

ORDINANCE 19-32

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ARTICLE I, ARTICLE III AND ARTICLE V OF CHAPTER 110 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN GOVERNING SUBDIVISIONS OF LAND CONCERNING DEFINITIONS, EXEMPTIONS FROM SUBDIVISION REQUIREMENTS, SUMMARY PROCEDURES FOR LOT ADJUSTMENTS, LOT SPLITS AND LOT COMBINATIONS AND VACATION OF PLATS AND PLAT DEDICATIONS; PROVIDING FOR COMBINATION OF CONTIGUOUS NONCONFORMING LOTS UNDER COMMON OWNERSHIP; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission desires to amend Article I and III of Chapter 110, City of Winter Garden Code of Ordinances to amend the definitions section, provide for an exemption to the subdivisions regulations concerning conveyances to the City and to provide for summary procedures governing lot splits, lot combinations and minor lot adjustments; and

WHEREAS, lots that are nonconforming with current zoning and land development regulations in not in the spirit and intent of the Comprehensive Plan and discourages orderly growth and development of land;

WHEREAS, the requirement to combine nonconforming lots of record for zoning purposes when such lots are held in common ownership is a reasonable regulation that will encourage development with an appropriate density and intensity in light of the current goals, objectives, policies and regulations of the City's Comprehensive Plan and land development regulations; and

WHEREAS, the City desires to provide for provisions governing plat vacations and plat dedications; and

WHEREAS, the City Commission finds it to be in the best interest of the public health, safety and welfare to make the revisions to Chapter 110, City of Winter Garden Code of Ordinances in the manner specified in this Ordinance.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:

Section 1: **Authority.** The City of Winter Garden has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 166, Florida Statutes.

Section 2: **Adoption.** Section 110-1 of Article I of Chapter 110 of the City of Winter Garden Code is hereby amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being revised):

Section 110-1. – Definitions

Alley means a minor public way open to any traffic and intended for vehicular service access to the back or side of properties otherwise abutting on a street.

Pedestrian and service easement means a public way at the back or side of properties otherwise abutting on a street open to general pedestrian use but restricted as to use by automobiles and trucks. Only governmental or public utility automobile vehicles shall be permitted in such easements.

Private roads means all roadways, not dedicated to the public use, except driveways defined as roads used for ingress or egress to a single structure.

Outparcel means a separate lot created within a commercial or mixed-use development typically adjacent to a public right-of-way and intended for the development of a single stand-alone structure and use.

Street means a public way for vehicular traffic.

Street, arterial, means a public way, as defined in section 62-26.

Street, collector, means a public way, as defined in section 62-26 and described in section 62-27 regarding location of arterial and collector streets.

Street, minor, means a public way, as defined in section 62-26, other than an arterial or collector street or alley.

Subdivision means the division of a parcel of land into two or more lots or parcels for the purpose of transfer of ownership or building development, or, if a new street is involved, any division of a parcel of land, provided that a division of land for agricultural purposes into lots or parcels of five acres or more and not involving a new street shall not be deemed a subdivision. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

Section 3. Adoption. A new Section 110-7 and Section 110-8 of Article I of Chapter 110 of the City of Winter Garden Code is created to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being revised):

Section 110-7.- Combination of contiguous nonconforming lots.

Whenever a nonconforming lot is contiguous to another lot(s) or parcel(s) of land under common ownership or similar ownership controlled by the same persons or entities, such lot shall be combined with the contiguous lot(s) or parcel(s) and if applicable, reconfigured or replatted, so as to create one or more conforming lots or so as to reduce the extent of the nonconformity of the lot and any structure thereon, but in either case, no remainder lot or parcel shall be left as a nonconforming lot or as a parcel on which any reasonable development is not possible. A combination of two or more contiguous nonconforming lots under common ownership into a single tax parcel identification number for ad valorem tax purposes prior to January 1, 2019 will be treated as a combination of those nonconforming lots into a single lot for zoning and land development regulation purposes and the property owner will be required to submit and obtain approval of an application under this chapter in order to subdivide such lot for development purposes. Conveyances of nonconforming lots determined by the city to be intended to circumvent the provisions of this section will not be recognized for zoning and land development regulation purposes. The city shall have the right to withhold issuance of site and building permits concerning any proposed development unless and until the legal combination, reconfiguration and replatting of lots and parcels required by this section is completed in accordance with the applicable provisions of this chapter. This section is applicable to nonconforming lots regardless of whether such lots are legally or illegally nonconforming to the city's zoning ordinances and land development regulations.

