8 Johnson.

9 BY MR. JOHNSON:

10 Q Good evening. A good number of my questions were  
11 probably better suited for Terry. I wasn't aware that he was  
12 not going to be here and that he moved to Colorado. one of  
13 my questions; however, was prior to this particular reclaim  
14 augmentation plant, how many other similar plants has CPH  
15 constructed, roughly?

16 MR. HAMNER: Prior to this plant?

17 Q Yes.

18 A It's not a real common thing, to do this, you're  
19 using water to out of the river was a relatively new concept,  
20 you know, so there's not a lot of these facilities out there,  
21 but we had done the -- one of the few that I know that's out  
22 there is for the City of Sanford. So we did an augmentation  
23 system for them on Lake Monroe and that was done before this  
24 and -- you know, so -- if you want to know more about that, I  
25 will --

1 Q And to your knowledge, did that plant function as  
2 designed and is it still working properly?

3 A Absolutely, yes.

4 Q And I'm going to suggest that perhaps you aren't --  
5 or not aware of -- or probably not aware of -- I had some  
6 questions about the water samples that were taken in Lake  
7 Jesup leading up to decisions on the filtration system of  
8 this particular plant, were you privy to any of that?

9 A I would not be privy to any of that.

10 Q Okay.

11 A I do want to say that there was different  
12 technology utilized at the Sanford facility than at this  
13 facility.

14 Q Okay. Because in the CDM smith report, it  
15 indicated that perhaps samples were taken in during the  
16 winter months and apparently there weren't a great deal of  
17 samples taken to get a full picture of the quality of the  
18 water prior to the design of the filtration system, and I  
19 don't think you were --

20 A I would not be knowledgeable of that.

21 Q Okay. And the whole series of questions on  
22 filters. One of the things that occurred at this plant, and  
23 again, you may not be privy to this, but to me it was just  
24 kind of a common sense thing. When Hurricane Irma struck a  
25 few years ago and flooded the plant and apparently burnt out

1 expensive control panels and so forth, and -- I guess my  
2 question is: From an engineering point of view -- I guess,  
3 it's more of a statement, I was kind of surprised at that  
4 because the lake is prone to doing that, and yet it was  
5 constructed in such a manor that it occurred.

6 A I guess my only comment on that was, you know,  
7 Terry Zodky and this -- I don't know this for myself, but  
8 that the panels were above the hundred year level elevation.  
9 Yeah, so that would have been the requirement that it would  
10 be set above the hundred year flood elevation and often  
11 times, you know, these water bodies can go above that. And  
12 you know, but you design to a certain level and in my  
13 understanding, Terry said that that's was what was down.

14 Q Okay. But and then you would not be privy to any  
15 of the water samples that were taken and logged during the  
16 first part of the start up of this plan that would be -- that  
17 would not be something that --

18 A No --

19 Q -- and then were you aware that they actually did a  
20 bypass for flushing the system? Apparently our -- our own  
21 utilities director attempted to do a back flush to the  
22 filters did a bypass of the system. Were you aware of any of  
23 that?

24 MR. HAMNER: My hesitation was to define the word,  
25 "They", but you're saying the utility director from the

1 city directed that bypass?

2 Q Yeah, were aware that he had done that?

3 A I was not aware of it. I think Terry my have  
4 mentioned something to to me, you know, that the --  
5 basically, if you're blending with the reclaimed water, then  
6 you have to meet the reclaim standards. If you separate the  
7 systems and you're not blending then there is no requirement  
8 on the irrigation water. Just like down on the cow pastures,  
9 there is no requirement to meet those standards. You know,  
10 so at that point, if they were just irrigating parks then  
11 that is certainly something that, you know, would potentially  
12 make sense.

13 Q Yeah, the reason I asked was that it seemed like,  
14 you know, something as drastic as bypassing the filtration  
15 system seems to me like someone at CPH should have been  
16 consulted before that happened. There is no supporting  
17 documentation that I could see that no one --

18 A I do not know if we were aware of it or any of our  
19 employees were aware of it.

20 Q Okay. Yeah. My fellow commissioners, my questions  
21 were more geared towards the engineer. So that's all I have,  
22 thank you.

23 A Okay.

24 MR. MCCANN: And that brings us to Commissioner  
25 Benton.

1 BY MR. BENTON:

2 Q I just have a few questions.

3 A Yes, sir.

4 Q And you said earlier that you just discovered that  
5 it was brought to your attention the plant wasn't working.  
6 When was that you had the lunch --

7 A It was when Shawn was the acting city manager.

8 Q Do you remember approximately when that was?

9 A I --

10 Q 2019?

11 MR. HAMNER: In response to the written questions,  
12 we noted that it was October of 2019.

13 Q Okay. Then before you guys signed off on the  
14 completion of the plant, the papers have got your name on  
15 them, I'm assuming that you-all signed off. Did they -- do  
16 you know if there was any testing done on how the plant was  
17 working?

18 A I was not involved with it direct but certainly any  
19 other facility that we would have done, you know, we would  
20 have done start up testing, we would have had the  
21 manufacturer there, we would have run through the whole set  
22 up, you know, the whole operations of the facility to make  
23 sure that it was working adequately and properly and meeting  
24 the standards. So we would have gone through all of that and  
25 then, you know, I'm sure our engineer would have certified

1 that meet the needs. So they would have had testing data  
2 that would have verified that the system was working as  
3 designed.

4 Q So unless it was working as designed at that time,  
5 you wouldn't have signed off?

6 A They should have not signed off on it, unless  
7 they're certifying that it meets those requirements and I'm  
8 assuming that they certified the DEP, which is typically a  
9 requirement of DEP, you know, permit engineering record and  
10 we're certifying that it's meeting those standards.

11 Q Okay. The other question I had was -- because I  
12 don't really understand, the reading and the reality of you  
13 talking about, it was just to water the park and some other  
14 people have mentioned that too. Was this facility designed  
15 to only bring enough augmentation water to water the park or  
16 was it initially designed to do more than that?

17 A I'm not aware of what the directions were as far as  
18 what the design capacity and what it was created -- intended  
19 to water. I didn't know that but my understanding was that  
20 it was going to be a reclaimed water augmentation system.

21 Q Okay. That was all from me.

22 MR. MCCANN: And that brings us to Commissioner  
23 Hale?

24 BY MS. HALE:

25 Q And you said that there was a plant done in

1 Sanford?

2 A Yes.

3 Q And that was on Lake Monroe?

4 A That's on Lake Monroe.

5 Q Okay. And does it have any issues, because I  
6 understood that part of our issue is when we are pulling in  
7 water, it's clogging up these filters and that sort of thing.  
8 What kind of system is different there than from here?

9 A Well, that's a system, it's called Active Flow,  
10 that's the name of that system that we install there. our  
11 actual -- it's interesting and I know that you have the  
12 details of it but our contract was to design that system for  
13 you-all.

14 Q Okay.

15 A And during the design process, I think, it was you  
16 know this is all hearsay, this is not my direct knowledge,  
17 and such just so you understand that, I'm not talking about  
18 just hearsay from what I heard from my my people, but the  
19 city did not want, you know, at the time it's -- if you go  
20 see it, it's a very large concrete structure. It's very --  
21 it's probably, I guess about 30 foot tall, you know, so it's  
22 very big industrial looking facility, active flow system.

23 And so they were -- they did not want, you know, that  
24 type of facility at the lake and it's also my understanding  
25 that also it was a much more expensive system. So it was

1 much more costly. For example, at that plant we actually do  
2 the Active Flow System and then we actually follow -- full  
3 filtration following that, we are located -- co-located at  
4 the waste water treatment plant. So we go from the Active  
5 Flow System, and we go -- you have just the filter component.  
6 So we go through the Active Flow System and it's followed by  
7 filters, which is similar to what amiant (ph.) filters would  
8 have been. So we have gotten, you know, deep bed dynaset --  
9 dynasamp (ph.) bed filters that follow that active flow  
10 treatment and then it goes to our point of contact chamber  
11 and then it's clean with reclaimed water. So it's much more  
12 expensive and much more larger system and my understanding is  
13 that they were concerned, you know, installing that at that  
14 location. We have used the amiant filters and I've got those  
15 -- we've got those installed at Sanford at their -- Site 10,  
16 facility. We've got them at Sanford at one of the storage --  
17 it's a burrow pit that we converted into storage. We've got  
18 them there. We've got them at Cigar Lake, which is a  
19 reclaimed storage burrow pit and we converted it at the City  
20 of Palm Coast. So we have used them the amiant filters, you  
21 know, in the past too. So that's kind of the history and  
22 understanding of -- from me of what went on with the design.

23 A All right. Do you know if there is any new  
24 technology that you retrofitted into our facility --

25 Q You can put Active Flow ahead of these -- these

1 units and it will -- you know, it's going to drastically  
2 improve that operation. You know, you can come and see the  
3 Sanford units and, you know, we'd be glad to give you a tour,  
4 you know, show you that facility. And, yeah, you know,  
5 basically, you know -- I think it would have been our  
6 recommendations. I don't know exactly what happened during  
7 the design process, but obviously we're lead by the clients  
8 on what the client's requirements are. I don't know what  
9 happened in that process.

10 Q I know that there were two different filter systems  
11 that you recommended the membrane and the fabric -- fabric  
12 cover?

13 A Yes, so they were probably looking at disc filters,  
14 you know, instead of these amiant filters that you put in and  
15 disc filters. But really the Active Flow, what the Active  
16 Flow does, is that it acts more like a clarifier, so it  
17 actually, you know, you have a lot of cholera and chemex in  
18 the water, so it coagulates those and it settles that  
19 material out, so that the water that you get going to your  
20 filter is a much cleaner water.

21 Q And now, on here somewhere, I saw that, but it says  
22 that -- under the analyst and everything that the water was  
23 satisfactory for this kind of thing, to filter the water and  
24 that you-all recommended the fabric disc and the membrane  
25 disc --

1 MR. HAMNER: Ms. Hale, when you say, "On here",  
2 what are you referring to?

3 MS. HALE: Say that again, I'm sorry?

4 MR. HAMNER: When you say, "On here", you're  
5 looking at something. What are you referring to?

6 MS. HALE: I apologize. The Reclaimed Water  
7 Augmentation Study.

8 MR. HAMNER: The 2005 study?

9 MS. HALE: I'm not sure --

10 MR. HAMNER: That's the one referenced in the  
11 resolution.

12 MS. HALE: Thank you.

13 MR. HAMNER: Yeah.

14 MS. HALE: Yes, 2005.

15 MR. HAMNER: So in that study you're saying that  
16 CPH recommended some membrane and the fabric filters?

17 MS. HALE: Fabric filters -- let me get back to it.  
18 one second. I apologize. On page 4 through 5, it talks  
19 about the treatment process required on the filter would  
20 not be a difficult one. The water quality of the water  
21 range of the -- in the last paragraph. And then on to  
22 the next page, paragraph 4 through 7, is the one where  
23 it was recommending the disc, the fabric disc and the  
24 membrane.

25 MR. HAMNER: So that was in a 2005 study, not in

1 the 2011 design?

2 MS. HALE: Right. Right.

3 MR. HAMNER: Okay.

4 BY MS. HALE:

5 Q So my biggest question was is the Sanford plant and  
6 what different and the different technology. So I would love  
7 to come and check out the Sanford plant.

8 A Let me know and we'd be glad to take you out there  
9 and give you a tour and see how the plant operates --

10 Q We just have to find closure -- so I appreciate you

11 MR. HAMNER: Winter Springs and Sanford get along,  
12 it's not some East Coast, West Coast thing. You guys  
13 are all right?

14 MR. JOHNSON: So far.

15 A Let me know, like I said, I'll be glad to arrange  
16 something and get you out there and show you --

17 Q Thank you very much.

18 MR. MCCANN: And that brings us back to Deputy  
19 Mayor Cannon.

20 BY MR. CANNON:

21 Q So if -- when a plant like this is constructed and  
22 it's coming online before everything is certified and you  
23 know that it's performing and they do the commissioning and  
24 the testing and the -- and the preliminary stuff to make sure  
25 that it's working, your engineers are there to make sure that

1 it's working as -- it's performing as it was designed; is  
2 that fair to say?

3 A Yes, our engineers would typically be there as part  
4 of the start up.

5 Q And if your engineers learned that it was not  
6 performing up to the design specifications, that if it was  
7 producing water that exceeded the five milligrams per liter  
8 of total suspended solids, for example, what would your  
9 engineers be expected to do?

10 A Well, I would have to go back and look at the  
11 specifications, but most likely, you know, as part of the  
12 filter specifications for amiant, when they did pilot  
13 testing, was my understanding. We -- so there would be  
14 performance specifications and we would go back to that  
15 manufacturer. And have them take the necessary actions to  
16 correct -- together with the city obviously and since the  
17 contract is, you know, with the contractor or -- and -- and  
18 -- with the -- to the manufacturer would be through the city.  
19 You know, we would work with the city and we would recommend  
20 that we go back to the manufacturer. Yeah, we would require  
21 them a propose solution fix.

22 Q So the people -- and I realize that you weren't the  
23 President back then and you weren't day-to-day handling this,  
24 but would Terry Zodky and William Goutcher be two people that  
25 would have more likely than not had been in communication

1 with our utility director Tim Lotcuff (ph.) on these kind of  
2 issues that we've been discussing, performance issues and so  
3 forth?

4 A Yes. William Goutcher, if there was any -- you  
5 know, I know that had was the actual engineer, but he was  
6 working closely with Terry and he was the main --

7 Q Okay. And have you -- since this issue arose in  
8 October of 2019, have you talked with either Terry or William  
9 -- Terry Zodky or William Goutcher and asked them, Hey, back  
10 when we were commissioning this plant and testing it and  
11 bringing it online were there any issues with performance?  
12 did you have any inquiries with them about that?

13 A Terry told me, as far as he knew of, you know,  
14 there weren't any issues with it.

15 Q Okay.

16 A So we weren't made aware of any issues and  
17 obviously we must have done testing and there wasn't any  
18 issues brought up and it with have been turned over to the  
19 city at that point for operations and we weren't made aware  
20 of any issues with the facility. You know, obviously, we've  
21 got a long term relationship with the city and if they would  
22 have had problems, together, they would have come and talked  
23 to us.

24 Q And that's because I know that Mr. Lotcuff for me  
25 many years is our utility director worked closely with your

1 firm and with Terry -- and I guess, I have never met -- I've  
2 met Terry, but I've never met Mr. Goutcher, but it seems  
3 logical that if there was problems that that would have been  
4 communicated at same time to CPH. And we have got some  
5 documentation that it wasn't working as it should have back  
6 at -- when it was starting up it was -- there was a problem  
7 with it. Would there be documentation at CPH where you would  
8 keep emails or documentation such as that that might reflect  
9 that the utility direct Tim Lotcuff reached out to CPH  
10 saying, Hey, we're having a problem?

11 MR. HAMNER: When you're talking about documents to  
12 reflect that there were problems at start-up, are you  
13 saying that there were communications with CPH or these  
14 are internal city documents?

15 MR. CANNON: No, I'm talking -- well, what I want  
16 to know is, do -- you would have in your archive of your  
17 records that CPH, this plant only came online less than  
18 10 years ago. You would have some communication files,  
19 email files if someone at the city said, Hey, this isn't  
20 filtering adequately or we're not getting the volume  
21 output adequately, I would think that you would have  
22 some file materials. Have you looked to see if any of  
23 that exists?

24 MR. HAMNER: No, sir. Not under my direction they  
25 have not looked to see if they exist. Our records

1 retention policy doesn't go back 10 or 11 years, like,  
2 most places don't go back 10 or 11 years. But if there  
3 had been emails at the time, there would have been  
4 interactivity between the city and CPH, so it wouldn't  
5 be a one way thing that CPH would have to maintain  
6 emails. You guys would have had initiated that contact  
7 --

8 MR. CANNON: Yeah, well I would like to hear from  
9 Mr. Gierach, okay? Not -- respectfully, Mr. Hamner. I  
10 would like to hear from Mr. Gierach. If someone were to  
11 pick up the phone from the city, and call either Terry  
12 or call William -- Bill and said, Hey, we're having  
13 problems with these filters. They're plugging up  
14 because organic -- you know, they're plugging up and  
15 we're not getting the volume and it's constantly back  
16 flushing and, you know, it's not working. Would there  
17 be some documentation of that, like a memo to the file  
18 or something?

19 MR. HAMNER: That's kind of a speculative  
20 speculation. It's like if they called, if you -- did he  
21 answer the call and if they had a record. Again, if  
22 records exist, CPH would have maintain them in their  
23 regular record retention policy. Mr. Gierach can say  
24 the same thing.

25 MR. GIERACH: You know, I guess the only thing that

1 I would say is that we had a very long term relationship  
2 with the city and had they told us that they're having  
3 trouble with something, we would have been out there  
4 trying to fix it. You know, we would have been working  
5 with them and trying to repair whatever the problem is.  
6 You know, like I said, we have a 50 -- almost a 50-year  
7 relationship with the city that we had, you know. So  
8 yeah, absolutely, if we would have been made aware of  
9 anything, we would have worked with them to figure it  
10 out what it would take to make things work --

11 BY MR. CANNON:

12 Q And as you sit here, you haven't done specific  
13 research of documents in that regard, but --

14 A I have not.

15 Q -- but if we talk to William and if we talk to  
16 Terry, they would probably be the most likely sources if such  
17 conversations or communications occurred; is that fair?

18 A If there was communications, it would have been to  
19 them not to me.

20 Q Yeah, that's what I figured --

21 A And if it came to me, it means that we were  
22 responding, so.

23 Q Okay.

24 A So yeah, it would not have been to me.

25 Q And if the through put is not 700 gallons a minute

1 but is only like 300 gallons per minute, again, that would  
2 likely be caused by a plugging up of these filters from the  
3 organic content and so forth?

4 A I can't really comment on what potentially would  
5 have caused that problem.

6 Q Okay. Do you know if CPH engineers before they --  
7 when they were doing their analysis of the source water from  
8 Lake Jesup, if they took into consideration total organic  
9 carbon, dissolved organic carbon, heterotrophic plate counts  
10 coliformen and fecal coliformen data in the Lake Jesup water,  
11 the source water that this plant was going to be drawing  
12 from, do you know if that was taken into consideration.

13 A I was not involved with direct design so I do not  
14 know.

15 Q Okay. And do you feel that the Amiade Model AMF  
16 37-K microfiber filtration system, as it was put into this  
17 plant, was susceptible to organic and biological fowling that  
18 it was prone for that?

19 A I'm not really sure I can really make a statement  
20 on that. I mean I did not research the specific equipment  
21 and models that were specified. My understanding is that  
22 they did pilot testing and this is what the manufacturer came  
23 back and recommended, is my understanding.

24 Q Okay. And we appreciate you coming here and I  
25 think that the other two engineers that had more hands on,

1 will probably be able to fill in some of the gaps. We're  
2 trying to found out now -- we're trying to connect the dots  
3 up, like, at some point it's apparent that this 2.7 million  
4 dollar plant has not worked adequately and I view this as  
5 kind of a two-step process. One, engineers like yourself or  
6 others are going to have to figure out modifications, if any,  
7 that could be made to the plan. The other part of our  
8 analysis, at least for me is, how did this kind of go off the  
9 rails? Why wasn't it reported either to you? If it was or  
10 wasn't? Why wasn't it reported to the commission? You know,  
11 in other words, why are we finding out about it now, in 2021  
12 -- 2019, when we need the additional water and we have a  
13 plant that doesn't work. And that's the other half of the  
14 analysis that we're trying to go through as to make sure  
15 systemic -- system wide procedurally in our city that we can  
16 -- lesson learned and we can make sure that we can implement  
17 procedures and going forward that it won't happen again.  
18 Those are the two steps.

19 Is there there anything else that you can think of, Mr.  
20 Gierach, that we haven't discussed about -- oh, I wanted to  
21 ask you this, have you had any conversations with Former  
22 Mayor Charles Lacey or any of the former commissioners of the  
23 city regarding any of the Lake Jesup plant, it's performance  
24 or any concerns or anything like that?

25 A Uh, no. I did have a call from Charles Lacey once

1 when they were issued the subpoenas, but they -- I think he  
2 was just asking me if I had been issued a subpoena.

3 Q Okay. And did -- now, whether to your knowledge do  
4 you know if any of the other CPH employees like Mr. Zodky or  
5 Mr. Goutcher received any communication from, you know,  
6 Former Mayor Lacey or any of the other commissioners about  
7 the plant?

8 A Not that I'm aware of, but I do not know.

9 Q And same question, Kip Lotcuff -- you know, Kip,  
10 right?

11 A Yes, I do know.

12 Q Have you had any communications with Kip regarding  
13 this plant directly or any issues involving this plant or --

14 A I have not.

15 Q Okay. I don't have anything further.

16 MR. MCCANN: Thank you, Deputy Mayor. And that  
17 brings us to Commissioner Elliot.

18 BY MR. ELLIOT:

19 Q Uh, David, just kind of a couple of follow-up  
20 questions to Commissioner Hale's line of questioning.

21 A Uh-huh.

22 Q And I'm not trying to look for free consulting here  
23 from an engineering firm, but it sounds apparently to me that  
24 this active flow system was considered early on, but because  
25 of costs it was probably --

1           A     I -- I -- I'm not aware of what happened through  
2 the design process. I do remember talking to Terry and then  
3 our proposal was to do an Active Flow, so -- but what  
4 happened after that, I'm not really aware of.

5           Q     Makes sense. And is the Active Flow System still  
6 state of the art technology for this?

7           A     Yes.

8           Q     So there's no additional newer technology, cheaper,  
9 better, faster?

10          A     No, it's a very, very new technology at the time.

11          Q     So active flow is -- and so as you sit here today,  
12 if we were going to do this from scratch having never done it  
13 before, you would still recommend the Active Flow System?

