IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

WP STATION TOWER, LLC,
WINTERPARK STATION LLC,
WINTERGATE, LLC, AND PALMETTO
BUILDING 2019, LLC,

Plaintiffs,

CASE NO.: 2020-CA-004388-O
DIV: 39

v.

CITY OF WINTER PARK, FLORIDA,

Defendant.
_____/

FINAL SUMMARY JUDGMENT AND ORDER ON DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (MOOTNESS), DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO COUNT V (GOVERNMENT-IN-THE SUNSHINE LAW) OF THE AMENDED COMPLAINT, PLAINTIFFS' AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT, AND PLAINTIFFS' MOTION FOR LEAVE TO AMEND

THIS CAUSE came to be heard before the Court on August 16, 2023, September 19, 2023, and October 9, 2023 on Defendant's, CITY OF WINTER PARK (the "City") Motion for Partial Summary Judgment filed on February 9, 2022, Motion for Summary Judgment (Mootness) filed on February 21, 2023, and Motion for Partial Summary Judgment as to Count V (Government-in-the-Sunshine Law) of the Amended Complaint filed on August 23, 2023 and Plaintiffs', WP STATION TOWER, LLC, WINTERPARK STATION LLC, WINTERGATE, LLC, and PALMETTO BUILDING 2019, LLC[1] ("Plaintiffs") Amended Motion for Partial Summary Judgment filed on March 1, 2023 and Motion for Leave to Amend filed on August 15, 2023.

[1] Consolidated Plaintiffs, DI PARTNERS, LLLP and CVJCR PROPERTIES, have voluntarily dismissed their claims and are no longer part of these proceedings.

The Court having heard argument of the counsel, reviewed the pleadings, the motions, responses, and other pertinent matters of record, and being otherwise duly advised in the premises, hereby finds and rules as follows:

INTRODUCTION

1. On February 16, 2021, Plaintiffs filed an Amended Complaint containing five causes of action challenging the validity of the Winter Park Ordinance No. 3172-20 adopted on April 13, 2020 (the "Rescission Ordinance"). The Rescission Ordinance purported to rescind Ordinance 3166-20 (the "2020 CPA Ordinance") and Ordinance 3167-20 (the "2020 Zoning Ordinance") that had previously been adopted by the City Commission on March 9, 2020.

2. Count I challenges the Rescission Ordinance for not being adopted in accordance with Sections 163.3184(3) & (11), *Florida Statutes*. Count II challenges the Rescission Ordinance for not being adopted in accordance with Section 58-6(a)(3)b. of the Winter Park Code. Count III challenges the Rescission Ordinance for not being adopted in accordance with the notice provisions of Section 166.041(3)(c)2., *Florida Statutes*. Count IV challenges the Rescission Ordinance for noncompliance with Rule 11 of the Rules for the Conduct of City Commission Meetings and Decorum and the City's Policy for Placing Items on the Agenda. Count V challenges the Rescission Ordinance based on alleged violations of Section 286.011, *Florida Statutes*.

3. The parties' cross-motions for summary judgment are currently before the Court. Plaintiffs argue that the undisputed summary judgment evidence establishes that the Recission Ordinance is invalid as a matter of law because the City failed to comply with Chapter 163 and Section 166.041, *Florida Statutes*, in adopting the Rescission Ordinance and because the City is equitably estopped from rescinding the Zoning Ordinance. The City maintains that Plaintiffs' claims are moot and would seek inconsequential advisory opinions and that the 2020 CPA and

Zoning Ordinances never became effective as a matter of law. Shortly before the August 16, 2023 hearing, Plaintiffs filed their Motion for Leave to Amend seeking to modify their allegations in various ways, add causes of action based on an alleged implied partnership and estoppel, and include a request for attorneys' fees in connection with their Sunshine Law claim. Shortly after the August 16, 2023 hearing, the City filed another motion for summary judgment arguing that there is no genuine issue of material fact with respect to Plaintiffs' Sunshine Law claim.

UNDISPUTED MATERIAL FACTS

4. On March 9, 2020, the City Commission, by a 3-2 vote, adopted the 2020 CPA Ordinance, which would have amended the City's Comprehensive Plan to establish an Orange Avenue Overlay District, and the 2020 Zoning Ordinance, which would have made certain zoning changes consistent with the amendment to the Comprehensive Plan. The 2020 Zoning Ordinance provided that it was to take effect upon the plan amendment becoming effective and, if the 2020 CPA Ordinance did not become effective, the 2020 Zoning Ordinance would be null and void.

