



Mayor
ROB MEDINA
Deputy Mayor
KENNY JOHNSON
Councilmembers
RANDY FOSTER
DONNY FELIX

AGENDA

Regular Council Meeting 2021-28 Thursday

**October 21, 2021 - 7:00 PM
Council Chambers, 120 Malabar Road SE, Palm Bay FL 32907**

CALL TO ORDER:

INVOCATION:

1. Pastor Troy Robinson - Lifepoint Church, Palm Bay.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

1. One (1) vacancy on the Youth Advisory Board (represents 'at-large student' member position).++
2. One (1) vacancy on the Youth Advisory Board (represents 'adult member, 30 years and older' position).++
3. One (1) vacancy on the Recreation Advisory Board (represents 'at-large position').++

AGENDA REVISIONS:

CONSENT AGENDA:

There will be no separate discussion on those items listed under Consent Agenda. They will be enacted by the City Council on one motion. If discussion is desired by the City Council, that item will be removed from the Consent Agenda by Council and will be considered in the order that it appears on the agenda.

1. Adoption of Minutes: Regular Council Meeting 2021-24; September 16, 2021.
2. Adoption of Minutes: Special Council Meeting 2021-27; October 12, 2021.
3. Award of Bid: Culvert pipe replacement, Unit 48 – IFB 65-0-2021 - Public Works Department (Timothy Rose Contracting, Inc. - \$581,754).
4. Resolution 2021-58, conveying City-owned surplus real estate located at 1942 Agora Circle SE to buyer BHA Land Investments, LLC.

5. Resolution 2021-59, conveying City-owned surplus real estate located at 1956 Agora Circle SE to buyer BHA Land Investments, LLC.
6. Consideration of Amendment 3 to the interlocal agreement with Brevard County for the Save Our Indian River Lagoon Project Cost Share Funding.
7. Consideration of the Addition of a Landscape Technician position within the Parks and Facilities Department
8. Consideration of utilizing Undesignated Fund Balance to modify the Procurement Position Control Plan (\$3,316).
9. Consideration of appropriating funds from the Building Department Undesignated Enterprise Fund for the purchase of a hybrid vehicle for the Building Department (\$28,960).
10. Consideration of travel and training for specified City employees (Office of the City Attorney).

RECOGNITIONS AND PROCLAMATIONS:

1. Recognition: One (1) year of service as a City boardmember on the Police and Firefighters' Pension Plan - Anthony Sacco.
2. Recognition: Ten (10) years of service as a City boardmember on the Police and Firefighters' Pension Plan - James Brock.
3. Recognition: Fifteen (15) years of service as a City boardmember on the Police and Firefighters' Pension Plan - Timothy Lancaster.
4. Proclamation: Recognizing hometown heroes for efforts in saving a life at the Palm Bay Aquatic Center. (Mayor Medina)
5. Proclamation: Lights on Afterschool - October 28, 2021. (Mayor Medina)
6. Proclamation: St. Francis Reflections Lifestage Care, Reflections of Love Day - November 3, 2021.
7. Proclamation: National Veterans Small Business Week - November 1-5, 2021. (Mayor Medina)

PRESENTATION:

1. Patrick Murphy, Acting Growth Management Director – nuisance properties update.

PUBLIC COMMENTS/RESPONSES:

Public comments will be heard by the City Council on non-agenda issues. Speakers must complete 'Public Comment Cards' (orange) and are limited to three (3) minutes each.

PUBLIC HEARINGS:

1. Ordinance 2021-66, granting approval of a Final Development Plan for a proposed Planned Unit Development (PUD) residential subdivision to be known as 'Gardens at Waterstone Phase II' on property located south of and adjacent to Melbourne Tillman Water Control District Canal 38, in the vicinity west of Mara Loma Boulevard (52.26 acres) (Case FD-33-2021, Waterstone Farms, LLC), final reading. (Quasi-Judicial Proceeding)
2. Ordinance 2021-67, amending the Code of Ordinances, Chapter 185, Zoning Code, Subchapter 'District Regulations', by including tree and landscape businesses as a conditional use within LI (Light Industrial and Warehousing District) zoning (Case T-36-2021, Michael and Lisa Cram), final reading.

UNFINISHED AND OLD BUSINESS:

1. Appointment of one (1) member to the Community Development Advisory Board.
2. Appointment of one (1) member to the Youth Advisory Board.

COMMITTEE AND COUNCIL REPORTS:

1. Committee/Council Reports

NEW BUSINESS:

1. Resolution 2021-60, declaring the position of Seat 5 on the Palm Bay City Council vacated as of August 10, 2021; scheduling a special municipal election for Tuesday, March 8, 2022.
2. Consideration of revising Council's Policies and Procedures with regard to the Order of Business at regular meetings.

ADMINISTRATIVE AND LEGAL REPORTS:

PUBLIC COMMENTS/RESPONSES: Speakers are limited to 3 minutes.

ADJOURNMENT:

Councilmembers who are members of the Space Coast Transportation Planning Organization (TPO) may discuss TPO issues which may subsequently be addressed by the TPO.

If an individual decides to appeal any decision made by the City Council with respect to any matter considered at this meeting, a record of the proceedings will be required, and the individual will need to ensure that a verbatim transcript of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based (FS 286.0105). Such person must provide a method for recording the proceedings verbatim.

Any aggrieved or adversely affected person desiring to become a party in the quasi-judicial proceeding shall provide written notice to the City Clerk which notice shall, at a minimum, set forth the aggrieved or affected person's name, address, and telephone number, indicate how the aggrieved or affected person qualifies as an aggrieved or affected person and indicate whether the aggrieved or affected person is in favor of or opposed to the requested quasi-judicial action. The required notice must be received by the Clerk no later than five (5) business days at the close of business, which is 5 p.m., before the hearing. (Section 59.03, Palm Bay Code of Ordinances).

In accordance with the Americans with Disabilities Act, persons needing special accommodations for this meeting shall, at least 48 hours prior to the meeting, contact the Office of the City Clerk at (321) 952-3414 or Florida Relay System at 711.

If you use assistive technology (such as a Braille reader, a screen reader, or TTY) and the format of any material on this website or documents contained therein interferes with your ability to access information, please contact us. To enable us to respond in a manner most helpful to you, please indicate the nature of your accessibility problem, the preferred format in which to receive the material, the web address of the requested material, and your contact information. Users who need accessibility assistance can also contact us by phone through the Federal Information Relay Service at 1-800-877-8339 for TTY/Voice communication.

Pursuant to Council Policies and Procedures, members of the public wishing to use electronic media when addressing City Council must provide the electronic file to staff for screening no later than 2:00 P.M. on the day of the meeting; audio presentations must be submitted to the City Clerk at least twenty-four (24) hours prior to the meeting.

THIS MEETING IS BROADCAST LIVE ON THE CITY'S WEBSITE AND TELEVISED ON THE SPACE COAST GOVERNMENT TV CHANNEL.



LEGISLATIVE MEMORANDUM

DATE: 10/21/2021

RE: Adoption of Minutes: Regular Council Meeting 2021-24; September 16, 2021.

ATTACHMENTS:

Description

Minutes - RCM 2021-24

CITY OF PALM BAY, FLORIDA

REGULAR COUNCIL MEETING 2021-24

Held on Thursday, the 16th day of September 2021, at the City Hall Council Chambers, 120 Malabar Road, SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Office of the City Clerk, City Hall, Palm Bay, Florida.

The meeting was called to order at the hour of 7:07 P.M.

Pastor Caleb Phelps, Faith Baptist Church, Palm Bay, gave the invocation which was followed by the Pledge of Allegiance to the Flag.

ROLL CALL:

MAYOR:	Rob Medina	Present
DEPUTY MAYOR:	Kenny Johnson	Present
COUNCILMEMBER:	Randy Foster	Present
COUNCILMEMBER:	Donny Felix	Present
CITY MANAGER:	Suzanne Sherman	Present
CITY ATTORNEY:	Patricia Smith	Present
DEPUTY CITY CLERK:	Terri Lefler	Present

CITY STAFF: Christopher Little, Utilities Director; Nancy Bunt, Community and Economic Development Director; Patrick Murphy, Acting Growth Management Director.

ANNOUNCEMENT(S):

Deputy Mayor Johnson announced the following vacancies and solicited applications for same:

- 1. One (1) vacancy on the Business Improvement District Board (represents 'at-large' member who owns a commercial property or operates a business within the District).++**
- 2. One (1) vacancy on the Community Development Advisory Board (represents 'residential home builder', 'actively engaged in home building', 'for-profit provider' or 'not-for profit provider' positions).++**
- 3. Two (2) vacancies on the Youth Advisory Board (represents 'at-large- student member positions).++**
- 4. One (1) vacancy on the Youth Advisory Board (represents 'adult member, 30 years and older' position).++**

AGENDA REVISION(S):

1. Ms. Sherman noted that on Item 2, under Consent Agenda, relating to the award of proposal for commercial real estate brokerage services, the company name had changed from National Realty of Brevard, Inc. to One Sotheby's International Realty due to a merger; however, the same employees would be working with the City, and this did not affect staff's recommendation.

CONSENT AGENDA:

All items of business under the 'Consent Agenda' heading were enacted by the following motion:

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, that the Consent Agenda be approved as presented with the removal of Items 3, 7, 10, 12, and 15 from consent. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

1. Award of Proposal: Bus bench and bus shelter advertising - RFP 49-0-2021 – Public Works Department (Fuel Media Holdings - \$38,100 in estimated revenue).

Staff Recommendation: Approve the award for bus bench and bus shelter advertising with Fuel Media Holdings (Ponte Vedra), with an anticipated revenue of \$38,100.

The item, considered under Consent Agenda, was approved as recommended by City staff.

2. Award of Proposal: Commercial real estate brokerage services - RFP 59-0-2021 – Community and Economic Development Department (National Realty of Brevard, Inc. - commissions paid from proceeds of sales).

Staff Recommendation: Approve the award for commercial real estate brokerage services with National Realty of Brevard, Inc. (Melbourne), with commissions paid to the commercial broker from the proceeds of each sale.

The item, considered under Consent Agenda, was approved as recommended by City staff.

3. Contract: South Regional Water Reclamation Facility construction, Change Order 3 (IFB-39-0-2020) – Utilities Department (RJ Sullivan - \$350,466).

Staff Recommendation: Approve Change Order 3 for the South Regional Water Reclamation Facility construction with RJ Sullivan Corporation (Pompano Beach), in the amount of \$350,465.82.

Bill Battin, resident, said this request saved money for the city but also relinquished any tax revenue that would have come to the city. Mr. Little explained that the tax savings was for state sales tax.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to approve Change Order 3 with RJ Sullivan Corporation (Pompano Beach) for construction of the South Regional Water Reclamation Facility in the amount of \$350,465.82. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

4. Resolution 2021-44, amending Resolution 2020-49, adopting Classification and Pay Plans and the Position Control Plan for employees of the City of Palm Bay (fourth amendment).

The City Attorney read the resolution in caption only.

The item, considered under Consent Agenda, was approved as recommended by City staff.

5. Resolution 2021-45, amending Resolution 2020-50, adopting the Five-Year Capital Improvements Program for Fiscal Years 2020-2021 through 2024-2025 (fourth amendment).

The City Attorney read the resolution in caption only.

The item, considered under Consent Agenda, was approved as recommended by City staff.

6. Consideration of an Interlocal Agreement with the City of Melbourne for the Florida Avenue Paving Project.

Staff Recommendation: Approve the Interlocal Agreement with the City of Melbourne for the Florida Avenue Paving Project, with the City of Palm Bay's cost-share of sixty-five percent (65%) of the estimated project cost of \$96,128.62.

The item, considered under Consent Agenda, was approved as recommended by City staff.

7. Consideration of terminating the grant agreements with the Florida Division of Emergency Management and the Florida Department of Economic Opportunity for the Voluntary Home Buyout Program due to lack of eligible households to participate in the program.

Staff Recommendation: Approve the termination of the grant agreements with the Florida Division of Emergency Management and the Florida Department of Economic Opportunity for the Voluntary Home Buyout Program.

Bill Battin, resident, said he had previously questioned what would happen if the program failed and was advised by previous management that there was a back-up plan. He questioned what was going to happen to the homes that should have been in the program and if this affected the bridge at Ferguson Street that had yet to be constructed.

Ms. Sherman said she was unaware of any back-up plans and advised that the Ferguson bridge project was still ongoing. Mrs. Bunt explained there were thirteen (13) homeowners that were interested in the program. The City received over \$2 million in grant funds and as there was a match requirement, the owners had to be 70% low-to-moderate income. Eventually, there were only five (5) owners that were interested, and all were over the income limits. Staff tried various resources and different ways to match the funds but were unable to assist any of the households due to their income levels.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to terminate the grant agreements with the Florida Division of Emergency Management and the Florida Department of Economic Opportunity for the Voluntary Home Buyout Program.

Mr. Foster asked if there was any way that the five (5) homeowners would still be eligible and be relocated. Ms. Sherman said that once the program was terminated, no one would be able to participate. She clarified that the five (5) homeowners did not actually qualify for the program due to their being over the income limits. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

8. Consideration of a purchase offer for City-owned surplus real estate located at 1942 Agora Circle SE to buyer BHA Land Investments, LLC (\$45,000).

Staff Recommendation: Authorize the City Manager to execute the purchase contract for City-owned surplus real estate, located at 1942 Agora Circle SE, with buyer BHA Land Investment, LLC, with sales proceeds in the amount of \$45,000.

The item, considered under Consent Agenda, was approved as recommended by City staff.

9. Consideration of a purchase offer for City-owned surplus real estate located at 1956 Agora Circle SE to buyer BHA Land Investments, LLC (\$45,000).

Staff Recommendation: Authorize the City Manager to execute the purchase contract for City-owned surplus real estate, located at 1956 Agora Circle SE, with buyer BHA Land Investment, LLC, with sale proceeds in the amount of \$45,000.

The item, considered under Consent Agenda, was approved as recommended by City staff.

10. Consideration of a purchase offer for City-owned surplus real estate (Tax ID 2839297, in the vicinity of 320 Chaska Street NE) to buyers Randy and Tammy Holliday (\$26,000).

Staff Recommendation: Authorize the City Manager to execute the purchase contract for City-owned surplus real estate, located in the vicinity of 320 Chaska Street NE (Tax ID 2839297), with buyers Randy and Tammy Holliday, with sale proceeds in the amount of \$26,000.

