

Ray Bagshaw
Mayor

Michael Hendrix
Council Member

Pam Henley
Council Member

John Dowless
Council President

Neil Powell
Council Member

Lee Chotas
Council Member

CITY COUNCIL AGENDA
Regular Meeting
City Hall – Council Chamber
405 Larue Avenue, Edgewood, Florida
Tuesday, December 17, 2013
6:30 p.m.

WELCOME! We are very glad you have joined us for today's Council meeting. If you are not on the agenda, please complete an appearance form and hand it to the City Clerk. When you are recognized, state your name and address. The Council is pleased to hear relevant comments; however a five-minute limit has been set by Council. Large groups are asked to name a spokesperson. Robert's Rules of Order guide the conduct of the meeting. **PLEASE SILENCE ALL CELLULAR PHONES AND PAGERS DURING THE MEETING.** "THANK YOU" for participating in your City Government.

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

1. 2014 Vote Processing Equipment Use Agreement And Elections Services Contract For Municipal Elections (Pgs. 1 – 10)
2. **Variance 2013-03**, Carl & Amy Peterson, 428 Oak Lynn Drive (Pgs. 11 – 15)

(Items on the consent agenda are defined as routine in nature, therefore, do not warrant detailed discussion or individual action by the Council. Any member of the Council may remove any item from the consent agenda simply by verbal request prior to consideration of the consent agenda. The removed item(s) are moved to the end of New Business for discussion and consideration.)

PRESENTATIONS

1. City Clerk

ORDINANCES

1. **ORDINANCE 2013-08** AN ORDINANCE OF THE CITY OF EDGEWOOD, FLORIDA, AMENDING SECTION 130-7 OF THE CITY OF EDGEWOOD CODE OF ORDINANCES; DELETING THE REPLACEMENT TREE STOCK LIST CONTAINED IN THE CODE OF ORDINANCES; PROVIDING FOR ADOPTION AND AMENDMENT OF THE REPLACEMENT TREE STOCK LIST BY

RESOLUTION; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND PROVIDING AN EFFECTIVE DATE. (Pgs. 16 – 18)

PUBLIC HEARINGS (ORDINANCES – SECOND READINGS & RELATED ACTION)

1. **ORDINANCE NO. 2013-07** AN ORDINANCE OF THE CITY OF EDGEWOOD, FLORIDA AMENDING THE REPLACEMENT TREE STOCK LIST CONTAINED IN SECTION 130-7 TO INCLUDE THE JAPANESE BLUEBERRY TREE; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND PROVIDING AN EFFECTIVE DATE. (Pgs. 19 – 21)

NEW BUSINESS

UNFINISHED BUSINESS

1. Legacy Tree Mitigation - Council Member Henley (*Council Member Henley made the Motion to rescind the Motion made in the October 15, 2013 Council meeting regarding Legacy tree mitigation plan, and consider in December 17, 2013 meeting, to include that the Legacy HOA pay into the tree fund and the City determine the type and location of trees. Seconded by Council Member Powell.*)
- 2.

GENERAL INFORMATION (No action required)

Filed Form 8B, Memorandum of Voting Conflict

1. Council President Dowless (filed 11/19/2013) (Pgs. 22 – 23)
2. Council Member Michael Hendrix (filed 11/19/2013) (Pgs. 23 – 24)

CITIZEN COMMENTS

BOARDS & COMMITTEES

STAFF REPORTS

City Attorney:

Police Chief:

City Clerk:

Code Enforcement:

MAYOR & COUNCIL REPORTS

- Mayor Bagshaw
- Council President Dowless
- Council Member Powell
- Council Member Henley

- Council Member Chotas
- Council Member Hendrix

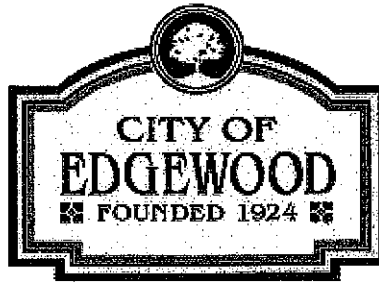
J. ADJOURNMENT

UPCOMING MEETINGS:

January 21, 2014.....City Council Regular Meeting

February 18, 2014.....City Council Regular Meeting

You are welcome to attend and express your opinion. Please be advised that Section 286.0105, Florida Statutes state that if you decide to appeal a decision made with respect to any matter, you will need a record of the proceedings and may need to ensure that a verbatim record is made. In accordance with the American Disabilities Act (ADA), if any person with a disability as defined by the ADA needs special accommodation to participate in this proceeding, he or she should telephone the City Clerk at (407) 851-2920.



MEMO

December 11, 2013

TO: Council President John Dowless
Council Member Neil Powell, D.D.S
Council Member Pam Henley
Council Member Lee Chotas
Council Member Mike Hendrix
Mayor Ray Bagshaw

FROM: City Clerk Bea Meeks

SUBJECT: Agreement/Orange County Supervisor of Elections for March 11 General Election

Summary:

The City of Edgewood's General Election will be held March 11, 2014, at the Edgewood City Hall. The Agreement addresses the duties in the election process and address direct cost related thereto. Council approved \$12,000 in the current budget for the election. It should be noted that the 2013 municipal election costs were \$8253.97. The election's office recently provided Orange County municipal clerks with the approved pay for poll workers in Orange County, and there was an increase of \$145.00 in poll workers' pay. Even with the increase, I feel the City's election budget will support the 2014 election, should there be contested races.