5. The process to amend the City's Comprehensive Plan to create the Orange Avenue Overlay District took almost three years and involved multiple public meetings, input from the City's professional planning staff, and the formation of a steering committee that met biweekly for over six months to gather data on the issues and make recommendations. The steering committee eventually recommended approval of the 2020 CPA and Zoning Ordinances.

6. The City Commission conducted several public hearings in December 2019 and January and March 2020 after publishing notice in the Orlando Sentinel and mailing individual notices to each household in the City in connection with the 2020 CPA and Zoning Ordinances.

7. The City transmitted the adopted 2020 CPA Ordinance to the state land planning agency, the State of Florida Department of Economic Opportunity ("DEO"). Thereafter, the City

received correspondence from DEO dated March 16, 2020, regarding the DEO's completeness determination pursuant to Section 163.3184(3)(c)3., *Florida Statutes*. The City then received correspondence from the DEO dated April 3, 2020 stating that the comprehensive plan amendment that was the subject of the 2020 CPA Ordinance would become effective pursuant to state law on April 16, 2020, unless a challenge to the comprehensive plan amendment was timely filed.

8. On March 17, 2020, the City conducted municipal elections, and two of the incumbent City Commissioners who voted to adopt the 2020 CPA and Zoning Ordinances lost reelection. The new City Commissioners assumed office on March 27, 2023.

9. Plaintiffs characterize the events transpiring between the March 17, 2020 election and the adoption of the Rescission Ordinance as being inappropriate or at least suspicious.

10. The City cancelled the meeting of the City Commission scheduled for March 23, 2020 and planned to schedule a special meeting for March 30, 2020. Although the special meeting was originally requested primarily to address COVID-19 issues, Commissioner-Elect DeCiccio requested that a first reading of the Rescission Ordinance be included on the agenda.

11. After receiving a request from Commissioner-Elect DeCiccio, the City Manager directed the City Planning Director to draft the Rescission Ordinance. (Knight Dep. at p. 30).

12. On March 25, 2020, the City Planning Director emailed Commissioner-Elect DeCiccio a draft of the Rescission Ordinance requesting any edits. The next day, Commissioner-Elect DeCiccio provided edits, including to state that the ordinance would be "replaced."

13. On March 27, 2020, the City provided notice of the March 30, 2020 virtual special meeting. The notice was posted on a bulletin board at the Winter Park City Hall (which was then largely closed to the public as a result of the COVID-19 pandemic) and was uploaded to the City's

website. The City Manager noted that the City's Charter permitted 24 hours' notice for a special meeting, although he could not recall another meeting set with one business day's notice.

14. At the March 30, 2020 special meeting, the City Commission conducted the first reading of the Rescission Ordinance and a public hearing on the Rescission Ordinance. Because of the COVID-19 pandemic, the meeting was held virtually. Members of the public were allowed to submit comments telephonically or through the City's web portal to be read into the record, and lengthier statements or documentary evidence were permitted to be submitted by email.

15. Plaintiffs, through Ms. Demetree's declaration, assert that the virtual format limited the public's ability to provide commentary at the March 30, 2020 meeting.

16. The minutes of the March 30, 2020 meeting reflect that approximately 200 persons attended the virtual meeting, which lasted roughly four and a half hours, and comments for or against the ordinance from over 65 individuals, including Plaintiffs, were read into the record.

17. On April 8, 2020, several residents of the City filed a petition with the Division of Administrative Hearings in *David C. Strong et al. v. City of Winter Park*, DOAH Case No: 20-001762GM (the "Administrative Proceeding"). The administrative petition asserted that the 2020 CPA Ordinance was not in compliance with the state comprehensive planning statutes.

18. On April 13, 2020, the City Commission conducted the second reading and a public hearing on the Rescission Ordinance. At that time, the City Commission, by a 3-2 vote, adopted the Rescission Ordinance, which purported to rescind the 2020 CPA and Zoning Ordinances. Because of the COVID-19 pandemic, the meeting was again conducted virtually.

19. The City did not follow the notice and procedural requirements for comprehensive plans amendments in Sections 163.3184(3) & (11), *Florida Statutes*, and Section 58-6(a)(3)b. of the Winter Park Code, or the requirements applicable to zoning changes affecting ten or more

contiguous acres in Section 166.041(3)(c)2., *Florida Statutes*. Instead, the City utilized the less stringent ordinance adoption procedures set forth in Section 166.041(3)(a), *Florida Statutes*.