Mr. Felix did not feel this was a fair market price. The property was landlocked as there were no streets and no entrance but felt the sale price was too low for the size of the property. He said the item should be withdrawn. Deputy Mayor Johnson agreed. Mr. Foster asked if the property was appraised and if there was an offer. Mrs. Junkala-Brown said a Comparative Market Analysis was performed. Appraisals would be required for residential properties less than ten (10) acres that could not be developed as commercial. Mrs. Bunt said an offer of \$26,000 had been received from the Hollidays but Council could counteroffer or hold off on the property sale. Mr. Foster said the city had no use for the property and if Council rejected the offer, the property would just sit there. Mr. Felix felt that \$50,000 would be a fair counteroffer or have staff solicit the surrounding neighbors for interest.

Motion by Mr. Felix, seconded by Deputy Mayor Johnson, to extend a counteroffer of \$50,000 to buyers Randy and Tammy Holliday. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

11. Consideration of amending the Planning and Zoning Board By-laws by including provisions for attendance by boardmembers.

Staff Recommendation: Approve an amendment to the Planning and Zoning Board By-laws by including provisions for attendance by boardmembers.

The item, considered under Consent Agenda, was approved as recommended by City staff.

12. Consideration of adopting the Sustainability Action Plan.

Staff Recommendation: Adopt the Sustainability Action Plan.

Bill Battin, resident, said that when Planned Unit Developments (PUD) were constructed, they were required to have water and sewer. However, also within those PUDs, wells were installed for irrigation purposes which pulled from the water table and negatively affected the surrounding area that may not have city utilities. He did not see this issue addressed in the Sustainability Action Plan. Ms. Sherman said she would discuss with staff.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to adopt the Sustainability Action Plan. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

13. Consideration of a new position and job description titled ‘Records Supervisor’ within the Police Department.

Staff Recommendation: Approve a new position and job description titled ‘Records Supervisor’ within the Police Department.

The item, considered under Consent Agenda, was approved as recommended by City staff.

14. Consideration of utilizing Police Impact Fees for the conversion of a marked patrol vehicle to a marked K9 unit (\$6,175).

Staff Recommendation: Approve the utilization of Police Impact Fees for the conversion of a marked patrol vehicle to a marked K9 unit, in the amount of \$6,175.

The item, considered under Consent Agenda, was approved as recommended by City staff.

15. Consideration of appropriating funds from the Undesignated Fund Balance to the Solid Waste Fund to cover the September 2021 invoice balance for Republic Services (\$230,000).

Staff Recommendation: Approve the appropriation of funds from the Undesignated Fund Balance to the Solid Waste Fund to cover the September 2021 invoice balance for Republic Services, in the amount of \$230,000.

Randall Olszewski, resident, asked how this deficit occurred. Ms. Sherman explained that projected revenues were based on when residents paid their bills and, typically, were not based on 100% collection as not all customers paid their bills. This budget was based on all customers paying on time every month so a budget transfer was needed to make the number whole.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to appropriate funds from the Undesignated Fund Balance to the Solid Waste Fund to cover the September 2021 invoice balance for Republic Services in the amount of \$230,000. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

RECOGNITIONS AND PROCLAMATION:

The proclamation was read and individuals were recognized.

- 1. Recognizing five (5) years of service as a City boardmember on the Planning and Zoning Board - Leeta Jordan; Kay Maragh; Rainer Warner.**
- 2. Recognizing five (5) years of service as a City boardmember on the Utilities Advisory Board - Richard Dexter; Robert Grassman.**
- 3. Esther Theological Seminary - 1st Inauguration, September 2021. (Councilman Foster)**

PUBLIC COMMENT(S)/RESPONSE(S): (Non-agenda Items Only)

1. Randall Olszewski, resident, felt that a board should be established to address long-term and/or high dollar contracts before final approval by Council. Specifically, he suggested a board for solid waste services and the Republic Services contract.

2. Bill Battin, resident, felt that having the Bayfront Community Redevelopment Agency (BCRA) meetings immediately prior to the regular Council meeting caused a strain for residents to submit comment cards on time for the Council meeting.

3. Mayor Paul Alfrey, City of Melbourne, stated that the Melbourne Council unanimously voted to allocate \$2.5 million of CARES Act funding to provide a center for outreach for homelessness. He asked that the staffs of Palm Bay and Melbourne work together and discuss ways to collaborate in the effort. Mayor Alfrey said he had a proposed plan involving Daily Bread becoming a 24-hour facility to serve Melbourne and Palm Bay.

4. Jeff Njus, Daily Bread, said the organization had transformed from a soup kitchen to focusing on housing and homelessness outreach. He said the organization needed to move in order to meet the needs of the community.

Mayor Medina asked if a site had been selected. Mr. Njus responded in the negative. Deputy Mayor Johnson asked if staff had met regarding this issue. Ms. Sherman confirmed same and said there had been open discussions with the City Manager of Melbourne. There were no details or recommendations from staff at this time. Mayor Alfrey said that as the largest city, Palm Bay was his first stop, but he would be reaching out to other entities. Councilmembers expressed their support.

Deputy Mayor Johnson asked that ideas not be limited to just having a facility. He wanted various options to be brought to the table. Ms. Sherman said that staff would meet with the other municipalities and bring further information to Council for discussion in the future. Mayor Medina suggested a workshop with Melbourne and West Melbourne to discuss ideas and options.

Ms. Sherman responded to the other public comments: staff would be meeting with Republic Services to provide a performance review and to discuss amendments to the contract; she noted the transition time between the BCRA and regular Council meetings and would discuss with staff.

PUBLIC HEARING(S):

1. Ordinance 2021-45, amending the Code of Ordinances, Chapter 185, Zoning Code, Subchapter 'District Regulations' by modifying provisions of the BMU - Bayfront Mixed Use District (Case T-8-2021, City of Palm Bay), final reading.

The City Attorney read the ordinance in caption only. The public hearing was opened and closed as there were no comments.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to adopt Ordinance 2021-45. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

2. Ordinance 2021-51, amending Ordinance 2020-17, which established the Everlands Community Development District (CDD), by expanding the designated land area for which the CDD would exercise special powers related thereto, final reading.

The City Attorney read the ordinance in caption only. The public hearing was opened. Attorney Ginger Wald, representative for the applicant, presented the request to Council. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to adopt Ordinance 2021-51. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

3. Ordinance 2021-55, amending the Fiscal Year 2020-2021 budget by appropriating and allocating certain monies (fourth budget amendment), final reading.

The City Attorney read the ordinance in caption only. The public hearing was opened and closed as there were no comments.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to adopt Ordinance 2021-55. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

4. Ordinance 2021-56, vacating portions of the rear and side public utility and drainage easements located within Lots 16, 17, and 18, Block 1983, Port Malabar Unit 40 (Case VE-5-2021, Azzurri Property Holdings Inc.), final reading.

The City Attorney read the ordinance in caption only. The public hearing was opened. The applicant presented the request to Council. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to adopt Ordinance 2021-56. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

5. Ordinance 2021-57, vacating a portion of the side public utility and drainage easement located within Tract “D”, Port Malabar Unit 42 (Case VE-6-2021, Massimiliano “Max” Delli), final reading.

The City Attorney read the ordinance in caption only. The public hearing was opened. The applicant was not in attendance. The public hearing was closed.

Bill Battin, resident, asked if the 10-foot driveway width would still allow city access for emergencies. Mr. Murphy responded that emergency staff usually stayed near the property line and would access by foot but would do what was necessary to handle the emergency.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to adopt Ordinance 2021-57. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

6. Ordinance 2021-58, vacating a portion of the rear public utility and drainage easement located within Lot 4, Block 2507, Port Malabar Unit 48 (Case VE-7-2021, Robert and Heather Whitmire), final reading.

The City Attorney read the ordinance in caption only. The public hearing was opened. The applicant was not in attendance. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to adopt Ordinance 2021-58. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

7. Ordinance 2021-59, vacating a portion of the rear public utility and drainage easement located within Lot 27, Block 2668, Port Malabar Unit 50 (Case VE-8-2021, Brian and Michelle Mallonn), final reading.

The City Attorney read the ordinance in caption only. The public hearing was opened. The applicants presented the request to Council. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to adopt Ordinance 2021-59. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

8. Ordinance 2021-60, vacating a portion of the rear public utility and drainage easement located within Lot 11, Block 193, Port Malabar Unit 7 (Case VE-9-2021, Jose Santana), final reading.

The City Attorney read the ordinance in caption only. The public hearing was opened. The applicant presented the request to Council. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to adopt Ordinance 2021-60. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

9. Ordinance 2021-65, granting approval of a Final Development Plan for a Planned Unit Development of a proposed residential subdivision to be known as 'Cypress Bay West Phase II' on property located west of and adjacent to Babcock Street, in the vicinities south of Mara Loma Boulevard and north of Davis Lane (185.747 acres) (Case FD-30-2021, Waterstone Holdings, LLC; Waterstone Farms, LLC; and, Forestar (USA) Real Estate Group), first reading. (Quasi-Judicial Proceeding)

Staff recommended the following conditions be addressed upon submission of the administrative construction plans:

- Fully engineered construction drawings;
- A Subdivision Plat meeting Chapter 177 of the Florida State Statutes and a title opinion;
- The technical comments generated by the Development Review Staff, hereby incorporated as Exhibit 'D', shall be observed and incorporated into the engineered construction drawings;
- Mara Loma Boulevard and Journey Drive right-of-way shall not be accepted by the City of Palm Bay for operation and maintenance, until and unless the Developer requests acceptance through the process promulgated in Chapter 182 of the Palm Bay Code of Ordinances. Upon commencement of said process, staff shall determine if acceptance of these roadways will provide a public benefit and that current City of Palm Bay construction standards are met; and
- An updated traffic study including traffic counts for Cypress Bay West Phase II shall be provided. This is to facilitate the determination of the Proportionate Fair Share contribution that may be due from the Developer towards the traffic impact improvements at associated segments along Babcock Street. These were previously recommended in the 2017 Waterstone Traffic Impact Study for the 2025 build-out.

The Planning and Zoning Board recommended approval of the request, subject to the comments in the Staff Report.

The City Attorney read the ordinance in caption only. The public hearing was opened. Chris Tyree, Forestar Real Estate Group and representative for the applicant, presented the request to Council.

Bill Battin, resident, asked when commercial would be developed or if the residential portion had to be completed first. He said there was only one egress from the site onto Babcock Street and felt another should be added to the north, possibly at Lowry Boulevard. He said it was mentioned that St. Johns Heritage Parkway (Parkway) would be used as an exit point but it may never get completed.

Mr. Tyree said he was a residential developer and was unsure of the commercial component but explained how commercial development was typically added based on the number of homes being built. He added that this project would have direct connection to the Parkway through Journey Drive, and Mara Loma Boulevard would also be extended to connect to Journey Drive.

Deputy Mayor Johnson requested an update on the Parkway project in the future.

Mr. Murphy addressed the comment regarding Lowry Boulevard and stated that the roadway did not connect into this property. He said that the Parkway project was still in the stages of determining the alignment and may take years to be completed. Mr. Murphy concurred with Mr. Tyree's statement regarding commercial development, and he was hopeful that applications for the commercial pieces would be received soon.

The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to approve Ordinance 2021-65. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

UNFINISHED AND OLD BUSINESS:

1. Appointment of one (1) member to the Melbourne-Tillman Water Control District.

The individuals were rated by the City Council due to the number of applications exceeding the number of vacant positions. Number 1 represented the first choice of each

councilmember and so on. The individual(s) receiving the lowest number(s) to the position(s) were considered for appointment to the board.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to appoint Philip Weinberg to the Melbourne-Tillman Water Control District. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

COMMITTEE AND COUNCIL REPORTS:

Councilmembers addressed various subject matters and provided updates on activities of agencies and boards on which they served as members.

1. *Space Coast Transportation Planning Organization (TPO)*. Mr. Foster said there was discussion regarding widening Babcock Street between Palm Bay Road and New Haven Avenue, as well as constructing roundabouts, for the purpose of slowing traffic. He was not in support of roundabouts and felt it would create major traffic issues. Mayor Medina suggested that staff send a letter to the TPO stating that Palm Bay was opposed to roundabouts in that area. Ms. Sherman said a preliminary study for the portion of Babcock Street south of Malabar Road also included roundabouts and she would address that in the letter as well, if desired by Council. Council concurred.
2. Deputy Mayor Johnson said that over the past few years, he, along with volunteers in the community, would assist the elderly and disabled with installing shutters for hurricane season. Former members of the Youth Advisory Board agreed to partner with a non-profit organization, Brevard Volunteer Organizations Active in Disaster (VOAD). Residents had to have their own shutters as VOAD did not provide shutters or plywood. They could be reached at 352-340-3202 or shuttersbrevard@gmail.com.
3. Mayor Medina said that back in the 1990's, the city had a "vision board" that consisted of residents. Citizens had a five (5) or ten (10) year plan on what and how they envisioned the city from different aspects, such as public works, parks and recreation, first responders, etc. He wanted to implement a visioning board and wanted citizen input on how the city grew in the future.
4. Mayor Medina mentioned the Mayor's Ball and said he wanted to have the event held within the city. He asked to send a letter to L3 Harris requesting their hosting of the event and use of their facility. Council concurred.
5. Mr. Foster appointed Christian Hamilton to the Youth Advisory Board.

NEW BUSINESS:

1. Consideration of co-sponsorship and waiver of the fee for the mobile stage for Pushback 2020's Community Immunity event on September 18, 2021 (valued at \$924.78)

Staff Recommendation: Approve the co-sponsorship and waive the fee for the mobile stage and cost of staff time, valued at \$924.78, for Pushback 2020's Community Immunity event on September 18, 2021.

Ms. Sherman presented the request to Council. She mentioned that the new co-sponsorship policy was to be implemented as of October 1, 2021. There were three (3) criteria to qualify: free/open to general public; planned and conducted by a non-profit organization; and the event would be held on city-owned property. Request would have to be submitted at least ninety (90) days prior to the event. Ms. Sherman requested input from Council on the criteria and submission deadline.

Mayor Medina did not want staff to be handcuffed with a deadline or having it on city property. Staff should be given discretion regarding the time frame. Deputy Mayor Johnson agreed. Mr. Felix wanted to be sure the location met certain criteria as it related to liability. Mr. Foster agreed and said it should be within the city limits and not necessarily on city property.

Ms. Sherman said that as these requests would be presented to Council, a time frame should be included as part of the application process. Deputy Mayor Johnson suggested 30-45 days. Ms. Sherman said she was considering forty-five (45) days. Council concurred.

Bill Battin, resident, said that rules should be established and followed, and Council should not pick and choose which organizations would receive waivers and which would pay.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to approve the co-sponsorship and waive the fee for the mobile stage as requested. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

2. Consideration of remuneration for Assistant City Attorneys.

Staff Recommendation: Approve additional salary to Rodney Edwards; and approve the creation of additional positions for the City Attorney's Office.

Ms. Smith presented the request to Council. She asked that Council only consider Mr. Edwards' salary at this time. She would present a departmental reorganization at a later date. Ms. Smith said she performed a salary survey of other municipalities of similar size throughout the state and Mr. Edwards was the lowest paid attorney.