Section 110-8. – Exemption.

The subdivision of land or lot readjustment solely as the result of the conveyance of land or granting of easements or rights-of-way to the city, whether voluntary or through the exercise of eminent domain, is exempt from the requirements of this chapter. Upon request, the community development director may grant an exemption to or partial waiver of the requirements of this chapter for the subdivision of land resulting solely from the conveyance of land or granting of easement or rights-of-way to other governmental entities to be used for public purposes.

Section 4: Adoption. Article III, Division 2 of Chapter 110 of the City of Winter Garden Code is hereby amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being revised):

DIVISION 2. - SUMMARY PROCEDURE

Sec. 110-96. - Proposed subdivision of existing lot.

(a) Whenever a proposed subdivision is a proposal for the division of a single existing lot into two lots, in lieu of platting or replatting complying with division 3 of this article, the subdivider may conform to the procedural requirements set out in this section ~~division~~ or the subdivider may comply with the procedure for subdivision or resubdivision platting or replatting contained in this chapter at the applicant's option, except as otherwise determined pursuant to subsection (f). This procedure shall not apply to a subdivision into more than two lots or additional lot splits on contiguous land or within the same existing subdivision. The intention being that this procedure may only be used once as it pertains to all or any portion of the lands involved in or previously utilizing or subject to this procedure.

(b) A subdivider shall apply to the city ~~manager~~ on an application form, promulgated by the community development director of planning, for the subdivision of a single existing lot into two lots, stating the subdivider's plans for development with the following minimum submittal requirements ~~criteria~~:

(1) A sketch showing the lot size, location of proposed buildings, location of easements, names of bordering streets, building setbacks, names and locations of all bodies of water, marshlands, drain fields, and all other waterways and watercourses abutting or encroaching upon subject property. This sketch must also show existing buildings and lot dimensions.

(2) A brief description of all utilities and city services, including sewers, potable water facilities, and fire hydrants electric and telephone poles, streetlights, storm drains and any other utilities or services relevant to the maintenance of subject properties.

(3) A listing of the names and addresses of the record owners abutting subject property.

(4) A boundary survey of the lands subject to this procedure, as existing (i.e., prior to the proposed lot split) and as proposed (i.e., after the proposed lot split), performed and prepared under the responsible direction and supervision of a professional surveyor and mapper shall be certified to and submitted to the city. Said surveys shall include the depiction of existing improvements and easements thereon.

(5) Proposed legal instruments creating and granting proposed easements, conditions and restrictions upon the proposed lots.

(6) A title opinion from a licensed attorney or title certificate from a title company certified to the city showing the ownership, easement, mortgage, and other lien and encumbrance information for the existing lot.

(7) Executed joinder and consent to the proposed lot split from all owners of the property and mortgage holders, if applicable.

(c) Lot split procedure. Once the application is determined to be complete, the ~~city staff~~ development review committee shall review the request for compliance with the code and

providing necessary easements and access for public services and utilities (e.g. compliance with lot dimensions requirements, setbacks for existing buildings, easements, legal access, etc.). The city may condition the lot split upon the recording in the Orange County public records legal instrument(s), in a form acceptable to the city, showing the new boundaries of the lots created by the lot split and creating any easements, conditions and restrictions upon the lots necessary for the orderly and proper development of the lots. Upon review by the development review committee ~~city staff~~, with or without conditions or restrictions, the application, together with the recommendations, conditions and restrictions, shall be presented to the planning and zoning board at its next available regular meeting or session, following action by the development review committee ~~city staff~~, for approval or disapproval. The planning and zoning board may take the following actions:

- (1) Approve the application as recommended by the development review committee ~~city staff~~.
- (2) Approve the application, deleting or supplementing the conditions and restrictions of the development review committee ~~city staff~~.
- (3) Approve the application, adding conditions and restrictions as determined by the planning and zoning board.
- (4) Disapprove the application.

The planning and zoning board shall have the option to take such action as it deems necessary and proper upon one hearing.

(d) Appeals shall be governed by sections 118-162 through 118-164. Appeal may be taken only upon final action by the planning and zoning board.