Recommendation:

Approve the Agreement/Orange County Supervisor of Elections for March 11 General Election, and authorize the Mayor to execute the Agreement.



**2014
VOTE PROCESSING EQUIPMENT
USE AGREEMENT AND
ELECTIONS SERVICES CONTRACT
FOR MUNICIPAL ELECTIONS**

This Vote Processing Equipment Use Agreement and Elections Services Contract (hereinafter referred to as the "Agreement") is hereby entered into by and between the **Orange County Supervisor of Elections Office**, (hereinafter referred to as "SOE") and the **City of Edgewood, Orange County, Florida**, (hereinafter referred to as "MUNICIPALITY").

RECITALS:

WHEREAS, pursuant to Section 101.34, Florida Statutes, SOE is the legal custodian of certified vote processing equipment owned by Orange County, Florida and is hereby charged with the responsibility for custody and maintenance of said equipment; and,

WHEREAS, MUNICIPALITY desires, or is otherwise statutorily obligated, to conduct an election that requires the use of vote processing equipment to count ballots; and,

WHEREAS, All vote processing equipment requires specially trained and knowledgeable individuals to program, operate and maintain said equipment; and,

WHEREAS, The Orange County Board of County Commissioners has authorized SOE to provide any necessary terms and conditions for the use of such voting equipment; and,

WHEREAS, SOE can provide the necessary personnel to program, operate and maintain said equipment; and,

WHEREAS, MUNICIPALITY hereby acknowledges full responsibility for any and all applicable requirements under the Florida Election Code and any provisions of the City charter or municipal ordinances which may not be addressed or included in this agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, terms and conditions stated herein SOE and MUNICIPALITY agree as follows:

SECTION 1. Recitals. The above recitals are true and correct and incorporated herein.

SECTION 2. Agreement. SOE shall provide to MUNICIPALITY such necessary vote processing equipment and services according to the terms and conditions stated in this Agreement, for the purposes of conducting a General Election to be held on Tuesday, March 11, 2014 along with the necessary equipment and services to facilitate any early voting sites and polling places as may be necessary and agreed upon by the parties.

SECTION 3. Operation and Programming Services.

DS200 For each election, MUNICIPALITY shall pay SOE One Hundred Fifty Dollars (\$150.00) for the program and maintenance of any DS200 tabulator and Seventy-five Dollars (\$75.00) for each additional tabulator that is identically programmed. For early voting, MUNICIPALITY shall pay SOE Seventy-five Dollars (\$75.00) for the program, maintenance and operation of each DS200 tabulator that is identically programmed and operated as the DS200 tabulators that are programmed for Election Day.

iVotronic Touchscreen Machine For each election, MUNICIPALITY shall pay SOE One Hundred Fifty Dollars (\$150.00) for the program and maintenance of any iVotronic Touchscreen machine and Seventy-five Dollars (\$75.00) for each additional Touchscreen machine that is identically programmed. For early voting, MUNICIPALITY shall pay SOE Seventy-five Dollars (\$75.00) for the program, maintenance and operation of each iVotronic Touchscreen machine that is identically programmed and operated as the Touchscreen machines that are programmed for Election Day.

M650 For each election, MUNICIPALITY shall pay SOE Two Hundred Dollars (\$200.00) for the program, maintenance and operation of any M650 Absentee Ballot Counting equipment. Such fee shall include up to four (4) hours of processing time, election set-up and coordination, programming of high speed ballot counting equipment and processing of envelopes through the automatic envelope openers. For each additional hour needed to provide the services described in this paragraph, MUNICIPALITY shall pay SOE Fifty Dollars (\$50.00) per hour.

Epoll Books For each election, MUNICIPALITY shall pay SOE Twenty Five Dollars (\$25.00) for data base set-up and maintenance of each Epoll Book (minimum two per polling place).

Repairs For any election, all maintenance, repairs or other troubleshooting services for vote processing equipment, including any processors or laptops, will be performed exclusively by SOE and such services are included in all stated charges. However, SOE does reserve the right to seek reimbursement from MUNICIPALITY for any repairs or maintenance caused by any negligent or unauthorized acts by any employee or representative of MUNICIPALITY.

SECTION 4. Additional Early Voting Services for Off-Site Locations For Non-Ballot-on-Demand Method

Laptops For each early voting site other than the Office of the SOE, MUNICIPALITY shall pay SOE Three Hundred and Seventy-Five Dollars (\$375.00) for the program and operation of each laptop computer employed per site. Such service fee includes the downloading or uploading of any necessary data. These charges are per election.

Printers For each early voting site other than the Office of the SOE, MUNICIPALITY shall pay SOE One Hundred and Seventy-Five Dollars (\$175.00) for the programming, configuration and set-up of any connected printer. These charges are per election.