Dr. Doreatha Fields, resident, spoke in support of Mr. Edwards and the request.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to promote Rodney Edwards to Deputy City Attorney GE-AP at the base salary of \$85,194.

Mr. Foster said that Mr. Edwards had been at the same salary since January 27, 2017. He felt that the salary should be the same as the other non-board-certified Deputy Attorneys. Mr. Felix supported Councilman Foster's comments. There was discussion on the work history of Mr. Edwards to which Ms. Smith provided clarification. Mr. Foster said that Mr. Edwards was hired as an attorney and should be paid equal to Erich Messenger, Deputy City Attorney. Mayor Medina supported the motion as is. He did not agree with approving anything above what was recommended by Ms. Smith.

Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

3. Consideration of councilmembers attending the Institute for Elected Municipal Officials 1 (IEMO 1) from October 8-10, 2021, in Kissimmee.

Deputy Mayor Johnson and Councilman Felix would attend the conference. Mayor Medina had to check his schedule and would notify staff if he was able to attend. Council concurred.

4. Consideration of councilmembers attending the Florida League of Cities 2021 Legislative Conference from November 3-5, 2021, in Kissimmee.

Deputy Mayor Johnson and Councilmembers Foster and Felix would attend the conference and would drive back for the Council meeting. Mayor Medina had to check his schedule and would notify staff if he was able to attend. Council concurred.

ADMINISTRATIVE AND LEGAL REPORTS:

1. Ms. Sherman made the following reports:

a. Funding for a strategic planning session had been included in the budget for Fiscal Year 2022;

b. A Council workshop was tentatively scheduled for review of the building permit process. It would be held on Tuesday, October 26th, at 6:00 P.M., at the Tony Rosa Community Center; and

c. Staff would be scheduling a meeting with Council in the near future to discuss union negotiations.

PUBLIC COMMENTS/RESPONSES:

There were no comments.

ADJOURNMENT:

There being no further business, the meeting adjourned at the hour of 10:15 P.M.

Rob Medina, MAYOR

ATTEST:

Terri J. Lefler, DEPUTY CITY CLERK



LEGISLATIVE MEMORANDUM

DATE: 10/21/2021

RE: Adoption of Minutes: Special Council Meeting 2021-27; October 12, 2021.

ATTACHMENTS:

Description

Minutes - SCM 2021-27

CITY OF PALM BAY, FLORIDA

SPECIAL COUNCIL MEETING 2021-27

Held on Tuesday, the 12th day of October 2021, at the City Hall Council Chambers, 120 Malabar Road, SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Office of the City Clerk, City Hall, Palm Bay, Florida.

The meeting was called to order at the hour of 6:00 P.M.

ROLL CALL:

MAYOR:	Rob Medina	Present
DEPUTY MAYOR:	Kenny Johnson	Present
COUNCILMEMBER:	Randy Foster	Present
COUNCILMEMBER:	Donny Felix	Present
CITY MANAGER:	Suzanne Sherman	Present
CITY ATTORNEY:	Patricia Smith	Present

Also present were Rodney Edwards, Deputy City Attorney; Margaret Sheffield, Court Reporter.

BUSINESS:

Attorney-client session scheduled to discuss the following pending litigation to provide the City Attorney/Attorneys advice confined to settlement negotiations or strategy sessions related to litigation expenditures:

1. Patricia E. Morgan v. City of Palm Bay (Case 05-2020-CA-054664).

Mayor Medina announced the names of the individuals who would be in attendance at the session. He stated the session would last approximately thirty (30) minutes.

The City Council moved to the City Manager's Conference Room to hold the attorney-client session and returned to the Council Chambers at the conclusion of same.

ADJOURNMENT:

There being no further business, the meeting adjourned at the hour of 6:30 P.M.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Mehul Parekh, Public Works; Juliet Misconi, Chief Procurement Officer

DATE: 10/21/2021

RE: Award of Bid: Culvert pipe replacement, Unit 48 – IFB 65-0-2021 - Public Works Department (Timothy Rose Contracting, Inc. - \$581,754).

This project is comprised of the removal, disposal, replacement, and restoration of 65 culvert crossings at 63 locations within Unit 48; Construction of this project is turn-key and will include all aspects of work.

Six (6) bids were received. The Procurement Department staff reviewed the bids for responsiveness. One (1) of the bids was a "No Bid." Public Works Department evaluated the bids for responsibility and ability to perform the scope of services. The Department found the lowest responsive bid to be acceptable.

The City's Engineer's estimate for this project was \$586,347.98. The lowest bid is \$581,753.50. Public Works staff has reviewed the low bidder's Summary of Pay Items, proposed Subcontractors, Equipment List and References and is satisfied with the evidence provided by the contractor. Staff recommends Timothy Rose Contracting, Inc. of Vero Beach, Florida for award of IFB #65-0-2021/MS – Culvert Pipe Replacement – Unit 48.

REQUESTING DEPARTMENT:

Public Works, Procurement

FISCAL IMPACT:

The total project award will be \$581,753.50. Funds are available in the Stormwater Utility Fund Account 461-7084-541-6309 project 21SU16 Unit 48 Pipe Replacement.

RECOMMENDATION:

Motion to approve award of IFB #65-0-2021/MS Culvert Pipe Replacement – Unit 48 to Timothy Rose Contracting, Inc. of Vero Beach, Florida.

ATTACHMENTS:

Description

Tabulation Sheet

		IFB #65-0-2021/MS Culvert Pipe Replaacement - Unit 48			Timothy Rose Contracting, Inc.		Johnson-Davis Incorporated		Parkit Construction, Inc.		MVB & Associates, Inc.		Affordable Development, a division of DRIVEWAYS, INC.		JoBear Contracting, Inc.	
					825 8th Street		863 S. Kings Hwy		1982 Sorento Circle		6565 Hazeltine National Drive, Suite #12		3300 Bobbi Lane		1950 Danr Dr. NE	
					Vero Beach, FL 32962		Fort Pierce, FL 34945		West Melbourne, FL 32904		Orlando, FL 32822		Titusville, FL 32780		Palm Bay, FL 32905	
					772-564-7800		772-468-9200		321-426-6556		407-578-9595		321-267-4032		321-723-3571	
		Items in RED indicate an error between the Unit Price and Extended Price			accounting@timothyrosecontracting.com		ccryer@johnsondavis.com		daprk1@cfl.rr.com		christian@mvgbc.com		driveways-heidi@cfl.rr.com		trey@jobearinc.com	
ITEM	FDOT Item #	ITEM DESCRIPTION	Est. Annual Qty	UOM	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	101-1	Mobilization	1	LS	\$ 69,400.00	\$ 69,400.00	\$ 40,000.00	\$ 40,000.00	\$ 71,600.00	\$ 71,600.00	\$ 72,450.00	\$ 72,450.00	\$ 83,600.00	\$ 83,600.00	NO BID	
2	102-1	Maintenance of Traffic	1	LS	\$ 11,000.00	\$ 11,000.00	\$ 21,500.00	\$ 21,500.00	\$ 7,000.00	\$ 7,000.00	\$ 86,940.00	\$ 86,940.00	\$ 71,214.00	\$ 71,214.00		
3	104-1	Erosion Control	1	LS	\$ 5,325.00	\$ 5,325.00	\$ 4,000.00	\$ 4,000.00	\$ 5,700.00	\$ 5,700.00	\$ 17,388.00	\$ 17,388.00	\$ 18,150.00	\$ 18,150.00		
4	120-3	Lateral Ditch Excavation	2,520	LF	\$ 8.50	\$ 21,420.00	\$ 14.50	\$ 36,540.00	\$ 12.20	\$ 30,744.00	\$ 40.00	\$ 100,800.00	\$ 44.00	\$ 110,880.00		
5	285-706	Optional Base, Group 06	1180	SY	\$ 24.45	\$ 28,851.00	\$ 24.00	\$ 28,320.00	\$ 21.00	\$ 24,780.00	\$ 67.00	\$ 79,060.00	\$ 165.67	\$ 195,490.60		
6	334-1-13	1.5" SP 9.5 Asphalt Concrete Traffic C	130	TN	\$ 292.50	\$ 38,025.00	\$ 475.00	\$ 61,750.00	\$ 383.00	\$ 49,790.00	\$ 743.00	\$ 96,590.00	\$ 775.95	\$ 100,873.50		
7	430-175-124	Pipe Culvert Optional Material Round 24" S/CD (PPP)	50	LF	\$ 89.99	\$ 4,499.50	\$ 130.00	\$ 6,500.00	\$ 199.00	\$ 9,950.00	\$ 124.00	\$ 6,200.00	\$ 291.38	\$ 14,569.00		
8	430-175-130	Pipe Culvert Optional Material Round 30" S/CD (PPP)	240	LF	\$ 111.00	\$ 26,640.00	\$ 145.00	\$ 34,800.00	\$ 217.00	\$ 52,080.00	\$ 170.00	\$ 40,800.00	\$ 315.36	\$ 75,686.40		
9		CORRUGATED ALUMINUM PIPE, OTHER, 17" x 13" S/CD	40	LF	\$ 114.00	\$ 4,560.00	\$ 130.00	\$ 5,200.00	\$ 357.00	\$ 14,280.00	\$ 104.00	\$ 4,160.00	\$ 261.98	\$ 10,479.20		
10		CORRUGATED ALUMINUM PIPE, OTHER, 24" x 18" S/CD	30	LF	\$ 114.50	\$ 3,435.00	\$ 145.00	\$ 4,350.00	\$ 475.00	\$ 14,250.00	\$ 123.00	\$ 3,690.00	\$ 274.85	\$ 8,245.50		
11	430-175-215	PIPE CULVERT, RCP, OTHER, 12" x 18" S/CD	600	LF	\$ 80.75	\$ 48,450.00	\$ 120.00	\$ 72,000.00	\$ 185.00	\$ 111,000.00	\$ 144.00	\$ 86,400.00	\$ 274.76	\$ 164,856.00		
12	430-175-218	PIPE CULVERT, RCP, OTHER, 14" x 23" S/CD	520	LF	\$ 102.85	\$ 53,482.00	\$ 130.00	\$ 67,600.00	\$ 193.00	\$ 100,360.00	\$ 149.00	\$ 77,480.00	\$ 290.58	\$ 151,101.60		
13	430-175-224	PIPE CULVERT, RCP, OTHER, 19" x 30" S/CD	288	LF	\$ 132.00	\$ 38,016.00	\$ 135.00	\$ 38,880.00	\$ 223.00	\$ 64,224.00	\$ 169.00	\$ 48,672.00	\$ 316.18	\$ 91,059.84		
14	430-175-230	PIPE CULVERT, RCP, OTHER, 24" x 38" S/CD	160	LF	\$ 168.50	\$ 26,960.00	\$ 150.00	\$ 24,000.00	\$ 288.00	\$ 46,080.00	\$ 234.00	\$ 37,440.00	\$ 352.92	\$ 56,467.20		
15	430-175-236	PIPE CULV, RCP, OTHER, 29" x 45" S/CD	112	LF	\$ 209.00	\$ 23,408.00	\$ 220.00	\$ 24,640.00	\$ 356.00	\$ 39,872.00	\$ 266.00	\$ 29,792.00	\$ 394.55	\$ 44,189.60		
16	430-175-242	PIPE CULVERT, OTHER, 34" x 53" S/CD	40	LF	\$ 266.25	\$ 10,650.00	\$ 300.00	\$ 12,000.00	\$ 367.00	\$ 14,680.00	\$ 384.00	\$ 15,360.00	\$ 444.30	\$ 17,772.00		
17	430-175-215	PIPE CULVERT, RCP, OTHER, 12" x 18" S/CD	640	LF	\$ 89.75	\$ 57,440.00	\$ 125.00	\$ 80,000.00	\$ 186.00	\$ 119,040.00	\$ 219.00	\$ 140,160.00	\$ 284.12	\$ 181,836.80		
18	430-175-218	PIPE CULVERT, RCP, OTHER, 14" x 23" S/CD	40	LF	\$ 119.00	\$ 4,760.00	\$ 150.00	\$ 6,000.00	\$ 243.00	\$ 9,720.00	\$ 253.00	\$ 10,120.00	\$ 251.47	\$ 10,058.80		
19		CONCRETE ARMOR	165	SY	\$ 80.80	\$ 13,332.00	\$ 140.00	\$ 23,100.00	\$ 52.00	\$ 8,580.00	\$ 246.00	\$ 40,590.00	\$ 211.30	\$ 34,864.50		
20	570-1-2	Performance Turf, Sod	1200	SY	\$ 4.75	\$ 5,700.00	\$ 10.00	\$ 12,000.00	\$ 5.00	\$ 6,000.00	\$ 4.50	\$ 5,400.00	\$ 9.23	\$ 11,076.00		
21	1050-15000	UTILITY PIPE, ADJUST/MODIFY, 5.9 - 12.9"	18	EA	\$ 4,800.00	\$ 86,400.00	\$ 3,500.00	\$ 63,000.00	\$ 11,000.00	\$ 198,000.00	\$ 5,520.00	\$ 99,360.00	\$ 9,658.68	\$ 173,856.24		
TOTAL BID AMOUNT IN NUMBERS					\$581,753.50		\$666,180.00		\$997,730.00		\$1,098,852.00		\$1,626,326.78		NO BID	



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Nancy A. Bunt, Community & Economic Development Director

DATE: 10/21/2021

RE: Resolution 2021-58, conveying City-owned surplus real estate located at 1942 Agora Circle SE to buyer BHA Land Investments, LLC.

In 2019, the City acquired a 0.62-acre unimproved lot located at 1942 Agora Circle SE, zoned RM-20, through escheatment by Brevard County for nonpayment of taxes pursuant to the tax certificates/tax deeds sale procedures of the Chapter 197, Florida Statutes.

On April 15, 2021, City Council declared this property as surplus real estate. This property has been listed for sale through the City's contract residential real estate broker, Ellingson Properties, LLC.

Ellingson Properties prepared a Comparative Market Analysis (CMA) with a suggested list price of \$45,000. The Buyer, BHA Land Investments, LLC is also seeking to purchase the adjacent City-owned parcel located at 1956 Agora Circle SE to construct a multi-family housing project, for which Council accepted the purchase offer of \$45,000 from BHA Land Investment, LLC at the September 16, 2021 Regular Council Meeting.

REQUESTING DEPARTMENT:
Community & Economic Development

FISCAL IMPACT:
Upon closing, sale proceeds will be deposited into the General Fund account 001-0000-388-1001 (Sales Proceeds) to be transferred to account 307-0000-381-1001 (Road Maintenance Fund).

RECOMMENDATION:
Motion to adopt Resolution conveying City-owned surplus real estate located at 1942 Agora Circle SE to buyer BHA Land Investments, LLC.