14          A     I would recommend the Active Flow for all of the  
15 bio-filtration.

16          Q     And just like they have in Sanford?

17          A     Just like they have in Sanford. It's a proven  
18 system, it works well -- same water quality, it's very  
19 similar --

20          Q     Right. Great. Thank you.

21                 MR. MCCANN: Commissioner Benton.

22 BY MR. BENTON:

23          Q     When did your employment with the City of Winter  
24 Springs end with your company, when did you-all stop working  
25 for the City of Winter Springs?

1 A I'm not aware of the specific date.

2 Q Was it sometime after 2013?

3 A I -- I'm not aware of the specific dates.

4 MR. HAMNER: It's hard to answer Commissioner  
5 Benton, because there are probably master services  
6 agreements that come with work-orders. Those master  
7 servicer agreements are rarely ever officially  
8 terminated. You just don't get the calls no more.

9 MR. GIERACH: I know we did City Hall. I know we  
10 did that -- I'm not sure when that was done.

11 BY MR. BENTON:

12 Q Concerning the augmentation plant, you guys signed  
13 off on it in 2013, that's when -- I'm assuming it was  
14 finished at that point, your duties would have been finished  
15 at that point with the augmentation plant in 2013?

16 A I guess, I'm taking your word that that's when we  
17 certified that. I don't know the specific dates but --

18 Q If you all would have had any service agreements  
19 after that?

20 A Typically not. You typically, we would finish  
21 design and once we get through the design, and construction  
22 services we typically would not have any involvement at that  
23 point.

24 Q And then you said your next knowledge of it not  
25 working was in 2019, which would have been -- what is that --

1 six or seven years later? Six years?

2 A Yes, sir.

3 Q Okay. So something must have happened in between  
4 which you wouldn't have any knowledge of; is that right? If  
5 it's not working now.

6 MR. HAMNER: I don't understand your question.

7 MR. BENTON: In 2019 it was discovered it wasn't  
8 working properly and it was brought to your attention,  
9 but it was finished in 2013, that's six years. So  
10 something must have happened that you wouldn't know  
11 about between then, is that what you might be saying?

12 MR. HAMNER: Let me had some clarity form our  
13 written statement as well. They finished the work  
14 approximately in 2013, the meeting in October of 2019  
15 was not called on augmentation plant, it was merely a,  
16 hey we're out here, you're the new city manager, this --  
17 this came up in this conversation between the time that  
18 the plant was finished until that informal conversation,  
19 CPH had not been contacted about any failings or in  
20 anyway about the operation of the plant.

21 MR. GIERACH: That's my understanding.

22 BY MR. BENTON:

23 Q That's what I was wondering, had nobody contacted  
24 you and say anything or ask any questions?

25 A You know, me personally? No.

1 Q Or you wouldn't have known --

2 A Staff-wise, I'm not aware of -- what they have been  
3 -- what I have been told. I haven't talked to Bill Goutcher  
4 about it, so -- Bill is, you know, he's -- he's much older at  
5 this point, so I don't know, you know, if he'd be available  
6 or not. But yeah, I did talk with Terry about it. And Terry  
7 had said nobody had contacted us.

8 MR. HAMNER: Given the relationship with the city  
9 though, there had been any contact, it would have likely  
10 gotten to you?

11 MR. GIERACH: If there was an issue, you know, a  
12 serious issue, then I would have assumed that, you know,  
13 Kevin -- Obviously I know Kevin Smith very well, he use  
14 to be at the City of Sanford, you know, so I've known  
15 him for many, many years. So Kevin certainly would have  
16 called me and said, Hey, you need to take care of this  
17 thing and we would have.

18 MR. BENTON: Thank you.

19 MR. MCCANN: And Commissioner Johnson.

20 BY MR. JOHNSON:

21 Q I was just looking over a statement submitted to us  
22 from Kip Lotcuff and he described bypassing the filter  
23 system, but then he went on to state, replacing or modifying  
24 the internal filtering units and the secondary filter with  
25 coarser media was still an alternative being pursued in 2017

1 although the overseas manufacturer was difficult to almost  
2 impossible to deal with. The facility was designed for three  
3 secondary filters. But only one was purchased with th  
4 initial construction. We declined to purchase secondary  
5 filter number 2 that was used as an alternative at a cost of  
6 around \$200,000 to expand usage beyond the parts needed, the  
7 existing filter needs to be retrofitted and/or the new  
8 remaining filters need to be able to pass a larger particle  
9 size but still meet the permit TSS requirements. My question  
10 is -- you brought up Active Flow?

11 A Yes.

12 Q Am I pronouncing it right?

13 A Yes, sir.

14 Q And with this -- with three secondary filters of  
15 this design, was that an alternative to spending the  
16 additional money for the Active Flow part of a system similar  
17 to Sanford? Is that -- when I'm listening to your  
18 conversation, I'm kind of guessing that they have all of  
19 these filters to kind of do a work around from -- for  
20 avoiding the cost of the Active Flow, is that -- am I  
21 thinking right on that?

22 A The filters -- you know, I think one of issues, you  
23 know, a filter that's filtering these particles is going to  
24 have increased maintenance, increased back wash, you know,  
25 because the filters are going to have to potentially back

1 wash significantly more to be able to clean those materials  
2 out. And the Active Flow is very similar to your waste water  
3 plant, you have a clarifier out in front of your filters.  
4 you know, that clarifier drops out a significant portion of  
5 the solids, so you're not seeing all of those solids through  
6 your filters, you know, like the filters in your waste water  
7 plant. So you're not seeing all of those solids into that  
8 filter. And you know the issue that you got is, you know,  
9 not that that filter maybe -- it could be able to handle it,  
10 but the issue becomes it is increased maintenance it will  
11 significantly increase back wash to get them cleaned out. So  
12 if you have something like an Active Flow clarifier out in  
13 front of that, then you reduce a lot of those solids. And  
14 so, you know, you reduce the loading that's going to your  
15 filters. So it's going to be less maintenance activity and  
16 -- and itself going to be better water quality.

17 MR. HAMNER: The way that I hear you describe it,  
18 Commissioner Johnson, is that there was a down stream  
19 filter from the main filter that was potentially  
20 specified as an alternate that could have been added to  
21 the system, is what I understood you saying.

22 MR. JOHNSON: Well, that's what Kip has stated in  
23 his written --

24 MR. HAMNER: Right. Alternates in a contract are  
25 typically written that you have got a base bid and if

1           you want to get these other extra things, they're  
2           alternates and you can add them, you know, in the add  
3           hawk way.

4       BY MR. JOHNSON:

5           Q       Well, for the -- for the facility to be designed  
6           for three secondary filters, is that, in your experience,  
7           common for a plant, let's say for example, the plant in  
8           Sanford, does it have three secondary filters down stream --

9           A       Yeah, you know, if you look at the City of Sanford,  
10          we've got, six thiacin (ph.) filters and we've got two  
11          traveling bridge filters and then we've got -- you know,  
12          we've got a significant number of filters on that facility.

13          Q       So in this case, three secondary filters will be  
14          very common?

15          A       I would need to look at the specifics of your  
16          design and, you know, like I said, are these parallel or are  
17          they -- they intended -- you know, are they in a series? You  
18          know, typically, parallel you need back up units and all of  
19          that. Capacity of the units, increase the capacity of the  
20          systems in a series is unusual, but you can do a coarser  
21          filter, it's going to take up bigger materials and then have  
22          a finer filter down stream. And then, you know, that could  
23          have been the design concept after that I would have to look  
24          at the specifics --

25          Q       And than what you had just stated would seem to

1 support what Kip has shared with us. And that they were  
2 looking at possibly putting -- getting a second filter, and  
3 apparently they purchased one.

4 A Yeah, it wouldn't be that uncommon to -- you know,  
5 you have a filter up front, then that would be removed with a  
6 more coarse material, so you take out the significant amount  
7 of the loadings, so you have a much finer material going to a  
8 finer screen. You know, and so, you know, and potentially if  
9 you did that in a series, that would potentially address the  
10 loading issues with the filters.

11 Q Because everything that I have -- that there seems  
12 to be a common thread through this that the filters are too  
13 efficient.

14 A Right.

15 Q The way that they were designed. So it just seems  
16 to me that perhaps this was put in place as an alternative to  
17 the Active Flow System. And I don't -- I guess I'm trying to  
18 see if that was the thinking.

19 A I could not tell you what that decision making  
20 process was.

21 Q Okay. Thank you.

22 MR. MCCANN: And that brings us back to  
23 Commissioner Elliot.

24 MR. ELLIOT: No, I withdraw.

25 MR. MCCANN: Commissioner -- Deputy Mayor Cannon.

1 MR. HAMNER: Did you get Commissioner the second  
2 round?

3 MR. MCCANN: They're hitting buttons and I'm going  
4 by who is active or requested to speak.

5 MR. HAMNER: Oh.

6 BY MR. CANNON:

7 Q So Mr. Gierach, if the system is designed, but it's  
8 not meeting the specifications, in other words, the filters  
9 are clogging up too quickly, the through put is not adequate  
10 and the output has too high of total suspended solids, that's  
11 when the engineering firm such as yours says, okay, this is  
12 not really an option anymore in order to comply with your DEP  
13 permit, you have to add this other filter, right? In order  
14 for it to come into complaint, you wouldn't write that  
15 recommendation?

16 A I think what we would do as part of this contract  
17 with the city, typically if we're providing construction  
18 services for this project, what we would do is that we would  
19 be looking at that specified equipment --

20 Q Right.

21 A -- and you would run it and you would verify that  
22 it's -- that it can meet the requirements, you know, of the  
23 specification. I know about back wash rates, what they  
24 identified it as in the specifications, but those are  
25 typically the only things that are identified as part of

1 those specifications, what are acceptable back wash rates and  
2 then those types of things. And you know, there are varying  
3 conditions, and I know that there was discussions about the  
4 water quality worse than what it was and I don't know any of  
5 that, you know. So all of those things can all impact the  
6 back wash rates and the loading for those filters too. So  
7 you know, once we certify -- once we go through the process,  
8 and together with the city, we'll work together with the  
9 city, because the city is making the final payments and we  
10 verify that the contractor that's built this thing and it's  
11 in compliance with plans and specifications that were  
12 prepared, which were permitted by DEP and therefore, if it  
13 meets specifications, it should be in compliance with DEP  
14 requirements and we would certify that based on the results  
15 that are current at that time. After that point in time, you  
16 know, it becomes an operational issue and the city is dealing  
17 with it and it's operation maintenance, you know, typically  
18 we have no involvement, you know, unless someone calls and  
19 asks us, you know. And that they want help, that they're  
20 having issues, and that type of thing.

21 But yeah, you know, eventually we'll get back involved  
22 again. But you know, after we do that certification and  
23 really those plans, they're not ours, you know. So -- so the  
24 operation of maintenance takes over.

25 Q So the start-up -- if the problem arises during

1 that start-up commissioning at the front end, then before you  
2 certified it to the state, you're engineer would probably  
3 say, Hey, we're not meeting our performance we may have to go  
4 a head and add another filter or we do this or that, is that  
5 reasonable?

6 A Yes, sir. We would either do that or we would go  
7 back to the manufacturer because most likely it was a  
8 performance based specifications. Could go back to the  
9 manufacturer and tell them that we need these requirements  
10 that were dictated within that specification.

11 Q And you would not -- your engineer would not do  
12 that certificate to DEP or the water management certificate  
13 completion or construction or whatever that certification is  
14 until the plant would have been tested and it was working  
15 and then you would sign off on it. Is that basically the way  
16 it would work?

17 A Yes, sir.

18 Q Okay. All right. Well, I appreciate it. Thank  
19 you for answering the questions tonight.

20 A Yes, sir.

21 MR. MCCANN: Commissioner Hale.

22 BY MS. HALE:

23 Q Just a quick question, you're talking about the  
24 operation and management of city staff after you had  
25 certified that it was operational./

1 MR. HAMNER: Operation maintenance.

2 Q Yeah, I'm sorry. Operation maintenance.

3 Do you have anything to do with training the staff when  
4 you -- when you're there to make sure that they're  
5 understanding the operation maintenance and how to go forward  
6 and to make sure that we're able to take care of the  
7 equipment properly, it is millions of dollars --

8 A Yes, yes. Typically within our specifications,  
9 we'll require the manufacturers to supply the equipment to  
10 provide training to the operators and you know it's usually  
11 -- you know, they have a certain amount of time that they  
12 have got to come out and work with the operators and train  
13 them on how to do the equipment, train them on how to do the  
14 maintenance. You know, so that's -- that would be typically  
15 and I would assume that would be in our specifications  
16 requirements of that manufacturer.

17 Q Thank you very much.

18 MR. HAMNER: And Commissioner Hale, that would extend  
19 through the warranty period as well, so --

20 MR. HALE: Okay. Perfect, thank you.

21 MR. HAMNER: So that would be a period of time that the  
22 manufacturer would still be on the hook for it and making  
23 sure that everything is working properly.

24 MR. GIERACH: Correct.

25 MS. HALE: Okay.

1 MR. MCCANN: And then Commissioner Johnson.

2 BY MR. JOHNSON:

3 Q I just had one last question. I believe you have  
4 this document, it's the CDM Smith memorandum. And if you  
5 look at that --

6 MR. HAMNER: We don't have that, Mr. Johnson.

7 Q Oh.

8 A I believe Terry was provided that document. I have  
9 not reviewed that document.

10 Q Oh, okay. We'll I don't think you really need it.  
11 These are -- if you can see, these are the recordings of  
12 water samples. Can you see that it's hand written?

13 A Okay.

14 Q Is that standard procedure -- I mean this is --  
15 this is summer of 2013.

16 MR. HAMNER: Who wrote those up, do you know?

17 Q I'm not sure. But this is apparently what the --  
18 what we were doing to sample the water quality coming out of  
19 plant and it's hand written, like, is that standard? It  
20 never seemed to me that it would be on a spreadsheet.

21 A If it's work not being done, you know, it's not  
22 lavatory, so these wouldn't be like reporting, you know,  
23 results. So, you know, it's very likely it was done by -- I  
24 would assume city staff.

25 Q Well, my question is: Is that -- would that be

1 standard procedure? Is that what Sanford does?

2 A It's no reporting so it's not documents -- so, you  
3 know, if you're doing testing and that type of thing, you're  
4 not reporting it to anybody, so you're not having to submit  
5 this as DEP reports or that type of thing. So you know, if  
6 your operators and they say okay you guys measure it,  
7 maintain, you know, check the PSS levels and all of that, you  
8 know, that would not be that uncommon.

9 Q Well, in the process of signing off and certifying  
10 the plant operational, does CPH require documentation similar  
11 to this with the water quality?

12 MR. HAMNER: Just to clarify. Are you asking  
13 similar to -- to the specifications, the numbers, the  
14 output reports, like, what the plant is doing or are you  
15 saying require handwritten notes about that?

16 MR. JOHNSON: Well, I guess my question is: What  
17 do you -- what would be typical of a requirement for  
18 signing off on an augmentation plant, such as, this one  
19 when you're looking at water quality coming out of the  
20 plant after the it's been processed?

21 MR. GIERACH: I would say, you know, potentially,  
22 we would require certified labs to, you know, often  
23 times to verify data. But if the city has, you know,  
24 often times the city can do laboratory testing. So the  
25 city at their waste water plant will -- you know, they

1 test for TSS, chlorine residual, they do all of that all  
2 on their own.

3 BY MR. JOHNSON:

4 Q So then you would require --

5 A So the city provided that for them, we're not  
6 requiring that they certify information from the city, if  
7 they give us this data, they're the client, you know, they're  
8 the ones that's going to do the testing and they said this is  
9 the results, we would not separately require certified data  
10 from a --

11 Q So you rely on the city in providing the  
12 appropriate --

13 A Yes, absolutely. And these are licensed operators  
14 that are licensed to do that type of testing. They do it  
15 every day as part of their job. So yeah, we would not  
16 require separate certified --

17 Q So you don't do that separately?

18 MR. HAMNER: Unless it's the state calls for it.

19 A Unless -- yeah, h, the specifications call for it or  
20 require it or that type of thing. But like I said, often  
21 times we'll work with the operators at the plant and they'll  
22 verify with the data themselves and they have the lab -- you  
23 know, many of these -- a lot of these have their own  
24 laboratory testing. You know, each city have the basic  
25 supplies that for us, you know, certified operators, that

1 data is fine.

2 Q During the process of certification what's -- and I  
3 apologize, I'm not an engineer.

4 A Okay. No problem.

5 Q What would -- using this plant as the example, of  
6 course, what would be the steps involved, like, okay, the  
7 plant is done, we're throwing the switch? So what would  
8 CPH's role be at that point?

9 A Typically, what would happen is that you go through  
10 a start-up process. So you would have the manufacturers  
11 there, the contractors there. The contractor would typically  
12 run the facility, not the city. So the contractors are  
13 typically are going to start up the plant, they're going to  
14 run it, they're going to have their manufacturers there, you  
15 know, typically at that point, you know, it's still the  
16 contractor's plans. So the city hasn't taken responsibility  
17 for it, he has to prove that it works. That it meets the  
18 specifications. Yeah, so he goes through that start-up  
19 process. You know, does he work with the city and they do  
20 some of the testing, very possible. Do they have some of the  
21 certified labs. It's possible. You know, that could be  
22 required. But basically, it's the contractor's job to prove  
23 that it the facility is meeting it's specifications through  
24 that start-up process. Once that's completed, and you get  
25 through that, then there's training with the operator. The

1 city will take over that facility, you know, and than the  
2 city is then responsible for the operation and maintenance  
3 going forward typically. And there maybe -- like, you know,  
4 when we do -- when we're getting ready to do a plant start-up  
5 on a big waste water plant, there's a 14-day operational  
6 test. So the contractor has to completely run this waste  
7 water facility for 14 days, you know, the city will be there,  
8 we'll be there, you know, everybody will be there to make  
9 sure it's meeting it's requirements and everything is  
10 functioning in accordance with the plant specifications and  
11 then after that 14-day period, then the city will come over  
12 and take over. I'm not sure of what the requirements of the  
13 specs are, you know, but that's typically the type of thing  
14 that's required, is that you require the operator to prove  
15 that that facility is meeting plans and specifications.

16 Q So CPH's role at that point, would be more of a  
17 consulting should something come up?

18 A Yeah, essentially we would monitor, you know, we  
19 would -- we would -- along with the city, we would monitor  
20 the -- the operations, we would monitor together with the  
21 city, you know, to make sure that it's complying with the  
22 specifications. You know, and once that's completed, we --  
23 you know, like I said, we're not running it. The contractor  
24 is operating the facility and then once that's completed, you  
25 know, then we would, certify it after we witnessed the

1 start-up testing.

2 Q And then you mentioned 14 days, is that kind of  
3 standard?

4 A No, that's a big -- that's a very -- that's an --  
5 that's a waste water plant. So typically, probably it could  
6 be a thing, you know, it could be less. You wanted a smaller  
7 facility, so --

8 Q So on one the size that we're working on currently,  
9 would that typically logistically take a day or two?

10 A I would think so.

11 Q Okay. Thank you.

12 MR. MCCANN: And Mr. Cannon.

13 BY MR. CANNON:

14 Q Mr. Gierach, I asks a couple of questions of you  
15 earlier about had you had any communication with former  
16 commissioners, have you had any communications with any of  
17 the commissioners seated up here today including myself  
18 regarding this plant?

19 A No, sir.

20 Q Not before? Okay. And did you have some  
21 communication with Kevin Smith, our former city manager,  
22 because he -- if I recall correctly, when he came in and  
23 spoke with us in September he said that he had a conversation  
24 with you about the plant and that you would stand behind your  
25 work or some words to that, and I'm paraphrasing -- but --

1           A     I -- I don't specifically remember talking about  
2 the facility. I do remember we talked a little bit about his  
3 testimony. I saw him at my daughter's Clean Juice -- when  
4 she use to go to the Clean Juice in Lake Mary. But I do  
5 remember that we talked a little bit about his -- but keep in  
6 mind that we're also consultants for Lake Mary also --

7           Q     Right.

8           A     So I would talk to Kevin on a pretty regular basis.

9           Q     All right. And then the only other question that I  
10 have is that I know that historically our utilities  
11 department and city has reached back to CPH when we were  
12 having trouble locating plans or some specs from some of the  
13 different plants. And that you had documents in your file  
14 going back more than just nine or ten years. Would you agree  
15 not to purge any of your documentation or files until we can  
16 get this matter resolved, in other words, whatever existed  
17 from CPH that you will not purge or destroy any of those  
18 documents or records that you may have? Are you agreeable to  
19 that?

20           MR. HAMNER: They have no reason to deviate from  
21 our regular retention policy.

22           MR. CANNON: Yeah, that's not the question  
23 counselor that I asked him.

24           MR. HAMNER: Yeah. Well, we're not going to amke  
25 an exception one way or the other.

1 MR. CANNON: So --

2 MR. HAMNER: There's no claim pending. There's no  
3 litigation holds. There's nothing like that. We're not  
4 going to go delete anything, we're also not going to  
5 preserve files that we wouldn't ordinarily preserve.

6 MR. CANNON: I want to hear from you, Mr. Gierach,  
7 what is the official document retention policy of the  
8 city -- of -- excuse me, of CPH and does the retention  
9 periods vary depending on the type of documents that  
10 you're talkng about?

11 MR. HAMNER: That's beyond the scope of your  
12 subpoena. our internal record retention is not part of  
13 your subpoena.