20. On April 14, 2020, the City notified DEO of its decision to withdraw the comprehensive plan amendment and provided DEO with a copy of the Rescission Ordinance. On April 14, 2020, the City received an email from DEO acknowledging the City's withdrawal of the comprehensive plan amendment and indicating that DEO would update its records accordingly.

21. On April 21, 2020, the City filed a Notice of Suggestion of Mootness in the Administrative Proceeding based on the Rescission Ordinance, and the petitioners then voluntarily dismissed their challenge to the 2020 CPA Ordinance in the Administrative Proceeding. The administrative law judge then entered an Order Closing File and Relinquishing Jurisdiction, and the record reflects no further action on the 2020 CPA Ordinance by DEO or DOAH.

22. On August 12, 2020, the City Commission of the City of Winter Park adopted Ordinance No. 3179-20 (the "Readoption Ordinance"). Section 3 of the Readoption Ordinance purported to confirm, validate, and readopt the Rescission Ordinance and to make legislative findings that the City Commission properly adopted the Rescission Ordinance consistent with its own rules and procedures and applicable statutory notice and hearing requirements.

23. On December 8, 2021, the City adopted Ordinance 3227-21 (the "2021 CPA Ordinance") and Ordinance 3228-21 (the "2021 Zoning Ordinance").

24. The 2021 CPA Ordinance purports to readopt and confirm the repeal of the 2020 CPA and Zoning Ordinances and amends the City's Comprehensive Plan to create an Orange Avenue Overlay District with different land use entitlements than would have existed under the version of the Orange Avenue Overlay District that would have been created by the 2020 CPA

Ordinance. The 2021 Zoning Ordinance makes certain zoning changes consistent with the amendment to the Comprehensive Plan that is the subject of the 2021 CPA Ordinance.

25. Plaintiffs filed an administrative petition challenging the 2021 CPA Ordinance in *WP Station Tower, LLC v. City of Winter Park*, DOAH Case No. 22-0073GM. On August 10, 2022, DEO entered a Final Order adopting the administrative law judge's Recommended Order and finding the proposed plan amendment "in compliance" pursuant to Section 163.3184(1)(b).

26. Plaintiffs' property is situated within the Orange Avenue Overlay District that is currently governed by the 2021 CPA and Zoning Ordinances and the prior version of the Orange Avenue Overlay District that would have been created by the 2020 CPA Ordinance.

SUMMARY JUDGMENT STANDARD

27. Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(a). Rule 1.510 is to be "construed and applied in accordance with the federal summary judgment standard." *Id.* In enacting this language, the Florida Supreme Court signaled its intention to adopt the body of federal cases interpreting Federal Rule of Civil Procedure 56. Stated another way, the "act of transplanting federal rule 56 brings with it the 'old soil' of case law interpreting that rule." *In re Amendments to Fla. R. Civ. P. 1.510*, 317 So. 3d 72, 76 (Fla. 2021).

28. The Eleventh Circuit has summarized the federal standard as follows:

> [S]ummary judgment is proper if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Rule 56 mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. The moving party bears the initial burden of proving the absence of a genuine issue of material fact. The burden then shifts to the nonmoving party, who is required to go beyond the pleadings to establish that there is a genuine issue for trial. A dispute about a material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.

> On motion for summary judgment, the Court must construe the evidence and all reasonable inferences arising from it in the light most favorable to the non-moving party. Any factual disputes will be resolved in the nonmoving party's favor when sufficient competent evidence supports the non-moving party's version of the disputed facts. However, mere conclusions and unsupported factual allegations are legally insufficient to defeat a summary judgment motion. Moreover, a mere scintilla of evidence supporting the opposing party's position will not suffice; there must be enough of a showing that the jury could reasonably find for that party.

Whitehead v. BBVA Compass Bank, 979 F.3d 1327, 1328-29 (11th Cir. 2020) (citations and internal marks omitted). The Florida Supreme Court has intentionally abrogated prior case law requiring the denial of summary judgment if the trial court found the "slightest doubt" as to a factual issue. *In re Amendments to Fla. R. Civ. P. 1.510*, 309 So. 3d 192, 193 (Fla. 2020). The summary judgment standard now tracks the directed verdict standard and turns on whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id*. Put another way, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* (internal quotation marks omitted).

29. Under the federal standard, the movant no longer needs to affirmatively and conclusively negate the non-moving party's claim or defense. Instead, "[a] party asserting that a fact cannot be or is genuinely disputed must support the assertion by (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fla. R. Civ. P. 1.510(c)(1). Thus, the movant can merely point out "that there is an absence of evidence to support the nonmoving party's case," and summary judgment is then warranted if the non-moving party "fails to make a showing sufficient

to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *In re Amendments to Fla. R. Civ. P. 1.510*, 309 So. 3d at 193.