ATTACHMENTS:

Description

Executed Vacant Land Contract

Resolution 2021-58

Vacant Land Contract



1. **Sale and Purchase ("Contract"):** _____ Palm Bay City Of _____ ("Seller")
 and _____ Central Florida Investment Funds LLC _____ ("Buyer")
 (the "parties") agree to sell and buy on the terms and conditions specified below the property ("Property")
 described as:

Address: 1942 Agora Circle, Palm Bay, FL 32909

Legal Description: PORT MALABAR UNIT 40 LOT 15 BLK 1981

SEC ____/TWP ____/RNG ____ of Brevard County, Florida. Real Property ID No.: 29-37-03-26-01981.0-0015.
 including all improvements existing on the Property and the following additional property:

BH 45000

2. **Purchase Price:** (U.S. currency) \$ ~~65,000.00~~

All deposits will be made payable to "Escrow Agent" named below and held in escrow by:

Escrow Agent's Name: E Title Services, LLC

Escrow Agent's Contact Person: _____

Escrow Agent's Address: 5815 US-1 Suite 1, Rockledge, FL 32955

Escrow Agent's Phone: (321) 450-4770

Escrow Agent's Email: Lu@Etitlebrevard.com

(a) Initial deposit (\$0 if left blank) (Check if applicable)

☐ accompanies offer

☒ will be delivered to Escrow Agent within 3 days (3 days if left blank)

after Effective Date \$ ~~4,200.00~~

(b) Additional deposit will be delivered to Escrow Agent (Check if applicable)

☐ within ____ days (10 days if left blank) after Effective Date

☐ within ____ days (3 days if left blank) after expiration of Due Diligence Period \$

(c) Total Financing (see Paragraph 6) (express as a dollar amount or percentage) BH 40,500

(d) Other: \$ ~~58,500~~ BH

(e) Balance to close (not including Buyer's closing costs, prepaid items, and prorations)
 to be paid at closing by wire transfer or other Collected funds \$ ~~60,900.00~~

(f) ☐ (Complete only if purchase price will be determined based on a per unit cost instead of a fixed price.) The
 unit used to determine the purchase price is ☐ lot ☐ acre ☐ square foot ☐ other (specify): _____
 prorating areas of less than a full unit. The purchase price will be \$ _____ per unit based on a
 calculation of total area of the Property as certified to Seller and Buyer by a Florida licensed surveyor in
 accordance with Paragraph 8(c). The following rights of way and other areas will be excluded from the
 calculation: _____

3. **Time for Acceptance; Effective Date:** Unless this offer is signed by Seller and Buyer and an executed copy
 delivered to all parties on or before July 9, 2021, this offer will be withdrawn and Buyer's deposit, if
 any, will be returned. The time for acceptance of any counter-offer will be 3 days after the date the counter-offer is
 delivered. The "Effective Date" of this Contract is the date on which the last one of the Seller and Buyer
 has signed or initialed and delivered this offer or the final counter-offer.

4. **Closing Date:** This transaction will close on September 9, 2021 ("Closing Date"), unless specifically
 extended by other provisions of this Contract. The Closing Date will prevail over all other time periods including,
 but not limited to, Financing and Feasibility Study periods. However, if the Closing Date occurs on a Saturday,
 Sunday, or national legal holiday, it will extend to 5:00 p.m. (where the Property is located) of the next business
 day. In the event insurance underwriting is suspended on Closing Date and Buyer is unable to obtain property
 insurance, Buyer may postpone closing for up to 5 days after the insurance underwriting suspension is lifted. If
 this transaction does not close for any reason, Buyer will immediately return all Seller provided documents and
 other items.

5. **Extension of Closing Date:** If Paragraph 6(b) is checked and Closing Funds from Buyer's lender(s) are not
 available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements

Buyer (BH) () and Seller () () acknowledge receipt of a copy of this page, which is 1 of 8 pages.

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("CFPB Requirements"), if applicable, then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 10 days.

6. Financing: (Check as applicable)

(a) ☒ **Buyer** will pay cash for the Property with no financing contingency.

(b) ☐ This Contract is contingent on **Buyer** qualifying for and obtaining the commitment(s) or approval(s) specified below ("Financing") within _____ days after Effective Date (Closing Date or 30 days after Effective Date, whichever occurs first, if left blank) ("Financing Period"). **Buyer** will apply for Financing within _____ days after Effective Date (5 days if left blank) and will timely provide any and all credit, employment, financial, and other information required by the lender. If **Buyer**, after using diligence and good faith, cannot obtain the Financing within the Financing Period, either party may terminate this Contract and **Buyer's** deposit(s) will be returned.

- (1) ☐ **New Financing:** **Buyer** will secure a commitment for new third party financing for \$ _____ or _____ % of the purchase price at (Check one) ☐ a fixed rate not exceeding _____ % ☐ an adjustable interest rate not exceeding _____ % at origination (a fixed rate at the prevailing interest rate based on **Buyer's** creditworthiness if neither choice is selected). **Buyer** will keep **Seller** and Broker fully informed of the loan application status and progress and authorizes the lender or mortgage broker to disclose all such information to **Seller** and Broker.
- (2) ☐ **Seller Financing:** **Buyer** will execute a ☐ first ☐ second purchase money note and mortgage to **Seller** in the amount of \$ _____, bearing annual interest at _____ % and payable as follows:

The mortgage, note, and any security agreement will be in a form acceptable to **Seller** and will follow forms generally accepted in the county where the Property is located; will provide for a late payment fee and acceleration at the mortgagee's option if **Buyer** defaults; will give **Buyer** the right to prepay without penalty all or part of the principal at any time(s) with interest only to date of payment; will be due on conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require **Buyer** to keep liability insurance on the Property, with **Seller** as additional named insured. **Buyer** authorizes **Seller** to obtain credit, employment, and other necessary information to determine creditworthiness for the financing. **Seller** will, within 10 days after Effective Date, give **Buyer** written notice of whether or not **Seller** will make the loan.

- (3) ☐ **Mortgage Assumption:** **Buyer** will take title subject to and assume and pay existing first mortgage to

LN# _____ in the approximate amount of \$ _____ currently payable at \$ _____ per month, including principal, interest, ☐ taxes and insurance, and having a ☐ fixed ☐ other (describe) _____ interest rate of _____ % which ☐ will ☐ will not escalate upon assumption. Any variance in the mortgage will be adjusted in the balance due at closing with no adjustment to purchase price. **Buyer** will purchase **Seller's** escrow account dollar for dollar. If the interest rate upon transfer exceeds _____ % or the assumption/transfer fee exceeds \$ _____, either party may elect to pay the excess, failing which this Contract will terminate; and **Buyer's** deposit(s) will be returned. If the lender disapproves **Buyer**, this Contract will terminate; and **Buyer's** deposit(s) will be returned.

7. Assignability: (Check one) **Buyer** ☐ may assign and thereby be released from any further liability under this Contract, ☒ may assign but not be released from liability under this Contract, or ☐ may not assign this Contract.

8. Title: Seller has the legal capacity to and will convey marketable title to the Property by ☒ statutory warranty deed ☐ special warranty deed ☐ other (specify) _____, free of liens, easements, and encumbrances of record or known to **Seller**, but subject to property taxes for the year of closing; covenants, restrictions, and public utility easements of record; existing zoning and governmental regulations; and (list any other matters to which title will be subject) _____, provided there exists at closing no violation of the foregoing.

(a) **Title Evidence:** The party who pays for the owner's title insurance policy will select the closing agent and pay for the title search, including tax and lien search (including municipal lien search) if performed, and all other fees charged by closing agent. **Seller** will deliver to **Buyer**, at

(Check one) ☒ **Seller's** ☐ **Buyer's** expense and

(Check one) ☐ within _____ days after Effective Date ☐ at least _____ days before Closing Date,

(Check one)

- (1) ☐ a title insurance commitment by a Florida licensed title insurer setting forth those matters to be discharged by **Seller** at or before closing and, upon **Buyer** recording the deed, an owner's policy in the

Buyer BH (____) and Seller [Signature] (____) acknowledge receipt of a copy of this page, which is 2 of 8 pages.

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Form
Simplicity

amount of the purchase price for fee simple title subject only to the exceptions stated above. If **Buyer** is paying for the owner's title insurance policy and **Seller** has an owner's policy, **Seller** will deliver a copy to **Buyer** within 15 days after Effective Date.

- (2) ☐ an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy exceptions and an update in a format acceptable to **Buyer** from the policy effective date and certified to **Buyer** or **Buyer's** closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller**, then (1) above will be the title evidence.

- (b) **Title Examination:** After receipt of the title evidence, **Buyer** will, within 10 days (10 days if left blank) but no later than Closing Date, deliver written notice to **Seller** of title defects. Title will be deemed acceptable to **Buyer** if (i) **Buyer** fails to deliver proper notice of defects or (ii) **Buyer** delivers proper written notice and **Seller** cures the defects within 30 days (30 days if left blank) ("Cure Period") after receipt of the notice. If the defects are cured within the Cure Period, closing will occur within 10 days after receipt by **Buyer** of notice of such cure. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured within the Cure Period. If the defects are not cured within the Cure Period, **Buyer** will have 10 days after receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this Contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

- (c) **Survey:** **Buyer** may, at **Buyer's** expense, have the Property surveyed and must deliver written notice to **Seller**, within 5 days after receiving survey but not later than 5 days before Closing Date, of any encroachments on the Property, encroachments by the Property's improvements on other lands, or deed restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a title defect and **Seller's** and **Buyer's** obligations will be determined in accordance with Paragraph 8(b).

- (d) **Ingress and Egress:** **Seller** warrants that the Property presently has ingress and egress.

9. **Property Condition:** **Seller** will deliver the Property to **Buyer** at closing in its present "as is" condition, with conditions resulting from **Buyer's** Inspections and casualty damage, if any, excepted. **Seller** will not engage in or permit any activity that would materially alter the Property's condition without the **Buyer's** prior written consent.

- (a) **Inspections:** (Check (1) or (2))

- (1) ☒ **Due Diligence Period:** **Buyer** will, at **Buyer's** expense and within 30 days (30 days if left blank) ("Due Diligence Period") after Effective Date and in **Buyer's** sole and absolute discretion, determine whether the Property is suitable for **Buyer's** intended use. During the Due Diligence Period, **Buyer** may conduct a Phase 1 environmental assessment and any other tests, analyses, surveys, and investigations ("Inspections") that **Buyer** deems necessary to determine to **Buyer's** satisfaction the Property's engineering, architectural, and environmental properties; zoning and zoning restrictions; subdivision statutes; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state, and regional growth management plans; availability of permits, government approvals, and licenses; and other inspections that **Buyer** deems appropriate. If the Property must be rezoned, **Buyer** will obtain the rezoning from the appropriate government agencies. **Seller** will sign all documents **Buyer** is required to file in connection with development or rezoning approvals. **Seller** gives **Buyer**, its agents, contractors, and assigns, the right to enter the Property at any time during the Due Diligence Period for the purpose of conducting Inspections, provided, however, that **Buyer**, its agents, contractors, and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will indemnify and hold **Seller** harmless from losses, damages, costs, claims, and expenses of any nature, including attorneys' fees, expenses, and liability incurred in application for rezoning or related proceedings, and from liability to any person, arising from the conduct of any and all Inspections or any work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a construction lien being filed against the Property without **Seller's** prior written consent. If this transaction does not close, **Buyer** will, at **Buyer's** expense, (i) repair all damages to the Property resulting from the Inspections and return the Property to the condition it was in before conducting the Inspections and (ii) release to **Seller** all reports and other work generated as a result of the Inspections.

Before expiration of the Due Diligence Period, **Buyer** must deliver written notice to **Seller** of **Buyer's** determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice requirement will constitute acceptance of the Property as suitable for **Buyer's** intended use in its "as is" condition. If the Property is unacceptable to **Buyer** and written notice of this fact is timely delivered to **Seller**, this Contract will be deemed terminated, and **Buyer's** deposit(s) will be returned.

Buyer BH () and Seller [Signature] () acknowledge receipt of a copy of this page, which is 3 of 8 pages.

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(2) ☐ **No Due Diligence Period:** Buyer is satisfied that the Property is suitable for Buyer's purposes, including being satisfied that either public sewerage and water are available to the Property or the Property will be approved for the installation of a well and/or private sewerage disposal system and that existing zoning and other pertinent regulations and restrictions, such as subdivision or deed restrictions, concurrency, growth management, and environmental conditions, are acceptable to Buyer. This Contract is not contingent on Buyer conducting any further investigations.

(b) **Government Regulations:** Changes in government regulations and levels of service which affect Buyer's intended use of the Property will not be grounds for terminating this Contract if the Due Diligence Period has expired or if Paragraph 9(a)(2) is selected.

(c) **Flood Zone:** Buyer is advised to verify by survey, with the lender, and with appropriate government agencies which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to improving the Property and rebuilding in the event of casualty.

(d) **Coastal Construction Control Line ("CCCL"):** If any part of the Property lies seaward of the CCCL as defined in Section 161.053, Florida Statutes, Seller will provide Buyer with an affidavit or survey as required by law delineating the line's location on the Property, unless Buyer waives this requirement in writing. The Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shore line of the Property being purchased.

☐ Buyer waives the right to receive a CCCL affidavit or survey.

10. Closing Procedure; Costs: Closing will take place in the county where the Property is located and may be conducted by mail or electronic means. If title insurance insures Buyer for title defects arising between the title binder effective date and recording of Buyer's deed, closing agent will disburse at closing the net sale proceeds to Seller (in local cashier's check if Seller requests in writing at least 5 days before closing) and brokerage fees to Broker as per Paragraph 21. In addition to other expenses provided in this Contract, Seller and Buyer will pay the costs indicated below.

(a) Seller Costs:

Taxes on deed

Recording fees for documents needed to cure title

Title evidence (if applicable under Paragraph 8)

Estoppel Fee(s)

Other: _____

(b) Buyer Costs:

Taxes and recording fees on notes and mortgages

Recording fees on the deed and financing statements

Loan expenses

Title evidence (if applicable under Paragraph 8)

Lender's title policy at the simultaneous issue rate

Inspections

Survey

Insurance

Other: _____

(c) **Prorations:** The following items will be made current and prorated as of the day before Closing Date: real estate taxes (including special benefit tax liens imposed by a CDD), interest, bonds, assessments, leases, and other Property expenses and revenues. If taxes and assessments for the current year cannot be determined, the previous year's rates will be used with adjustment for any exemptions.

(d) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, Seller will pay (i) the full amount of liens that are certified, confirmed, and ratified before closing and (ii) the amount of the last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not resulted in a lien before closing; and Buyer will pay all other amounts. If special assessments may be paid in installments, ☐ Seller ☒ Buyer (Buyer if left blank) will pay installments due after closing. If Seller is checked, Seller will pay the assessment in full before or at the time of closing. Public body does not include a Homeowners' or Condominium Association.