(e) If the ~~city manager~~ community development director or the planning and zoning board determines that an easement or right-of-way is necessary for the subdivision of the subject property, the applicant must provide a proper and satisfactory executed deed of easement or right-of-way prior to any final approval by the authority determining this necessity and prior to approval by any subsequent authorities determining the application.

(f) The ~~city manager~~ community development director may require an applicant to follow the standard subdivision procedure contained in this chapter if ~~he~~ the community development director determines that the summary procedure is being utilized by an applicant in order to defeat the objectives of subdivision requirements or the summary procedure would be inadequate to address matters presented by the application that could be more adequately addressed through the platting or replatting procedure.

(g) A lot shall not be created by this process if a lot does not have legal access to a public right-of-way, or a lot is not conforming to applicable land development regulations governing lot dimensions or densities within the applicable zoning district.

Section 110-97.- Lot combination.

(a) The purpose of this section is to create a summary procedure for the combination of two or more contiguous lots or parcels of land that share the same future land use map and zoning designations. Lot combinations are distinguished from boundary line adjustments or lot adjustments which retain portions of the original lots or parcels as separate lots or parcels, lot splits, subdivisions or replats and result in the creation of more than one parcel, lot or tract.

(b) A property owner shall apply to the city for a lot combination on an application form, promulgated by the community development director, stating their plans for development of the combined lot and providing the following minimum submittal requirements:

(1) A sketch showing the lot size, location of proposed buildings, location of easements, names of bordering streets, building setbacks, names and locations of all bodies of water, marshlands, drain fields, and all other waterways and watercourses abutting or encroaching upon subject property. This sketch must also show existing buildings and lot dimensions.

(2) A brief description of all utilities and city services, including sewers, potable water facilities, and fire hydrants electric and telephone poles, streetlights, storm drains and any other utilities or services relevant to the maintenance of subject properties.

(3) A listing of the names and addresses of the record owners abutting subject property.

(4) A boundary survey of the lands subject to this procedure, as existing (i.e., prior to the proposed lot combination) and as proposed (i.e., after the proposed lot combination), performed and prepared under the responsible direction and supervision of a professional surveyor and mapper shall be certified to and submitted to the city. Said surveys shall include the depiction of existing improvements and easements thereon.

(5) Proposed legal instruments creating and granting proposed easements, conditions and restrictions upon the proposed combined lots, if applicable.

(6) A title opinion from a licensed attorney or title certificate from a title company certified to the city showing the ownership, easement, mortgage, and other lien and encumbrance information for the existing lots or parcels.

(7) Proposed binding lot combination agreement with attached legal sketches and descriptions to be recorded in the public records requiring the combined lots or parcels to be retained in single ownership, and shall remain as a single, integral lot, and shall not be subdivided, severed, sold, leased, encumbered, or otherwise disposed of in lesser constituent lots or parcels. Along with an executed joinder and consent to the proposed binding lot combination agreement from all owners of the property and mortgage holders, if applicable.

(c) Lot combination procedure. Once the application is determined to be complete, the development review committee shall review the request for compliance with the code and providing necessary easements and access for public services and utilities (e.g. compliance with

lot dimensions requirements, setbacks for existing buildings, easements, legal access, etc.). The city may condition the lot combination upon the recording in the Orange County public records legal instrument(s), in a form acceptable to the city, showing the new boundaries of the lots created by the lot combination and creating any easements, conditions and restrictions upon the lots necessary for the orderly and proper development of the lots. Upon review by the development review committee, with or without conditions or restrictions, the application, together with the recommendations, conditions and restrictions, shall be presented to the community development director, for approval, approval with conditions or disapproval.

(d) If the community development director determines that an easement or right-of-way is necessary for the subject property, the applicant must provide a proper and satisfactory executed deed of easement or right-of-way as a condition of the effectiveness of any lot combination approval.

(e) The community development director may require an applicant to follow the standard subdivision procedure contained in this chapter if the community development director determines that the summary procedure is being utilized by an applicant in order to defeat the objectives of subdivision requirements or the summary procedure would be inadequate to address matters presented by the application that could be more adequately addressed through the platting or replatting procedure.

Section 110-98.- Minor lot adjustment.