ANALYSIS

30. The Court first addresses the threshold issues of subject matter jurisdiction and mootness. The City argues that this Court lacks jurisdiction because Plaintiffs' claims would require it to assume the functions of DEO and to declare the 2020 CPA Ordinance "in compliance" with state comprehensive planning statutes pursuant to Section 163.3184, *Florida Statutes*.

31. Section 163.3184(10), *Florida Statutes*, provides that an administrative proceeding before DEO "shall be the sole proceeding or action for a determination of whether a local government's plan, element, or amendment is in compliance with this act." Section 163.3184(1)(b), in turn, defines the term "[i]n compliance" to mean "consistent with the requirements of ss. 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248, with the appropriate strategic regional policy plan, and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable."

32. No portion of Plaintiffs' claims in this action requires the Court to assess whether the 2020 CPA Ordinance or any other ordinance is "in compliance," as that term is statutorily defined. Instead, they challenge the manner in which the meetings directed to the Rescission Ordinance were noticed and conducted. Because Section 163.3184(10) does not vest exclusive jurisdiction in DEO to decide those issues, the Court does not lack subject matter jurisdiction.

33. The City raises two arguments with respect to mootness: (a) the Readoption Ordinance readopted the Rescission Ordinance and found that it was enacted in a manner consistent with law and the City Commission's own rules and procedures, and (b) the 2021 CPA

and Zoning Ordinances now govern the properties at issue, so that the requested declaration regarding the Rescission Ordinance would be an advisory opinion without legal consequence.

34. The Readoption Ordinance's "legislative findings" do not render Plaintiffs' claims moot. The Court readily acknowledges its limited role in the context of separation of powers and home rule authority, and as explained below, the City's internal rules do not provide a basis for declaring the Rescission Ordinance void. For notice and public meeting requirements created by statute or ordinance, however, it is within the Court's proper authority to assess and declare whether there has been compliance, and the City Commission cannot moot claims or foreclose judicial review merely by stating that its actions complied with applicable legal requirements.[2]

35. To the extent that the City asserts that Plaintiffs "did not amend the [Amended Complaint] to challenge the Readoption Ordinance" (Mot. for Summ. J. as to Mootness at p. 4), the Readoption Ordinance was adopted after the filing of this lawsuit and does not add substantively to the Court's summary judgment analysis, as it simply purported to readopt the Rescission Ordinance. And regardless, Plaintiffs have now filed a proposed amended pleading that would correct any pleading defect on this issue. For that reason, summary judgment is not warranted based on the operative pleading's failure to address the Readoption Ordinance.

36. The 2021 CPA and Zoning Ordinances offer a more substantive mootness argument. From the perspective of the actual use of the Plaintiffs' property, the requested declaration would have no obvious effect. Plaintiffs do not argue that the 2020 CPA and Zoning

[2] The Court rejects the City's argument that it must defer to the City Commission's interpretation of statutory requirements. Regardless of whether the Readoption Ordinance and subsequent enactments used the words "legislative findings," determining compliance with statutory notice and public meeting requirements is neither a policy choice nor "fact-finding" as part of the legislative process. Deference is afforded because lawmaking bodies are tasked with making policy decisions and are better positioned to conduct associated fact-finding involving input from a variety of interest groups. That rationale plainly has no bearing when a public body purports to make a "finding" on whether it previously complied with notice and public meeting requirements in the context of ongoing litigation over the very same issues.

Ordinances should be declared effective, and there is no clear legal path to such a result, considering that DEO never approved the proposed plan amendment. The 2021 CPA and Zoning Ordinances now govern Plaintiffs' property, and even in their proposed amended pleading, Plaintiffs advance no claim and offer no legal basis for challenging those ordinances. Accordingly, a ruling for or against Plaintiffs on the validity of the Rescission Ordinance will not have any actual impact on the land use entitlements and restrictions affecting their property, which will continue to be governed by the 2021 CPA and Zoning Ordinances regardless of the outcome of this case.