(e) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY

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IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.

- (f) **Foreign Investment in Real Property Tax Act ("FIRPTA"):** If **Seller** is a "foreign person" as defined by FIRPTA, **Seller** and **Buyer** will comply with FIRPTA, which may require **Seller** to provide additional cash at closing.
- (g) **1031 Exchange:** If either **Seller** or **Buyer** wish to enter into a like-kind exchange (either simultaneously with closing or after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will cooperate in all reasonable respects to effectuate the Exchange including executing documents, provided, however, that the cooperating party will incur no liability or cost related to the Exchange and that the closing will not be contingent upon, extended, or delayed by the Exchange.

11. Computation of Time: Calendar days will be used when computing time periods, except time periods of 5 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal holidays specified in 5 U.S.C. 6103(a). Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or national legal holiday (see 5 U.S.C. 6103) shall extend until 5:00 p.m. (where the Property is located) of the next business day. **Time is of the essence in this Contract.**

12. Risk of Loss; Eminent Domain: If any portion of the Property is materially damaged by casualty before closing or **Seller** negotiates with a governmental authority to transfer all or part of the Property in lieu of eminent domain proceedings or an eminent domain proceeding is initiated, **Seller** will promptly inform **Buyer**. Either party may terminate this Contract by written notice to the other within 10 days after **Buyer's** receipt of **Seller's** notification, and **Buyer's** deposit(s) will be returned, failing which **Buyer** will close in accordance with this Contract and receive all payments made by the governmental authority or insurance company, if any.

13. Force Majeure: **Seller** or **Buyer** will not be required to perform any obligation under this Contract or be liable to each other for damages so long as the performance or non-performance of the obligation is delayed, caused, or prevented by an act of God or force majeure. An "act of God or "force majeure" is defined as hurricanes, earthquakes, floods, fire, unusual transportation delays, wars, insurrections, and any other cause not reasonably within the control of **Seller** or **Buyer** and which by the exercise of due diligence the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the act of God or force majeure is in place. However, in the event that such act of God or force majeure event continues beyond 30 days, either party may terminate this Contract by delivering written notice to the other; and **Buyer's** deposit(s) will be returned.

14. Notices: All notices will be in writing and delivered to the parties and Broker by mail, personal delivery, or electronic means. **Buyer's failure to timely deliver written notice to Seller, when such notice is required by this Contract, regarding any contingency will render that contingency null and void, and this Contract will be construed as if the contingency did not exist. Any notice, document, or item delivered to or received by an attorney or licensee (including a transactions broker) representing a party will be as effective as if delivered to or received by that party.**

15. Complete Agreement; Persons Bound: This Contract is the entire agreement between **Seller** and **Buyer**. **Except for brokerage agreements, no prior or present agreements will bind Seller, Buyer, or Broker unless incorporated into this Contract.** Modifications of this Contract will not be binding unless in writing, signed or initialed, and delivered by the party to be bound. Electronic signatures will be acceptable and binding. This Contract, signatures, initials, documents referenced in this Contract, counterparts, and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. **Seller** and **Buyer** will use diligence and good faith in performing all obligations under this Contract. This Contract will not be recorded in any public record. The terms "**Seller**," "**Buyer**," and "**Broker**" may be singular or plural. This Contract is binding on the heirs, administrators, executors, personal representatives, and assigns, if permitted, of **Seller**, **Buyer**, and Broker.

16. Default and Dispute Resolution: This Contract will be construed under Florida law. This Paragraph will survive closing or termination of this Contract.

- (a) **Seller Default:** If **Seller** fails, neglects, or refuses to perform **Seller's** obligations under this Contract, **Buyer** may elect to receive a return of **Buyer's** deposit(s) without thereby waiving any action for damages resulting

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from **Seller's** breach and may seek to recover such damages or seek specific performance. **Seller** will also be liable for the full amount of the brokerage fee.

- (b) Buyer Default:** If **Buyer** fails, neglects, or refuses to perform **Buyer's** obligations under this Contract, including payment of deposit(s), within the time(s) specified, **Seller** may elect to recover and retain the deposit(s), paid and agreed to be paid, for the account of **Seller** as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon **Seller** and **Buyer** will be relieved from all further obligations under this Contract; or **Seller**, at **Seller's** option, may proceed in equity to enforce **Seller's** rights under this Contract.

17. Attorney's Fees; Costs: In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

18. Escrow Agent; Closing Agent: **Seller** and **Buyer** authorize Escrow Agent and closing agent (collectively "Agent") to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them upon proper authorization and in accordance with Florida law and the terms of this Contract, including disbursing brokerage fees. "Collection" or "Collected" means any checks tendered or received have become actually and finally collected and deposited in the account of Agent. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to **Seller** or **Buyer**, unless the misdelivery is due to Agent's willful breach of this Contract or gross negligence. If Agent interpleads the subject matter of the escrow, Agent will pay the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party.

19. Professional Advice; Broker Liability: Broker advises **Seller** and **Buyer** to verify all facts and representations that are important to them and to consult an appropriate professional for legal advice (for example, interpreting this Contract, determining the effect of laws on the Property and this transaction, status of title, foreign investor reporting requirements, the effect of property lying partially or totally seaward of the CCCL, etc.) and for tax, property condition, environmental, and other specialized advice. **Buyer** acknowledges that all representations (oral, written, or otherwise) by Broker are based on **Seller** representations or public records. **Buyer agrees to rely solely on Seller, professional inspectors, and government agencies for verification of the Property condition and facts that materially affect Property value.** **Seller** and **Buyer** respectively will pay all costs and expenses, including reasonable attorneys' fees at all levels, incurred by Broker and Broker's officers, directors, agents, and employees in connection with or arising from **Seller's** or **Buyer's** misstatement or failure to perform contractual obligations. **Seller** and **Buyer** hold harmless and release Broker and Broker's officers, directors, agents, and employees from all liability for loss or damage based on (i) **Seller's** or **Buyer's** misstatement or failure to perform contractual obligations; (ii) the use or display of listing data by third parties, including, but not limited to, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, and remarks related to the Property; (iii) Broker's performance, at **Seller's** or **Buyer's** request, of any task beyond the scope of services regulated by Chapter 475, Florida Statutes, as amended, including Broker's referral, recommendation, or retention of any vendor; (iv) products or services provided by any vendor; and (v) expenses incurred by any vendor. **Seller** and **Buyer** each assume full responsibility for selecting and compensating their respective vendors. This Paragraph will not relieve Broker of statutory obligations. For purposes of this Paragraph, Broker will be treated as a party to this Contract. This Paragraph will survive closing.

20. Commercial Real Estate Sales Commission Lien Act: If the Property is commercial real estate as defined by Section 475.701, Florida Statutes, the following disclosure will apply: The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

21. Brokers: The licensee(s) and brokerage(s) named below are collectively referred to as "Broker." **Instruction to closing agent:** **Seller** and **Buyer** direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Paragraph will not be used to modify any MLS or other offer of compensation made by **Seller** or listing broker to cooperating brokers.

Gregory P Ellingson 3066292

Seller's Sales Associate/License No.

Laura Cerpa

3342737

Buyer's Sales Associate/License No.

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329* greg@gregellingson.com
330 Seller's Sales Associate Email Address
331
332* 3217507050
333 Seller's Sales Associate Phone Number
334
335* Ellingson Properties
336 Listing Brokerage
337
338* 5815 US-1, Rockledge, FL 32955
339 Listing Brokerage Address

cerparealty@gmail.com
Buyer's Sales Associate Email Address
(407) 591-1648
Buyer's Sales Associate Phone Number
EXP Realty LLC
Buyer's Brokerage
5039 Ocean Blvd., Siesta Key, FL 34242
Buyer's Brokerage Address

340 22. Addenda: The following additional terms are included in the attached addenda and incorporated into this Contract
341 (Check if applicable)
342* ☐ A. Back-up Contract
343* ☐ B. Kick Out Clause
344* ☐ C. Other

345* 23. Additional Terms:
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361 COUNTER-OFFER/REJECTION

- 362* ☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and
363 deliver a copy of the acceptance to Seller).
364* ☐ Seller rejects Buyer's offer

365 This is intended to be a legally binding Contract. If not fully understood, seek the advice of an attorney before
366 signing.

367* Buyer: Brent Howells Date: 7/9/2021

368* Print name: Central Florida Investment Funds LLC

369* Buyer: _____ Date: _____

370* Print name: _____

371 Buyer's address for purpose of notice:

372* Address: _____

373* Phone: _____ Fax: _____ Email: info@buildrei.com

374* Seller: [Signature] Date: 8-10-2021

375* Print name: Suzanne Sherman, City Manager

376* Seller: _____ Date: _____

377* Print name: _____

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378 **Seller's address for purpose of notice:**

379 * **Address:** _____

380 * **Phone:** _____ **Fax:** _____ **Email:** _____

381 * **Effective Date:** _____ **(The date on which the last party signed or initialed and delivered the**
382 **final offer or counter offer.)**

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RESOLUTION 2021-58

A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, SELLING AND CONVEYING PROPERTY AS RECORDED IN PLAT BOOK 21, PAGES 29 THROUGH 33, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Bay has contracted to sell and convey the following described property to BHA Land Investments, LLC ("Purchaser"):

Lot 15, Block 1981, Port Malabar Unit 40, according to the map or plat thereof as recorded in Plat Book 21, Page(s) 29 through 33, of the Public Records of Brevard County, Florida; Section 3, Township 29S, Range 37E; containing 0.62 acres, more or less;

Said property being more commonly known as 1942 Agora Circle SE, Palm Bay, Florida 32909, and

WHEREAS, the City has no plans to develop said Property and that it is unnecessary for public purposes, and

WHEREAS, the City has determined that the sale of said Properties is in the best interest of the Public, and

WHEREAS, the City has authorized its sale and authorized the City Manager to execute all necessary documents to convey the Property to the Purchasers.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay has hereby determined that said properties are unnecessary for the City's public purposes.

SECTION 2. The City of Palm Bay has hereby determined that disposal of said properties, as they are described above, is in the best interest of the public.

SECTION 3. The City of Palm Bay hereby authorizes the conveyance of said properties to BHA Land Investments, LLC, by City Manager, Suzanne Sherman, pursuant to the applicable Florida Statutes.

SECTION 4. The City of Palm Bay specifically releases any automatic reservation and right of entry in accordance with Section 270.11, Florida Statutes.

SECTION 5. This Resolution shall take effect immediately upon its adoption.

This resolution was duly enacted at Meeting 2021- , of the City Council of the City of Palm Bay, Brevard County, Florida, held on , 2021.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

cc: Brevard County Recording



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Nancy A. Bunt, Community & Economic Development Director

DATE: 10/21/2021

RE: Resolution 2021-59, conveying City-owned surplus real estate located at 1956 Agora Circle SE to buyer BHA Land Investments, LLC.

In 2019, the City acquired a 0.62-acre unimproved lot located at 1956 Agora Circle SE, zoned RM-20, through escheatment by Brevard County for nonpayment of taxes pursuant to the tax certificates/tax deeds sale procedures of the Chapter 197, Florida Statutes.

On April 15, 2021, City Council declared this property as surplus real estate. This property has been listed for sale through the City's contract residential real estate broker, Ellingson Properties, LLC.

Ellingson Properties prepared a Comparative Market Analysis (CMA) with a suggested list price of \$45,000. The Buyer, BHA Land Investments, LLC is also seeking to purchase the adjacent City-owned parcel located at 1942 Agora Circle SE to construct a multi-family housing project, for which Council accepted the purchase offer of \$45,000 from BHA Land Investment, LLC at the September 16, 2021 Regular Council Meeting.

REQUESTING DEPARTMENT:

Community & Economic Development

FISCAL IMPACT:

Upon closing, sale proceeds will be deposited into the General Fund account 001-0000-388-1001 (Sales Proceeds) to be transferred to account 307-0000-381-1001 (Road Maintenance Fund).

RECOMMENDATION:

Motion to adopt Resolution conveying City-owned surplus real estate located at 1956 Agora Circle SE to buyer BHA Land Investments, LLC.

ATTACHMENTS:

Description

Executed Vacant Land Contract

Resolution 2021-59

Vacant Land Contract



1. **Sale and Purchase ("Contract"):** _____ City of Palm Bay _____ ("Seller")
 and _____ BHA Land Investments, LLC _____ ("Buyer")
 (the "parties") agree to sell and buy on the terms and conditions specified below the property ("Property")
 described as:

Address: _____ 1956 Agora Circle, Palm Bay, FL 32909

Legal Description: _____ PORT MALABAR UNIT 40 LOT 14 BLK 1981

SEC ____/TWP ____/RNG ____ of _____ County, Florida. Real Property ID No.: _____ 29-37-03-26-1981-1
 including all improvements existing on the Property and the following additional property: _____

2. **Purchase Price:** (U.S. currency) _____ \$ 45,000.00

All deposits will be made payable to "Escrow Agent" named below and held in escrow by:

Escrow Agent's Name: _____ TBD City of Palm Bay

Escrow Agent's Contact Person: _____

Escrow Agent's Address: _____

Escrow Agent's Phone: _____

Escrow Agent's Email: _____

(a) Initial deposit (\$0 if left blank) (Check if applicable)

☐ accompanies offer

☒ will be delivered to Escrow Agent within _____ days (3 days if left blank)

after Effective Date

\$ 4,500.00

(b) Additional deposit will be delivered to Escrow Agent (Check if applicable)

☐ within _____ days (10 days if left blank) after Effective Date

☐ within _____ days (3 days if left blank) after expiration of Due Diligence Period

\$

(c) Total Financing (see Paragraph 6) (express as a dollar amount or percentage)

(d) Other:

\$

(e) Balance to close (not including Buyer's closing costs, prepaid items, and prorations)

to be paid at closing by wire transfer or other Collected funds

\$ 40,500.00

(f) ☐ (Complete only if purchase price will be determined based on a per unit cost instead of a fixed price.) The unit used to determine the purchase price is ☐ lot ☐ acre ☐ square foot ☐ other (specify): _____

prorating areas of less than a full unit. The purchase price will be \$ _____ per unit based on a

calculation of total area of the Property as certified to Seller and Buyer by a Florida licensed surveyor in

accordance with Paragraph 8(c). The following rights of way and other areas will be excluded from the

calculation: _____

3. **Time for Acceptance; Effective Date:** Unless this offer is signed by Seller and Buyer and an executed copy delivered to all parties on or before _____ TBD _____, this offer will be withdrawn and Buyer's deposit, if any, will be returned. The time for acceptance of any counter-offer will be 3 days after the date the counter-offer is delivered. The "Effective Date" of this Contract is the date on which the last one of the Seller and Buyer has signed or initialed and delivered this offer or the final counter-offer.