(a) The purpose of this section is to create a summary procedure for the minor adjustment of boundaries between two contiguous lots or parcels of land that share the same future land use map and zoning designations and where no additional lots will be created. The proposed lot adjustment shall be approximately parallel with existing boundaries, shall not significantly change the shape or size of the lots, and shall not result in the creation of nonconforming lots or structures. For the purpose of determining whether the lot adjustment represents a significant change in the size of the lots, the portion of land subtracted from a lot should not be more than ten percent of the land area of such lot; however, the community development director may consider other factors in making such determination.

(b) A property owner shall apply to the city for a minor lot adjustment on an application form, promulgated by the community development director, stating their plans for development of the adjusted lots and providing the following minimum submittal requirements:

(1) A sketch showing the lot size, location of proposed buildings, location of easements, names of bordering streets, building setbacks, names and locations of all bodies of water, marshlands, drain fields, and all other waterways and watercourses abutting or encroaching upon subject property. This sketch must also show existing buildings and lot dimensions.

(2) A brief description of all utilities and city services, including sewers, potable water facilities, and fire hydrants electric and telephone poles, streetlights, storm drains and any other utilities or services relevant to the maintenance of subject properties.

(3) A listing of the names and addresses of the record owners abutting subject property.

(4) A boundary survey of the lands subject to this procedure, as existing (i.e., prior to the proposed lot adjustment) and as proposed (i.e., after the proposed lot adjustment), performed and prepared under the responsible direction and supervision of a professional surveyor and mapper shall be certified to and submitted to the city. Said surveys shall include the depiction of existing improvements and easements thereon.

(5) Proposed legal instruments creating and granting proposed easements, conditions and restrictions upon the proposed lots as adjusted.

(6) A title opinion from a licensed attorney or title certificate from a title company certified to the city showing the ownership, easement, mortgage, and other lien and encumbrance information for the existing lots or parcels.

(c) Minor lot adjustment procedure. Once the application is determined to be complete, the development review committee shall review the request for compliance with the code and providing necessary easements and access for public services and utilities (e.g. compliance with lot dimensions requirements, setbacks for existing buildings, easements, legal access, etc.). The city may condition the minor lot adjustment upon the recording in the Orange County public records legal instrument(s), in a form acceptable to the city, showing the new boundaries of the lots created by the minor lot adjustment and creating any easements, conditions and restrictions upon the lots necessary for the orderly and proper development of the lots. Upon review by the development review committee, with or without conditions or restrictions, the application, together with the recommendations, conditions and restrictions, shall be presented to the community development director, for approval, approval with conditions or disapproval.

(d) If the community development director determines that an easement or right-of-way is necessary for the subject property, the applicant must provide a proper and satisfactory executed deed of easement or right-of-way as a condition of the effectiveness of any minor lot adjustment approval.

(e) The community development director may require an applicant to follow the standard subdivision procedure contained in this chapter if the community development director determines that the summary procedure is being utilized by an applicant in order to defeat the objectives of subdivision requirements or the summary procedure would be inadequate to address matters presented by the application that could be more adequately addressed through the platting or replatting procedure.

SECTION 5: Adoption. Article III, Division 3 of Chapter 110 of the City of Winter Garden Code is hereby amended to add a new Section 110-125 to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being revised):

Section 110-125. – Waiver. The Community Development Director may waive the preliminary plat requirements of this division, or any part thereof, for subdivisions creating less than three (3) lots or any replat of nonconforming lots making such lots conforming to the code or mitigating nonconformities to the code.

SECTION 6: Adoption. Article III, Division 5 of Chapter 110 of the City of Winter Garden Code is hereby amended to add a new Section 110-153 to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being revised):

Sec. 110-153. - Homeowners association.

(1) Prior to final plat approval and, in the case of a gated community, prior to the closure or operation of the gates, a residential subdivision or commercial subdivision which is subject to the provisions of this division shall establish a mandatory homeowners' (or property owners') association in accordance with the requirements of this division, and a declaration (or in the event of an existing recorded declaration, an amendment thereto) must be approved by the city. The city manager has the authority to waive the property owner's association requirement for non-residential subdivisions having five or fewer lots provided the intent of this division, including section 110-154, can be satisfied through alternative means. A certificate of good standing or such other evidence to determine the status of the HOA shall be submitted to the city as part of the final plat approval process.

(2) Unless otherwise approved by the city, simultaneous with the recording of the plat the developer shall cause to be conveyed to the HOA such land and improvements for which the HOA shall have the responsibility for maintaining and repairing, including the community subdivision infrastructure.