Delivery For each early voting site other than the Office of the SOE, MUNICIPALITY shall pay SOE Two Hundred Dollars (\$200.00) for the delivery, set-up and/or pick-up of any early voting equipment. These charges are per election.

SECTION 5. Other Election Charges.

Supplies For each election, MUNICIPALITY shall pay SOE for consumable precinct supplies at a rate of One Hundred Fifty Dollars (\$150.00) for each precinct and each Early Voting site. MUNICIPALITY shall return precinct supplies to Office of SOE no later than the day after the election. MUNICIPALITY shall also identify and provide a secure place for precinct clerk(s) to return supplies and voted and unvoted ballots on election night.

PAPER PL/PR For each election, MUNICIPALITY shall pay SOE the actual costs incurred to produce, print and bind Poll Lists/Precinct Registers ("PL/PR"), including any paper or delivery costs. SOE shall have sole discretion in selecting a third party vendor to perform the requisite printing and binding services.

Telephone For each election, MUNICIPALITY shall pay SOE for any actual costs incurred by SOE from a third party telecommunications provider for the set-up, activation, use and deactivation of any telephone lines which in the SOE's sole discretion are necessitated at any voting site. Selection of the third party telecommunications provider shall be at the sole discretion of SOE.

Indexes For any Street Indexes ordered or required, MUNICIPALITY shall pay SOE Nine Dollars (\$9.00) as a set-up services fee plus Twenty-five Cents (\$.25) for each printed page.

Absentees For each election, MUNICIPALITY shall pay SOE One Dollar with Seventy-five Cents (\$1.75) for each absentee ballot request processed plus actual postage costs. MUNICIPALITY shall also pay SOE Ten Cents (\$.10) for each absentee ballot signature verified.

Early Voting MUNICIPALITY shall reimburse SOE for any overtime hours by SOE staff due to weekend hours for Early Voting locations including any hours accrued by SOE staff at the Offices of SOE. SOE may elect to evenly apportion the costs for early voting overtime hours among various municipalities, if appropriate, but in no event shall SOE be obligated to apportion such costs. SOE shall insure that experienced SOE personnel staff each Early Voting site, in accordance with Florida law.

Notices For each election, MUNICIPALITY shall pay SOE Twenty-five Cents (\$.25) for each Notice of Election that is mailed to each eligible voter plus actual postage costs.

Fee Schedule For each election, MUNICIPALITY shall pay SOE for any other goods or services not specifically provided for in this Agreement but that may be described or listed in the latest Municipal Fee Schedule as distributed to MUNICIPALITY. MUNICIPALITY agrees that the Municipal Fee Schedule and the prices contained therein are subject to change.

Other For each election and upon proper notice to MUNICIPALITY, MUNICIPALITY shall pay SOE for any other election services not contemplated herein which may be needed to conduct an orderly election.

SECTION 6. Term. For each election, the terms of this Agreement begins with ballot layout and concludes when ballots have been processed, election results have been certified, all vote processing equipment has been returned to the SOE's warehouse and an audit, if applicable, has been completed. In the event of an election contest or challenge, SOE agrees to cooperate in providing any public records which the SOE maintains or otherwise controls.

SECTION 7. Applicable Requirements of Florida's Election Code. MUNICIPALITY shall properly call the election in accordance with any Florida Statutes, applicable charter provisions or City ordinances. MUNICIPALITY agrees that the Municipal Clerk is responsible for the conduct of the City's elections and for insuring compliance with all applicable Florida Statutes, including the Florida Election Code and any municipal charter provisions and ordinances. Any obligations or duties not set forth in this Agreement shall be the sole responsibility of MUNICIPALITY.

SECTION 8. Notice and Advertisement of Elections. MUNICIPALITY shall prepare and arrange for publication of all legal advertising required by state and federal statutes, City charter & City ordinances. MUNICIPALITY agrees that all advertisements of elections conducted in Orange County shall be published in both English and Spanish and that MUNICIPALITY shall be responsible for the accurate and complete translation of any such notices. SOE shall, if available, provide samples of required advertising upon request.

SECTION 9. Qualifying of Candidates. MUNICIPALITY may provide qualifying packets to candidates. MUNICIPALITY shall accept and process all qualifying papers and fees. For audio ballots, MUNICIPALITY shall collect pronunciation guides from candidates at the time of qualifying and shall submit them to SOE at the close of qualifying.

If petitions are part of qualifying process, MUNICIPALITY shall pay to SOE ten (10) cents per name checked to verify any signatures on qualifying petitions. SOE agrees to verify any signatures for any qualifying petitions submitted by MUNICIPALITY.

In no event shall SOE issue any recommendations or make any legal determinations as to the qualifications or eligibility of any candidate for municipal office.

SECTION 10. Printing of Ballots and Ballot Services. MUNICIPALITY shall place an order for a sufficient quantity of ballots to include early voting, absentees, provisional ballots and precincts, with a third party printer as selected exclusively by SOE. MUNICIPALITY shall provide prompt payment to the third party printer for the cost of any printed ballots or election materials.