4. **Closing Date:** This transaction will close on TBD by City of Palm Bay ("Closing Date"), unless specifically extended by other provisions of this Contract. The Closing Date will prevail over all other time periods including, but not limited to, Financing and Feasibility Study periods. However, if the Closing Date occurs on a Saturday, Sunday, or national legal holiday, it will extend to 5:00 p.m. (where the Property is located) of the next business day. In the event insurance underwriting is suspended on Closing Date and Buyer is unable to obtain property insurance, Buyer may postpone closing for up to 5 days after the insurance underwriting suspension is lifted. If this transaction does not close for any reason, Buyer will immediately return all Seller provided documents and other items.

5. **Extension of Closing Date:** If Paragraph 6(b) is checked and Closing Funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements

Buyer (BA) (_____) and Seller (_____) acknowledge receipt of a copy of this page, which is 1 of 8 pages.

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("CFPB Requirements"), if applicable, then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 10 days.

6. Financing: (Check as applicable)

(a) ☒ **Buyer** will pay cash for the Property with no financing contingency.

(b) ☐ This Contract is contingent on **Buyer** qualifying for and obtaining the commitment(s) or approval(s) specified below ("Financing") within _____ days after Effective Date (Closing Date or 30 days after Effective Date, whichever occurs first, if left blank) ("Financing Period"). **Buyer** will apply for Financing within _____ days after Effective Date (5 days if left blank) and will timely provide any and all credit, employment, financial, and other information required by the lender. If **Buyer**, after using diligence and good faith, cannot obtain the Financing within the Financing Period, either party may terminate this Contract and **Buyer's** deposit(s) will be returned.

- (1) ☐ **New Financing:** **Buyer** will secure a commitment for new third party financing for \$ _____ or _____ % of the purchase price at (Check one) ☐ a fixed rate not exceeding _____ % ☐ an adjustable interest rate not exceeding _____ % at origination (a fixed rate at the prevailing interest rate based on **Buyer's** creditworthiness if neither choice is selected). **Buyer** will keep **Seller** and Broker fully informed of the loan application status and progress and authorizes the lender or mortgage broker to disclose all such information to **Seller** and Broker.
- (2) ☐ **Seller Financing:** **Buyer** will execute a ☐ first ☐ second purchase money note and mortgage to **Seller** in the amount of \$ _____, bearing annual interest at _____ % and payable as follows:

The mortgage, note, and any security agreement will be in a form acceptable to **Seller** and will follow forms generally accepted in the county where the Property is located; will provide for a late payment fee and acceleration at the mortgagee's option if **Buyer** defaults; will give **Buyer** the right to prepay without penalty all or part of the principal at any time(s) with interest only to date of payment; will be due on conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require **Buyer** to keep liability insurance on the Property, with **Seller** as additional named insured. **Buyer** authorizes **Seller** to obtain credit, employment, and other necessary information to determine creditworthiness for the financing. **Seller** will, within 10 days after Effective Date, give **Buyer** written notice of whether or not **Seller** will make the loan.

- (3) ☐ **Mortgage Assumption:** **Buyer** will take title subject to and assume and pay existing first mortgage to

LN# _____ in the approximate amount of \$ _____ currently payable at \$ _____ per month, including principal, interest, ☐ taxes and insurance, and having a ☐ fixed ☐ other (describe) _____ interest rate of _____ % which ☐ will ☐ will not escalate upon assumption. Any variance in the mortgage will be adjusted in the balance due at closing with no adjustment to purchase price. **Buyer** will purchase **Seller's** escrow account dollar for dollar. If the interest rate upon transfer exceeds _____ % or the assumption/transfer fee exceeds \$ _____, either party may elect to pay the excess, failing which this Contract will terminate; and **Buyer's** deposit(s) will be returned. If the lender disapproves **Buyer**, this Contract will terminate; and **Buyer's** deposit(s) will be returned.

- 7. Assignability: (Check one)** **Buyer** ☐ may assign and thereby be released from any further liability under this Contract, ☒ may assign but not be released from liability under this Contract, or ☐ may not assign this Contract.

- 8. Title:** **Seller** has the legal capacity to and will convey marketable title to the Property by ☐ statutory warranty deed ☐ special warranty deed ☐ other (specify) _____, free of liens, easements, and encumbrances of record or known to **Seller**, but subject to property taxes for the year of closing; covenants, restrictions, and public utility easements of record; existing zoning and governmental regulations; and (list any other matters to which title will be subject) _____ provided there exists at closing no violation of the foregoing.

(a) **Title Evidence:** The party who pays for the owner's title insurance policy will select the closing agent and pay for the title search, including tax and lien search (including municipal lien search) if performed, and all other fees charged by closing agent. **Seller** will deliver to **Buyer**, at

(Check one) ☒ **Seller's** ☐ **Buyer's** expense and

(Check one) ☐ within _____ days after Effective Date ☐ at least _____ days before Closing Date, (Check one)

- (1) ☒ a title insurance commitment by a Florida licensed title insurer setting forth those matters to be discharged by **Seller** at or before closing and, upon **Buyer** recording the deed, an owner's policy in the

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amount of the purchase price for fee simple title subject only to the exceptions stated above. If **Buyer** is paying for the owner's title insurance policy and **Seller** has an owner's policy, **Seller** will deliver a copy to **Buyer** within 15 days after Effective Date.

- (2) ☐ an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy exceptions and an update in a format acceptable to **Buyer** from the policy effective date and certified to **Buyer** or **Buyer's** closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller**, then (1) above will be the title evidence.

(b) **Title Examination:** After receipt of the title evidence, **Buyer** will, within _____ days (10 days if left blank) but no later than Closing Date, deliver written notice to **Seller** of title defects. Title will be deemed acceptable to **Buyer** if (i) **Buyer** fails to deliver proper notice of defects or (ii) **Buyer** delivers proper written notice and **Seller** cures the defects within _____ days (30 days if left blank) ("Cure Period") after receipt of the notice. If the defects are cured within the Cure Period, closing will occur within 10 days after receipt by **Buyer** of notice of such cure. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured within the Cure Period. If the defects are not cured within the Cure Period, **Buyer** will have 10 days after receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this Contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

(c) **Survey:** **Buyer** may, at **Buyer's** expense, have the Property surveyed and must deliver written notice to **Seller**, within 5 days after receiving survey but not later than 5 days before Closing Date, of any encroachments on the Property, encroachments by the Property's improvements on other lands, or deed restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a title defect and **Seller's** and **Buyer's** obligations will be determined in accordance with Paragraph 8(b).

(d) **Ingress and Egress:** **Seller** warrants that the Property presently has ingress and egress.

9. **Property Condition:** **Seller** will deliver the Property to **Buyer** at closing in its present "as is" condition, with conditions resulting from **Buyer's** Inspections and casualty damage, if any, excepted. **Seller** will not engage in or permit any activity that would materially alter the Property's condition without the **Buyer's** prior written consent.

(a) **Inspections: (Check (1) or (2))**

- (1) ☐ **Due Diligence Period:** **Buyer** will, at **Buyer's** expense and within _____ days (30 days if left blank) ("Due Diligence Period") after Effective Date and in **Buyer's** sole and absolute discretion, determine whether the Property is suitable for **Buyer's** intended use. During the Due Diligence Period, **Buyer** may conduct a Phase 1 environmental assessment and any other tests, analyses, surveys, and investigations ("Inspections") that **Buyer** deems necessary to determine to **Buyer's** satisfaction the Property's engineering, architectural, and environmental properties; zoning and zoning restrictions; subdivision statutes; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state, and regional growth management plans; availability of permits, government approvals, and licenses; and other inspections that **Buyer** deems appropriate. If the Property must be rezoned, **Buyer** will obtain the rezoning from the appropriate government agencies. **Seller** will sign all documents **Buyer** is required to file in connection with development or rezoning approvals. **Seller** gives **Buyer**, its agents, contractors, and assigns, the right to enter the Property at any time during the Due Diligence Period for the purpose of conducting Inspections, provided, however, that **Buyer**, its agents, contractors, and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will indemnify and hold **Seller** harmless from losses, damages, costs, claims, and expenses of any nature, including attorneys' fees, expenses, and liability incurred in application for rezoning or related proceedings, and from liability to any person, arising from the conduct of any and all Inspections or any work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a construction lien being filed against the Property without **Seller's** prior written consent. If this transaction does not close, **Buyer** will, at **Buyer's** expense, (i) repair all damages to the Property resulting from the Inspections and return the Property to the condition it was in before conducting the Inspections and (ii) release to **Seller** all reports and other work generated as a result of the Inspections.

Before expiration of the Due Diligence Period, **Buyer** must deliver written notice to **Seller** of **Buyer's** determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice requirement will constitute acceptance of the Property as suitable for **Buyer's** intended use in its "as is" condition. If the Property is unacceptable to **Buyer** and written notice of this fact is timely delivered to **Seller**, this Contract will be deemed terminated, and **Buyer's** deposit(s) will be returned.

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(2) ☒ **No Due Diligence Period:** Buyer is satisfied that the Property is suitable for Buyer's purposes, including being satisfied that either public sewerage and water are available to the Property or the Property will be approved for the installation of a well and/or private sewerage disposal system and that existing zoning and other pertinent regulations and restrictions, such as subdivision or deed restrictions, concurrency, growth management, and environmental conditions, are acceptable to Buyer. This Contract is not contingent on Buyer conducting any further investigations.

(b) **Government Regulations:** Changes in government regulations and levels of service which affect Buyer's intended use of the Property will not be grounds for terminating this Contract if the Due Diligence Period has expired or if Paragraph 9(a)(2) is selected.

(c) **Flood Zone:** Buyer is advised to verify by survey, with the lender, and with appropriate government agencies which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to improving the Property and rebuilding in the event of casualty.

(d) **Coastal Construction Control Line ("CCCL"):** If any part of the Property lies seaward of the CCCL as defined in Section 161.053, Florida Statutes, Seller will provide Buyer with an affidavit or survey as required by law delineating the line's location on the Property, unless Buyer waives this requirement in writing. The Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shore line of the Property being purchased.

☒ Buyer waives the right to receive a CCCL affidavit or survey.

10. Closing Procedure; Costs: Closing will take place in the county where the Property is located and may be conducted by mail or electronic means. If title insurance insures Buyer for title defects arising between the title binder effective date and recording of Buyer's deed, closing agent will disburse at closing the net sale proceeds to Seller (in local cashier's check if Seller requests in writing at least 5 days before closing) and brokerage fees to Broker as per Paragraph 21. In addition to other expenses provided in this Contract, Seller and Buyer will pay the costs indicated below.

(a) Seller Costs:

Taxes on deed
Recording fees for documents needed to cure title
Title evidence (if applicable under Paragraph 8)
Estoppel Fee(s)
Other: _____

(b) Buyer Costs:

Taxes and recording fees on notes and mortgages
Recording fees on the deed and financing statements
Loan expenses
Title evidence (if applicable under Paragraph 8)
Lender's title policy at the simultaneous issue rate
Inspections
Survey
Insurance
Other: _____

(c) **Prorations:** The following items will be made current and prorated as of the day before Closing Date: real estate taxes (including special benefit tax liens imposed by a CDD), interest, bonds, assessments, leases, and other Property expenses and revenues. If taxes and assessments for the current year cannot be determined, the previous year's rates will be used with adjustment for any exemptions.

(d) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, Seller will pay (i) the full amount of liens that are certified, confirmed, and ratified before closing and (ii) the amount of the last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not resulted in a lien before closing; and Buyer will pay all other amounts. If special assessments may be paid in installments, ☒ Seller ☐ Buyer (Buyer if left blank) will pay installments due after closing. If Seller is checked, Seller will pay the assessment in full before or at the time of closing. Public body does not include a Homeowners' or Condominium Association.

(e) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY

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IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.

- (f) **Foreign Investment in Real Property Tax Act ("FIRPTA"):** If Seller is a "foreign person" as defined by FIRPTA, Seller and Buyer will comply with FIRPTA, which may require Seller to provide additional cash at closing.
- (g) **1031 Exchange:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with closing or after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will cooperate in all reasonable respects to effectuate the Exchange including executing documents, provided, however, that the cooperating party will incur no liability or cost related to the Exchange and that the closing will not be contingent upon, extended, or delayed by the Exchange.

11. Computation of Time: Calendar days will be used when computing time periods, except time periods of 5 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal holidays specified in 5 U.S.C. 6103(a). Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or national legal holiday (see 5 U.S.C. 6103) shall extend until 5:00 p.m. (where the Property is located) of the next business day. **Time is of the essence in this Contract.**

12. Risk of Loss; Eminent Domain: If any portion of the Property is materially damaged by casualty before closing or Seller negotiates with a governmental authority to transfer all or part of the Property in lieu of eminent domain proceedings or an eminent domain proceeding is initiated, Seller will promptly inform Buyer. Either party may terminate this Contract by written notice to the other within 10 days after Buyer's receipt of Seller's notification, and Buyer's deposit(s) will be returned, failing which Buyer will close in accordance with this Contract and receive all payments made by the governmental authority or insurance company, if any.

13. Force Majeure: Seller or Buyer will not be required to perform any obligation under this Contract or be liable to each other for damages so long as the performance or non-performance of the obligation is delayed, caused, or prevented by an act of God or force majeure. An "act of God or "force majeure" is defined as hurricanes, earthquakes, floods, fire, unusual transportation delays, wars, insurrections, and any other cause not reasonably within the control of Seller or Buyer and which by the exercise of due diligence the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the act of God or force majeure is in place. However, in the event that such act of God or force majeure event continues beyond 30 days, either party may terminate this Contract by delivering written notice to the other; and Buyer's deposit(s) will be returned.

14. Notices: All notices will be in writing and delivered to the parties and Broker by mail, personal delivery, or electronic means. Buyer's failure to timely deliver written notice to Seller, when such notice is required by this Contract, regarding any contingency will render that contingency null and void, and this Contract will be construed as if the contingency did not exist. Any notice, document, or item delivered to or received by an attorney or licensee (including a transactions broker) representing a party will be as effective as if delivered to or received by that party.

15. Complete Agreement; Persons Bound: This Contract is the entire agreement between Seller and Buyer. Except for brokerage agreements, no prior or present agreements will bind Seller, Buyer, or Broker unless incorporated into this Contract. Modifications of this Contract will not be binding unless in writing, signed or initialed, and delivered by the party to be bound. Electronic signatures will be acceptable and binding. This Contract, signatures, initials, documents referenced in this Contract, counterparts, and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. Seller and Buyer will use diligence and good faith in performing all obligations under this Contract. This Contract will not be recorded in any public record. The terms "Seller," "Buyer," and "Broker" may be singular or plural. This Contract is binding on the heirs, administrators, executors, personal representatives, and assigns, if permitted, of Seller, Buyer, and Broker.