14 MR. CANNON: Okay. Well, counselor, you just put  
15 it in issue because you're objecting.

16 MR. HAMNER: I'm answering you're question, Mr.  
17 Cannon, and I don't think that objecting to your  
18 question puts anything at issue.

19 BY MR. CANNON:

20 Q Okay. So Mr. Gierach, will you answer my question  
21 or if you refuse to answer it I'll advise that counsel will  
22 certify it and then we'll take it up at a later date if we  
23 need to. Can you tell me what your document retention policy  
24 is at CPH?

25 A No, I cannot tell you.

1 Q Okay.

2 A I cannot tell you. You can talk to my assistant,  
3 she can tell you, but I do not know what the specific  
4 document --

5 Q And will you agree until we can finish talking with  
6 Mr. Zodka and, if necessary, Mr. Goutcher. Will you agree  
7 not to destroy any documents that you may have in your files  
8 at least until these two men can review it if necessary and  
9 help answer some questions.

10 MR. HAMNER: We have answered that question.

11 MR. CANNON: I want to hear it from the witness.

12 MR. HAMNER: You don't have to hear it from the  
13 witness as counsel is advising you, we will follow our  
14 normal record retention policy.

15 MR. CANNON: (CQ) Okay. So, Mr. Gierach, are you  
16 going to refuse to answer my question on the advice of  
17 counsel?

18 MR. GIERACH: I'm going to do what my counsel tells  
19 me --

20 MR. HAMNER: I'm not telling not to answer the  
21 question, I'm telling you we're going to follow our  
22 regular record retention policy.

23 MR. GIERACH: We will follow our regular record  
24 retention policy.

25 MR. CANNON: Okay.

1 MR. GIERACH: Whatever that is.

2 BY MR. CANNON:

3 Q (CQ) And to the extent that the records still exist  
4 but maybe outside of your normal purge date, will you agree  
5 to hold those records until we review them with Mr. Gourtcher  
6 and Mr. Zodky?

7 MR. HAMNER: You can ask it ten different ways Mr.  
8 Cannon, it's the same answer.

9 Q (CQ) Mr. Gierach, your answer, sir.

10 A I will follow my advice of counsel.

11 MR. CANNON: Certify the last three questions and  
12 answers please.

13 THE COURT REPORTER: Okay.

14 MR. CANNON: Okay. Thank you. We're just trying  
15 to get the information. I think you understand that.

16 MR. GIERACH: I understand that.

17 MR. CANNON: And we don't have direct access to  
18 your files. We have access to our files but not -- we  
19 don't have access to memos or whatever that might be in  
20 existence at CPH. We're just trying to get to the  
21 bottom of this. And it's not -- it's note meant for any  
22 other purpose. And you know, it's not meant to be a  
23 hostile environment here at all, but we're searching for  
24 facts and information. Okay?

25 MR. HAMNER: Yeah.

1 MR. CANNON: Thank you, sir.

2 MR. HAMNER: And, Mr. Cannon, I heard everyone's  
3 comments before, we're not making claims but I have had  
4 people try to ask me that about my records retention  
5 policy. I have had people try to ask me about our  
6 insurance policies, so it sure doesn't sound like all of  
7 that dovetails together. And as counsel for my client,  
8 I certainly have to protect the bare interest as well.  
9 And when you start saying things about asking about  
10 insurance and records retention policies, those sure are  
11 litigation words in my world. So we're not trying to be  
12 difficult either, we're trying to cooperate. This is a  
13 project that's nine or ten years old, all right? And  
14 you're asking us to dig back and talk about records that  
15 are that old with two people that have retired, one of  
16 them has been retired a long, long time.

17 So I think we're going to try to do the best we can  
18 and we have no interest whatsoever and hiding anything  
19 from them city or keeping anything out of the city  
20 purview at a proper request and long standing  
21 relationship, and I think that Mr. Gierach made it very  
22 clear that based on that long standing relationship, any  
23 time an intervening period of the start-up of this  
24 plant, any one that called and said, Hey, we're having  
25 trouble here, CPH has almost a 50-year relationship with

1 the City of Winter Springs, no one is going to ignore  
2 that call. Okay. But to come back now nine or ten  
3 years later and say, Oh, well, do not purge records and  
4 what's your insurance policy, put yourself in my shoes,  
5 okay? So we're not trying to be difficult either, but  
6 at the same time I want to protect the interest of my  
7 client.

8 MR. CANNON: I think everybody -- I really  
9 genuinely really believe that, Mr. Gierach, your company  
10 as well as the city, everybody wants to get the most  
11 accurate information and you're right it goes back  
12 several years and none of our city employees, like Mr.  
13 Lotcuff, are not with the city anymore, right? So we're  
14 trying to -- we asked him to come in and he refused to  
15 come appear, which made it more difficult, right? We're  
16 trying to get records and we're trying to talk with you  
17 and others to try and piece together what had happened.  
18 So thank you.

19 MR. HAMNER: We have made Mr. Gierach available to  
20 you, we have had some scheduling issues. We were caught  
21 flat footed with these subpoenas. Nobody gave us a  
22 phone call, nobody made any informal calls. Nobody  
23 tried to reach out to CPH and say, Hey, can we talk  
24 about this? All of a sudden a subpoena shows up out of  
25 nowhere and so since that time, we have been trying to

1 schedule this properly. This was the earliest time we  
2 could get. And Mr. Zodky, when he's available, he'll be  
3 available if you need to talk to him. I don't know  
4 about Mr. Goutcher, he's not been on the list of people  
5 to subpoena at all. So --

6 MR. MCCANN: We'll move one. Commissioner Elliot.

7 BY MR. ELLIOT:

8 Q David, would it be safe to say that over a period  
9 of years the water quality in Lake Jesup could have possibly  
10 changed?

11 A Certainly.

12 Q I mean, better or worse, it would change over time,  
13 it's an open body of water.

14 A Yes, sir.

15 Q I mean, I would guess the same thing. And from  
16 what the -- conversation with Commissioner Johnson about  
17 these start-up periods and these testing periods before  
18 things are certified, it appears to me that these -- the real  
19 issue were these filters were clogging up more often than  
20 they probably should have and they needed to be back washed  
21 more often than they should have and that that issue probably  
22 would not have appeared during a start-up period, I'm  
23 guessing at this point, but one of these issues did arise  
24 it's my understanding that no one from the city ever  
25 contacted CPH and said hey these filters are needing to be

1 back washed more often than not. It's clogging more often  
2 and then it's effecting the performance of the plant. Nobody  
3 ever told CPH that, correct?

4 A Not that I'm aware of.

5 Q Okay. Thank you.

6 MR. MCCANN: Further discussion from the dais?

7 MR. JOHNSON: I just have one. Segway from that.

8 MR. MCCANN: Thank you. Commissioner.

9 BY MR. JOHNSON:

10 Q Did the company that manufactured the filters  
11 indicate at any time to you that th city contacted them  
12 regarding the problem with the filters clogging up?

13 A Not that I'm aware of.

14 Q Okay.

15 A I was told that they went out to this site once we  
16 contacted them, but that was all that I was made aware of.

17 MR. HAMNER: Just for clarity, that would have been  
18 after the October 19th meeting with the new city  
19 manager?

20 A That's right.

21 Q So that was much later?

22 MR. HAMNER: October 2019. Yes, sir.

23 Q Okay. Thank you.

24 MR. MCCANN: Further discussion? In that case  
25 gentlemen, I would like to thank you for coming in

1 tonight and spending time with us. The real goal here  
2 really is to find out where we are. So in closing for  
3 you two gentlemen before we continue, thank you for  
4 coming out. Unfortunately, I don't really know if we're  
5 finding more information that we really have had. I  
6 think at this point and I'll discuss when -- when you  
7 stand up and remove yourself. But thank you for coming  
8 out. I'll leave it at that.

9 MR. GIERACH: Thank you.

10 MR. HAMNER: Thank you.

11 MR. MCCANN: So while the gentlemen step out, if I  
12 may just for simply residents a little bit of a re-cap  
13 here. This Lake Jesup augmentation plant was put on  
14 line in 2013. There were, to my understanding, the  
15 first design issues at the Lake Jesup were set high, so  
16 during the low water time period, when we attempted to  
17 use those plants, the water could not be brought in for  
18 the plant, because the design had set the intakes above  
19 the low water line. These plants were never intended to  
20 be used as a full-time -- they were meant to augment to  
21 or to supplement our water, primarily for Central Winds  
22 Park to water the baseball fields at the parks and keep  
23 the fields going and then additional water was going to  
24 be put into use by our residents. Again, it was  
25 supposed to be used during high need times, not year

1 around use. The second issue came during Lake -- or  
2 Hurricane Irma when Lake Jesup flooded and went above  
3 the flood plain and wiped out the electrical panels for  
4 that plant, causing again substantial problems.

5 The bottom line here is that when the new city  
6 manager came on board he was made aware and we were  
7 concerned about issues. This dais has now become well  
8 aware, we're just simply trying to find out how we can  
9 move forward. It's my understanding that the city staff  
10 is working diligently and brought on different engineers  
11 to create solutions to these problems. I think we -- if  
12 it's not inappropriate to speak for myself, the entire  
13 dais is just simply concerned about finding out what has  
14 happened with 2.7 million dollars that's being put into  
15 our utilities at a point where quite frankly we have a  
16 great deal of infrastructure work to be done and that  
17 2.7 million dollars needs to be justified and we need to  
18 get that plant up and working. We understand that we  
19 need it and hopefully that will come to fruition. I am  
20 optimistic during conversations that I have been apart  
21 of that we will get that plant up and going, but we do  
22 have a responsibility to our tax payers. And having  
23 said that, I'll return the conversation back to the dais  
24 and Deputy Mayor Cannon.

25 MR. CANNON: Yeah, so Anthony, would you please

1 send an expoliation of evidence letter to Mr. Hamner and  
2 to CPH tomorrow, please, just on that. And then it's  
3 apparent that Mr. David Gear -- excuse me. It's  
4 apparent that Mr. Zodky and this William Goutcher, whose  
5 name appears on a lot of these applications. We just  
6 really need to get these guys in here. I took Gierach  
7 at face value. I mean he's the president of the  
8 company, he wasn't the one out there in the field. we  
9 need to get these other two in here and -- so we can  
10 wrap this up, right? And I mean he started back in  
11 September and there's been some big -- so if you can get  
12 with Mr. Hamner and try to get Zodky in here and then  
13 also reach out to Mr. Goutcher, who apparently is local.  
14 I think based on everything that I heard and read, these  
15 are the two men that's going to have the most  
16 information and likely would have been the people that  
17 could have walked up to or reached out to our city staff  
18 if and when these problems were arising, clearly in the  
19 unsigned question and answer document purported to have  
20 been prepared by Kip Lotcuff. He says that there were  
21 problems with the filters and that it wasn't working.  
22 The through proof wasn't there and it had to be bypassed  
23 and modifications and so forth. So those are the two --  
24 you know, Mr. Lotcuff through counsel refused to appear,  
25 so let's -- and Mr. Zodky said that he will be here. so

1 let's get Mr. Zodky in here and Mr. Goutcher and let's  
2 get this finished up, you know.

3 MR. GARGANESE: The commission voted on subpoenaing  
4 Mr. Zodky and I tried to get Mr. Zodky and I tried to  
5 coordinate with Mr. Hamner, he wasn't available. I gave  
6 alternate dates at the end of January and so unless the  
7 commission directs otherwise, we can do -- we can try to  
8 schedule something for Mr. Zodky. It's the first that  
9 I've heard that he lives in Colorado. I don't know how  
10 accessible he is here in Florida. Or alternatively  
11 whether you want him to try video.

12 MR. CANNON: Yeah, I mean, we just need to get it  
13 --

14 MR. GARGANESE: -- a video inquiry --

15 MR. CANNON: A lot of this stuff that you're  
16 seeing as I'm looking through these records that you  
17 have, has William Goutcher's name on it, he's the one  
18 that certified the plans, he's the one that participated  
19 in the design of plans and he's --

20 MR. GARGANESE: I get it, but they were not on the  
21 original list --

22 MR. CANNON: I understand.

23 MR. GARGANESE: If the commission wants to add  
24 another person on the subpoena list, I'll be happy to  
25 issue a subpoena, but you guys tell me what you want to

1 do.

2 MR. CANNON: I make a motion that we add William  
3 Goutcher, the professional engineer, to the list and  
4 bring him so that -- he's probably going to be in the  
5 best position to answer these questions.

6 MR. MCCANN: There's the motion, who would be the  
7 second?

8 MR. BENTON: I second.

9 MR. MCCANN: The motion is made by Deputy Mayor  
10 Cannon, seconded by Commissioner Benton. Christopher --

11 MR. ELLIOT: Mr. Mayor, can we have a discussion  
12 before we go.

13 MR. CANNON: Thank you, I appreciate that.

14 MR. ELLIOT: I want to keep in mind, for a lack of  
15 a better term, what the endgame is here. We're very  
16 knowledgeable at this point of what's going on. There  
17 has been a lot of mistakes made. There has been some  
18 finger pointing, there has been quite a few subpoenas  
19 that have been completely ignored and this one could  
20 very well be ignored too. I just want to make sure that  
21 we, as a commission, know what the endgame is here,  
22 which is to kind of get an idea of how this happened.  
23 We can't reverse it. We need to move forward which we  
24 are doing right now with this plant and I'm really not  
25 so sure that brining more witnesses in is really going

1 to give us a whole lot more information that we really  
2 don't already know.

3 MR. CANNON: Well, what we don't know,  
4 Commissioner, is because Kip Lotcuff, the professional  
5 engineer of utilities director of 20 years at the city,  
6 has refused to honor his subpoena. We don't know if  
7 there was communication from the city to CPH. And Mr.  
8 Gierach, and I take him at his word, he's the president  
9 and he -- you know, it's not likely that -- the likely  
10 people that would have been reached out to would have  
11 been Mr. Goutcher and Mr. Zody. So I don't think that  
12 it's going to take very long. But -- and Mr. Goutcher  
13 is a local -- I mean, he lives locally at least that's  
14 what David told us, that he saw him at UCF games. So I  
15 just -- and the reason that I think that's important, is  
16 if there was a failure on the part behalf of the City  
17 staff to communicate to CPH, right? And they didn't  
18 report to the design engineers had we had a problem with  
19 this, that's one thing, right? That's part of the  
20 fixing the system to make sure that it doesn't happen  
21 again. If it was reported to CPH and they blew it off  
22 and they didn't help with adding another filter or  
23 whatever the fix would be, then that's another thing.  
24 And that's my only rationale for it, I mean.

25 MR. MCCANN: If we can, Commissioner Elliot, you

1 were trying to --

2 MR. ELLIOT: Well, I understand what you're saying  
3 about it Deputy Mayor, but my concern is, is that the  
4 endgame is whatever answer we get from these other  
5 engineers or that we may or may not have gotten from Mr.  
6 Lotcuff, is that really going to change where we go down  
7 the road with this process. Do I think right now there  
8 was a failure of communication between a whole lot of  
9 people in this issue, yes, I think there was. Do I  
10 think that the city did or did not make the best  
11 decision in choosing the design of this plant, maybe,  
12 maybe not. But the bottom line is we have got a plant  
13 that doesn't work, we need to get it fixed and we're  
14 probably going to have to do it ourselves. We're not --  
15 I don't see us getting to a point where we're going to  
16 be able to get any kind of assistance whether it's  
17 financial or another type of assistance from any entity  
18 out there to assist us with going forward with this  
19 process. So I want to make sure that we're using our  
20 time, the city's time, the taxpayer's time, to really  
21 come to a conclusion that's different to the one that I  
22 kind of already have right now, which is -- it was a big  
23 cluster and it's still somewhat of a cluster, but we  
24 need to kind of move forward on this process. And take  
25 care of what needs to be done.

1 MR. CANNON: And this is why I wanted to ask the  
2 city manager a question, if I may, I'm not trying to cut  
3 you off.

4 MR. ELLIOT: No, that's fine.

5 MR. CANNON: We had the prior city manager -- and  
6 I'm paraphrasing, although we could read it out of the  
7 transcript, saying that he communicated with David  
8 Gierach and that they would stand behind the work, or  
9 words to that effect. And I believe that the city  
10 manage had a conversation with Mr. Gierach about would  
11 they help us with the repair of these plants. This one  
12 specific plant, did you --

13 MR. BOYLE: There were two meetings that occurred.  
14 And I would have to go back and look at my calendar and  
15 see which one occurred first. David and Terry and I and  
16 Charles Lacey the former mayor, had a meeting over at  
17 the Public House. And that meeting was really around an  
18 the change of the commission, the disposition of the  
19 commission and CPH trying to retain the city as a client  
20 and that really was a an focus.

21 The plant came up in that meeting and I said one of  
22 the primary things that the commission should or will be  
23 looking into is the functionality of the plant. And at  
24 that point, David had said we'll work through this, in  
25 other words, indicating that they were going to

1 positively assist the city in figuring out what was  
2 going on with the plant. There was a second meeting  
3 with myself, Aleena Rivera, which is the prior -- she  
4 was the utility director between Kip Lotcuff, and the  
5 current -- Jason, the current director with Terry and  
6 David, which I have somewhat aggressively in that  
7 meeting, that was held here at City Hall, pointed out  
8 the fact that the communication center of the plant,  
9 which were really the control panels were replaced too  
10 close to the lake and I specifically remember David  
11 actually saying, probably not the best place for it, but  
12 you know we could have moved it up the hill on the  
13 actual back wall of the plant would have been safer.

14 And I also brought up some concerns about -- in  
15 2000 -- roughly in 2015, we had a similar drought  
16 condition that we had back in the Spring of 2021. And  
17 what happened was that the intake box that was out on  
18 the pier, on the end of the concrete pier that we built  
19 was actually high and dry. So right at the precise time  
20 that we needed the water, it couldn't suction any of the  
21 water off of Lake Jesup. And so he -- he said of course  
22 -- and at that time, we didn't know to the extent of the  
23 -- and I will use different words because I think  
24 they're important. They were efficient, but they  
25 weren't effective. They were efficient at removing the

1 biological mater out of the lake but they weren't  
2 effective because they couldn't continue to run. So  
3 it's an important distinction. And at that point we  
4 didn't know exactly what was going on with those filters  
5 because the panel had been -- it had basically exploded  
6 because it was under water and we had to pay  
7 approximately \$60,000 to repair that. So at that point  
8 what we were doing is trying to get all of the  
9 components between the lake and the actual filters up  
10 and running before we could test to figure out what was  
11 going. But we indicated that in the meeting. And  
12 again, David looked at me and he's a very honest guy he  
13 said. Shawn we'll work through it, we'll figure out  
14 what's going on with it and we'll take care of it  
15 together and I said, okay. Fine. And than the meeting  
16 concluded.

17 MR. CANNON: And because of that is the reason why  
18 I'm saying this. If they had blown us off from day one  
19 and said, You know, we're not going to help you, then I  
20 would have -- then I wouldn't be inclined to take the  
21 -- you know, to take the interview Mr. Goutcher,  
22 interview Mr. Zodky and that's really where I'm coming  
23 from. If they had just said you're on your own, you  
24 know then I would be more inclined to agree with you,  
25 Mr. Elliot.

1 MR. MCCANN: Commissioner Benton, you were up next.

2 MR. BENTON: I'm not sure if this has to do with  
3 whether or not we should subpoena the gentleman, so I  
4 would like to wait until after we discuss this and --

5 MR. MCCANN: And Commissioner Johnson.

6 MR. JOHNSON: It seems to me that our key  
7 individuals that we need to hear from are Terry Zodky  
8 and Kip Lotcuff. Well, Mr. Lotcuff has made it clear  
9 his stance. My question would be to the city attorney,  
10 would it be feasible for us to submit questions to Terry  
11 Lotcuff [sic.] out in Colorado or wherever he's at, and  
12 ask that he respond to those questions. Is that a  
13 method? You had mentioned perhaps a Zoom meeting I  
14 guess of some sort, but -- I personally would like to  
15 hear from him. The other fella I honestly don't think  
16 he's a player. I think your key players are these two  
17 gentlemen. Kip we have heard from or at least he's  
18 provided a statement. I would like to hear something  
19 from Terry Lotcuff [sic.], but I don't know what the --

20 MR. MCCANN: Zodky -- Terry Zodky.

21 MR. JOHNSON: Terry Zodky. But would it be logical  
22 approach to this -- you have tried to reach them without  
23 success, but is there another avenue that we could go?

24 MR. GARAGNESE: Well, I'm working through his  
25 Attorney, Mr. Hamner, so I can contact him and try to

1 schedule Mr. Zodky and see if he's going to be here in  
2 Florida and he's accessible or provide some other  
3 alternative, whether it be a Zoom call or maybe a  
4 combination Zoom call and maybe some advanced  
5 questionings from the commission whether it be --  
6 whether we would be able to do t that way.

7 MR. JOHNSON: Because quite frankly, I did a lot of  
8 homework, but all of my questions were really geared  
9 towards him. And I think if -- you know, if we could  
10 just submit questions to him out in Colorado, if he's  
11 willing to respond to them, at least that's something.  
12 My sense is that we're -- other than that we're not  
13 going to hear from him.

14 MR. CANNON: Okay.

15 MR. JOHNSON: So I guess there's a couple of  
16 avenues that we could take, right?

17 MR. GARGANESE: Sure.

18 MR. MCCANN: All right. Commissioner Elliot?

19 MR. ELLIOT: I withdrew.

20 MR. MCCANN: And Commissioner Hale.

21 MS. HALE: I do think that we do need to wrap this  
22 up and get going. I'm not disagreeing with that  
23 because, we kind of know what going on -- but I have  
24 seen such a failure of the communication and the back  
25 and forth that I think that the people that worked hand

1 in hand on this project, is where we're going to get our  
2 answers for what they -- you know, what things we need  
3 to put in place to make sure that this doesn't happen  
4 again in the future with other projects. You know -- so  
5 I mean, I have -- I do think that we need to talk to  
6 these people with -- if they'll talk to us, I think we  
7 need to find out how they can get better systems in  
8 place so that this doesn't happen on any project in the  
9 future. My opinion.