MUNICIPALITY shall furnish, immediately upon the conclusion of the qualifying period, all ballot information in English and Spanish including the name the name of the candidates as they are to appear on the ballot; the name of the Municipality; the name of the election; the title of office and/or referendum title; explanation; and questions.

SOE agrees to provide the layout of the ballot(s) based on the information furnished by MUNICIPALITY and deliver ballot layout to the approved printer. MUNICIPALITY will place ballot order with printer. Both SOE and MUNICIPALITY must sign off on ballot proof(s) and replication of screen displays for the iVotronic Touchscreens. SOE shall contract to have ADA required audio files produced for audio portion of the Touchscreen ballots and MUNICIPALITY shall reimburse SOE for any costs incurred to produce such audio files.

Once test ballots are received from the printer, SOE will test all vote processing equipment in accordance with the standards established by the Florida Division of Elections and any applicable Florida Statutes. Upon receipt of the printed ballots from the printer SOE shall receive, securely store and account for all ballots until disbursed to Early Voting locations or to poll clerks. SOE shall also control and limit all access to unvoted ballots while in the possession of SOE.

SECTION 11. Poll Workers. SOE will select poll workers from a group of experienced poll workers. SOE will assign back-up poll workers to be available on Election morning. SOE will train all poll workers in accordance with the Florida Election Code and other guidelines, procedures or regulations as followed or adopted for the conduct of elections in Orange County. Clerk for MUNICIPALITY, or a representative, shall be in attendance for poll worker training sessions. SOE shall distribute all necessary supplies and ballots at poll worker training sessions. MUNICIPALITY shall pay poll workers directly for their services at pay rates previously established by SOE.

SOE will select and train early voting staff. SOE will pay early voting staff directly for their services. MUNICIPALITY will be billed for any overtime charges incurred due to Early Voting.

SECTION 12. Selection of Polling Places and Early Voting Sites. SOE shall approve any Polling Place(s) and Early Voting site(s) intended for use of as a voting location. Each location shall meet necessary ADA requirements. MUNICIPALITY shall conduct an onsite inspection of all polling places, including any early voting locations used other than the Office of SOE, and confirm that such locations are accessible to disabled and elderly voters. SOE reserves the right to select a suitable alternative if any proposed site fails to meet with SOE approval. MUNICIPALITY shall provide a list of proposed polling places and early voting sites no later than thirty-five (35) days prior to the date of the election. MUNICIPALITY shall pay any rental fees or usage fees directly to the polling place.

MUNICIPALITY shall notify SOE in writing if any tables or chairs will be required. Note that each polling place must, as determined by SOE, provide a minimum number of tables and chairs. MUNICIPALITY shall pay any rental fees incurred by SOE for tables and chairs.

SECTION 13. Sample Ballots. SOE shall layout, check and deliver sample ballot layout to a third party vendor for distribution to registered voters. MUNICIPALITY shall review the sample ballots and confirm the accuracy of the election date, office, candidate names, polling place and all other information contained therein. SOE shall coordinate the mailing of the sample ballots to all registered voters in the municipality prior to the election including accurate polling place information. MUNICIPALITY shall reimburse SOE for all costs incurred in producing and mailing sample ballots.

SECTION 14. Absentee Ballots. MUNICIPALITY shall refer all requests for absentee ballots to SOE. Unless MUNICIPALITY or the Clerk for MUNICIPALITY provides written directions to the contrary, SOE agrees to accept all requests for absentee ballots by telephone, mail, or in person. SOE also agrees to mail absentee & overseas ballots as requested by registered voters, receive and securely store any voted absentee ballots, verify the signatures on any returned voted absentee ballot certificates and to account for all absentee ballots.

MUNICIPALITY shall provide adequate staff assistance for the opening and handling of absentee ballots during the counting process and shall coordinate a date for the opening and counting of such absentee ballots with SOE.

SECTION 15. Transportation of Elections Equipment and Supplies. SOE will be responsible for delivery and pick up of any voting equipment. One day prior to Election Day, voting equipment will be delivered by SOE, or a third party representative of SOE. One day after Election Day, voting equipment will be picked up by SOE, or a third party representative of SOE. MUNICIPALITY shall reimburse SOE, for any and all costs incurred for equipment delivery and pickup. SOE shall have full discretion and authority to hire and employ any outside third parties to assist with or perform delivery and pick-up of voting equipment. **MUNICIPALITY IS NOT PERMITTED TO DELIVER ANY ELECTIONS EQUIPMENT.**

SECTION 16. Location and Storage of Voting Equipment. All voting equipment shall be stored, maintained and located in a well-protected, secure, temperature-controlled and indoor room or facility. Once the voting equipment is delivered to a voting site or early voting site, no equipment shall be relocated without the prior written approval of SOE.

SECTION 17. Canvassing of Election Results. MUNICIPALITY shall schedule and coordinate the date on which the municipal canvassing board is to assemble to canvass the results of the election. If applicable, MUNICIPALITY shall coordinate for the use of SOE facilities to conduct the canvassing board activities. MUNICIPALITY shall notice and advertise, as needed, the dates of any canvassing board meetings. MUNICIPALITY shall convene the canvassing board to determine which voted absentee ballots are to be tabulated. MUNICIPALITY shall provide for collection of results from each precinct(s).