16. Default and Dispute Resolution: This Contract will be construed under Florida law. This Paragraph will survive closing or termination of this Contract.

- (a) **Seller Default:** If Seller fails, neglects, or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive a return of Buyer's deposit(s) without thereby waiving any action for damages resulting

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from Seller's breach and may seek to recover such damages or seek specific performance. Seller will also be liable for the full amount of the brokerage fee.

- (b) **Buyer Default:** If Buyer fails, neglects, or refuses to perform Buyer's obligations under this Contract, including payment of deposit(s), within the time(s) specified, Seller may elect to recover and retain the deposit(s), paid and agreed to be paid, for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Seller and Buyer will be relieved from all further obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract.

- 17. Attorney's Fees; Costs:** In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

- 18. Escrow Agent; Closing Agent:** Seller and Buyer authorize Escrow Agent and closing agent (collectively "Agent") to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them upon proper authorization and in accordance with Florida law and the terms of this Contract, including disbursing brokerage fees. "Collection" or "Collected" means any checks tendered or received have become actually and finally collected and deposited in the account of Agent. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to Seller or Buyer, unless the misdelivery is due to Agent's willful breach of this Contract or gross negligence. If Agent interpleads the subject matter of the escrow, Agent will pay the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party.

- 19. Professional Advice; Broker Liability:** Broker advises Seller and Buyer to verify all facts and representations that are important to them and to consult an appropriate professional for legal advice (for example, interpreting this Contract, determining the effect of laws on the Property and this transaction, status of title, foreign investor reporting requirements, the effect of property lying partially or totally seaward of the CCCL, etc.) and for tax, property condition, environmental, and other specialized advice. Buyer acknowledges that all representations (oral, written, or otherwise) by Broker are based on Seller representations or public records. Buyer agrees to rely solely on Seller, professional inspectors, and government agencies for verification of the Property condition and facts that materially affect Property value. Seller and Buyer respectively will pay all costs and expenses, including reasonable attorneys' fees at all levels, incurred by Broker and Broker's officers, directors, agents, and employees in connection with or arising from Seller's or Buyer's misstatement or failure to perform contractual obligations. Seller and Buyer hold harmless and release Broker and Broker's officers, directors, agents, and employees from all liability for loss or damage based on (i) Seller's or Buyer's misstatement or failure to perform contractual obligations; (ii) the use or display of listing data by third parties, including, but not limited to, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, and remarks related to the Property; (iii) Broker's performance, at Seller's or Buyer's request, of any task beyond the scope of services regulated by Chapter 475, Florida Statutes, as amended, including Broker's referral, recommendation, or retention of any vendor; (iv) products or services provided by any vendor; and (v) expenses incurred by any vendor. Seller and Buyer each assume full responsibility for selecting and compensating their respective vendors. This Paragraph will not relieve Broker of statutory obligations. For purposes of this Paragraph, Broker will be treated as a party to this Contract. This Paragraph will survive closing.

- 20. Commercial Real Estate Sales Commission Lien Act:** If the Property is commercial real estate as defined by Section 475.701, Florida Statutes, the following disclosure will apply: The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

- 21. Brokers:** The licensee(s) and brokerage(s) named below are collectively referred to as "Broker." **Instruction to closing agent:** Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Paragraph will not be used to modify any MLS or other offer of compensation made by Seller or listing broker to cooperating brokers.

BK 3119425
Seller's Sales Associate/License No.

BK3008643
Buyer's Sales Associate/License No.

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329* Jenny @ Greg Ellinger
330 **Seller's Sales Associate Email Address**

331
332* 321-544-4751
333 **Seller's Sales Associate Phone Number**

334
335* Ellinger Properties
336 **Listing Brokerage**

337
338* 5815 S. US 7, Rockledge
339 **Listing Brokerage Address**

JensenBeachRealty@hotmail.com
Buyer's Sales Associate Email Address

772-398-1212
Buyer's Sales Associate Phone Number

Jensen Beach Realty, Inc....34952
Buyer's Brokerage

2400 SE Veterans Memorial Pkwy. Port St Lucie FL
Buyer's Brokerage Address

340 **22. Addenda:** The following additional terms are included in the attached addenda and incorporated into this Contract

341 **(Check if applicable)**

342* ☐ A. Back-up Contract

343* ☐ B. Kick Out Clause

344* ☐ C. Other _____

345* **23. Additional Terms:** _____

361 **COUNTER-OFFER/REJECTION**

362* ☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and
363 deliver a copy of the acceptance to Seller).

364* ☐ Seller rejects Buyer's offer

365 **This is intended to be a legally binding Contract. If not fully understood, seek the advice of an attorney before**
366 **signing.**

367* **Buyer:** Bruce H. Adler Date: July 13, 2021

368* Print name: Bruce H Adler, Mgr. BHA Land Investments, LLC

369* **Buyer:** _____ Date: _____

370* Print name: _____

371 **Buyer's address for purpose of notice:**

372* Address: _____

373* Phone: _____ Fax: _____ Email: _____

374* **Seller:** [Signature] Date: 9-21-2021

375* Print name: City of Palm Bay

376* **Seller:** _____ Date: _____

377* Print name: _____

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378 Seller's address for purpose of notice:

379* Address: _____

380* Phone: _____ Fax: _____ Email: _____

381* Effective Date: _____ (The date on which the last party signed or initialed and delivered the
382 final offer or counter offer.)

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Addendum 'A' to Contract

The Addendum is made to the Contract between the City of Palm Bay, a Florida municipal corporation, as Seller, and BHA Land Investments, LLC, C/O Bruce H Adler, Mgr. as Buyer, for the sale and purchase of the Property at 1956 Agora Circle SE, Palm Bay, FL 32902, as follows, and the provisions, terms, and conditions stated herein shall be controlling over any provision, term, or condition to the contrary contained in the remainder of the Contract.

No Conveyance of Personal property: Seller is not hereby selling or agreeing to convey any personal property and makes no representations or warranties regarding the same. Seller will not provide a bill of sale or any other document of conveyance or assignment of any warranties, etc. for any personal property located on the premises. Seller abandons any and all such personal property located on the premises at the Effective Date unless specifically excluded by addendum and shall not be responsible for removal of the same. If any such personal property located on the premises at the Effective Date shall be damaged, destroyed, lost, or stolen during the pendency of the Contract prior to Closing, the same shall not excuse Buyer's performance in any way Buyer's obligations under this Contract including Buyer's obligation to close.

All prorations at closing final: All prorations, including but not limited to, any and all taxes, fees, utilities, homeowners or condominium association assessments and dues and any other charges against the Property as reflected on the settlement statement executed by the Seller are FINAL. No adjustments or payments will be made by Seller post-closing. Tax prorations are based on the last known tax year or current tax bill if available. Special assessments will be prorated up to the Closing Date regardless if said assessments are due in full or in future installments. Any special assessments levied and payable in installments shall be prorated to the Closing Date and shall be assumed and paid by Buyer from the Closing Date forward. In no instance shall the Seller be responsible for the payment of any assessment pending but not levied as of the Closing Date.

No Duty to Cure Title Defects: Seller's obligations under this Contract are subject to Seller's ability to deliver marketable title. Seller has no obligation to expend any money to cure any defect in title. Buyer's sole remedy is limited to a return of Buyer's Deposit. Under no circumstances shall Seller be obligated to reimburse Buyer for any of Buyer's expenses in inspecting the Property.

If in Seller's sole discretion Seller finds that it is not able to convey marketable title without expenditure of monies or other resources, Seller has the sole discretion to either extend the contract or terminate the contract and return all earnest money to Buyer upon termination.

If Seller elects to extend this Contract of Sale, Seller shall have a minimum 30 days to resolve any title defects before terminating the Contract. If in Seller's sole discretion Seller is not able to cure any title defects within the 30 day period, either Buyer or Seller has the option to immediately terminate this Contract of Sale, with no further obligation, and all earnest money will be returned to Buyer. Buyer and anyone claiming by, through, or under Buyer, including any mortgagees of Buyer, agree to hold Seller

harmless from all liabilities, losses, costs, charges, expenses and damages of any type whatsoever, including reasonable attorney's fees, sustained by Buyer by reason of or arising out of any title defects discovered after closing and shall look to recover only from any title insurance policy for any loss incurred thereby.

No Disclosures, Warranties, or Representations Regarding Condition of Property: Seller and Seller's agents, brokers, employees, and other representatives make no warranties and disclaim any knowledge of the condition of the Property, other than as may be disclosed in the Inspection Report (as hereinafter defined), if any, that has been prepared for the Property. Seller may not have knowledge of any material facts or defects impacting the Property. Buyer acknowledges that neither the Seller nor any other person acting on its behalf, including specifically Seller's Broker (whether acting solely as Seller's Broker or as a 'transactional broker), has made any representation regarding the condition of the Property, any of the appliances or structural components that may be contained therein, its fitness for general or specific use, or any other matter affecting the Property. If an inspection report has been obtained by or on behalf of Seller or Seller's representative (the "Inspection Report(s)"), such Inspection Report may be provided to Buyer for Buyer's information only but no representation or warranty shall be made as to the accuracy or completeness of such Inspection Report and in no event shall this be deemed to be a part of the Contract. Nothing herein shall obligate Seller to procure any such Inspection Reports but Seller may provide to Buyer any Inspection Reports in Seller's possession, as for example if obtained by Seller from a previous Buyer who failed to close. If after Closing it is discovered that Seller did not provide any Inspection Report in Seller's possession, Buyer expressly waives any claim against Seller for failure to provide the same prior to Closing.

Neither Seller nor any person acting as Seller's representative has occupied the Property and no party represents or warrants that the Property conforms to local building codes, zoning requirements or any other applicable laws, rules or regulations.

Buyer acknowledges that Buyer has had the opportunity to inspect, examine and make a complete review of the Property prior to the close of escrow of the Contract. Buyer will rely solely on its own inspection and review to evaluate the condition of the Property. Buyer acknowledges that it is Buyer's sole responsibility to obtain inspection reports by qualified professionals on the appliances, structural components, alterations and additions to the Property and to determine the presence of any toxic or hazardous substances on the Property, including, but not limited to, mold, radon, asbestos and lead paint, that would make it uninhabitable or dangerous to the health of the occupants or otherwise not in compliance with law, or any other factors regarding the condition of the Property about which Buyer may be concerned.

In the event electrical, plumbing, water and/or heating services are shut down for Property preservation or other purposes, Seller will NOT reactivate these systems prior to closing. Buyer understands, acknowledges, and agrees that neither Seller nor any person acting as Seller's representative is making any warranties or representations, either expressed or implied, as to the condition of the Property. The Property is being conveyed to Buyer in "AS IS/ WHERE IS" condition and "with all faults." It is the right and

responsibility of the Buyer to inspect the Property and Buyer must satisfy himself/herself as to the condition of the Property. If Buyer fail to inspect the Property, such failure shall not under any circumstances alter, change or impair the understanding and agreement made between the Seller and Buyer as set forth herein.

Buyer shall execute at closing a Waiver and Release Regarding Property Condition. Seller, Seller's agents and Buyer shall, if the Property was built prior to 1978, execute a LEAD BASED PAINT Disclosure Addendum to Contract of Sale, a form of which shall be provided by Seller's representative. By signing this addendum, if applicable, the Buyer acknowledge that he/she have received a copy of the EPA manual "Protect Your Family from Lead in Your Home."

Buyer hereby acknowledges that Seller shall not be providing Buyer with a Real Estate Transfer Disclosure Statement and/or a Certificate of Occupancy with respect to the Property. Buyer hereby waives any requirement that Seller furnish Buyer with any such disclosure statement and/or a Certificate of Occupancy and hereby releases Seller from any and all liability resulting from the non-delivery of such disclosure statement and/or a Certificate of Occupancy.

Seller does not agree to provide building permits. It is Buyer' responsibility to confirm building and safety compliance on the Property during the inspection period. Seller is under no obligation to clear any existing municipal code and/or ordinance violations, but may in its sole discretion agree to forbear enforcement of same and/or close with an agreement to provide Buyer with an agreed upon time period after closing within which Buyer shall bring the Property into compliance. By closing, Seller does not waive any rights to continue to enforce any municipal codes which the Property may be in violation of.

By entering into this Contract, Buyer agrees to indemnify Seller and Seller's representatives and fully protect, defend and hold Seller and Seller's representatives harmless from and against any and all claims, liens, losses, damages, liabilities, costs, injuries, attorney's fees and expenses of every kind and nature that may be made against Seller or the Property for any liens on the Property, any damage to the Property and/or injury to Buyer or any other persons that may arise from Inspections, repairs, replacements. Buyer shall indemnify and fully protect, defend and hold Seller its servicers, representatives, agents, attorneys and employees harmless from any and all claims, costs, liens loss, damages, injuries, attorney's fees and expenses of every kind and nature, resulting from or arising out of any inspections, repairs, replacements or any other work performed in or upon the premises by Buyer or its agents, employees, contractors or assigns. In the event any repairs are made at the premises, or any work or material are added to the premises, or the value of the premises is enhanced in any way, then in the event this transaction does not close, all material added to the premises shall become the sole and exclusive Property of the Seller, and Seller shall have no liability to Buyer or any third party for any such material or work completed.

No Occupancy or Repairs Before Closing: Occupancy of the Property shall NOT be permitted prior to closing and funding. BUYER WILL NOT BE PERMITTED TO COMMENCE ANY REPAIRS PRIOR TO CLOSING, NOR SHALL SELLER BE REQUIRED TO MAKE ANY REPAIRS.

Multiple Offers: Buyer acknowledges that Seller may have received offers prior to or may receive offers after receipt of this offer. Buyer acknowledges that the Seller may consider all offers regarding purchase, regardless of the date of receipt of the offer and that Seller may accept or reject any offer at its sole discretion. The Contract shall not be deemed accepted by Seller until Seller's signature is affixed hereon and a fully executed original counterpart or facsimile of the Contract has been delivered to Buyer.

Limitation of Remedies: Buyer expressly waives the (a) remedy of specific performance, in the event of Seller's default, under this Agreement, (b) Buyer agrees to forgo to record or file a lis pendens or a notice of pendency of action or similar notice against all or any portion of the Property; (c) Buyer waives the right to invoke any other equitable remedy that may be available, that, if invoked, would prevent the Seller from conveying the Property to a third party buyer, (d) Buyer waives any claims or losses relating to environmental conditions affecting the Property, including but not limited to, mold, lead paint, fuel, oil, allergens or any other toxic substances of any kind, and (e) Buyer waives any claim or losses arising from encroachments, easements and/or shortages which would have been disclosed or revealed to the Buyer by a survey or inspection of the Property or by a search of the public records. In the event that the Buyer, files a claim in direct contradiction to the waivers agreed to above, or contemplated here, Buyer shall reimburse Seller for all reasonable attorney fees and costs incurred by Seller in defending such action, if Seller prevails.