10 MR. MCCANN: Deputy Mayor Cannon.

11 MR. CANNON: Yeah, Anthony, we could just do a  
12 telephone. We can do it over the telephone to have  
13 somebody go and put them under oath there at his home.  
14 We don't even need it on Zoom, you know, and that will  
15 make it much simpler to schedule and if his attorney  
16 wants to come here or wants to be on the conference  
17 call, whatever it doesn't matter, but -- and the same,  
18 we don't -- and in like none of these when we hand in a  
19 bunch of documents or anything, so let's just do -- they  
20 testify all the time in court, right? In depositions.  
21 So why don't we do it that way and just get it --get  
22 these guys scheduled, that's easy and you know we have  
23 the hook up here and just have a court reporter out  
24 there and have one here and just do it. I mean that's  
25 even easier than Zoom.

1 MR. GARGANESE: That's fine. I'll contact Mr.  
2 Hamner. I'll say, you know, the commissioners said that  
3 he doesn't have to be physically present and try to get  
4 it on the calendar.

5 MR. CANNON: Yes. And I mean, as far as the  
6 advanced questions they already know what the questions  
7 are because they're getting the transcripts. I mean,  
8 they know kind of what we're going to be asking, but my  
9 experience has been, you need to be able ask that and  
10 follow-up, right? Because then they'll say something  
11 and then you'll want to be able to follow-up and say can  
12 you explain that or what about this or what about that.  
13 I want to get this done. I'm not personally happy that  
14 it's been a four-month hiatus since we started this in  
15 September. And if the problem has been a scheduling  
16 problem, then we probably should have just said, do it  
17 by telephone, I don't care. You know, but we just need  
18 to finish it up and -- uh, if you look through all of  
19 these permits and all of the applications and the  
20 certificate of construction that was signed it was all  
21 by William Goutcher, he's the one that signed off on it,  
22 the permits from St. John's, he's the one who signed off  
23 on the DEP permits. He's the one that did the  
24 certifications. So that's the only reason why I'm  
25 bringing him and his name up because until I recently

1 got these documents from the clerk Friday, I didn't even  
2 know who he was really, but -- and I don't see Terry's  
3 name in there. So frankly, Mr. Goutcher might be the  
4 better way to go. He might be the man that answers the  
5 most questions. I don't know.

6 MR. MCCANN: Commissioner Johnson.

7 MR. JOHNSON: From my understanding, it sound like  
8 they signed off on this thing in a day and maybe in an  
9 afternoon --

10 MR. CANNON: Well, we don't know.

11 MR. JOHNSON: Yeah, I don't know. But going back  
12 to the motion, I would support the motion with the  
13 understanding that alternative methods are available for  
14 them to help us out. So I think it was a motion was  
15 moved forward and seconded and I think given the  
16 circumstances, I think both gentlemen need to be reached  
17 out to.

18 MR. CANNON: And we can make it -- I'm about making  
19 it easy on them too, right? So that's the easiest for  
20 them because they can just sit at home or they can sit  
21 at their attorneys office or whatever. If they want to  
22 come in, fine. If they want to do it by phone that's  
23 okay too. I didn't know that Mr. Zodky was out in  
24 Colorado. That would explain the difficulties.

25 MR. GARGANESE: I was not not aware until tonight

1 that he was out in Colorado.

2 MR. CANNON: Yeah, let's just do it by phone and  
3 let's just get these done and be finished with it.

4 MR. JOHNSON: Yeah, let's wrap it up.

5 MR. CANNON: I want to wrap it up. It would have  
6 been easier, frankly, if Mr. Lotcuff would come in  
7 because he would have been the most knowledgeable about  
8 the operations and everything. But his attorney  
9 instructed him to disregard the subpoena, so it is what  
10 it is.

11 MCCANN: So then Deputy Mayor, if you could restate  
12 your motion.

13 MR. CANNON: All right. I'll do that. I make a  
14 motion that we subpoena William Goutcher and Terry Zodky  
15 and that we offer for the conveniences of the witnesses  
16 that they can testify telephonically or by Zoom or  
17 whatever they prefer, but telephonically -- whatever is  
18 easiest for them and that we -- and that our city  
19 attorney basically to reach out to Mr. Hamner and say,  
20 we have got to get these done, because it's been four or  
21 five months now and we just need to wrap this up.

22 MR. MCCANN: So the motion is to reissue a subpoena  
23 and asks for a new type of communication by exactly  
24 whom?

25 MR. CANNON: We just don't need to resubpoena Mr.

1       Zodky, I don't think. Do we, Anthony?

2               MR. GARGANESE: The way that I handled it was that  
3 I re-subpoenaed Mr. Hamner and he said that he wouldn't  
4 accept the subpoena on behalf of this clients, but as  
5 far as I know Mr. Goutcher as of tonight, is not his  
6 client. So we would have to locate him and Mr. Goutcher  
7 and figure out --

8               MR. CANNON: Well, reach out to Mr. Hamner and see.  
9 I'm pretty sure he's going to -- but in any event, so  
10 the motion is that we take testimony from William  
11 Goutcher and Terry Zodky and if that requires a subpoena  
12 for Mr. Goutcher, fine. Anthony, are you sure that Mr.  
13 Hamner will produce it. And offer at their convenience  
14 telephonic, Zoom, but we just want them to get this  
15 wrapped up.

16              MR. MCCANN: Looking for a second.

17              MR. HALE: Second.

18              MR. MCCANN: Okay. The motion is made by Deputy  
19 Mayor Cannon and seconded my Commissioner Cannon [sic.],  
20 any further discussion?

21              MR. CANNON: Commissioner Hale seconded it.

22              MR. MCCANN: I'm sorry.

23              MR. CANNON: I made the motion and it was seconded  
24 by Hale.

25              MR. MCCANN: I'm sorry if I stated it wrong. I was

1 thinking of you. So the motion is made by Deputy Mayor  
2 Cannon and seconded by Commissioner Hale. If I got that  
3 wrong the first time, my apologies, for the record. Any  
4 further discussion? Seeing none. Christian --

5 MR. GOWAN: Commissioner Benton.

6 MR. BENTON: Aye.

7 MR. GOWAN: Deputy Mayor Cannon?

8 MR. CANNON: Aye.

9 MR. GOWAN: Commissioner Johnson?

10 MR. JOHNSON: Aye.

11 MR. GOWAN: Commissioner Hale?

12 MS. HALE: Aye.

13 MR. GOWAN: Commissioner Elliot?

14 MR. ELLIOT: Nay.

15 MR. MCCANN: The motion passes.

16 Okay. Is there any further discussion on this  
17 topic for this evening? I do see Commissioner Benton.

18 MR. BENTON: Yeah. If you hear something often  
19 enough be it a truth or a lie, you'll start to believe  
20 it. And I heard tonight a couple times in previously  
21 that this plant was only designed to water Central Winds  
22 Park. Every -- all of my history of reading up to then,  
23 that is not what it was to designed for. It was  
24 designed to augment and that means being able to supply  
25 more water than our reclamation facilities could, a lot

1 more water and possibly even supply it to other areas.  
2 that was the initial design according to what I read.  
3 If that changed, we have no documentation of it.

4 MR. MCCANN: And just for clarification, it's my  
5 understanding that the first case was to Central Winds  
6 Park and then the secondary use was to people's homes.  
7 is that city --

8 MR. BENTON: Excuse me. Excuse me. I'm still  
9 talking. Excuse me --

10 MR. MCCANN: No, no. Pardon me.

11 MR. BENTON: Respectfully. But the distribution  
12 system not being built, see that was what? The plant  
13 was designed to feed out to this -- to have enough water  
14 that you could feed to the plants -- the reclamation  
15 plants and then augment back and be able to feed out  
16 more water to our city. Those pipes were never laid in  
17 the ground. So whether we didn't produce the water  
18 because we didn't have the pipes or we didn't put the  
19 pipes because we didn't have the water, but that as the  
20 initial design. And unless I'm mistaken and if someone  
21 can correct that, and have some documentation to back it  
22 up, please do.

23 MR. CANNON: And I think we maybe saying the same  
24 thing in different ways. And if we can get an answer  
25 from the city manager, can you explain the actual use

1 and priority of use, just for the record for the Lake  
2 Jesup augmentation plant.

3 MR. BOYLE: Sure. It was to feed into the totality  
4 of the reclaimed water supply to the entire city. The  
5 Central Winds Park consumes on a bad day -- and I say,  
6 "Bad", for water conservation purposes, about 300,000  
7 gallons. That's with all of the -- the zones going  
8 about all the water that that field --all the fields  
9 could take. So I'm not sure why somebody would build a  
10 2 million gallon plant -- 2 million per day plant for a  
11 need of 300,000. So if you read through a lot of the  
12 information that they produced, it was to feed the  
13 totality of the reclaimed system as the city built out.  
14 And it is still going to be needed to some degree in the  
15 future for that purpose. There is a reason why they  
16 focused on talking about the water feeding the park.

17 So you guys will have to dig into that and you'll  
18 find your answers.

19 MR. MCCANN: And if I may, one final follow-up  
20 question would be, is it the infrastructure, is the  
21 piping there for to supply residents?

22 MR. BOYLE: We have about 1400 customers on  
23 reclaimed. And this plant feeds and can back feed both  
24 the systems on the east and the west side. Jason can  
25 tell you sitting in the audience, but Jason can tell you

1 specifically where it feeds, but it can feed the  
2 existing customer base indirect through some of these  
3 storage tanks.

4 MR. MCCANN: Okay. Anything else before we move  
5 on? Commissioner Benton, thank you for the  
6 clarification. Because I was a bit confused on that and  
7 the priority. Thank you for that. Deputy Mayor Cannon.

8 MR. CANNON: I agree with you, Commissioner Benton,  
9 and I have carefully studied these permits and so forth,  
10 and we are extending the reuse lines in the Tuscawilla  
11 Crossings and in other areas now, right? That's in the  
12 works. And perhaps the reason why they wanted to just  
13 focus on Central Winds Park is because they thought that  
14 they could get away with but substandard water at  
15 Central Winds Park and not in people's front and  
16 backyards. And that's my suspiscion because based on  
17 what I have seen here, and that CDM Smith report, it was  
18 not performing -- it was not performing as it was  
19 required to under the permits. and so there's -- and I  
20 agree with you Commissioner Elliot, there is lot of  
21 layers here. I just -- I think you -- and I understand  
22 your concern, I want to be done with this. If simply  
23 doing this by telephone testimony, we could have gotten  
24 this done three months ago, you know, for the  
25 convenience of everybody. But we need to finish this

1 up. And if you buy -- if a farmer buys a million dollar  
2 irrigation pump, when they're going to need to irrigate  
3 their crops, which they don't have to do all of the  
4 time, but then doesn't buy the irrigation sprinklers and  
5 pipes to hook up to the pump. Well, what have you got?  
6 You've got a million dollar pump. If a farmer buys a  
7 pump that needs to put out 700 gallons a minute, but  
8 it's only capable of a couple hundred -- 300 gallons a  
9 minute, well he didn't get what he paid for. And so if  
10 the taxpayers of Winter Springs have about 2.7 million  
11 dollars in this plant that was suppose to filter water  
12 at a certain rate and was suppose to pump the water out  
13 at a certain rate and by all appearances, it wasn't  
14 performing, then why did that happen and how do we fix  
15 it? And you know, and I don't mean just the plant  
16 itself because the engineers put -- you know, if we have  
17 employees of the city that know that there is a problem  
18 like this and don't bring it to the attention of the  
19 city manager and don't -- Kevin Smith said that he was  
20 unaware of any problems and said that the plant worked  
21 fine. And the prior city engineer, Brian Fields, said  
22 that he had nothing to do with the plant and I'm looking  
23 through documents that he's got signatures and he's got  
24 -- as this plant was brought before the commission for  
25 approval, he's the one presenting the project together

1 with Kip Lotcuff. So in any event, bottom line here is  
2 a lot of money was paid by the taxpayers of this plant  
3 and I would hope that CPH would work with us and maybe  
4 help us with some engineering of any kind to try and  
5 make it right. Because I think that's their MO, that's  
6 the kind of company that I think they've always been.  
7 And I just -- the reuse line extension, we've had sewer  
8 plants that have not been producing adequate quality  
9 affluent reused water that meets the TSS standards that  
10 was going into spray fields, right? Because it's a  
11 lesser criteria, I believe, right, Shawn?

12 MR. BOYLE: For the record, any water that's  
13 substandard, goes into what we call our reject ponds and  
14 it's not redistributed anywhere.

15 MR. CANNON: Even the --

16 MR. BOYLE: And then later on it's pumped back  
17 through the waste water treatment plant and brought up  
18 to the specs. But I will tell you that, again, Jason is  
19 behind me, but for many months we have been producing  
20 unbelievably good water.

21 MR. CANNON: So I guess the point I'm making here  
22 --

23 MR. GOWAN: If you want to extend the meeting --

24 MR. CANNON: Motion to extend.

25 MR. MCCANN: Motion to extent meeting unitl

1 completion and public input. Motion made my Deputy  
2 Mayor Cannon, seconded by Commissioner Hale. All in  
3 favor?

4 COLLECTIVE: Aye.

5 MR. CANNON: So along the same lines, if the  
6 filters -- and Jason you can clarify this, but if the  
7 filters, whether it's at the waste water sewage plant or  
8 the filters here on this Lake Jesup plant, if they're  
9 not working optimally, what do you have to do? It's  
10 back flushing, you're not getting the performance, you're  
11 spending a lot of extra money and electricity pumping  
12 and pumping and refiltering and so forth. So that's an  
13 engineering thing, but I do think that we had clearly,  
14 as Commissioner Benton pointed out, the city had a  
15 multi-year plan to extend the reuse lines every other  
16 year, a 14-year plan, seven phases every two years to  
17 extent reuse into different neighborhoods.

18 We may need to revisit that, because it's David  
19 now. That was done definitively because of our  
20 declining cup. And our need to maximize irrigation with  
21 reused water rather than pulling water out of the  
22 aquifer. And if that means extending some reuse lines  
23 in certain areas like we're doing with Tusawilla  
24 Crossings, then I think as a commission we need to  
25 address that.

1 MR. MCCANN: And Commissioner Hale.

2 MS. HALE: That was from earlier, I was going to  
3 extend the meeting.

4 MR. MCCANN: Oh, thank you. Is there any further  
5 discussion?

6 MR. GARGANESE: Deputy Mayor indicating that -- to  
7 send them an expoliation letter to CPH, I don't know if  
8 that's the direction of the commission to do that.

9 MR. MCCANN: Is that something that we should vote  
10 on?

11 MR. CANNON: Do you want to explain what it is?

12 MR. GARGANESE: Well, it's a litigation hold or a  
13 preservation letter. It's a letter that you --

14 MR. MCCANN: To preserve documents?

15 MR. GARGANESE: A party will send it in  
16 anticipation of litigation, but also it also could be  
17 done in the course of an official investigation asking  
18 the party to preserve relative documents pertaining to  
19 the subject matter. In this case, the investigation.

20 MR. MCCANN: Commissioner Elliot.

21 MR. ELLIOT: I really don't have a problem with the  
22 expoliation letter, other than the fact that it just  
23 pushes us more towards kind of a negative relationship  
24 with our former contractor, with CPH. David seemed very  
25 cooperative. He seemed to indicate as Shawn mentioned,

1 that CPH maybe willing to help us out, but listening the  
2 some of the responses from counsel on certain questions,  
3 I can see that he is very concerned and I truly believe  
4 that if we send an expoliation letter we're -- we could  
5 be effecting detrimentally this relationship with --  
6 that we have with CPH. I really do believe that they're  
7 trying to be a good corporate citizen and do what's  
8 right. Even if they don't believe that it's something  
9 that they did wrong, it sounded like they maybe wanted  
10 to maybe assist, especially after conversations that  
11 they had with the city manager. So I'm not going to say  
12 that I'm against expoliation letter, but in my line of  
13 business and Deputy Mayor's line of business, those  
14 letters they're not necessarily looked at in a poisitive  
15 fashion.

16 MR. CANNON: Anthony, what if we just simply say,  
17 will you hold on to your records until we interview Mr.  
18 Goutcher and Mr. Zodky? That way they have access to  
19 them if they needed it and not really specify that we're  
20 looking to ramp up litigation or anything like that, but  
21 there might be some records or documents that those men  
22 will need to refresh their memories. And that we would  
23 request that they not, you know, purge anything until  
24 that time. And then that way it takes the sting out of  
25 it. Because I agree, I was kind of floored that the

1 attorney, Mr. Hamner, kid of said what he said, you  
2 know, because I think that, frankly, Mr. Zodky -- or  
3 excuse me. Mr. Gierach would have been fine with it.  
4 But the attorney was like, well -- so maybe try it that  
5 way, you know, kind of a soft, you know --

6 MR. MCCANN: So you're saying make the records  
7 available to those two former employees of theirs?

8 MR. CANNON: Yeah, not just -- not to purge the  
9 records until we've had the opportunity to, you know,  
10 interview Mr. Goutcher and Mr. Zodky basically. And  
11 then that way, just say it may be a benefit for them to  
12 refresh their memory and there maybe some additional  
13 information that they would like to look up -- and just  
14 soften it. Because I'm not -- I mean, we've not made a  
15 claim against them -- I mean, that's --

16 MR. GARGANESE: I can send him an email at the  
17 direction of the commission --

18 MR. CANNON: Yeah.

19 MR. MCCANN: Commissioner Hale.

20 MS. HALE: City Manager, Boyle. City Manager,  
21 Boyle.

22 MR. BOYLE: Oh, I'm sorry. I have a hard time  
23 hearing you.

24 MS. HALE: What is your opinion on how this could  
25 affect our relationship with CPH?

1 MR. BOYLE: These proceedings?

2 MS. HALE: By --

3 MR. ELLIOT: Expoliation letter.

4 MR. BOYLE: Well, there's a normal cycle to the  
5 engineering selection process and I think that CPH had  
6 been around for a long time. They have been on the  
7 engineering, they just didn't -- they weren't selected  
8 -- actually what number were they? Number 4? They were  
9 in the top five and we only went with the top three. so  
10 they were still pretty highly ranked. So the point that  
11 I'm trying to make is, it would be behovent upon them  
12 and the commission to moderate the track so that in the  
13 future they can still come back and be the engineer on  
14 the record for some projects in the future. So as you  
15 know we have an enormous project that's about to be bid  
16 out. There's nothing precluding them because it doesn't  
17 fit under these continuing services contracts to  
18 maintain a relationship because my understanding, to my  
19 dismay, that the engineering fees on these projects are  
20 going to be very, very large and there's going to be a  
21 lot of companies trying to bid for that. So I think  
22 it's a reciprocal relationship that needs to be  
23 maintained because when we put that out for RP we're  
24 going to have independent people choosing those  
25 engineers. So did that --

1 MS. HALE: Yeah. Will it hurt our relationship, to  
2 push this through to have them maintain the records.

3 MR. BOYLE: I don't know.

4 MR. JASON: I don't know that it would help. Their  
5 attorney made it clear that they're going to maintain  
6 their normal retention policy. He stated the fact  
7 numerous times. So I don't know how hard we want to  
8 push at this point, I guess is what I'm saying.

9 MS. HALE: Even for a soft request --

10 MR. MCCANN: If I may, Commissioner, if you're  
11 finished. It sounds to me that there are two different  
12 -- there are two different requests. Either hold  
13 records, maintain records until these two gentlemen have  
14 a -- and that's -- so for legal terms, I'm not the  
15 attorney in the dais, but for legal terms, once you send  
16 a notice that records must be kept, that is a sign to an  
17 organization that a lawsuit could be potentially there.  
18 if we say instead of keep these records until they have  
19 a chance and we would change it to would you please make  
20 these records, please keep them so that these two  
21 gentlemen can look at them. Instead of saying, keep  
22 them until they have time to look at them, which also  
23 means, "We", still have time to make a decision about  
24 potential liable -- litigation, instead say simply, hold  
25 it for them. Does that make sense? Is there a

1 difference there or am I not being an attorney and  
2 missing the mark completely?

3 MR. GARGANESE: Well, if it's an expoliation letter  
4 it's written a certain way and with potential sanctions  
5 for somebody destroying evidence, if it becomes  
6 necessary to produce that evidence in an official  
7 proceeding like a court case. So that's one and you  
8 know, the soft peddling of an email, I would be happy to  
9 write that, but I think as Jason said, I -- I don't know  
10 if it's any different than what they already said,  
11 right? There isn't anything that needs to be said. The  
12 already said that they had records and that they will  
13 make them available to refresh Mr Goutcher's  
14 recollection, if necessary or Mr. Zodky, you know, I  
15 don't know. Whatever the commission wants to do.

16 MR. MCCANN: Okay. Commissioner Benton.

17 MR. BENTON: My opinion on it is that if we soft  
18 peddle it, we might as well not do it at all. That's  
19 just my opinion. I'm not a legal expert, nor a city  
20 official, but if someone were to send something like  
21 that to a company that I was with, they might be soft  
22 peddling it, they may decide that maybe I should get rid  
23 of something. I hate to say that, but it's true. We  
24 either should or shouldn't and that's just the desicion  
25 that I would make. That's just my opinion.