SECTION 18. Audits. MUNICIPALITY may adopt Ordinances or Amendments to its Charter to opt out of the audit provisions as provided for in Florida Statutes. If MUNICIPALITY has not opted out of the audit provisions, MUNICIPALITY shall provide necessary personnel to conduct the audit as prescribed by law. MUNICIPALITY agrees to pay SOE for any additional costs as may be necessary, including overtime expenses, for conducting the audit.

- SECTION 19. Post-Election Records Retention. SOE shall process affirmation forms and sort, inventory and pack all election materials for pick up by the Municipal Clerk for retention and disposition. MUNICIPALITY shall store or cause to be stored all necessary election records and ballots until expiration of retention period as prescribed by applicable Florida Statutes and rules.
- SECTION 20. Voter History. MUNICIPALITY and SOE will make mutually acceptable arrangements for recording voter history. The date selected for undertaking this activity may occur subsequent to the conclusion of all election dates and outside of the terms of this agreement but both parties agree to work toward recording voter history in a timely manner.
- SECTION 21. Other Necessary Costs. Any additional costs or fees that may be incurred by SOE in compliance with the Florida Election Code and as a direct result of either any Election, if necessary, that are not specified in this contract shall be paid for by MUNICIPALITY at rates and fees as established by SOE. Examples of such additional costs or reimbursements include, but are not limited to, the following:
- A. Recounts – Any expenditure for conducting a recount, including any overtime expenses for reprogramming voting equipment, and other expenses as may be necessary to conduct a recount; and,
 - B. Attorney's Fees and Costs - Actual attorney's fees and costs incurred by SOE for research on any election related matter shall be invoiced by SOE for reimbursement by MUNICIPALITY.
- SECTION 22. Hold Harmless Covenant. MUNICIPALITY shall at all times hereafter indemnify, hold harmless and, at SOE's option, defend or pay for an attorney selected by SOE to defend SOE, its officers, agents, and employees against any and all claims, damages, injuries, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, arising out of or resulting from any or all acts of omission or commission of or by the MUNICIPALITY, its officers, agents, or employees, with respect to any election conducted pursuant to this Agreement. MUNICIPALITY also agrees to indemnify SOE against any administrative challenges, civil suits, or other legal challenges or appeals that may arise, including all attorney's fees and costs, from the contest of election results or the validation of any candidate qualifications.

Parties recognize that SOE is a state agency or subdivision as defined in Section 768.28, Florida Statutes and that nothing herein is intended to serve as a waiver of sovereign immunity by SOE for acts or omissions to which sovereign immunity applies. Furthermore, nothing herein shall be construed as consent by SOE, as a state agency or subdivision of the State of Florida, to be sued by third parties in any matter arising out of any contract.

SECTION 23. Entirety and Amendments. The Agreement embodies the entire agreement between SOE and MUNICIPALITY and supersedes all prior agreements and understandings relating to the conduct of elections. No modification, amendment or alteration to this Agreement shall be effective or binding unless submitted in writing and executed by duly authorized representatives of both SOE and MUNICIPALITY.

SECTION 24. Effective Date. The Effective Date of this Agreement shall be the latest date of execution by duly authorized representatives of SOE and MUNICIPALITY as shown on the signature page hereto.

IN WITNESS WHEREOF, we, the undersigned, do hereby state that we have the authority to bind and obligate as promised herein, SOE and MUNICIPALITY for purposes of executing this Agreement on the dates set forth below.

Signature

Bill Cowles
Name (Printed or Typed)

Orange County Supervisor of Elections
Title

Date

Witness Signature

Witness Name (Printed or Typed)

Signature

Name (Printed or Typed)

Title

Date

Witness Signature

Witness Name (Printed or Typed)



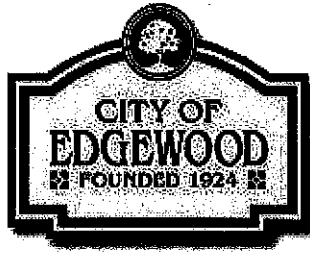
Memorandum

To: Bea Meeks, City Clerk
From: Cinnamon Wild, Administrative Assistant
Date: 12/10/2013
Re: Planning and Zoning Meeting 12/09/13 – Carl and Amy Peterson Fence
Height Variance – 428 Oak Lynn Drive

Residents Carl and Amy Peterson, 428 Oak Lynn Drive submitted an application for a Variance. Mr. and Mrs. Peterson requested to install a fence that exceeds the maximum height requirement of 4'. Their request is for a 5 foot fence.

In the Planning & Zoning Board Meeting held on 12/09/13, the Board approved the variance request as follows:

Board Member Leahy made the Motion to approve a fence variance for Carl and Amy Peterson, who live at 428 Oak Lynn Drive, to exceed the code required height of 4' to 5,'subject to the conditions in Planner Hardgrove's report; Seconded by Board Member Rayburn. The Motion passed unanimously with a 4/0 vote.