37. Plaintiffs rely primarily on *Anderson v. City of St. Pete Beach*, 161 So. 3d 548 (Fla. 2d DCA 2014), to argue that their claims are not moot. In *Anderson*, the plaintiff asserted that the City of St. Pete Beach failed to comply with Section 166.041, *Florida Statutes*, in enacting a comprehensive plan amendment and that the city commissioners violated the Sunshine Law by discussing and orchestrating the plan amendment and a change to the city charter outside of public meetings. The Second District found that there was not compliance with the requirements of Section 166.041 and voided the ordinance on that basis. *Id.* at 551. With respect to the alleged violation of the Sunshine Law, the City of St. Pete Beach asserted that it "cured" the violation (which involved holding "shade" meetings that exceeded their proper scope) by conducting subsequent public meetings and further argued that it was unnecessary for the Second District to reach the issue because it had already voided the ordinance in question. *Id* at 553. The Second District rejected the argument that the Sunshine Law claim was moot, reasoning as follows:

> Having concluded that the City did violate the Sunshine Law, we must address the remedy for that violation. The primary remedy Anderson has sought in bringing his Sunshine Law claim—having the adoption of the comprehensive plan amendment voided—has already been accomplished by virtue of our determination that the plan amendment was improperly adopted without complying with the notice provision of section 166.041(c)(3). Nevertheless, Anderson has argued, and the City conceded at oral argument, that Anderson is at least entitled to a declaration that the City violated the Sunshine Law, provided we conclude that it did. We also note

> that as argued by amicus First Amendment Foundation, Inc., even when an illicit action is "cured" it does not absolve a public body of its responsibility for violating the Sunshine Law in the first instance; it simply provides a way to salvage a void act by reconsidering it in Sunshine. Amicus also points out that responsibility for a violation can include criminal and noncriminal penalties under section 286.011(4). Thus, while there may be no need to declare the comprehensive plan void, we conclude that Anderson is still entitled to a declaration that the City violated the Sunshine Law. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

Id. at 553-54 (citations omitted).

38. Because Plaintiffs cited *Anderson* and several other decisions for the first time at the summary judgment hearing, the Court allowed the City an opportunity to file a supplemental brief further addressing the mootness issue. The City's memorandum primarily addresses the merits of the Sunshine Law claim and argues that "[t]he Court does not need to get to the issue of whether Count V is moot based on the case law cited by the Plaintiffs during the summary judgment hearing, because Count V does not state a cause of action." (Supp. Memo. at p. 9). The Court must, however, satisfy itself that there is an active dispute before reaching the merits. While the City points to factual distinctions with *Anderson* based on the amount of notice provided and the number of meetings held before and after adoption of the Rescission Ordinance, it ultimately offers no basis for distinguishing the decision's core holding on the question of mootness.

39. The mootness inquiry framed by *Anderson* does not focus on the ultimate impact on the comprehensive plan or the associated property rights, but on the public's entitlement to a declaration that the Sunshine Law has been violated. Although *Anderson* addresses the Sunshine Law in particular, the Court sees no basis to distinguish the other enactments relied on by Plaintiffs that also affect the public's notice of and access to meetings at which government decisions are made. Accordingly, the City has not shown that the claims are moot as a matter of law.

40. The Court turns next to the merits of Plaintiffs' claims. In their written submissions and oral argument, Plaintiffs leave no doubt of their sincere belief that the process of adopting the Rescission Ordinance was unfair (if not unseemly) and a sharp retreat from the process that produced the 2020 CPA Ordinance, which they describe as being marked by public participation and reasoned decision making. The Court's role is, however, a limited one, and it would be a dangerous infringement on local authority and legislative decisions for a single jurist to void enactments by elected officials based on general notions of fair play. Thus, the Court focuses on the specific statutes and other judicially enforceable provisions alleged to have been violated.

41. Many of the arguments raised by the parties focus on whether the 2020 CPA Ordinance became effective at the time of the Rescission Ordinance. Under the plain language of Section 163.3184(3)(c)4., *Florida Statutes*, the 2020 CPA Ordinance did not become effective. Because the 2020 CPA Ordinance was timely challenged in the Administrative Proceeding, the effectiveness of the 2020 CPA Ordinance was delayed "until the state land planning agency or the Administrative Commission enters a final order determining the adopted amendment to be in compliance." When the City adopted the Rescission Ordinance, the Administrative Proceeding remained pending, and no final order had been entered. As a result, the Rescission Ordinance operated to rescind (and withdraw from DEO's consideration) the 2020 CPA Ordinance.

42. Because neither the plan amendment nor the associated zoning changes had taken effect, the Rescission Ordinance did not amend the City's Comprehensive Plan or make a zoning change affecting ten or more contiguous acres, and the requirements of Sections 163.3184(3) & (11) and Section 166.041(3)(c)2., *Florida Statutes*, and Section 58-6(a)(3)b. of the Winter Park Code did not apply as a matter of law. Thus, the undisputed record shows that the City is entitled to summary judgment as a matter of law on Counts I through III of the Amended Complaint.