1 MR. MCCANN: And -- and Deputy Mayor Cannon.

2 MR. CANNON: Yeah. You know, the attorney made it  
3 very clear that he was -- they weren't going to deviate  
4 from their records retention of course they wouldn't  
5 tell us what that is. Okay. So we don't know -- it  
6 would have been a lot easier if they would have said,  
7 yeah, we keep the records. And I know for a fact, our  
8 city has reached out to CPH and gotten records that are  
9 10, 20 years old, 30 year old. So -- but those -- you  
10 know -- I'm not trying to create animosity with the  
11 contractor at all, I'm rally not. And I think that they  
12 will have opportunities to continue to bid. I mean,  
13 they did work within the last year or two, several  
14 things for us. The screen, the inlet screens and  
15 several other things, so it's not like we're  
16 blackballing CPH because we have not. And I want them  
17 -- you know, I think that through that bidding process a  
18 lot of times you get better prices, right? So I don't  
19 want to dis-way them from going forward bidding on  
20 what's going to be a lot of different engineering  
21 projects going forward.

22 It would have been a lot easier if Mr. Lotcuff  
23 would have just come in because he probably had more  
24 knowledge than all of them combined. As from the  
25 operations standpoint, from the bypass and all the rest

1 of it and had his attorney not instructed him not to  
2 answer that it would have been a little easier. We  
3 probably would have been done in one night with him and  
4 that would have answered the remaining questions, but it  
5 is, what it is. So I don't know maybe I'll just -- I  
6 don't know what the sense of the commission is. If  
7 you're not -- I'm not trying to push a bad angle here  
8 I'm really not. But you know --

9 MR. MCCANN: Commissioner Benton.

10 MR. BENTON: My only thinking after he made the  
11 request is that the information that they would have, I  
12 don't suspect would incriminate them, if what he said  
13 was true tonight, they may have even suggested to our  
14 city staff and whoever they talked to paid a better plan  
15 than what was actually done. We don't know the reasons  
16 why that might not have been done. There is a number of  
17 reasons why we would want to have access to that  
18 information and whoever answered our questions before,  
19 whether it would be over the telephone or in person,  
20 they would want to have access to that information  
21 because it might -- it has been a few years ago.

22 Their employees or former employees should probably  
23 have access to that I would hope. And I don't know I if  
24 we should do something official to make that happen or  
25 not. I don't know.

1 MR. MCCANN: Deputy Mayor Cannon.

2 MR. CANNON: Yeah, you know, going back and looking  
3 at all the minutes. In July of 2011 the final  
4 engineering and site plans and aesthetic review plans  
5 were bought before the commission as Item 502 and there  
6 were concerns raised by Perez and other commissioners  
7 about the appearance of this plant down on Lake Jesup.  
8 and so they made some revisions I guess to it, aesthetic  
9 improvements to the tune of 58,000. And then they  
10 brought it back on August 27 and then it was approved.

11 But I guess the point that I'm trying to make is,  
12 that it may well be that the better maxi flow or Active  
13 Flow System was proposed and because of aesthetics and  
14 because of the size of the plant it was rejected by the  
15 prior commission. I don't know that but it might have  
16 been. I don't know. It's not in the minutes but  
17 certainly Mr. Lotcuff would have known about it. And  
18 certainly CPH Mr. Zody or Goutcher, would have probably  
19 said, Well, we recommend this, but you know. So anyway,  
20 but -- because yeah, initially there was a design for  
21 the filtration and, you know, if the aesthetics were  
22 such that they didn't want to go with that design, then  
23 so -- so be it. That was the wisdom of the commission,  
24 Representative Brown and the rest of them in -- back in  
25 2011, when they were making those decisions, so we have

1 to honor their decision from back then.

2 MR. MCCANN: And it's not entirely unreasonable,  
3 not that we're talking about pickleball courts, and  
4 retention meeting space, some big million gallon tank  
5 that's 30 foot high right there, would -- they may not  
6 have foreseen or I assume -- or you have to assume that  
7 they did not foresee the problems with this plant. They  
8 chose that particular engineer idea, ended up not  
9 working, but they were watching out for Lake Jesup and  
10 those things and the beautification of our parks.

11 MR. CANNON: Well, we built a plant on our million  
12 dollar property, lakefront property. I mean, had I been  
13 on the commission back then, I would have said, wait a  
14 minute this is our lakefront property, the most that we  
15 have in the city, why do we have to put it here?  
16 Frankly. Whatever. I don't know I have -- and listen I  
17 have the benefit now of 12 years later of hindsight that  
18 they didn't have. But you know, I would -- today, if  
19 you Jason or you, Shawn, brought something to us about  
20 let's put a plan or whatever right there on Lake Jesup,  
21 I would say, in that location? You know that's like our  
22 premo real estate, but whatever.

23 MR. MCCANN: Was there anything that you wanted to  
24 add?

25 MR. BOYLE: Sorry, I was playing with the mic.

1 MR. MCCANN: So we were back to -- the city  
2 attorney is asking for direction.

3 MR. CANNON: I'll withdraw the suggestion that we  
4 do a -- a -- the expropriation of evidence letter only  
5 becomes effective if we're going through litigation.  
6 And I don't see that as a liable plan forward right now,  
7 based on the information that's available. So I'm just  
8 going -- Anthony, do you agree unless you're going to go  
9 forward with my litigation claim, then we'll assert that  
10 based on certain records that would move forward. This  
11 whole matter has been going on for so long that it's --  
12 this dog has got fleas on it and it's laying on it's  
13 side. So I don't see this as being a viable litigation  
14 claim. I don't have all of the information, but not  
15 against them.

16 So I'll withdraw the suggestion and then make it  
17 simple. But I do think that it would be good for you to  
18 convey and listen -- make this -- if they make this bit  
19 available to Zodky and to Goutcher and let's try to get  
20 this done quickly, do it by phone, do it however -- you  
21 know, let's just get it finished. Because it's been  
22 dragging on now for months. And I'm not happy with the  
23 delays in getting these scheduled, so we just need to  
24 get it done.

25 MR. MCCANN: All right. Further discussion.

1 Commissioner Elliot.

2 MR. ELLIOT: Just real quick, if I look back at the  
3 whole reason of going down this path was to find out  
4 what happened? Why? How it went wrong? When? Why?  
5 and how? And all of that, so we don't fall into the  
6 same situation in the future or cause these same  
7 problems for future commissioners and mayors. There was  
8 never any discussion of legal action or pointing fingers  
9 and blaming this company or this person. We jsut want  
10 to know what happened, why it happened? And so we don't  
11 do it again. We're getting ready to spend a lot of  
12 money on waste water treatment plants and we sure don't  
13 want to do -- in this process what was done in the  
14 augmentation process. So ten years later, we've got  
15 commission up here, scratching their heads going, what  
16 were those guys doing ten years ago? And that's the  
17 whole reason from this process and I really don't want  
18 it to turn adversarial with any of the parties involved  
19 even though it seems like it's taken that path. You  
20 know, she the word subpoena creates that. To throw on  
21 something like an expoliation letter or something -- it  
22 just -- it's just kind of piling on. I just -- like the  
23 deputy mayor said, we've been beating this dog for a  
24 while and I'm not sure we're going to find out a whole  
25 lot more that's going to change the final path we take,

1 which is -- we just don't want to repeat mistakes that  
2 were made in the past by other entities. That really  
3 concerns me. We're spending a heck of a lot more money  
4 than 2.7 million dollars in the very near future, so  
5 it's a big deal to understand what happened in this  
6 situation and just not repeat those mistakes. I would  
7 rather keep this as positive as we can and really not  
8 create anymore animosity that's already been created,  
9 especially with CPH.

10 MR. MCCANN: Deputy Mayor.

11 MR. CANNON: Yeah, so just -- I'm going to share  
12 with the commission that I feel that the city needs to  
13 adopt through an ordinance or whatever, a requirement  
14 that employees of the city whether it be the plant  
15 operators or whether it be, you know, department head or  
16 whatever, if they know that it's a plant and it ain't  
17 working right, then they an affirmative duty to report  
18 it in writing to the department head and to the city  
19 manager. And an affirmative duty to report to report  
20 it, if you will. And we need to put that in place  
21 because there's too many -- we know now that people knew  
22 full well that these sewer plants were falling apart for  
23 years, but the word never got back to the city manager  
24 certainly not to me, you know, I'm prepared to say under  
25 oath right now. No city manager until Shawn Boyle

1 brought it to our attention -- to my attention that the  
2 sewer plants were literally crumbling and falling apart.  
3 But yet, he was alerted by a city employee, you need to  
4 come out and look at these things. So we need to adopt  
5 going forward, especially with that these massive  
6 projects that we're doing. We need to come forward and,  
7 Shawn, you probably have already had some thought about  
8 this and Jason, across the board, okay, if we bought  
9 police cars, and the police officers knew that th radios  
10 weren't working correctly or the transmissions were bad  
11 or whatever, then I would expect that those police  
12 officers would bring it to attention of the chief and  
13 even bring it to the attention of the city managers.  
14 Hey, we just bought these new police cars and they're  
15 defective, they're not working. And the same thing with  
16 the plants and the same thing with any other big piece  
17 of equipment. We buy dump trucks and front-loaders and  
18 all of this other equipment. If there's a problem, if  
19 we didn't get the taxpayer's value, what we paid for,  
20 then there's needs to be a requirement that someone  
21 speak up through the chain of command, through the  
22 department head and through city manager. And that in  
23 turn we be briefed on it, Shawn.

24 So have you given some thought to that?

25 MR. BOYLE: I have given it a lot of thought. I

1 have a lot more insight about the situation and how it  
2 occurred and unfolded. Without destroying people's  
3 careers and licenses and everything in between, I think  
4 we have enough information to propose changes in our  
5 procurement and our ethics policies about arms length  
6 transactions, so that staff remains objective. And that  
7 we always keep our fiduciary responsibilities of the  
8 focus that employ us, which are the citizens. I think  
9 that I have enough information that I -- I'm very  
10 confident that we can prevent these things from  
11 happening in the future.

12 MR. CANNON: Okay. Let's definitely do it, because  
13 I don't know. But I get the sense from everybody up  
14 here on the dais that we want to make sure that this  
15 doesn't happen and we're about to spend the largest  
16 capital program in the history -- probably in the  
17 hundred year history of this city. And we can't have a  
18 repeat of this. You know, I mean, I'm looking at the  
19 commissioning data, and the commissioning data when they  
20 fire these plants up, clearly show it wasn't needing the  
21 specifications it's right there. And Mr. Lotcuff --  
22 well, presumably -- purportedly it's his statement.  
23 It's not really his statement because it's not signed or  
24 anything. But even that document of questions and  
25 answers from Lotcuff said, Yeah, the filters worked so

1 good that they were plugging up constantly and they were  
2 back flushing and it wasn't working. And that might be  
3 the reason that the plant got used so little in an  
4 eight-year period of time, because it wasn't working  
5 correctly. I don't know without Mr. Lotcuff coming in,  
6 we won't know. But I would like if -- if the commission  
7 is in agreement, I would like for the city manager to  
8 come up with some specific guidelines on this because  
9 it's common for governmental entities to have these kind  
10 of guidelines. Basically, if you know something, then  
11 you have to report it and you have to report to your  
12 supervisor and supervisor to the city manager. And you  
13 know, when it -- when we're dealing with these kinds of  
14 problems that arise. And inevitably they are going to  
15 arise, you know, you might get a copier that doesn't  
16 work worth a hoot that needs to be returned but you  
17 can't just sit on it for six months and then the  
18 warranty is gone and you can't return it. So if you  
19 have given some thought to that Shawn, I think we need  
20 to --

21 MR. BOYLE: I have given it a lot of thought. I  
22 think we could turn it to the airline industry. And  
23 look at the relationship between the pilot and the  
24 co-pilot. And I think that we can extrapolate from  
25 that. And the policies and procedures that were created

1 by one of the accidents from back in the 80's or 90's.  
2 I think we can extrapolate from that and put a policy in  
3 place that would allow plants supervisors, for instance,  
4 that run our treatment plants to report around anybody  
5 that might not be willing or open to hearing of what the  
6 issues are with these type of plants. I know that the  
7 police department has that. I think we just need to  
8 expand it to the general employees. I think we can  
9 definitely work with them with the information that we  
10 have and what happened.

11 MR. CANNON: We have dedicated men and women that  
12 are employees of this city and they're the eyes and ears  
13 out there day-in and day-out touching things and looking  
14 at things. So if they see something, they need to say  
15 something. And so you figure it out where it's not  
16 dually burden some to you and your team. But there  
17 needs to -- our employees need to be told. We have the  
18 expectation that if they see something that's not right  
19 and to define it correctly, you know, so not everytime  
20 somebody says something inappropriate, you're going to  
21 get bombarded, but you know, please. I think that -- I  
22 was -- I think we need to do that. And that's part of  
23 why this process is going -- we're going through this  
24 process.

25 MR. MCCANN: If I might, this commission has made

1 agreements not to accept campaign contributions or any  
2 kind of benefit from any -- any company that does  
3 business with the city. And that's not always been that  
4 way. This is new to this dais we have made a number of  
5 other agreements based on ethics. And we need to carry  
6 some of that down to some of the decision makers that  
7 there were -- they're immediate family members and  
8 employment with the contractor that's doing business  
9 with the city and all of those other different things  
10 that go on whether there maybe conflict, and all of the  
11 those different types of conversations that when on the  
12 dais -- and it maybe more difficult with the city  
13 employee but anyone who had a -- has a benefit from  
14 someone doing business with the city, should be  
15 addressed and looked at.

16 Is there any further discussion before we move on  
17 to public input? Seeing none. Well, then that brings  
18 us back to public input. Right. Okay. And I would  
19 remind any one to fill out the blue form and the same  
20 rules apply as -- Mr. Gallow your name and address for  
21 the record.

22 MR. GALLOW: Good evening. Art Gallow, 199 Indian  
23 Terrace and I think everyone knows how much I love and  
24 respect everybody on the dais, but tonight I think I  
25 have to agree with Commissioner Elliot. Unless it's a

1 big giant pit of gold at the end of this rainbow, I  
2 think going further from here is just throwing good  
3 money in a bag. I think you have pretty much, most of  
4 the information that you're going to get. I really  
5 can't in my mind -- and I was one from the beginning of  
6 September that I wanted to get more people in here to  
7 find out. So I think life is choices, and I think back  
8 than we made our choices. We said okay, we're only  
9 going to test one for one season. We're only going to  
10 -- we're going to design and put our pot too high, we're  
11 going to put it on the the lake and we're going to make  
12 it too low. And do this and do that. I think the city  
13 made a bunch of bad choices back then. And there might  
14 be a lot of reasons for it. And I would guess that it  
15 had something to do with the budget and I was in  
16 acquisition when I worked at civil service down at TSD  
17 and there's federal acquisition regulations that you  
18 have find. So if we have problems with the far -- here  
19 then training at the minimum is one of them. So I don't  
20 I think -- I think you'll want to reconsider going any  
21 further with this. I would think that you should  
22 discuss -- what -- where are we going to go from here?  
23 what else are we going to find out and what can we  
24 possibly do except waste more of the taxpayer money.

25 And and I don't want anymore of my money on this.

1 I think we got -- like Commissioner Elliot said, Okay.  
2 take our licks, let's move forward. If we got a plan --  
3 I would like to see, my commissioners, my mayor, taking  
4 time and fixing it. Let's go forward into the future.  
5 I would see you spend your time on that than on the past  
6 because I don't think -- all you got to do is piss a lot  
7 of people off that we're going to have to work with and I  
8 don't think you're going to find out anything else. So  
9 that's my two cents. Thank you.

10 MR. MCCANN: You are appreciated, Mr. Gallow.  
11 Anyone else? And as a courtesy we can get you a  
12 handheld.

13 MS. BENTON: It's Sheila Benton, 414 Seaward Court,  
14 in Winter Springs. I have sat here, as you all know,  
15 for hours listening and I understand and hear your  
16 frustration and someone stonewalling, but as a resident  
17 of this city, as you consider your next move, take a  
18 look at the comp plan. There is within our comp plan  
19 has been updated since 2009, a conservation element. an  
20 element that says, Mr. Developer, when you come into  
21 this city, you are required to develop an alternative  
22 irrigation system. If you don't have the pipes out  
23 there for them to look into, where do they hook up to?  
24 Potable water. Okay. So now we're just working in  
25 circular. You've got a piece of the element that says

1 that you're required to do that, but don't have the  
2 ability for them to look in. You-all just might want to  
3 take a look at that and consider what type of  
4 frustration are we adding to our developers asking them  
5 to hook into a system that is non-existent. We have a  
6 prime example. Tuscawilla Crossing, they got into the  
7 potable water because the irrigation water wasn't  
8 available. And I'm sure they're not the only ones out  
9 there. Just take time to look at that and consider how  
10 we can help our developers. Lower the anxiety of  
11 building in this city. Have a wonderful evening.

12 MR. MCCANN: Thank you, Ms. Benton. Anyone else  
13 would like to take this opportunity to speak. Seeing  
14 none. That brings us to adjournment. Thank you all for  
15 being here. Thank you --

16 MR. CANNON: Can I bring one thing up before we're  
17 done. I hear what Mr. Gallow was saying and I hear what  
18 Commissioner Elliot was saying. Anthony, my inclination  
19 is, if they're not going to produce those two witnesses,  
20 say, within the next 30 days, that we shut this down.  
21 Because I'm not interested in this dragging out for six  
22 more months or five more months.

23 So when you communication with Mr. Hamner and say  
24 he would like to get this done quickly, and efficiently  
25 and very efficiently, but let's get it done, okay? And

1 if they're not inclined to do that then report back to  
2 us and that's it, you know, that's it. There's still a  
3 lot info that we don't have obviously. That we would  
4 have been in a much better position had Mr. Lotcuff come  
5 in and honored his subpoena. But it is what it is, you  
6 know, and -- Commissioner Johnson, please.

7 MR. JOHNSON: We have a February 28th commission  
8 meeting, I would say if we were getting now where by  
9 that commission meeting let's finish it.

10 MR. CANNON: Yeah, I agree.

11 MR. JOHNSON: Yeah, we can vote on it at that time.

12 MR. CANNON: Yeah, I don't like the fact -- I think  
13 that we did the thing In July or whatever it was --  
14 September or whatever and you know, here we are  
15 basically into February. And they stalled us and I  
16 don't like that because basically we cold have done this  
17 more quickly, we could have had this done and had this  
18 behind us. I know why they did it but --

19 MR. MCCANN: We sent out approximately a dozen  
20 subpoenas and we've had three respond. Their motivation  
21 for not appearing, different reasons for different  
22 people I'm sure are different.

23 MR. CANNON: We did our due diligence for the  
24 taxpayers, okay, and, you know, I -- at some point, I  
25 would like to testify. Me. Okay? Because the

1 suggestion has been made that because I have been a  
2 commissioner for seven years I was running these sewer  
3 plants and I was running this reclaimed water plant and  
4 I'm opening valves and I'm causing all of these problems  
5 that these really big problems with the sewer plants  
6 were brought to my attention as a commissioner. And  
7 again, it was by City Manager, Boyle.

8 And so I'm more than happy to go under oath and put  
9 that on the record. Because the fact of the matter is,  
10 it didn't happen. Nobody brought this to my attention  
11 or those that know me know that I would have been all  
12 over it like Pitbull, let's get it fixed. But in any  
13 event, we can do that sometime in the near -- some time  
14 in the future.

15 MR. MCCANN: Well, those comments are on the  
16 record, Mr. Mayor as they should be. And -- with a  
17 court reporter here as well and they are being recorded.  
18 So without further discussion -- Commissioner Benton --

19 MR. BENTON: As a commission is it advisable that  
20 we put out some sort of finding of what we did find out  
21 and what we did not found out, if this -- from these  
22 hearings. I think it probably is, I think for the  
23 commission here for us to somehow to put that into  
24 writing and make it official.

25 MR. CANNON: I think we need to generate a report

1 and I think the city manager and the city attorney ought  
2 to write it and let us review it but absolutely.

3 MR. MCCANN: Yeah, I think we can -- wasn't the  
4 dead line the 28th or whenever the next commission  
5 meeting arises, then we can have that discussion and  
6 have a -- set up the exact endgame --

7 MR. CANNON: I agree.

8 MR. ELLIOT: Thank you.

9 MR. MCCANN: Any further discussion?

10 MR. BOYLE: Is that -- I just want to be clear. So  
11 the meeting hasn't ended yet, the we had the public  
12 comment. Are you directing us to not -- I'm looking for  
13 nods of heads, but are you looking for us to come back  
14 with a -- a conclusion, a summary of the events and you  
15 want us to do that at the end of February if they don't  
16 appear --

17 MR. MCCANN: I believe we're giving no direction at  
18 this time in that --

19 MR. BOYLE: Okay. Also you may --

20 MR. MCCANN: We will have this conversation on the  
21 28th.

22 MR. BOYLE: Okay. Thank you.

23 MR. MCCANN: No further.

24 MR. CANNON: No. But I think the city manager,  
25 you, have been intimate or familiar with lessons

1 learned, failure of the system and so forth. So you  
2 know, you want to get started drafting something, but  
3 hopefully we'll get a final ones in here. And if they  
4 don't show up, they don't show up and then we did our  
5 best.

6 MR. BOYLE: I was focused on the procedural, you  
7 know, we did public comment. If the commission were to  
8 give me direction, I don't know if the city attorney  
9 would -- say then we would need to have a final public  
10 comment on the decisions of the commission, I guess --

11

12 MR. MCCANN: We're giving no direction at this  
13 point.

14 MR. BOYLE: Okay.

15 MR. MCCANN: We're talking in the sunshine.

16 MR. BOYLE: Okay.

17 MR. MCCANN: And with that being said, looking to  
18 my right and to my left, any further discussion and this  
19 evening has ended, thank you all again for caring about  
20 your city.