405 Larue Avenue - Edgewood, Florida 32809-3406
(407) 851-2920

To: City Council
XC: Ms. Bea Meeks, City Clerk
From: Ellen Hardgrove, AICP, City Planning Consultant
Date: December 10, 2013
Re: Fence Setback Variance Request (428 Oaklynn Drive – Carl and Amy Peterson)

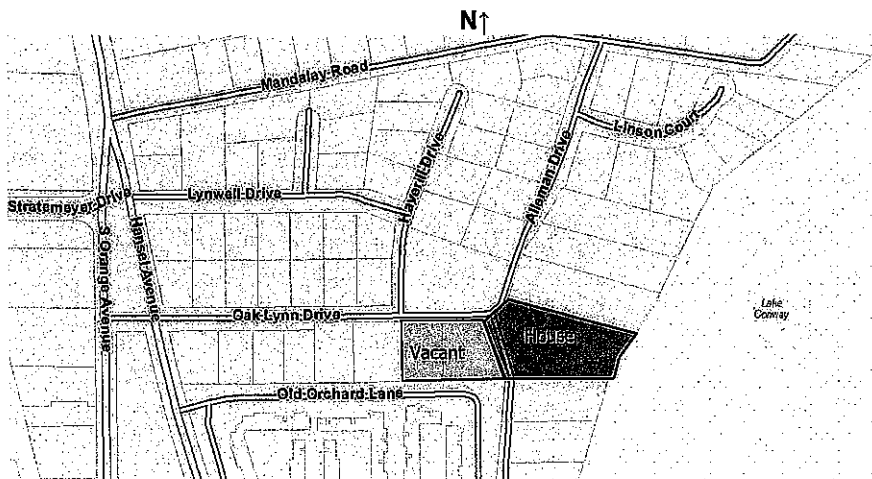
The Planning and Zoning Board, at their December 9, 2013 meeting, recommended approval of a 5 feet high fence along the front property line of the three lots at 428 Oaklynn Drive. Per staff recommendation, the Board attached two conditions to the approval:

- 1) The fence shall be of open decorative/wrought-iron-look to provide consistency with other fences in the neighborhood and to minimize the visual effect of a fence on the property line.
- 2) There shall be a minimum 20 feet separation between the fence on the house lot and fence on the vacant lot; i.e., the easement width between the fences, be it brick or grass, shall be at least 20 feet in width to accommodate emergency vehicles.

Staff's full report follows.

INTRODUCTION OF REQUEST

Request: Variance to allow a 5 feet high fence on the front property line in lieu of the Code maximum of 4 feet
Property Owner: Carl and Amy Peterson
Location: 428 Oaklynn Drive (both shaded areas)
Tax ID #s: 13-23-29-6056-01-090 – vacant lot
13-23-29-6056-01-091 – vacant lot
13-23-29-6056-01-100 -- house



Existing Zoning: R1AA

Future Land Use: Low Density Residential

Existing on site: 13-23-29-6056-01-090 vacant
 (See map pg. 1) 13-23-29-6056-01-091 vacant with large historic tree
 13-23-29-6056-01-100 house, access easement

Surrounding uses: North- single family house
 South- single family house and Camelot by the Lake Condos
 West - single family house
 East - Lake Conway

Surrounding Zoning: North- R1AA
 South - R1AA and R3
 West - R1AA
 East - Lake

CONSIDERATION OF REQUEST

Request

The request is to allow a 5 feet high fence along the front property line of the three lots of the subject property. According to Section 134-517 of the Edgewood Code, the maximum height of a fence within a front yard setback (on the property line as requested) of a residentially zoned lot is four feet. The lot front for non-corner lots, by definition, is the street side. The front yard setback for the R1AA district is 30 feet. Thus, by Code, the requested 5 feet high fence is required to be setback 30 feet from the Oaklynn Drive. Code would allow a 4 feet high fence on the property line.

Standards for Variance Approval

According to Section 134-104, variances are allowed when “there are practical difficulties or unnecessary hardships in complying with the strict letter” of the City Code and when the following approval standards are met.

1. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.
2. Special conditions and circumstances do not result from the actions of the applicant.
3. Approval of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.
4. Literal interpretation of the provisions contained in this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.
5. The variance approved is the minimum variance that will make possible the reasonable use of the land, building or structure.

6. Approval of the variance will be in harmony with the general intent and purpose of this chapter and that such variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Analysis of Standards

Do special conditions and circumstances exist?

Staff views the request as two parts due to the access driveway easement creating a division of the property. The house is east of the driveway easement and the vacant lots west of the driveway easement.

The purpose of the fence on the vacant lots, as expressed by the property owner in a phone conversation, is to provide a secure play area for children on the vacant portion of the owned property. Special circumstances do exist on the vacant lots to justify the variance. A historic oak tree is situated about 30 feet from the front property line. Thus, to preserve the tree, a Code compliant five feet high fence would be setback a distance greater than other property owners could enjoy. According to Code, "the preservation of any historic or specimen tree may be considered as a basis for the granting of a variance."