43. Count IV of the Amended Complaint asserts violations of certain internal rules and policies of the City Commission. First, Plaintiffs assert that the City violated Rule 11 of the Rules for the Conduct of City Commission Meetings and Decorum (the "Commission Rules"), which requires ordinances to be adopted in accordance with Section 166.041, *Florida Statutes*, and provides that ordinances would not be prepared for presentation to the Commission "unless ordered by a majority vote of the Commission, or requested by the City Manager, or prepared by the City Attorney on his own initiative." Second, Plaintiffs assert that the City violated its Policy for Placing Items on the Agenda (the "Agenda Policy") and reference the following language:

> No member of the Commission shall ask a staff member or the City Attorney to prepare a resolution, ordinance or other backup for an agenda item without that member first addressing it at a public meeting under New Business (Commission) and gaining consensus to consider the issue at a future meeting.
> * * *
> No item/issue may be brought up for reconsideration by a commissioner that was on the minority side of a vote until at least six months have passed since the action was taken. However, a commission member from the majority side of a vote may request that the item be reconsidered at any time by following the procedures outlined (in the Agenda Policy).[3]

44. The Commission Rules and Agenda Policy are not municipal ordinances susceptible to a declaration pursuant to Chapter 86, *Florida Statutes*. The Commission Rules were adopted by resolution of the City Commission. The record does not reflect how the Agenda Policy was adopted, but Plaintiffs point to no ordinance making it effective at the relevant time.

45. Plaintiffs offer no authority for the proposition that this Court can declare an ordinance invalid based on a local government's noncompliance with its internal rules and policies.

[3] It is not clear from the record and the City's request for admissions responses whether these provisions were operative at the time of the subject meetings. (*See* Def. Response to Plaintiffs' First Req. for Admissions filed on June 26, 2020). In its responses, the City references the Commission Rules as including the operative agenda policy, and indeed, Rules 5(A) and 5(B) appear to include language similar to that quoted in the Amended Complaint. In any event, the Court assumes for the purpose of deciding the Motion that the Agenda Policy was in effect and includes the language quoted in the Amended Complaint.

By its plain language, Section 86.021, *Florida Statutes*, limits the Court's authority to issue declarations to "municipal ordinance[s]" and makes no mention of resolutions or other municipal enactments. While an ordinance is "an official legislative action . . . enforceable as local law," a resolution is merely an "expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body." Fla. Stat. § 166.041(1); *see also Little v. City of N. Miami*, 805 F.2d 962, 966 (11th Cir. 1986) ("Florida law explicitly provides that an ordinance, and not a resolution is 'enforceable as a local law.'"). The Commission Rules themselves make clear that "[t]he City Commission will be the judge, interpreter, and enforcer of the rules set forth herein," and "[n]othing herein grants or is intended to grant any rights to or vest any rights in third parties to enforce or be beneficiaries of the rules set forth herein." (*See* Commission Rules, § 1; *see also id.* § 11(A) ("This Resolution does not and is not intended to create additional legal requirements for the Commission's adoption of ordinances and resolutions.")).

46. If the Legislature had intended to permit the Court to construe, interpret, and enforce rules, policies, or other enactments, it could easily have expanded the scope of Section 86.021, *Florida Statutes*, beyond "municipal ordinance[s]." The Legislature did not draft the statute so expansively, and the Court must acknowledge its limited to role and leave it to municipal bodies – and not the judiciary – to construe and enforce internal rules and policies. Because alleged noncompliance with the Commission Rules and Agenda Policy cannot support invalidation of the Rescission Ordinance, Count IV of the Amended Complaint fails as a matter of law.

47. Plaintiffs have not come forward with summary judgment evidence from which a reasonable factfinder could find a violation of the Sunshine Law.[4] The Court has closely reviewed

[4] The Court need not address the City's objection that Plaintiffs filed their response past the deadline established by Rule 1.510(c)(5). If the Court considers all materials submitted and arguments raised without