21 (The meeting was concluded at 8:58 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF SEMINOLE

I, Martha Braun, Court Reporter, certify that I was authorized to and did stenographically report the City Commission Special Meeting, pages 1 through 115; and that the transcript is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 24th day of March, 2022.



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Martha Braun  
Professional Court Reporter

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CITY COMMISSION SPECIAL MEETING

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COURT REPORTER'S CERTIFICATE OF CORRECTIONS  
TO THE CITY COMMISSION SPECIAL MEETING

STATE OF FLORIDA  
COUNTY OF SEMINOLE

Under Penalties of perjury, I declare that I, Martha Braun, Florida Professional Reporter, have reviewed the transcript and found the following errors:

Throughout the transcript, the speaker, "Deputy Cannon" should be, "Mr. Cannon".

I hereby certify that copies have been provided to City Attorney, Anthony Garganese.

Dated this 24th day of March, 2022,



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Martha Braun  
Florida Professional Reporter

City Commission Special Meeting CORRECTED  
January 31, 2022

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# PUBLIC HEARINGS AGENDA ITEM 400

CITY COMMISSION AGENDA | APRIL 11, 2022 REGULAR MEETING

## TITLE

Hickory Grove Townhomes | 132 Townhomes (Single-Family Attached) - Continuance Requested

## SUMMARY

On March 14, 2022, the City Commission held a Public Hearing to consider the Aesthetic Review, Final Engineering Plans, multiple Waivers, Variance, Removal of Specimen Trees, and Development Agreement for Hickory Grove Townhomes located within the Town Center (T4 Transect) which includes 132 single-family attached units (townhomes) as a permitted use.

The City Commission approved Waiver 1 (1-story Pool Amenity Building), Waiver 2 (Modified Streetscape), a Variance (Stormwater runoff volume), and the Aesthetic Review.

The City Commission continued Waiver 3 (Lot Coverage), the Specimen Tree Removal, the Development Agreement, and the Final Engineering Plans until April 11, 2022.

Unfortunately staff did not receive all of the documentation for review from the applicant and staff is requesting an additional continuance until April 25, 2022.

## RECOMMENDATION

Staff recommends that the City Commission continue the item until April 25, 2022



# PUBLIC HEARINGS AGENDA ITEM 401

CITY COMMISSION AGENDA | APRIL 11, 2022 REGULAR MEETING

## TITLE

First Reading of Ordinance 2022-02

## SUMMARY

On January 10, 2022, the City Commission reviewed the current fertilizer Ordinance and discussed various changes during the regular agenda. The City Commission directed staff to move forward with proposed changes in the code to strengthen City Code Chapter 19 – Utilities Article IX., regarding fertilizers.

Ordinance 2022-02 amends Chapter 19 of the City Code and established regulations for the proper use of fertilizers in the City. The adoption of a fertilizer ordinance is a requirement of the City's National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit. The adoption of Ordinance 2022-02 satisfies the City's NPDES permit requirement to have a fertilizer ordinance in place. In addition, the adoption of a fertilizer ordinance provides Total Maximum Daily Load credit of the City, which helps to offset the amount of credits needed using more expensive stormwater treatment methods. The ordinance has no direct fiscal impact on the City. Homeowners and commercial fertilizer applicators may find the proposed fertilizer regulation to increase the cost of lawn maintenance.

A few of the highlights of Ordinance 2022-03 include the following:

- Fertilizer containing nitrogen or phosphorus may not be applied before seeding or sodding a site, and may not be applied for the first thirty (30) days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation, or in accordance with an adopted stormwater pollution prevention plan for that site.
- Fertilizer containing nitrogen or phosphorus may not be applied to turf or landscape plants from June 1 through September 30 of each year.
- Fertilizer may not be applied within fifteen (15) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the state department of environmental protection (Chapter 62-340, Florida Administrative Code) or from the top of a seawall. Previously, fertilizer was not permitted to be applied within ten (10) feet from the above listed water bodies.
- By September 30, 2014, all commercial fertilizer applicators were

required by state law to abide by and successfully complete training and continuing education requirements in the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, offered by the Florida Department of Environmental Protection through the University of Florida/IFAS Florida-Friendly Landscapes program, or an approved equivalent program. Commercial fertilizer applicators shall provide proof of completion of the program prior to obtaining a new local business tax receipt for any category of occupation which may apply any fertilizer to turf, landscape plants, or both. Commercial fertilizer applicators with an existing local business tax receipt for any category of occupation which may apply any fertilizer to turf, landscape plants, or both shall provide proof of completion of the program within thirty (30) days after completing the program as required by state law.

The proposed Ordinance requires several publicly noticed and advertised public hearings including two (2) hearings before the City Commission.

### **RECOMMENDATION**

Staff recommends the City Commission conduct a First Reading of Ordinance 2022-02 amending the City of Winter Springs Code of Ordinances Chapter 19, Article IX of the Winter Springs Code of Ordinances, regulating the proper use of fertilizers; providing for the repeal of prior inconsistent ordinances and resolutions, incorporation into the code, severability, and an effective date.

**ORDINANCE NO. 2022-02**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS, SEMINOLE COUNTY, FLORIDA; AMENDING CHAPTER 19, ARTICLE IX OF THE WINTER SPRINGS CODE OF ORDINANCES, REGULATING THE PROPER USE OF FERTILIZERS; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City is granted the authority, under § 2(b), Art. VIII of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, pursuant to 33 U.S.C. § 1313(d) of the Federal Clean Water Act and the resulting Florida Impaired Waters Rule, Chapter 62-303, Florida Administrative Code, the Florida Department of Environmental Protection (“FDEP”) has classified specific waterbodies in Seminole County as “impaired” as a result of the presence of excess nutrients; and

**WHEREAS**, the Seminole County National Pollutant Discharge (NPDES) Municipal Separate Storm Sewer System (MS4) Permit No. FLS000038, issued by the Florida Department of Environmental Protection under authority delegated to it by the United States Environmental Protection Agency, mandates the adoption of a fertilizer ordinance that includes all of the requirements set forth in the Florida Department of Environmental Protection’s Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes pursuant to Section 403.9337, Florida Statutes (the “Model Ordinance”); and

**WHEREAS**, via Ordinance 2017-08, on August 14, 2017, the City Commission adopted a new Article IX, Chapter 19 of the City Code, which adopted the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes as required by state law; and

**WHEREAS**, it is the intent of the City Commission to amend Chapter 19, Article IX to impose certain more stringent requirements related to the application of fertilizers generally consistent with the terms of Seminole County Ordinance 2017-6, which has been adopted by all other cities in Seminole County; and

**WHEREAS**, the City Commission of the City of Winter Springs, Florida, hereby finds this ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Winter Springs.

**NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF WINTER**

**SPRINGS HEREBY ORDAINS, AS FOLLOWS:**

**Section 1. Recitals.** The foregoing recitals are hereby fully incorporated herein by reference as legislative findings of the City Commission of Winter Springs.

**Section 2. Code Amendment.** The City of Winter Springs Code of Ordinances, Chapter 19, is hereby amended as follows (underlined type indicates additions and ~~strikeout~~ type indicates deletions, while asterisks (\* \* \*) indicate a deletion from the Ordinance of text existing in Chapter 19. It is intended that the text in Chapter 19 denoted by the asterisks and set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this ordinance):

**Chapter 19 – UTILITIES**

\* \* \*

**ARTICLE IX. – PROPER USE OF FERTILIZERS**

\* \* \*

**Sec. 19-312. Definitions.**

For the purposes of this article IX, the following terms have the meanings set forth in this section unless the context clearly indicates otherwise.

*Administrator* means the city manager, or an administrative official of the city designated by the city manager to administer and enforce the provisions of this article.

*Application* or *apply* means the actual physical deposit of fertilizer to turf or landscape plants.

*Applicator* means any person who applies fertilizer on turf and/or landscape plants in the city.

*Approved best management practices training program* means a training program approved per F.S. § 403.9338, or any more stringent requirements set forth in this article that includes the most current version of the Florida Department of Environmental Protection's "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008," as revised, and approved by the administrator.

*Best management practices* means turf and landscape practices or a combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

*Code enforcement officer, official* or *inspector* means any designated employee or agent who has the duty to enforce codes and ordinances enacted by the city.

*Commercial fertilizer applicator*, except as provided in F.S. § 482.1562(9), means any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicator.

*Fertilize, fertilizing or fertilization* means the act of applying fertilizer to turf, specialized turf, or landscape plants.

*Fertilizer* means any substance or mixture of substances that contains one (1) or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil. *Fertilizer does not include unmanipulated peat or compost that make no claims as described in the preceding sentence.*

*Guaranteed analysis* means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

*Institutional fertilizer applicator* means any person, other than a private, non-commercial or a commercial fertilizer applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional fertilizer applicators shall include, but are not limited to, owners, managers or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium or other form of common ownership.

*Landscape plant* means any native or exotic tree, shrub, or groundcover (excluding turf).

*Low maintenance zone* means an area a minimum of ten (10) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, and related activities.

*Person* means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any other group of people acting as an organized entity.

*Prohibited application period* means the time period during which a flood watch or warning, or a tropical storm watch or warning, or a hurricane watch or warning is in effect for any portion of the city, issued by the National Weather Service, or if heavy rain, as defined by the World Meteorological Organization as rainfall greater than or equal to two (2) inches in a twenty-four (24) hour period, is likely.

*Saturated soil* means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this article IX, soils are considered saturated if standing water is present or the pressure of a person standing on the soil causes the release of free water.

*Slow release, controlled release, timed release, slowly available, or water insoluble nitrogen* means nitrogen in a form which delays its availability for plant uptake and use after application or which extends its availability to the plant longer than a reference rapid or quick release product.

*Turf, sod, or lawn* means a piece of grass-covered soil held together by the roots of the grass.

*Urban landscape* means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants. For the purposes of this section, agriculture has the same meaning as in F.S. § 570.02.

\* \* \*

#### **Sec. 19-314. Timing of fertilizer application.**

(a) No applicator may apply fertilizers containing nitrogen, phosphorus, or both to turf and/or landscape plants during the prohibited application period, or to saturated soils.

(b) Fertilizer containing nitrogen or phosphorus may not be applied before seeding or sodding a site, and may not be applied for the first thirty (30) days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation, or in accordance with an adopted stormwater pollution prevention plan for that site.

(c) Fertilizer containing nitrogen or phosphorus may not be applied to turf or landscape plants from June 1 through September 30 of each year.

#### **Sec. 19-315. Fertilizer free zones.**

Fertilizer may not be applied within ~~ten (10)~~ fifteen (15) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the state department of environmental protection (Chapter 62-340, Florida Administrative Code) or from the top of a seawall, ~~unless a deflector shield, drop spreader, or liquid applicator with a visible and sharply defined edge, is used, in which case a minimum of three (3) feet shall be maintained. If more stringent City Code regulations apply, this provision does not relieve the requirements to adhere to more stringent regulations.~~ Newly planted turf and/or landscape plants may be fertilized in this zone only for a sixty (60) day period beginning thirty (30) days after planting if needed to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

\* \* \*

#### **Sec. 19-317. Fertilizer content and application rates.**

(a) Fertilizers applied to turf shall be applied in accordance with requirements and directions provided by Rule 5E-1.003, Florida Administrative Code.

~~(b) Fertilizer containing nitrogen shall not be applied before seeding or sodding a site, and shall not be applied for the first thirty (30) days after seeding or sodding, except when hydro-~~

~~seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the stormwater pollution prevention plan for that site.~~

- (b) Nitrogen or phosphorus Fertilizer may not be applied to turf or landscape plants except as provided in subsection (a) for turf, or in the University of Florida/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test. Soil and tissue tests for phosphorus are normally done by UF/IFAS or another accredited laboratory. IFAS recommendations are available from the County Extension Service or [http://solutionsforyourlife.ufl.edu/lawn\\_and\\_garden/](http://solutionsforyourlife.ufl.edu/lawn_and_garden/).
- (c) No fertilizer containing phosphorus may be applied to turf, sod, lawns, or landscape plants unless a soil or plant tissue deficiency is verified by a testing methodology approved by the University of Florida, Institute of Food and Agricultural Sciences. If a deficiency is verified, the application of fertilizer containing phosphorus must adhere to the rates and directions for the appropriate Region of Florida, as adopted by Florida Administrative Code Rule. This subsection (c) controls over any inconsistent provisions in subsections (a) and (b) above regarding phosphorus.
- (d) Fertilizers containing nitrogen applied to turf or landscaping plants within Seminole County must contain no less than sixty-five percent (65%) Slow Release Nitrogen per Guaranteed Analysis Label. This subsection (d) controls over any inconsistent provisions in subsections (a) and (b) above regarding nitrogen.

\* \* \*

### **Sec. 19-322. Licensing of commercial fertilizer applicators.**

- (a) By September 30, 2014, all commercial fertilizer applicators were required by state law to abide by and successfully complete training and continuing education requirements in the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, offered by the Florida Department of Environmental Protection through the University of Florida/IFAS Florida-Friendly Landscapes program, or an approved equivalent program. Commercial fertilizer applicators shall provide proof of completion of the program prior to obtaining a new local business tax receipt for any category of occupation which may apply any fertilizer to turf, landscape plants, or both. Commercial fertilizer applicators with an existing local business tax receipt for any category of occupation which may apply any fertilizer to turf, landscape plants, or both shall provide proof of completion of the program within thirty (30) days after completing the program as required by state law.
- (b) All commercial applicators or fertilizer within the city, shall have and carry in their possession at all times when applying fertilizer, evidence of certification by the state

department of agriculture and consumer services as a commercial fertilizer applicator per 5E-14.117(18) F.A.C.

(c) All businesses applying fertilizer to turf and/or landscape plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one (1) employee has a "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries" training certificate prior to the business owner obtaining a local business tax certificate. Owners for any category of occupation which may apply any fertilizer to turf and/or landscape plants shall provide proof of completion of the program to the city tax collector's office

\* \* \*

**Section 3. Repeal of Prior Inconsistent Ordinances and Resolutions.** All prior inconsistent ordinances and resolutions adopted by the City Commission, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

**Section 4. Incorporation Into Code.** This Ordinance shall be incorporated into the Winter Springs City Code and any section or paragraph, number or letter, and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions, not affecting the construction or meaning of this Ordinance and the City Code may be freely made.

**Section 5. Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

**Section 6. Effective Date.** This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Springs, Florida, and pursuant to the City Charter.

**ADOPTED** by the City Commission of the City of Winter Springs, Florida, in a regular meeting assembled on the \_\_\_\_ day of \_\_\_\_\_, 2022.

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**KEVIN MCCANN, Mayor**

**ATTEST:**

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**CHRISTIAN GOWAN**  
City Clerk

**APPROVED AS TO LEGAL FORM AND SUFFICIENCY  
FOR THE CITY OF WINTER SPRINGS ONLY.**

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**ANTHONY A. GARGANESE**  
City Attorney

First Reading:  
Legal Ad Published:  
Effective Date:

# COMMISSION AGENDA

## ITEM 400

<b>Informational</b>	
<b>Consent</b>	
<b>Public Hearings</b>	<b>X</b>
<b>Regular</b>	

August 14, 2017

KS

BF

Regular Meeting

City Manager

Department

### REQUEST:

The Community Development Department requesting the City Commission consider Second Reading and adoption of Ordinance 2017-08 regulating the use of fertilizers in the City.

### SYNOPSIS:

The adoption of a fertilizer ordinance is a requirement of the City's National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit. Based on the City Commission's direction at First Reading, Ordinance 2017-08 has been modified to match the state's model fertilizer ordinance, which represents the minimum requirements that must be enacted to maintain compliance with the City's NPDES stormwater permit.

### CONSIDERATIONS:

### BACKGROUND:

- Stormwater runoff contains nutrients that are a major source of pollution flowing into our natural water bodies. Nitrogen and phosphorous are the two nutrients that are most problematic in water bodies and are responsible for contributing to algae blooms and fish kills. The Florida Department of Environmental Protection (FDEP) has determined that lawn fertilizers containing nitrogen and phosphorous can create risks to water bodies when used improperly.
- FDEP has classified specific water bodies in Seminole County as "impaired" as a

result of the presence of excess nutrients. For the City of Winter Springs, Lake Jesup is classified as impaired for having excessive levels of nitrogen and phosphorous. The City of Winter Springs is entirely within the Lake Jesup drainage basin.

- The City's National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit, issued by FDEP, mandates the adoption of a fertilizer ordinance that includes all of the requirements set forth in FDEP's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.
- FDEP has extended the time for the cities in Seminole County, including the City of Winter Springs, to adopt a fertilizer ordinance, with the understanding that all cities will adopt the ordinance as soon as practical.

### **CITY OF WINTER SPRINGS FERTILIZER ORDINANCE:**

- Ordinance 2017-08 (Exhibit B) amends Chapter 19 of the City Code and establishes regulations for the proper use of fertilizers in the City.
- Based on the City Commission's direction at First Reading on July 10, 2017, Ordinance 2017-08 had been modified to match the Florida Department of Environmental Protection's (FDEP) Model Fertilizer Ordinance. The FDEP Model Ordinance represents the minimum requirements that must be enacted by the City of Winter Springs to maintain compliance with the City's NPDES stormwater permit.
- Highlights of Ordinance 2017-08:
  - Fertilizer containing nitrogen or phosphorus may not be applied to turf or landscape plants during the Prohibited Application Period (severe rainfall events) or to saturated soils.
  - Fertilizer may not be applied within fifteen (10) feet of any pond, stream, watercourse, lake, canal, or wetland.
  - Fertilizers applied to turf must be applied in accordance with requirements and directions provided by Rule 5E-1.003, *Florida Administrative Code*, "Fertilizer Label Requirements for Urban Turf, Sports Turf or Lawns" (2016), as this regulation may be amended from time to time.
  - Fertilizer must not be applied, spilled, or otherwise deposited on any impervious surfaces.
  - In no case may grass clippings, vegetative material, vegetative debris, or any combination of them be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks, or roadways. Any material that is accidentally so deposited must be immediately removed to the maximum extent practicable.
  - Golf courses, athletic fields and turf managed for active recreation, whose owners implement Best Management Practices as described in Rule 5E-1.003(2) (d), *Florida Administrative Code*, "Fertilizers Labeled for Sports Turf at Golf Courses, Parks and Athletic Fields" (2016), as this regulation may be amended

from time to time, are exempt.

- The adoption of Ordinance 2017-08 satisfies the City's NPDES permit requirement to have a fertilizer ordinance in place. In addition, the adoption of a Fertilizer Ordinance provides Total Maximum Daily Load (TMDL) Credit for the City, which helps to offset the amount of credits needed using more expensive stormwater treatment methods.

**FISCAL IMPACT:**

Ordinance 2017-08 has no direct fiscal impact on the City. Homeowners and commercial fertilizer applicators may find the proposed fertilizer regulations to increase the cost of lawn maintenance.

**COMMUNICATION EFFORTS:**

This Agenda Item has been electronically forwarded to the Mayor and City Commission, City Manager, City Attorney/Staff, and is available on the City's Website, LaserFiche, and the City's Server. Additionally, portions of this Agenda Item are typed verbatim on the respective Meeting Agenda which has also been electronically forwarded to the individuals noted above, and which is also available on the City's Website, LaserFiche, and the City's Server; has been sent to applicable City Staff, Media/Press Representatives who have requested Agendas/Agenda Item information, Homeowner's Associations/Representatives on file with the City, and all individuals who have requested such information. This information has also been posted outside City Hall, posted inside City Hall with additional copies available for the General Public, and posted at six (6) different locations around the City. Furthermore, this information is also available to any individual requestors. City Staff is always willing to discuss this Agenda Item or any Agenda Item with any interested individuals.

**RECOMMENDATION:**

Staff recommends the City Commission approve Second Reading of Ordinance 2017-08 for final adoption.

**ATTACHMENTS:**

1. Exhibit A - Legal Advertisement (2 pages)
2. Exhibit B - Ordinance 2017-08 (10 pages)

**EXHIBIT A**



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**CITY OF WINTER SPRINGS  
NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN THAT  
THE CITY COMMISSION  
PROPOSES TO CONSIDER THE FOLLOWING:**

**ORDINANCE 2017-08**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS, SEMINOLE COUNTY, FLORIDA; AMENDING CHAPTER 19 OF THE WINTER SPRINGS CITY CODE AND CREATING A NEW ARTICLE IX THEREOF, "PROPER USE OF FERTILIZERS"; REGULATING THE PROPER USE OF FERTILIZERS BY ANY APPLICATOR; PROVIDING FOR APPLICABILITY WITHIN WINTER SPRINGS; ESTABLISHING A PROHIBITED APPLICATION PERIOD; SPECIFYING ALLOWABLE FERTILIZER APPLICATION RATES AND METHODS, FERTILIZER-FREE ZONES, LOW MAINTENANCE ZONES, AND EXEMPTIONS; REQUIRING THE USE OF BEST MANAGEMENT PRACTICES WHICH PROVIDE SPECIFIC MANAGEMENT GUIDELINES TO MINIMIZE NEGATIVE SECONDARY AND CUMULATIVE ENVIRONMENTAL EFFECTS ASSOCIATED WITH THE MISUSE OF FERTILIZERS WHICH HAVE BEEN OBSERVED IN AND ON WINTER SPRINGS' NATURAL AND CONSTRUCTED STORMWATER CONVEYANCES, RIVERS, CREEKS, CANALS, SPRINGS, LAKES AND OTHER WATERBODIES; REQUIRING PROPER TRAINING OF COMMERCIAL AND INSTITUTIONAL FERTILIZER APPLICATORS; ESTABLISHING TRAINING AND LICENSING REQUIREMENTS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AMENDING CHAPTER 2 OF THE WINTER SPRINGS CITY CODE TO PROVIDE FOR PENALTIES; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND AN EFFECTIVE DATE.**

**CITY COMMISSION SECOND READING  
PUBLIC HEARING  
WILL BE HELD ON**

**MONDAY, AUGUST 14, 2017  
AT 5:15 P.M. OR SOON THEREAFTER IN THE  
COMMISSION CHAMBERS LOCATED AT  
WINTER SPRINGS CITY HALL  
1126 EAST STATE ROAD 434  
WINTER SPRINGS, FLORIDA**

Said ordinance may be inspected by the public at the City Clerk's Office, located at 1126 E. SR 434, Winter Springs, Florida, prior to the public hearings. Interested members of the public may appear at the public hearings and be heard with respect to the proposed ordinances.