The purpose of proposed fence on the house lot appears to be for aesthetic purpose –continuity of the same fence at the same setback across the entire owned land (excluding the access driveway). Whereas, technically the Oaklynn Drive frontage of the house lot is the "front", the house is oriented to the access easement. The house front faces the access easement and driveway is connected to the access easement. Thus, due to the way the house is situated, the Oaklynn Drive lot frontage is used as a "side". A five feet high fence is permissible along the side lot line.

During field inspection of the property, nonconforming fence heights were noticed on several properties in proximity to the subject property. The house to the north has a 5.5 feet high chain link fence (covered with hedges) on the front property line. A five feet high fence exists along the front property line on a lot three lots north of the subject property. A 5.5 chain link fence extends to the front property line between the subject property and the lot to the west. A 4.5 feet high fence is on the front property line of a lot just west of Haverill Drive. Neither permits, nor variances for these nonconforming fences could be found.

A five feet high fence, situated on the property line, is located on the property directly across the street from the subject property; however, that fence is permissible by Code given the location is a side yard (vs. a front yard).

Did the special condition/circumstance result from the actions of the applicant?

Yes

Will the approval of the variance request confer any special privilege that would be denied to other lands, buildings or structures in the same zoning district?

As stated, other lots nearby have higher than permissible fences existing on the front property lines.

Would denial of this request deprive the applicant of rights commonly enjoyed by other properties in the same zoning district?

See comments above related to nearby lots.

Is the requested variance the minimum variance that will make possible the reasonable use of the land, building or structure?

Locating the proposed fence on the property line of the vacant lots would preserve the historic tree's root system to the greatest extent possible. The canopy of the tree is about 120 feet in diameter. For the lot with the house, given the Oaklynn Drive frontage is used as a "side yard", allowing the fence on the property line would be consistent with Code requirements for fences in the side yard.

Will the approved variance be in harmony with the general intent and purpose of this chapter and such variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare?

Yes, with a conditions of approval. First, an open wrought-iron-look fence is recommended to provide consistency with other fences in the neighborhood and to minimize the visual effect of a fence on the property line. Second, to ensure emergency vehicle clearance width on the access easement, the minimum separation between the fence on the house lot and fence on the vacant lot should be a minimum of 20 feet.

RECOMMENDATION

Approval with the following conditions:

- 1) The fence shall be of open decorative/wrought-iron-look to provide consistency with other fences in the neighborhood and to minimize the visual effect of a fence on the property line.
- 2) There shall be a minimum 20 feet separation between the fence on the house lot and fence on the vacant lot; i.e., the easement width between the fences, be it brick or grass, shall be at least 20 feet in width.

NOTES:

- Per Code, any variance approved by Council shall expire 12 months after the effective date of the approval unless the rights approved by the variance have been exercised prior to the expiration date. Acquisition of necessary building permits, installation of required equipment or initiation of the activity granted shall be considered adequate exercising of the variance rights.

ESH

ORDINANCE NO. 2013-08

AN ORDINANCE OF THE CITY OF EDGEWOOD, FLORIDA, AMENDING SECTION 130-7 OF THE CITY OF EDGEWOOD CODE OF ORDINANCES; DELETING THE REPLACEMENT TREE STOCK LIST CONTAINED IN THE CODE OF ORDINANCES; PROVIDING FOR ADOPTION AND AMENDMENT OF THE REPLACEMENT TREE STOCK LIST BY RESOLUTION; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Section 130-7 of the Code of Ordinances contains a replacement tree stock list; and

WHEREAS, in order to make amendments to the replacement tree stock list more efficient, the City Council finds it appropriate to remove the replacement tree stock list from the Code of Ordinances and provide for adoption and amendment of the replacement tree stock list by Resolution.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF EDGEWOOD, FLORIDA AS FOLLOWS:

SECTION 1. Section 130-7 of the City of Edgewood Code of Ordinances is hereby amended as follows (note, ~~strike through~~ text indicates deletion and underlined text indicates added text):

Sec. 130-7. - Relocation or replacement of trees; removal without replacement.

(a) Nonexotic, nonhistoric, nonspecimen trees. As a condition for the approval of an application for removal of a tree, the city official may require that the owner of the real property or permittee either relocate said tree somewhere within the property lines of said property or replace each tree with one of the following:

- (1) A tree of comparable size and type;

(2) A tree commonly sold in a 15-gallon container, of at least 1½ inches in diameter as measured three feet above soil level, and of a crown height of at least eight feet.

No owners shall replace trees with those which appear on the state exotic pest plant council's list of invasive plants, as listed in section 130-5(d).

(b) Exception to tree replacement requirement. At the discretion of the city official, and with the submission of the appropriate application, a tree removal permit may be issued with no tree replacement requirement if the tree being removed is one which appears on the state exotic pest plant council's list of invasive plants, as listed in section 130-5(d).

(c) City tree replacement trust fund. The city official may offer a choice to a permittee, especially when space limitations or other conditions exist, to make payment into the city tree replacement trust fund in accordance with section 130-8 in lieu of replacing trees to be removed.