Mr. Knight's deposition testimony, Ms. Demetree's declaration, the emails submitted by Plaintiffs, and the remainder of the summary judgment record. Even if the Court views the evidence in the light most favorable to Plaintiffs, there are at most emails indicating that the Rescission Ordinance was added to the agenda at Commissioner-Elect DeCiccio's request, and she commented on, and worked with City staff to revise, the draft Rescission Ordinance. Her indication in an email that "we are not amending the ordinance but are replacing it" is a statement regarding the intended effect of the Rescission Ordinance and, without more, does not establish that Commissioner-Elect DeCiccio had discussions or made decisions with other Commissioners or Commissioners-Elect in a non-public context. Unlike in *Blackford v. School Board of Orange County*, 375 So. 2d 578, 580 (Fla. 5th DCA 1979), Plaintiffs have not offered testimony or other evidence that any of the Commissioners or Commissioners-Elect used Mr. Knight or staff members as a conduit and employed successive meetings or other mechanisms to indirectly violate the Sunshine Law.[5]

48. As to the public meetings themselves, Plaintiffs contrast the speed with which the Rescission Ordinance was adopted with what they characterize as a more deliberative and thoughtful approach in adopting the initial Orange Avenue Overlay District. Again, however, the Court cannot invalidate a local government action because it was taken hastily or in a manner that Plaintiffs contend to be unfair or unseemly absent a violation of applicable law – in this case, the

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regard to timeliness, Plaintiffs have not come forward with summary judgment evidence from which a reasonable factfinder could find a violation of the Sunshine Law.

[5] Importantly, the record includes several emails, but not testimony from anyone, including the Commissioners themselves, offering direct or circumstantial evidence of an improper discussion or decision. To be sure, the Court previously granted a protective order when the plaintiffs in the now-dismissed consolidated case sought to the depose the Commissioners, but it did so specifically because, at that time, "none of the substantive causes of actions asserted by Plaintiffs is premised on an alleged violation of the Sunshine Law." (Order on Def. Mot. for Protective Order dated Jan. 14, 2021 ¶ 5). The Court noted that "this ruling is without prejudice to a later showing that the requested depositions are warranted based on further developments in these proceedings." (*Id.* ¶ 7). Plaintiffs then added a substantive cause of action for violation of the Sunshine Law, but they never renewed their request for depositions of the Commissioners in the more than two and a half years that elapsed since issuance of the protective order.

Sunshine Law. In that regard, the City Commission was required to "provide reasonable notice" of the meetings in question. Fla. Stat. § 286.011(1). The undisputed evidence shows that the City provided three days' notice of the first meeting to consider the Rescission Ordinance. The three-day notice period exceeds what the City Charter required, and at least one appellate court has found three days' notice to be sufficient. *See Yarbrough v. Young*, 462 So. 2d 515, 516 (Fla. 1st DCA 1985) (notice through radio announcement on October 25 for meeting held on October 28).

49. Plaintiffs likewise have not shown that the meeting violated the Sunshine Law because it was held virtually. The March 30, 2020 meeting was held at the very outset of the COVID-19 Pandemic when applicable guidance restricted in-person gatherings, and the City Commission provided notice of the meeting through its website and allowed virtual access to the public. Although Plaintiffs make a general claim that the virtual format hampered access, they identify no violation of the Sunshine Law. Approximately 200 persons attended the virtual meeting, and public comments were received during the four and a half hour meeting from numerous members of the public, including Plaintiffs themselves. Plaintiffs do not identify any way in which they – or anyone else who wished to participate – were materially hindered in attending and observing the meeting or providing commentary because of the virtual format. Accordingly, this case is far removed from *Meyers v. Osceola County et al.*, Case No. 2020-CA-001169 (Fla. 9th Cir., Osceola Cty.), where an Executive Policy Group held unannounced, non-public meetings for which no minutes were created and no other records were generated.

50. For the foregoing reasons, the City has demonstrated that there is no genuine issue of material fact and that it is entitled to final summary judgment as a matter of law with respect to Counts I, II, III, IV, and V of the Amended Complaint.

MOTION TO AMEND

51. Plaintiffs seek leave to file a Second Amended Complaint that would expand on or modify several allegations and add new counts for breach of implied partnership agreement and estoppel to enforce private property rights. At the outset, the Court acknowledges that the standard for leave to amend is liberal and should be approached with still more liberality when the request to amend is made in response to a motion for summary judgment. *See, e.g.*, *Spolski Gen. Contractor, Inc. v. Jett-Aire Corp. Aviation Mgmt. of Cent. Fla., Inc.*, 637 So. 2d 968, 970 (Fla. 5th DCA 1994). Under Florida's liberal standard, denial of leave "is an abuse of discretion unless it is clear that allowing the amendment would prejudice the opposing party, the privilege to amend has been abused, or amendment would be futile." *Carr v. Eslinger*, 101 So. 3d 423, 423-24 (Fla. 5th DCA 2012). Even recognizing the leniency of this standard, leave to amend is due to be denied because the City has demonstrated that Plaintiffs' proposed amendment would be futile.