The City Commission reserves the right to continue or postpone hearings to a date certain without re-advertising. Any person who decides to appeal any decision of the City Commission with respect to any matter considered at these meetings will need a record of the proceedings and, for such purposes, 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 based.

**SPECIAL ACCOMMODATIONS:** Persons with disabilities needing special accommodations to participate in this proceeding should contact the City Clerk's Office at 407-327-5955 no later than 48 hours prior to the proceeding for assistance.

Notice Of Public Hearing

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**ORDINANCE NO. 2017-08**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS, SEMINOLE COUNTY, FLORIDA; AMENDING CHAPTER 19 OF THE WINTER SPRINGS CITY CODE AND CREATING A NEW ARTICLE IX THEREOF, “PROPER USE OF FERTILIZERS”; REGULATING THE PROPER USE OF FERTILIZERS BY ANY APPLICATOR; PROVIDING FOR APPLICABILITY WITHIN WINTER SPRINGS; ESTABLISHING A PROHIBITED APPLICATION PERIOD; SPECIFYING ALLOWABLE FERTILIZER APPLICATION RATES AND METHODS, FERTILIZER-FREE ZONES, LOW MAINTENANCE ZONES, AND EXEMPTIONS; REQUIRING THE USE OF BEST MANAGEMENT PRACTICES WHICH PROVIDE SPECIFIC MANAGEMENT GUIDELINES TO MINIMIZE NEGATIVE SECONDARY AND CUMULATIVE ENVIRONMENTAL EFFECTS ASSOCIATED WITH THE MISUSE OF FERTILIZERS WHICH HAVE BEEN OBSERVED IN AND ON WINTER SPRINGS’ NATURAL AND CONSTRUCTED STORMWATER CONVEYANCES, RIVERS, CREEKS, CANALS, SPRINGS, LAKES AND OTHER WATERBODIES; REQUIRING PROPER TRAINING OF COMMERCIAL AND INSTITUTIONAL FERTILIZER APPLICATORS; ESTABLISHING TRAINING AND LICENSING REQUIREMENTS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AMENDING CHAPTER 2 OF THE WINTER SPRINGS CITY CODE TO PROVIDE FOR PENALTIES; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City is granted the authority, under § 2(b), Art. VIII of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, pursuant to 33 U.S.C. § 1313(d) (2016) of the Federal Clean Water Act and the resulting Florida Impaired Waters Rule, Chapter 62-303, Florida Administrative Code (2016), the Florida Department of Environmental Protection (“FDEP”) has classified specific waterbodies in Seminole County as “impaired” as a result of the presence of excess nutrients; and

**WHEREAS**, the Seminole County National Pollutant Discharge (NPDES) Municipal Separate Storm Sewer System (MS4) Permit No. FLS000038, issued by the Florida Department of Environmental Protection under authority delegated to it by the United States Environmental Protection Agency, mandates the adoption of a fertilizer ordinance that includes all of the requirements set forth in the Florida Department of Environmental Protection’s Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes pursuant to Section 403.9337, Florida Statutes (2016), by December 31, 2013 (the “Model Ordinance”); and

**WHEREAS**, the Florida Department of Environmental Protection has informally extended the time for the City of Winter Springs to adopt the subject ordinance with the understanding that the City would adopt the ordinance as soon as practical; and

**WHEREAS**, it is the intent of the City Commission to adopt this Ordinance consistent with the terms of the Model Ordinance, and the principal purposes of the instant Ordinance are to receive credits and otherwise comply with all applicable Total Maximum Daily Loads (TMDLs) and Basin Management Action Plans (BMAPs); and

**WHEREAS**, the City Commission of the City of Winter Springs, Florida, hereby finds this ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Winter Springs.

**NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS HEREBY ORDAINS, AS FOLLOWS:**

**Section 1. Recitals.** The foregoing recitals are hereby fully incorporated herein by reference as legislative findings of the City Commission of Winter Springs.

**Section 2. Code Amendment.** The City of Winter Springs Code of Ordinances, Chapter 19, is hereby amended as follows (underlined type indicates additions and ~~strikeout~~ type indicates deletions, while asterisks (\* \* \*) indicate a deletion from the Ordinance of text existing in Chapter 19. It is intended that the text in Chapter 19 denoted by the asterisks and set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this ordinance):

**Chapter 19 – UTILITIES**  
\* \* \*

**ARTICLE IX. – PROPER USE OF FERTILIZERS**

**Sec. 19-310. – Findings.**

As a result of impairment to the City of Winter Springs’ surface waters caused by excessive nutrients, or, as a result of increasing levels of nitrogen in the surface and ground water within the

aquifers and springs within the boundaries of the City of Winter Springs, the Winter Springs City Commission hereby determines that the use of Fertilizers on lands within the City of Winter Springs creates a risk of contributing to adverse effects on surface and ground water. Accordingly, the City Commission hereby finds that management measures contained in the most recent edition of the *Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries* are required.

**Sec. 19-311. – Purpose and Intent.**

This Article IX: (a) regulates the proper use of Fertilizers by any Applicator; (b) requires proper training of commercial and Institutional Fertilizer Applicators; (c) establishes training and licensing requirements; (d) establishes a Prohibited Application Period; and (e) specifies allowable Fertilizer Application rates and methods, Fertilizer free zones, Low Maintenance Zones, and exemptions. This Article IX requires the use of Best Management Practices, which provide specific management guidelines to minimize negative secondary and cumulative environmental effects associated with the misuse of Fertilizers. These secondary and cumulative effects have been observed in and on natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural, and economic well-being of city residents and the health of the public in general. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both nitrogen and phosphorus contained in Fertilizer, will help improve and maintain water and habitat quality.

**Sec. 19-312. – Definitions.**

For the purposes of this Article IX, the following terms have the meanings set forth in this Section unless the context clearly indicates otherwise.

*Administrator* means the City Manager, or an administrative official of the City of Winter Springs designated by the City Manager to administer and enforce the provisions of this Article.

*Application* or *Apply* means the actual physical deposit of Fertilizer to Turf or Landscape Plants.

*Applicator* means any Person who Applies Fertilizer on Turf and/or Landscape Plants in the City of Winter Springs.

*Approved Best Management Practices Training Program* means a training program approved per section 403.9338, F.S., or any more stringent requirements set forth in this Article that includes the most current version of the Florida Department of Environmental Protection’s “*Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008,*” as revised, and approved by the Administrator.

Best Management Practices means turf and landscape practices or a combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

Code Enforcement Officer, Official or Inspector means any designated employee or agent who has the duty to enforce codes and ordinances enacted by the City of Winter Springs.

Commercial Fertilizer Applicator, except as provided in Section 482.1562(9), Florida Statutes, means any Person who Applies Fertilizer for payment or other consideration to property not owned by the Person or firm Applying the Fertilizer or the employer of the Applicator.

Fertilize, Fertilizing or Fertilization means the act of Applying Fertilizer to Turf, specialized Turf, or Landscape Plants.

Fertilizer. Any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

Guaranteed Analysis means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a Fertilizer.

Institutional Fertilizer Applicator means any Person, other than a private, non-commercial or a Commercial Fertilizer Applicator (unless such definitions also apply under the circumstances), that Applies Fertilizer for the purpose of maintaining Turf and/or Landscape Plants. Institutional Fertilizer Applicators shall include, but are not limited to, owners, managers or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium or other form of common ownership.

Landscape Plant means any native or exotic tree, shrub, or groundcover (excluding Turf).

Low Maintenance Zone means an area a minimum of ten (10) feet wide adjacent to water courses which is planted and managed in order to minimize the need for Fertilization, watering, mowing, and related activities.

Person means any natural Person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any other group of people acting as an organized entity.

Prohibited Application Period means the time period during which a Flood Watch or Warning, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of the City of Winter Springs, issued by the National Weather Service, or if heavy rain, as defined by the World Meteorological Organization as rainfall greater than or equal to two (2) inches in a

twenty-four (24) hour period, is likely.

Saturated Soil means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this Article IX, soils are considered saturated if standing water is present or the pressure of a Person standing on the soil causes the release of free water.

Slow Release, Controlled Release, Timed Release, Slowly Available, or Water Insoluble Nitrogen means nitrogen in a form which delays its availability for plant uptake and use after Application or which extends its availability to the plant longer than a reference rapid or quick release product.

Turf, Sod, or Lawn means a piece of grass-covered soil held together by the roots of the grass.

Urban Landscape means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants. For the purposes of this section, agriculture has the same meaning as in s. 570.02.

**Sec. 19-313. – Applicability.**

This Article IX applies to and regulates any and all Applicators of Fertilizer and areas of Application of Fertilizer within the jurisdictional limits of the City of Winter Springs, unless such Applicator is specifically exempted by the terms of this Article IX. This Article IX operates prospectively only, and does not impair any existing contracts.

**Sec. 19-314. – Timing of Fertilizer Application.**

No Applicator may Apply Fertilizers containing nitrogen, phosphorus, or both to Turf and/or Landscape Plants during the Prohibited Application Period, or to Saturated Soils.

**Sec. 19-315. – Fertilizer Free Zones.**

Fertilizer may not be Applied within ten (10) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or from the top of a seawall, unless a deflector shield, drop spreader, or liquid applicator with a visible and sharply defined edge, is used, in which case a minimum of 3 feet shall be maintained. If more stringent Winter Springs City Code regulations apply, this provision does not relieve the requirements to adhere to more stringent regulations. Newly planted Turf and/or Landscape Plants may be Fertilized in this zone only for a sixty (60) day period beginning thirty (30) days after planting if needed to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

**Sec. 19-316. – Low Maintenance Zones.**

A voluntary ten (10) foot Low Maintenance Zone is strongly recommended, but not

mandated, from any pond, stream, water course, lake, wetland, or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of this Low Maintenance Zone to capture and filter runoff. If more stringent Winter Springs City Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. No mowed or cut vegetative material may be deposited or left remaining in this zone or deposited in the water. Care must be taken to prevent the over-spray of aquatic weed products in this zone.

**Sec. 19-317. – Fertilizer Content and Application Rates.**

(a) Fertilizers Applied to Turf shall be Applied in accordance with requirements and directions provided by Rule 5E-1.003, Florida Administrative Code.

(b) Fertilizer containing nitrogen shall not be applied before seeding or sodding a site, and shall not be applied for the first 30 days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the Stormwater Pollution Prevention Plan for that site.

(c) Nitrogen or phosphorus Fertilizer may not be Applied to Turf or Landscape Plants except as provided in subsection (a) for Turf, or in the University of Florida/IFAS recommendations for Landscape Plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test.

**Sec. 19-318. – Application Practices.**

(a) Spreader deflector shields are required when Fertilizing via rotary (broadcast) spreaders. Deflectors must be positioned such that Fertilizer granules are deflected away from all impervious surfaces, Fertilizer free zones, and water bodies, including wetlands.

(b) Fertilizer must not be Applied, spilled, or otherwise deposited on any impervious surfaces.

(c) Any Fertilizer Applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable.

(d) Fertilizer released on an impervious surface must be immediately contained and either legally Applied to Turf or any other legal site, or returned to the original or other appropriate container.

(e) In no case may Fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

**Sec. 19-319. – Management of Grass Clippings and Vegetative Matter.**

In no case may grass clippings, vegetative material and/or vegetative debris be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks, or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

**Sec. 19-320. – Exemptions.**

This Article IX does not apply to:

- (a) Bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14, Florida Statutes.
- (b) Other properties not subject to or covered under subsection (a) above that have pastures used for grazing livestock.
- (c) Any lands used for bona fide scientific research, including, but not limited to, research on the effects of Fertilizer use on urban stormwater, water quality, agronomics, or horticulture.

**Sec. 19-321. – Training.**

- (a) All commercial and Institutional Fertilizer Applicators shall abide by and successfully complete the six-hour training program in the “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” offered by the Florida Department of Environmental Protection through the University of Florida Extension “Florida-Friendly Landscaping” program, or an approved equivalent.
- (b) Private, non-commercial Applicators are encouraged to follow the recommendations of the University of Florida/IFAS Florida Yards and Neighborhoods program when Applying Fertilizers.

**Sec. 19-322. – Licensing of Commercial Fertilizer Applicators.**

All commercial applicators or fertilizer within the City, shall have and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a Commercial Fertilizer Applicator per 5E-14.117(18) F.A.C.

All businesses applying fertilizer to turf and/or landscape plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one employee has a “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” training certificate prior to the business owner obtaining a Local Business Tax Certificate. Owners for any category of

occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide proof of completion of the program to the City Tax Collector's Office

**Sec. 19-323. – Enforcement, Penalties, and Legal Proceedings.**

(a) Any Person found to be in violation of the provisions of this Article IX may be subject to any applicable civil enforcement mechanisms available to the City, including, but not limited to: injunctive relief; referral to the City's Code Enforcement Board or Code Enforcement Magistrate; or issuance of a citation pursuant to Section 2-69 of this Code.

(b) Violations of this Article IX can present a serious threat to public welfare and are potentially irreparable or irreversible. Therefore, pursuant to Section 2-69.1 of this Code and Section 162.21(3)(b), Florida Statutes (2016), as these provisions may be amended from time to time, a City Code Enforcement Officer may immediately issue a citation to any Person in violation of this Article IX if the Code Enforcement Officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

(c) Each incidence of violation under this Article IX constitutes a separate violation and offence and a separate offence will be deemed committed on each day during or on which a violation occurs or continues.

(d) In addition to the other remedies provided in this Section, the City is authorized to make application in a court of appropriate jurisdiction for an injunction restraining any person from violating, or continuing to violate any provisions of this Article IX. Further, the City may avail itself of any other legal or equitable remedy available to it in the enforcement of any provision of this Article IX or any provision of any resolution enacted pursuant to this Article IX.

(e) The City may elect to take any or all of the above remedies concurrently, and the pursuit of one does not preclude the pursuit of another.

(f) Funds generated by penalties imposed under this section shall be used by the City for the administration and enforcement of section 403.9337, Florida Statutes, and the corresponding sections of this Article IX, and to further water conservation and nonpoint pollution prevention activities.

**Section 3.** **Code Amendment.** The City of Winter Springs Code of Ordinances, Chapter 2, is hereby amended as follows (underlined type indicates additions and strikeout type indicates deletions, while asterisks (\* \* \*) indicate a deletion from the Ordinance of text existing in Chapter 2. It is intended that the text in Chapter 2 denoted by the asterisks and set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this ordinance):

**Chapter 2 – ADMINISTRATION**



**CHARLES LACEY, Mayor**

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**ATTEST:**

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**ANDREA LORENZO-LUACES**  
City Clerk

**APPROVED AS TO LEGAL FORM AND SUFFICIENCY  
FOR THE CITY OF WINTER SPRINGS ONLY.**

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**ANTHONY A. GARGANESE**  
City Attorney

First Reading: July 10, 2017

Legal Ad Published:

Effective Date: 

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August 14, 2017

# COMMISSION AGENDA

## ITEM 401

<b>Informational</b>	
<b>Consent</b>	
<b>Public Hearings</b>	<b>X</b>
<b>Regular</b>	

July 10, 2017

KS

BF

Regular Meeting

City Manager

Department

### REQUEST:

The Community Development Department requesting the City Commission consider First Reading of Ordinance 2017-08 regulating the use of fertilizers in the City.

### SYNOPSIS:

The adoption of a fertilizer ordinance is a requirement of the City's National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit. Ordinance 2017-08 matches the fertilizer ordinance recently passed by Seminole County.

### CONSIDERATIONS:

### BACKGROUND:

- Stormwater runoff contains nutrients that are a major source of pollution flowing into our natural water bodies. Nitrogen and phosphorous are the two nutrients that are most problematic in water bodies and are responsible for contributing to algae blooms and fish kills. The Florida Department of Environmental Protection (FDEP) has determined that lawn fertilizers containing nitrogen and phosphorous can create risks to water bodies when used improperly.
- FDEP has classified specific water bodies in Seminole County as "impaired" as a result of the presence of excess nutrients. For the City of Winter Springs, Lake Jesup is classified as impaired for having excessive levels of nitrogen and phosphorous. The City of Winter Springs is entirely within the Lake Jesup drainage basin.

- The City's National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit, issued by FDEP, mandates the adoption of a fertilizer ordinance that includes all of the requirements set forth in FDEP's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. Cities and counties have the option of enacting additional fertilizer regulations above the minimum specified in the Model Ordinance.
- FDEP has extended the time for the cities in Seminole County, including the City of Winter Springs, to adopt a fertilizer ordinance, with the understanding that all cities will adopt the ordinance as soon as practical.
- Seminole County adopted a fertilizer ordinance in February 2017. The County's fertilizer ordinance followed the minimum requirements listed the FDEP Model Ordinance, plus it included additional regulations in certain areas.

### **CITY OF WINTER SPRINGS FERTILIZER ORDINANCE:**

- Ordinance 2017-08 (Exhibit A) amends Chapter 19 of the City Code and establishes regulations for the proper use of fertilizers in the City. Ordinance 2017-08 is substantively identical to the Seminole County fertilizer ordinance adopted by the Board of County Commissioners earlier this year. Exhibit B identifies the areas where Ordinance 2017-08 (and the Seminole County fertilizer ordinance) is stricter and/or clearer than the FDEP Model Ordinance. The purpose of the changes from the Model Ordinance are to improve the effectiveness and clarity of the Fertilizer Ordinance.
- Highlights of Ordinance 2017-08:
  - Fertilizer containing nitrogen or phosphorus may not be applied to turf or landscape plants from June 1 through September 30 of each year.
  - Fertilizer may not be applied within fifteen (15) feet of any pond, stream, watercourse, lake, canal, or wetland.
  - Fertilizers applied to turf must be applied in accordance with requirements and directions provided by Rule 5E-1.003, *Florida Administrative Code*, "Fertilizer Label Requirements for Urban Turf, Sports Turf or Lawns" (2016), as this regulation may be amended from time to time.
  - Fertilizers containing nitrogen applied to turf or landscaping plants must contain no less than fifty percent (50%) Slow Release Nitrogen per Guaranteed Analysis Label. If the necessary product is available on the local commercial market on March 1, 2020, then this requirement will increase to no less than sixty-five percent (65%) Slow Release Nitrogen effective on this date.
  - Fertilizer must not be applied, spilled, or otherwise deposited on any impervious surfaces.
  - In no case may grass clippings, vegetative material, vegetative debris, or any combination of them be washed, swept, or blown off into stormwater drains,

ditches, conveyances, water bodies, wetlands, or sidewalks, or roadways. Any material that is accidentally so deposited must be immediately removed to the maximum extent practicable.

- o Golf courses, athletic fields and turf managed for active recreation, whose owners implement Best Management Practices as described in Rule 5E-1.003(2) (d), *Florida Administrative Code*, “Fertilizers Labeled for Sports Turf at Golf Courses, Parks and Athletic Fields” (2016), as this regulation may be amended from time to time, are exempt.
- The adoption of Ordinance 2017-08 satisfies the City's NPDES permit requirement to have a fertilizer ordinance in place. In addition, the adoption of a Fertilizer Ordinance provides Total Maximum Daily Load (TMDL) Credit for the City, which helps to offset the amount of credits needed using more expensive stormwater treatment methods.

#### **FISCAL IMPACT:**

Ordinance 2017-08 has no direct fiscal impact on the City. Homeowners and commercial fertilizer applicators may find the proposed fertilizer regulations to increase the cost of lawn maintenance.

#### **COMMUNICATION EFFORTS:**

This Agenda Item has been electronically forwarded to the Mayor and City Commission, City Manager, City Attorney/Staff, and is available on the City's Website, LaserFiche, and the City's Server. Additionally, portions of this Agenda Item are typed verbatim on the respective Meeting Agenda which has also been electronically forwarded to the individuals noted above, and which is also available on the City's Website, LaserFiche, and the City's Server; has been sent to applicable City Staff, Media/Press Representatives who have requested Agendas/Agenda Item information, Homeowner's Associations/Representatives on file with the City, and all individuals who have requested such information. This information has also been posted outside City Hall, posted inside City Hall with additional copies available for the General Public, and posted at six (6) different locations around the City. Furthermore, this information is also available to any individual requestors. City Staff is always willing to discuss this Agenda Item or any Agenda Item with any interested individuals.

#### **RECOMMENDATION:**

Staff recommends the City Commission approve First Reading of Ordinance 2017-08.