(3) A residential subdivision or commercial subdivision (or any combination thereof) shall be subject to the provisions of this division when:

a. The responsibility to maintain certain areas or community subdivision infrastructure within the subdivision is to be shared by the lot owners, or where common areas will exist; or

b. Any of the community subdivision infrastructure is to be owned or maintained privately; or

c. A gated community is sought to be established.

As long as one or more of the matters set forth in subsections (a), (b) or (c) exists, this division applies to the subdivision regardless of whether such subdivision has public or private roads, or is gated or un-gated.

SECTION 7: Adoption. Article III of Chapter 110 of the City of Winter Garden Code is hereby amended to add a new Division 7 entitled “Plat Vacations” to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being revised):

DIVISION 7.- Plat Vacations

110-176.- Plat vacations.

(a) An applicant proposing to vacate and abandon a plat or any portion thereof or any dedication set forth in a plat shall show that the proposal meets the minimum requirements of Chapter 177, Florida Statutes and is consistent with the provisions of the city code, the comprehensive plan and applicable development agreements and development orders and conditions thereof.

(b) All requests to vacate and abandon plats or any portion thereof, including a request to vacate city or publicly dedicated rights-of-way and easements shall be made by written petition. Any such petition shall be in a form or forms required by the city and shall be presented along with the following minimum information:

(1) A legal description of the property subject to the petition.

(2) The plat or other instrument that identifies the title or interest, which is the subject of the petition.

(3) A recent boundary survey of the property subject to the petition.

(4) Sketch and legal description of the area proposed to be vacated and abandoned.

(5) A listing of the names and addresses of record owners of all abutting properties.

(6) A title opinion from a licensed attorney or title certificate from a title company certified to the city showing ownership of and any easements, mortgages and other liens and encumbrances on the property subject to the petition.

(7) In the case of vacation and abandonment of city or publicly dedicated rights-of-way, a certification by the applicant that the vacation and abandonment proposed will not deprive other property owners of access to and from their property.

(8) In the case of vacation and abandonment of city or publicly dedicated rights-of-way or utility easements, written correspondence from public utility companies that they have no objection to the proposed vacation and abandonment.

(9) A statement of reasons why the petition should be granted.

The community development director may require such additional information and documentation from the applicant as the community development director deems relevant and appropriate under the circumstances.

110-177.- Vacation of rights-of-way or other public dedications. The decision to vacate and abandon plat dedicated city or public rights-of-ways, easements or other plat dedications to the city or public shall be considered legislative decisions of the city commission. Such decisions by the city commission may be in the form of an ordinance or by way of approval of a replat. The city is not required to vacate and abandon any city or public dedication of right-of-way, easement, development rights, access rights or any other dedication for which the city commission determines: (i) currently serves a public or municipal purpose, (ii) is likely to serve a future public or municipal purpose, or (iii) would adversely affect the interests of lot owners within the applicable subdivision, utility service providers or the general public.

110-178.- Open space, conservation and golf course tracts.

The city recognizes common law principles that lot owners acquire certain implied easement rights in reliance of purchasing lots within a subdivision with a recorded plat containing dedications and description of uses and purposes of lots, tracts and lands within such plat. Any tract or lands within a plat dedicated for or described as a golf course, open space or conservation shall not be subject to vacation and abandonment to remove the dedicated use or purpose of the golf course, open space or conservation or to permit redevelopment inconsistent with golf course, open space or conservation use without either (i) the prior written consent of all fee simple owners owning a lot within the plat, or (ii) a final judgment of a court of competent jurisdiction binding upon all lot and tract owners within the applicable plat(s) determining that the fee simple owners of lots and tracts within the plat do not have any expressed or implied easement rights in the golf course, open space or conservation tract. The provisions of this section are supplemental to any other requirements of the general law and city code concerning the subject matter hereof. Tracts or other portions of a plat dedicated as a golf course are considered open space within the subdivision and provide significant value to all lots and tracts within the subdivision and shall remain maintained and trimmed even if golf course operations cease.

SECTION 8: Codification: Sections 2, 3, 4, 5, 6 and 7 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

SECTION 9: Control: In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance controls to the extent of the conflict.

SECTION 10: Severability: It is the intent of the City Commission of the City of Winter Garden, 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 be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