52. At the hearing on the Motion to Amend, Plaintiffs withdrew their request for leave to assert a cause of action for breach of implied partnership agreement. In any event, the proposed claim would be futile because, among other things, sovereign immunity bars claims against public bodies based on implied contractual theories. *See Goldstein v. Univ. of Cent. Fla. Bd. of Trustees*, Case No. 6D23-1203, 2023 WL 5492043, at *1-*3 (Fla. 6th DCA Aug. 25, 2023) (affirming dismissal of claim based on implied contractual theory against public university).

53. As to the proposed cause of action for estoppel to enforce private property rights, Florida law provides that estoppel may "be invoked against the government only in exceptional circumstances." *Town of Ponce Inlet v. Pacetta, LLC*, 120 So. 3d 27, 29 (Fla. 5th DCA 2013) (quoting *Citrus Cnty. v. Halls River Development, Inc.*, 8 So. 3d 413, 422 (Fla. 5th DCA 2009)). The doctrine applies "when a property owner (1) relying in good faith (2) upon some act or

omission of the government (3) has made such a substantial change in position or incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights that the owner has acquired." *Id.* (quoting *Citrus Cnty.*, 8 So. 3d at 421).

54. Plaintiffs seek an injunction precluding enforcement of the Rescission and Readoption Ordinances and requiring the City to accept zoning applications consistent with the initial Orange Avenue Overlay. As explained above, however, the 2020 CPA Ordinance never became effective because of the Administrative Proceeding, and the 2020 Zoning Ordinance was dependent on adoption of the proposed plan amendment. It would upend the state coordinated review process outlined in Section 163.3184 for the Court, without DEO's input or involvement, to permit development under a proposed amendment that never became effective, rather than the current comprehensive plan, and Plaintiffs offer no authority for the Court to award such relief.

55. In any event, Plaintiffs cannot have justifiably relied upon ordinances that were not yet effective based on the pending administrative challenge, and to the extent that Plaintiffs allege that they relied on other representations from City officials or staff, any such representations cannot, as a matter of law, result in acquisition of rights by estoppel. *See Pacetta*, 120 So. 3d at 30-31 ("Any assurances by town officials that the Comprehensive Plan would be amended so as to authorize Pacetta's development plans could not be relied upon in good faith by Pacetta, since town officials lacked the authority to unilaterally amend the Comprehensive Land-Use Plan. . . . Recognition of a vested right based on assurances from town officials to amend the Comprehensive Land-Use Plan would also be in violation of public policy, in light of the public hearings and other government approvals required for Comprehensive Plan amendments."). Accordingly, Plaintiffs' proposed claim for estoppel to enforce private property rights would be futile.

56. Plaintiffs' other proposed amendments to supplement or modify factual allegations, even if allowed, would not affect the Court's summary judgment ruling as outlined above. For that reason, it would be futile for the Court to permit the other requested amendments.

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED**:

(a) The City's Motion for Partial Summary Judgment filed on February 9, 2022 is **GRANTED**.

(b) The City's Motion for Partial Summary Judgment as to Count V (Government-in-the-Sunshine Law) of the Amended Complaint filed on August 23, 2023 is **GRANTED**.

(c) The City's Motion for Summary Judgment (Mootness) filed on February 21, 2023 is **DENIED**.

(d) Plaintiffs' Amended Motion for Partial Summary Judgment filed on March 1, 2023 is **DENIED**.

(e) Plaintiffs' Motion for Leave to Amend filed on August 15, 2023 is **DENIED**.

(f) The City has shown that there is no genuine issue of material fact and that it is entitled to final summary judgment as a matter of law on all claims asserted in this action by Plaintiffs.

(g) The Court hereby enters final summary judgment in favor of the City and against Plaintiffs on all claims asserted in this action.

(h) Plaintiffs shall take nothing by this action, and the City shall go hence without day.

(i) The Clerk of Courts is directed to close this case.

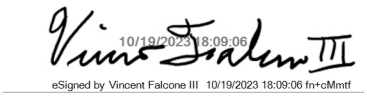
DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida this 19th day of October, 2023.

10/19/2023 18:09:06
eSigned by Vincent Falcone III 10/19/2023 18:09:06 fn+cMmtf

Vincent Falcone III
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this 19th day of October, 2023 by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.



Judge Vincent Falcone III