#### **ATTACHMENTS:**

1. Exhibit A - Ordinance 2017-08 (11 pages)
2. Exhibit B - Comparison of Ordinance 2017-08 to Model Ordinance (2 pages)

ORDINANCE NO. 2017-08

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS, SEMINOLE COUNTY, FLORIDA; AMENDING CHAPTER 19 OF THE WINTER SPRINGS CITY CODE AND CREATING A NEW ARTICLE IX THEREOF, “PROPER USE OF FERTILIZERS”; REGULATING THE PROPER USE OF FERTILIZERS BY ANY APPLICATOR; PROVIDING FOR APPLICABILITY WITHIN WINTER SPRINGS; ESTABLISHING A PROHIBITED APPLICATION PERIOD; SPECIFYING ALLOWABLE FERTILIZER APPLICATION RATES AND METHODS, FERTILIZER-FREE ZONES, LOW MAINTENANCE ZONES, AND EXEMPTIONS; REQUIRING THE USE OF BEST MANAGEMENT PRACTICES WHICH PROVIDE SPECIFIC MANAGEMENT GUIDELINES TO MINIMIZE NEGATIVE SECONDARY AND CUMULATIVE ENVIRONMENTAL EFFECTS ASSOCIATED WITH THE MISUSE OF FERTILIZERS WHICH HAVE BEEN OBSERVED IN AND ON WINTER SPRINGS’ NATURAL AND CONSTRUCTED STORMWATER CONVEYANCES, RIVERS, CREEKS, CANALS, SPRINGS, LAKES AND OTHER WATERBODIES; REQUIRING PROPER TRAINING OF COMMERCIAL AND INSTITUTIONAL FERTILIZER APPLICATORS; ESTABLISHING TRAINING AND LICENSING REQUIREMENTS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AMENDING CHAPTER 2 OF THE WINTER SPRINGS CITY CODE TO PROVIDE FOR PENALTIES; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City is granted the authority, under § 2(b), Art. VIII of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, pursuant to 33 U.S.C. § 1313(d) (2016) of the Federal Clean Water Act and the resulting Florida Impaired Waters Rule, Chapter 62-303, Florida Administrative Code (2016), the Florida Department of Environmental Protection (“FDEP”) has classified specific waterbodies in Seminole County as “impaired” as a result of the presence of excess nutrients; and

**WHEREAS**, the Seminole County National Pollutant Discharge (NPDES) Municipal Separate Storm Sewer System (MS4) Permit No. FLS000038, issued by the Florida Department of Environmental Protection under authority delegated to it by the United States Environmental Protection Agency, mandates the adoption of a fertilizer ordinance that includes all of the requirements set forth in the Florida Department of Environmental Protection’s Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes pursuant to Section 403.9337, Florida Statutes (2016), by December 31, 2013 (the “Model Ordinance”); and

**WHEREAS**, in Seminole County, the County and the seven incorporated cities including the City of Winter Springs are listed as co-permittees under the above NPDES permit, and the City coordinates closely with Seminole County and the other cities regarding the implementation of the NPDES permit; and

**WHEREAS**, the Florida Department of Environmental Protection has informally extended the time for the City of Winter Springs to adopt the subject ordinance with the understanding that the City would adopt the ordinance as soon as practical; and

**WHEREAS**, it is the intent of the City Commission to adopt this Ordinance consistent with the terms of the Model Ordinance, and the principal purposes of the instant Ordinance are to receive credits and otherwise comply with all applicable Total Maximum Daily Loads (TMDLs) and Basin Management Action Plans (BMAPs); and

**WHEREAS**, the instant Ordinance is also consistent with Ordinance 2017-6 adopted by Seminole County on February 28, 2017; and

**WHEREAS**, the City Commission of the City of Winter Springs, Florida, hereby finds this ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Winter Springs.

**NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS HEREBY ORDAINS, AS FOLLOWS:**

**Section 1. Recitals.** The foregoing recitals are hereby fully incorporated herein by reference as legislative findings of the City Commission of Winter Springs.

**Section 2. Code Amendment.** The City of Winter Springs Code of Ordinances, Chapter 19, is hereby amended as follows (underlined type indicates additions and ~~strikeout~~ type indicates deletions, while asterisks (\* \* \*) indicate a deletion from the Ordinance of text existing in Chapter 19. It is intended that the text in Chapter 19 denoted by the asterisks and set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this ordinance):

## **Chapter 19 – UTILITIES**

\* \* \*

## **ARTICLE IX. – PROPER USE OF FERTILIZERS**

### **Sec. 19-310. – Findings.**

As a result of impairment to surface waters caused by excessive nutrients, and as a result of increasing levels of nitrogen in the surface and ground water within the aquifers and springs, the Winter Springs City Commission hereby determines that the use of Fertilizers creates a risk of contributing to adverse effects on surface and ground water. Accordingly, the City Commission hereby finds that management measures contained in the most recent edition of the *Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries* are required.

### **Sec. 19-311. – Purpose and Intent.**

This Article IX: (a) regulates the proper use of Fertilizers by any Applicator; (b) requires proper training of commercial and Institutional Fertilizer Applicators; (c) establishes training and licensing requirements; (d) establishes a Prohibited Application Period; and (e) specifies allowable Fertilizer Application rates and methods, Fertilizer free zones, Low Maintenance Zones, and exemptions. This Article IX requires the use of Best Management Practices, which provide specific management guidelines to minimize negative secondary and cumulative environmental effects associated with the misuse of Fertilizers. These secondary and cumulative effects have been observed in and on natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural, and economic well-being of city residents and the health of the public in general. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both nitrogen and phosphorus contained in Fertilizer, will help improve and maintain water and habitat quality.

### **Sec. 19-312. – Definitions.**

For the purposes of this Article IX, the following terms have the meanings set forth in this Section. Words not defined in this Article IX have the meaning as provided in other Sections of this Code, and otherwise have the meaning provided by common and ordinary use:

*Application* or *Apply*. The actual physical deposit of Fertilizer to Turf, Landscape Plants, or both.

*Applicator*. Any Person who Applies Fertilizer on Turf, Landscape Plants, or both.

*Approved Best Management Practices Training Program*. A training program approved pursuant to Section 403.9338, *Florida Statutes* (2016), as this statute may be amended from time to time,

or any more stringent requirements set forth in this article that includes the most current version of the Florida Department of Environmental Protection's *Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries*, as this document may be amended from time to time.

*Best Management Practices.* Turf and landscape practices or a combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

*Code Enforcement Officer, Official or Inspector.* Any designated employee or agent who has the duty to enforce codes and ordinances.

*Commercial Fertilizer Applicator.* Any Person who Applies Fertilizer for payment or other consideration to property not owned by the Person or firm Applying the Fertilizer or the employer of the Applicator, except as provided in Section 482.1562(9), *Florida Statutes* (2016), as this statute may be amended from time to time.

*Fertilize.* The act of Applying Fertilizer to Turf, specialized Turf, or Landscape Plants.

*Fertilizer.* Any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil. *Fertilizer* does not include unmanipulated peat or compost that make no claims as described in the preceding sentence.

*Guaranteed Analysis.* The percentage of plant nutrients or measures of neutralizing capability claimed to be present in a Fertilizer.

*Institutional Fertilizer Applicator.* Any Person, other than a private, non-commercial or a Commercial Fertilizer Applicator (unless such definitions also apply under the circumstances), that Applies Fertilizer for the purpose of maintaining Turf, Landscape Plants, or both. *Institutional Fertilizer Applicators* include, but are not limited to, owners, managers or employees of public lands, schools, parks, religious institutions, utilities, industrial, or business sites and any residential properties maintained in condominium or other form of common ownership.

*Landscape Plant.* Any native or exotic tree, shrub, or groundcover (excluding Turf).

*Low Maintenance Zone.* An area a minimum of ten (10) feet wide adjacent to water courses that is planted and managed in order to minimize the need for Fertilization, watering, mowing, and related activities.

*Person.* Any natural Person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, or any other group of people acting as an organized

entity.

Prohibited Application Period. The time period during which a Flood Watch or Warning, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of the City of Winter Springs, issued by the National Weather Service, or if heavy rain, as defined by the World Meteorological Organization as rainfall greater than or equal to two (2) inches in a twenty-four (24) hour period, is likely.

Reclaimed Water. A high quality alternative water source that has received at least secondary treatment and is reused after being discharged from a domestic wastewater treatment facility. Moreover, there are some constituents, such as nitrogen and phosphorus found in recycled water. These constituents are beneficial for plant growth, and will serve as an additional “Fertilizing” source.

Saturated Soil. A soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this Article IX, soils are considered saturated if standing water is present or the pressure of a Person standing on the soil causes the release of free water.

Slow Release, Controlled Release, Timed Release, Slowly Available, or Water Insoluble Nitrogen. Nitrogen in a form that delays its availability for plant uptake and use after Application or that extends its availability to the plant longer than a reference rapid or quick release product.

Turf, Sod, or Lawn. A piece of grass-covered soil held together by the roots of the grass.

### **Sec. 19-313. – Applicability.**

This Article IX applies to and regulates any and all Applicators of Fertilizer and areas of Application of Fertilizer within the jurisdictional limits of the City of Winter Springs, unless such Applicator is specifically exempted by the terms of this Article IX. This Article IX operates prospectively only, and does not impair any existing contracts.

### **Sec. 19-314. – Timing of Fertilizer Application.**

(a) No Applicator may Apply Fertilizers containing nitrogen, phosphorus, or both to Turf, Landscape Plants, or both during the Prohibited Application Period, or to Saturated Soils.

(b) Fertilizer containing nitrogen or phosphorus may not be Applied before seeding or sodding a site, and may not be Applied for the first thirty (30) days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation, or in accordance with an adopted stormwater pollution prevention plan for that site.

(c) Fertilizer containing nitrogen or phosphorus may not be Applied to Turf or Landscape Plants from June 1 through September 30 of each year.

**Sec. 19-315. – Fertilizer Free Zones.**

Fertilizer may not be Applied within fifteen (15) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection Rule 62-340, Florida Administrative Code (2016), as this regulation may be amended from time to time, or from the top of a seawall. Newly planted Turf, Landscape Plants, or both may be Fertilized in this zone only for a sixty (60) day period beginning thirty (30) days after planting if needed to allow the plants to become well established. Caution must be used to prevent direct deposition of nutrients into the water.

**Sec. 19-316. – Low Maintenance Zones.**

A voluntary ten (10) foot Low Maintenance Zone is strongly recommended, but not mandated, from any pond, stream, water course, lake, wetland, or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of this Low Maintenance Zone to capture and filter runoff. No mowed or cut vegetative material may be deposited or left remaining in this zone or deposited in the water. Care must be taken to prevent the over-spray of aquatic weed products in this zone.

**Sec. 19-317. – Fertilizer Content and Application Rates.**

(a) Fertilizers Applied to Turf must be Applied in accordance with requirements and directions provided by Rule 5E-1.003, Florida Administrative Code, “Fertilizer Label Requirements for Urban Turf, Sports Turf or Lawns” (2016), as this regulation may be amended from time to time.

(b) Nitrogen or phosphorus Fertilizer may not be Applied to Turf or Landscape Plants except as provided in subsection (a) for Turf, or in the University of Florida/IFAS recommendations for Landscape Plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test. Soil and tissue tests for phosphorus are normally done by UF/IFAS or another accredited laboratory.

(c) No Fertilizer containing phosphorus may be Applied to Turf, Sod, Lawns, or Landscape Plants unless a soil or plant tissue deficiency is verified by a testing methodology approved by the University of Florida, Institute of Food and Agricultural Sciences. If a deficiency is verified, the Application of Fertilizer containing phosphorus must adhere to the rates and directions for the appropriate Region of Florida, as adopted by Florida Administrative Code Rule. This subsection (c) controls over any inconsistent provisions in subsections (a) and (b) above regarding phosphorus.

(d) Fertilizers containing nitrogen Applied to Turf or landscaping plants within the City of Winter Springs must contain no less than fifty percent (50%) Slow Release Nitrogen per Guaranteed Analysis Label. If the necessary product is available on the local commercial market on March 1, 2020, then this requirement will increase to no less than sixty-five percent (65%) Slow

Release Nitrogen effective on this date. This subsection (d) controls over any inconsistent provisions in subsections (a) and (b) above regarding nitrogen.

(e) The above referenced Application rates must be reduced appropriately on properties where reclaimed wastewater is used for irrigation based on available nutrients in the Reclaimed Water as reported by the provider of the Reclaimed Water.

**Sec. 19-318. – Application Practices.**

(a) Spreader deflector shields are required when Fertilizing by rotary or broadcast spreaders. Deflectors must be positioned such that Fertilizer granules are deflected away from all impervious surfaces, Fertilizer free zones, and water bodies, including wetlands.

(b) Fertilizer must not be Applied, spilled, or otherwise deposited on any impervious surfaces.

(c) Any Fertilizer Applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface must be immediately and completely removed to the greatest extent practicable.

(d) Fertilizer released on an impervious surface must be immediately contained and either legally Applied to Turf or any other legal site, or returned to the original or other appropriate container.

(e) In no case may Fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

**Sec. 19-319. – Management of Grass Clippings and Vegetative Matter.**

In no case may grass clippings, vegetative material, vegetative debris, or any combination of them be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks, or roadways. Any material that is accidentally so deposited must be immediately removed to the maximum extent practicable.

**Sec. 19-320. – Exemptions.**

This Article IX does not apply to:

(a) Bona fide farm operations as defined in Section 823.14, *Florida Statutes* (2016), “Florida Right to Farm Act”, as this statute may be amended from time to time.

(b) Other properties not subject to or covered under subsection (a) above that have pastures used for grazing livestock.

(c) Any lands used for bona fide scientific research, including, but not limited to, research on the effects of Fertilizer use on stormwater, water quality, agronomics, or horticulture.

(d) Golf courses, athletic fields and Turf managed for active recreation, whose owners implement Best Management Practices as described in Rule 5E-1.003(2)(d), *Florida Administrative Code*, “Fertilizers Labeled for Sports Turf at Golf Courses, Parks and Athletic Fields” (2016), as this regulation may be amended from time to time.

(e) Any fruit or vegetable gardens, provided they are not within fifteen (15) feet of any waterbody or wetland.

**Sec. 19-321. – Training.**

(a) All commercial and Institutional Fertilizer Applicators shall abide by and successfully complete the six-hour training program in the *Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries* offered by the Florida Department of Environmental Protection through the University of Florida/IFAS *Florida-Friendly Landscapes* program, or an approved equivalent.

(b) Private, non-commercial Applicators are encouraged to follow the recommendations of the University of Florida/IFAS *Florida Friendly Landscapes* program when Applying Fertilizers.

**Sec. 19-322. – Licensing of Commercial Fertilizer Applicators.**

(a) By September 30, 2014, all Commercial Fertilizer Applicators were required by state law to abide by and successfully complete training and continuing education requirements in the *Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries*, offered by the Florida Department of Environmental Protection through the University of Florida/IFAS *Florida-Friendly Landscapes* program, or an approved equivalent program. Commercial Fertilizer Applicators shall provide proof of completion of the program prior to obtaining a new Local Business Tax Receipt for any category of occupation which may Apply any Fertilizer to Turf, Landscape Plants, or both. Commercial Fertilizer Applicators with an existing Local Business Tax receipt for any category of occupation which may Apply any Fertilizer to Turf, Landscape Plants, or both shall provide proof of completion of the program within thirty (30) days after completing the program as required by state law prior to September 30, 2014.

(b) After September 30, 2014, all Commercial Fertilizer Applicators were required by state law to have and carry in their possession at all times when Applying Fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a Commercial Fertilizer Applicator pursuant to Rule 5E-14.117(18), *Florida Administrative Code* (2016), as this regulation may be amended from time to time.

(c) By September 30, 2014, all businesses Applying Fertilizer to Turf, Landscape Plants, or

both (including but not limited to residential Lawns, commercial properties, and multi-family and condominium properties) were required by state law to ensure that at least one employee has a Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries training certificate. Business owners for any category of occupation which may Apply any Fertilizer to Turf, Landscape Plants, or both shall provide proof of completion of the program by at least one employee prior to the business owner obtaining a new Local Business Tax Receipt. Business owners for any category of occupation which may Apply any Fertilizer to Turf, Landscape Plants, or both with an existing Local Business Tax Receipt shall provide proof of completion of the program by at least one employee within thirty (30) days after completing the program and prior to September 30, 2014.

**Sec. 19-323. – Enforcement, Penalties, and Legal Proceedings.**

(a) Any Person found to be in violation of the provisions of this Article IX may be subject to any applicable civil enforcement mechanisms available to the City, including, but not limited to: injunctive relief; referral to the City’s Code Enforcement Board or Code Enforcement Magistrate; or issuance of a citation pursuant to Section 2-69 of this Code.

(b) Violations of this Article IX can present a serious threat to public welfare and are potentially irreparable or irreversible. Therefore, pursuant to Section 2-69.1 of this Code and Section 162.21(3)(b), Florida Statutes (2016), as these provisions may be amended from time to time, a City Code Enforcement Officer may immediately issue a citation to any Person in violation of this Article IX if the Code Enforcement Officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

(c) Each incidence of violation under this Article IX constitutes a separate violation and offence and a separate offence will be deemed committed on each day during or on which a violation occurs or continues.

(d) In addition to the other remedies provided in this Section, the City is authorized to make application in a court of appropriate jurisdiction for an injunction restraining any person from violating, or continuing to violate any provisions of this Article IX. Further, the City may avail itself of any other legal or equitable remedy available to it in the enforcement of any provision of this Article IX or any provision of any resolution enacted pursuant to this Article IX.

(e) The City may elect to take any or all of the above remedies concurrently, and the pursuit of one does not preclude the pursuit of another.

(f) Any fines or other funds received as a result of enforcement under this Article IX which are not used for specific purposes set forth in this Article IX, as it may be amended from time to time, must be deposited in the General Fund of the City in the penalty, fine and forfeiture account.

**Section 3. Code Amendment.** The City of Winter Springs Code of Ordinances,



upon adoption by the City Commission of the City of Winter Springs, Florida, and pursuant to the City Charter; provided, however, no citations, notices to appear, notices of violation or other enforcement procedures may be instituted until October 1, 2017.

**ADOPTED** by the City Commission of the City of Winter Springs, Florida, in a regular meeting assembled on the 14th day of August, 2017.

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**CHARLES LACEY, Mayor**

**ATTEST:**

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**ANDREA LORENZO-LUACES**  
City Clerk

**APPROVED AS TO LEGAL FORM AND SUFFICIENCY  
FOR THE CITY OF WINTER SPRINGS ONLY.**

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**ANTHONY A. GARGANESE**  
City Attorney

First Reading:	July 10, 2017
Legal Ad Published:	
Effective Date:	<hr/> August 14, 2017

**EXHIBIT B**

Proposed Fertilizer Ordinance vs. Model Ordinance Comparison

Item	Model Ordinance	Ordinance 2017-08	Notes
Summer Fertilizer Restrictions	No requirement	Apply only summer blend fertilizer formulations, which contain iron, potassium and other micronutrients, but no nitrogen (N) or phosphorus (P) between June 1 and September 30	<ul style="list-style-type: none"> <li>• Using fertilizers that don't contain N or P during the wet summer season reduces the amount of leaching and runoff that reaches our surface waterbodies and springs.</li> <li>• Excess N and P are the cause of algae blooms and other water quality and ecological problems.</li> <li>• Detailed studies identified 15% of N affecting the Wekiva Spring system is attributed to residential fertilizer.</li> <li>• Volusia, Brevard Counties all have the same summer fertilization restrictions.</li> <li>• Summer blend fertilizer formulations are already used by industry professionals and are available in retail settings.</li> </ul>
Slow-Release Fertilizers	No recommendations	At least 50% slow release nitrogen (SRN) content when adopted and then increased to a minimum of 65% SRN after three years of adoption.	<ul style="list-style-type: none"> <li>• 50% SRN is already readily available in retail stores.</li> <li>• Cost of 50% SRN is lower than or comparable to other formulations.</li> <li>• The higher the percentage of SRN, the longer it lasts, and needs to be applied less often.</li> <li>• Brevard &amp; Volusia ordinances all require 50% SRN.</li> <li>• The use of 50 to 65% SRN decreases the potential for getting into waterbodies by an estimated 67% to 86%, respectively.</li> </ul>

## Proposed Fertilizer Ordinance vs. Model Ordinance Comparison

Fertilizer-Free Zone	No fertilizer within 10 ft from top of bank of any surface waterbody, wetland or seawall or 3 ft with a deflector shield	No fertilizer within 15 ft from top of bank of any surface waterbody, wetland or seawall.	<ul style="list-style-type: none"> <li>• It provides more buffer to protect waterbodies from direct fertilizer impact.</li> <li>• This is consistent with Brevard &amp; Volusia ordinances.</li> </ul>
Ordinance Exemptions	<ul style="list-style-type: none"> <li>• Golf Courses, parks and athletic fields (must follow specified guidance manuals)</li> <li>• Agriculture, including Right to Farm Act sites, pastures used for livestock grazing not under the Right to Farm Act</li> <li>• Lands used for scientific research</li> </ul>	Same exemptions as model except for addition of fruit and vegetable gardens	<ul style="list-style-type: none"> <li>• This added exemption for fruit and vegetable gardens was included to allow for proper fertilization of fruit trees or gardens not covered under the Right to Farm Act.</li> </ul>
Reclaimed Water	No mention	Reduce fertilizer nitrogen (N) application rates appropriately where reclaimed water is used	<ul style="list-style-type: none"> <li>• Reclaimed water is widely variable in its N concentrations.</li> <li>• Depending on the source of reclaimed water and its concentrations of N, fertilization may not be necessary at all.</li> <li>• The County Fertilizer website will provide information on local reclaimed nutrient (N) concentrations, as well as a calculator to help determine how much additional fertilizer, if any, is needed.</li> </ul>
Enforcement	No mention	Staff from the Watershed Management Division will conduct the authorized code enforcement activities for any violations to this ordinance.	<ul style="list-style-type: none"> <li>• The goal of the ordinance is to provide education.</li> </ul>