(d) Historic and/or specimen trees.

(1) Generally. Historic and/or specimen trees shall be replaced in accordance with subsections (d)(2)—(4) of this section. Replacement trees shall be chosen from ~~the following recommended stock list:~~ a stock list adopted by Resolution of the City Council.

(2) Historic and/or specimen trees on existing single-family properties. Historic and/or specimen trees on existing single-family properties shall be replaced with trees sold in 15-gallon containers of at least 1½ inches in diameter as measured three feet above soil level.

(3) Historic and/or specimen trees on all other properties. Historic and/or specimen trees on all other properties shall be replaced with trees at least 18 feet in height, six inches in diameter as measured three feet above soil level.

(4) Alternative replacement plans. The city official may offer a choice to a permittee, especially when space limitations or other conditions exist, to make payment into the city tree replacement trust fund in lieu of replacing historic or specimen trees.

SECTION 2: Codification: Section 1 of this Ordinance shall be codified and made part of the City of Edgewood Code of Ordinances.

SECTION 3: Control: In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance controls.

SECTION 4: Severability: It is the intent of the City Council of the City of Edgewood, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 5: Effective Date: This Ordinance shall become effective upon final passage and adoption.

ADOPTED by the City Council of the City of Edgewood, Florida, this ____ day of _____, 2013.

John Dowless, Council President

ATTEST:

Bea Meeks
City Clerk

ORDINANCE NO. 2013-07

AN ORDINANCE OF THE CITY OF EDGEWOOD, FLORIDA AMENDING THE REPLACEMENT TREE STOCK LIST CONTAINED IN SECTION 130-7 TO INCLUDE THE JAPANESE BLUEBERRY TREE; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council finds it appropriate to include the Japanese Blueberry Tree in the replacement tree stock list contained in the City's Tree Management and Protection Ordinance.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF EDGEWOOD, FLORIDA AS FOLLOWS:

SECTION 1. The Replacement Tree Stock List contained in Section 130-7 of the City of Edgewood Code of Ordinances is hereby amended as follows (note, underlined text indicates added text):

American beech	Pignut hickory
American elm; White elm	Pond cypress
American holly	Red bay
Bald cypress	Red buckeye
Basswood	Red maple
Black cherry	Sand live oak
Black gum	Scrub hickory
Bluejack oak	Scrub oak
Chickasaw plum	Slash pine
Chinese elm	Southern magnolia
Coast pignut hickory	Southern red cedar

Crepe myrtle	Southern red oak
Dahoon holly	Spanish oak; Shumard oak
Flowering dogwood	Swamp chestnut oak
Fringe tree	Swamp dogwood
Green ash	Sweet bay
Hackberry	Sweet gum
Ironwood	Sycamore
<u>Japanese Blueberry</u>	Tulip tree
Laurel oak	Turkey oak
Live oak	Water oak
Loblolly bay	White oak
Loblolly pine	Wild olive-Devilwood
Long Leaf pine	Willow oak
Myrtle oak	Winged elm; Cork elm
Pecan	

SECTION 3: Codification: Section 1 of this Ordinance shall be codified and made part of the City of Edgewood Code of Ordinances.

SECTION 4: Control: In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance controls.

SECTION 5: Severability: It is the intent of the City Council of the City of Edgewood, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 6: Effective Date: This Ordinance shall become effective upon final passage and adoption.

ADOPTED by the City Council of the City of Edgewood, Florida, this ____ day of _____, 2013.

John Dowless, Council President

ATTEST:

Bea Meeks, MMC, CPM, CBTO
City Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <i>Dowless John Lyn</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>City Council</i>
MAILING ADDRESS <i>4857 Legacy Oaks Dr</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY <i>Edgewood</i>	NAME OF POLITICAL SUBDIVISION: <i>City of Edgewood</i>
COUNTY <i>Orange</i>	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE
DATE ON WHICH VOTE OCCURRED <i>11/19/2013</i>	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

Received 10-19-13
Bonnie Clark
City Clerk

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.
- YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:
- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, John Dowless, hereby disclose that on Nov 19, 2013:

(a) A measure came or will come before my agency which (check one or more)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Avoid the appearance of a conflict

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

11/19/2013
Date Filed

[Signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <i>Endrix - Michael - Charles</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>City Council</i>
MAILING ADDRESS <i>5001 Legacy Oaks Drive</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY COUNTY <i>Orlando Orange</i>	NAME OF POLITICAL SUBDIVISION: <i>City of Edgewater</i>
DATE ON WHICH VOTE OCCURRED <i>11/19/2013</i>	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

Received 10-19-13
 City Clerk

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
 - The form must be read publicly at the next meeting after the form is filed.
- IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:**
- You must disclose orally the nature of your conflict in the measure before participating.
 - You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Michael Charles Hendrix, hereby disclose that on November 19, 2013:

(a) A measure came or will come before my agency which (check one or more)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

I serve on the Legacy HOA Board of Directors. The measure involves the Legacy Tree Mitigation plan.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

11/19/2013
Date Filed

Michael C. Hendrix
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.