No Duty to Maintain Property: Seller is under no duty to maintain or otherwise deliver the Property in the same condition as it was in at the Effective Date or at the close of Buyer's Inspection Period. In the event the Property is damaged either after the Effective Date or Inspection Period, Seller has no duty or obligation to expend any monies or other resources to repair the Property, and the same shall not excuse Buyer's performance unless the cost to repair any such damage exceeds \$2000.00, as determined in writing by an estimate provided by a contractor licensed to make such repairs or by a licensed insurance adjustor (which written estimate must accompany any notice by Buyer to terminate this Contract), in which event Buyer may elect to terminate the Contract if Seller elects to not make any repairs, and Buyer's sole remedy shall be return of Buyer's Deposit, and both parties shall thereupon be released from any liability under this Contract.

Locks, Keys, Etc.: Buyer shall at Buyer's sole expense install new locks on the Property immediately after closing, and Buyer shall hold Seller and Seller's representatives harmless from and indemnify Seller and Seller's representatives against any and all damages, claims, liens, losses, liabilities, costs, injuries, attorney's fees and expenses of every kind and nature that may be made against Seller as a result of Buyer failure to install new locks on the Property. Seller shall not be responsible to provide any keys, garage door openers, or other access devices beyond what is in Seller's possession.

Conveyance: Seller shall convey by special warranty deed, subject to all restrictions, easements, covenants, and other matters of record.

Survey: Buyer shall obtain any desired or required survey(s) of the Property no later than the expiration of Buyer's inspection period. In the event any encroachment(s) are revealed by any survey obtained by

Buyer, Seller shall be under no obligation to cure same, and Buyer's sole remedy shall be to terminate this Contract and receive a return of Buyer's Deposit. If Buyer obtains a survey after the inspection period which reveals an encroachment as would prevent a Buyer from obtaining title insurance coverage in favor of Buyer's lender, Buyer may terminate the Contract but Seller may retain Buyer's Deposit and thereby both parties shall be release from any further liability under this Contract; provided that if the Contract is not otherwise contingent on Buyer obtaining mortgage financing, then Buyer must close notwithstanding the encroachment(s) revealed by the survey, and Seller may avail itself of specific performance.

'Restricted Persons' Not Eligible to Purchase: Unless specifically disclosed to Seller in writing at the time of the submission of Buyer's offer, and a specific written waiver is included with Seller's notification of acceptance of Buyer's offer, Buyer acknowledges that as a material inducement to Seller to enter into this Contract with Buyer, Buyer affirmatively represents to Seller that Buyer is not a 'restricted person' as defined as follows: (1) Seller's Broker, (2) Seller's Broker's employees, (3) Seller's Broker's agents, (4) any persons who are affiliated with any of the foregoing, (5) any persons who are married to any of the foregoing, (6) any persons who are first degree relatives of any of the foregoing (for the purpose of this Section term "first degree relative" means parent, child, or sibling).

If after closing Seller discovers that Buyer is a prohibited person, Seller may elect to rescind the sale of the Property to Buyer, and Buyer shall be responsible for all of Seller's costs and attorney's fees if Seller shall elect to rescind the sale.

Addendum to Survive Closing: Buyer acknowledges that the terms and condition of this Addendum shall survive the closing.

Buyer:

Bruce H Adler June 17, 2021
Date

Date

Seller

City of Palm Bay, a Florida municipal corporation

Suzanne Sherman 9-21-2021
By: Date
As: City Manager

Seller's Property Disclosure Update



Seller makes the following disclosure regarding the property described as: _____

City of Palm Bay owned Property

Notice to Licensee and Seller: Only the Seller should fill out this form.

Instructions to Seller: If the information set forth in a previously provided disclosure statement becomes inaccurate or incorrect, you must promptly notify Buyer. Use the space below to make corrections and provide additional information, if necessary. Then acknowledge that the information is accurate as of the date signed below.

Seller (City of Palm Bay) makes no representations or warranties as to the condition of any property or the presence of defects therein, latent or otherwise.

Seller represents that the information provided on this form and any attachments is accurate and complete to the best of Seller's knowledge on the date signed by Seller.

Seller: [Signature] / Suzanne Sherman, City Manager Date: 1-29-2021
(signature) (print)

Seller: _____ / _____ Date: _____
(signature) (print)

Buyer acknowledges that Buyer has read, understands, and has received a copy of this revised disclosure statement.

Buyer: Bruce H Adler / Bruce H Adler Date: June 17, 2021
(signature) (print)

Buyer: _____ / _____ Date: _____
(signature) (print)

RESOLUTION 2021-59

A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, SELLING AND CONVEYING PROPERTY AS RECORDED IN PLAT BOOK 21, PAGES 29 THROUGH 33, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Bay has contracted to sell and convey the following described property to BHA Land Investments, LLC ("Purchaser"):

Lot 14, Block 1981, Port Malabar Unit 40, according to the map or plat thereof as recorded in Plat Book 21, Page(s) 29 through 33, of the Public Records of Brevard County, Florida; Section 3, Township 29S, Range 37E; containing 0.62 acres, more or less;

Said property being more commonly known as 1956 Agora Circle SE, Palm Bay, Florida 32909, and

WHEREAS, the City has no plans to develop said Property and that it is unnecessary for public purposes, and

WHEREAS, the City has determined that the sale of said Properties is in the best interest of the Public, and

WHEREAS, the City has authorized its sale and authorized the City Manager to execute all necessary documents to convey the Property to the Purchasers.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay has hereby determined that said properties are unnecessary for the City's public purposes.

SECTION 2. The City of Palm Bay has hereby determined that disposal of said properties, as they are described above, is in the best interest of the public.

SECTION 3. The City of Palm Bay hereby authorizes the conveyance of said properties to BHA Land Investments, LLC, by City Manager, Suzanne Sherman, pursuant to the applicable Florida Statutes.

SECTION 4. The City of Palm Bay specifically releases any automatic reservation and right of entry in accordance with Section 270.11, Florida Statutes.

SECTION 5. This Resolution shall take effect immediately upon its adoption.

This resolution was duly enacted at Meeting 2021- , of the City Council of the City of Palm Bay, Brevard County, Florida, held on , 2021.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

cc: Brevard County Recording



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Christopher A. Little, P.E.

DATE: 10/21/2021

RE: Consideration of Amendment 3 to the interlocal agreement with Brevard County for the Save Our Indian River Lagoon Project Cost Share Funding.

The North Regional Water Reclamation Facility (NRWRF) was identified as an eligible facility to be part of a program to reduce sources of pollution in the Indian River Lagoon (IRL). Funding for the project will be through a cost-share program, via the Brevard County Save Our Indian River Lagoon (SOIRL) Project Plan. On April 5, 2018, Council approved the execution of an Interlocal Agreement with Brevard County to accept funding in the amount of \$1,400,000 for the installation of the nutrient removal facility. The NRWRF Nutrient Removal Facilities will reduce nutrient levels in reclaimed water; thereby reducing the pollutants to the IRL from reclaimed water from the NRWRF.

Subsequent to the execution of the Agreement, two (2) amendments have been approved to SOIRL 18-17; 1) Amendment 1 was approved by Council on October 17, 2019, for an extension of the completion date and to increase the cost-share funding for a revised total of \$3,634,900; and 2) Amendment 2 was approved by Council on February 4, 2021, for an extension of the completion date.

The award of the contract for the construction of the Nutrient Removal Facilities was approved by Council on February 20, 2020, to TLC Diversified Inc., in the amount of \$3,367,000. Subsequent to the award, two (2) change orders have been approved; 1) for an increase in the contract construction time, approved by the Chief Procurement Officer on May 28, 2020; 2) for an increase in construction cost of \$59,473.47 and an increase in the contract construction time, approved by Council on December 17, 2020.

Due to the ongoing pandemic, there have been delays in the acquisition of construction materials by the Contractor to complete the Work; therefore, the City made a new request to the County to extend the completion date of the project. On October 12, 2021, the Brevard County Board of County Commissioners approved the extension with a new project completion date of April 30, 2022.

The Utilities Department is requesting Council approval for Amendment 3 to the Interlocal Agreement SOIRL 18-17, to extend the completion date and continue our participation in the cost-share funding with Brevard County for the NRWRF Nutrient Removal Project. Upon approval, staff will process a Change Order for time with the Contractor.

REQUESTING DEPARTMENT:

Utilities

FISCAL IMPACT:

There is no fiscal impact to the City of Palm Bay.

RECOMMENDATION:

Motion to authorize the City Manager to execute Amendment 3 to the Save Our Indian River Lagoon Project Cost-Share Funding Interlocal Agreement, SOIRL 18-17.

ATTACHMENTS:

Description

SOIRL 18-17 Amendment 3

AMENDMENT 3 TO THE SAVE OUR INDIAN RIVER LAGOON PROJECT COST-SHARE
FUNDING INTERLOCAL AGREEMENT BETWEEN BREVARD COUNTY, FLORIDA AND THE
CITY OF PALM BAY, FLORIDA

AGREEMENT NUMBER: SOIRL 18-17

THIS AMENDMENT is made and entered into by and between Brevard County, Florida, a political subdivision of the State of Florida (hereinafter "COUNTY"), and the City of Palm Bay, Florida, a Florida municipal corporation organized and existing under the laws of the State of Florida (hereinafter "CITY").

WHEREAS, the parties have previously entered into that certain Save Our Indian River Lagoon Project Cost-Share Funding Interlocal Agreement No. SOIRL 18-17 on April 6, 2018 ("Agreement"), which is incorporated herein by this reference; and

WHEREAS, the parties previously entered into Amendment 1 to the Agreement on October 22, 2019 to adjust the project cost share and contract expiration date from February 5, 2020 to April 30, 2021 ("Amendment 1"), which is incorporated herein by this reference; and

WHEREAS, the parties previously entered into Amendment 2 to the Agreement on February 5, 2021 to update the Project Managers, Local Preference Limitations, E-Verify Language, and contract expiration date from April 30, 2021 to October 30, 2021 ("Amendment 2"), which is incorporated herein by this reference; and

WHEREAS, the CITY experienced further delays in material acquisition to complete construction due to COVID-19, and the parties desire to amend the Agreement to extend the timeline required to complete the Project.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereby agree as follows:

1. The above recitals are hereby incorporated herein by this reference.
2. Section 3. Terms and Extensions subsection 3.a. is amended to read as follows:
 - a. The term of this Agreement is from the date upon which the last party has dated and executed the same ("Effective Date") until April 30, 2022 ~~October 30, 2021~~ ("Completion Date"). CITY shall not commence the Project until any required submittals are received and approved. Time is of the essence for every aspect of this Agreement, including any time extensions.
3. The following section replaces Section 25 to the Agreement:

Section 25. Severability.

If any portion of this Agreement is found to be invalid or unenforceable or if applicable law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal, or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.

4. All terms and conditions of the Agreement, and any amendments and other modifications made thereto, which are incorporated herein by this reference, not inconsistent with the provisions of this Third Amendment, shall remain in full force and effect.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the date last written below

BREVARD COUNTY, FLORIDA

By: _____

Date: _____

Rita Pritchett, Chair

As Approved by the Board on May 23, 2017

Attest

Rachel Sadoff, Clerk

Date: _____

PALM BAY, FLORIDA

By: _____

Name: Suzanne Sherman

Title: City Manager

Date: _____

Attest

By: _____

Name: _____

Title: _____

Date: _____

Reviewed for legal form and content for Brevard County:


Alexander Essee, Assistant County Attorney



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Greg Minor, Director of Parks and Facilities Department

DATE: 10/21/2021

RE: Consideration of the Addition of a Landscape Technician position within the Parks and Facilities Department

The Parks and Facilities department currently maintains over 2,287,624 square feet of Athletic Field Turf, along with thousands of lineal feet of irrigation pipe, hundreds of irrigation heads, along with numerous timers and controllers and many irrigation wells. It has come to the point, where a clearly defined worker needs to be a position that will take over the responsibilities of overseeing the turf management. There are also additional elements of the turf management to include fertilization, application of chemicals and dealing with permitting agencies such as ACOE and SJRWMD. The creation of a Landscape Technician position will allow the Parks/Facilities department to adequately maintain large amount of Athletic Turf in a professional manner.

The annual salary for a Maintenance Worker II is \$35,542.08, and the salary for a Landscape Technician is \$41,271, requiring an additional \$6,728.92 if funded for a full year. However, due to current vacancies of 3.5 Maintenance Worker I positions and the Maintenance Worker II position, funding is available within the personnel budget to cover the reclassification.

If approved, this position will be a new addition to the City's position control document.

REQUESTING DEPARTMENT:

Parks and Facilities

FISCAL IMPACT:

No fiscal impact as funding will be from the existing Departmental budget.

RECOMMENDATION:

Request for addition of a Landscape Technician position to the Position Control Plan, to allow for the reclassification of a vacant Maintenance Worker II into a Landscape Technician.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Juliet Misconi, Chief Procurement Officer

DATE: 10/21/2021

RE: Consideration of utilizing Undesignated Fund Balance to modify the Procurement Position Control Plan (\$3,316).

Procurement is requesting to use undesignated fund balance to promote the a Procurement Agent II to a Procurement Agent III.

In Fiscal Year 2019, Procurement reclassified their positions from Contract Administrators and developed tiers of increasing experience, education, responsibility, and certification requirements by creating Procurement Agents I, II and III (PA I, II, III). In Fiscal Year 2021, Procurement was budgeted for two PA III and two PA I. Staff was not able to fill either of the two vacant PA III roles, despite multiple job postings and advertising, and instead re-posted for PA II or III. Procurement filled both positions as PA II's with the intent of educating and training them for future advancement. As such, although the PA III position exists in the pay plan, Procurement does not have a PA III position currently budgeted. The PA III position is a critical role. PA III's handle complex procurements like construction, architectural and engineering, financial services, benefit services, federally funded and grant-funded purchases, and disaster recovery services like debris removal. The position requires five years of experience, three of which must be in these complex solicitations, and it requires a nationally recognized procurement certification within two (2) years of hire. This position also supervises other PA's, as assigned by the Procurement Manager. As the City's procurement volume, construction volume, and grant-funded solicitations continue to increase, the PA III is important to efficiency of the operation.

Note that although Procurement is now fully staffed, the personnel budget for FY 2022 actually decreased from FY 2021 because of the inability to fill PA III positions (\$318,467 in FY 2021 to \$307,358 in FY 2022). So although this request is from undesignated fund balance, the increase to the Procurement account 001-1510-513-1210 is actually less than the savings realized from FY 2022 to FY 2021.

REQUESTING DEPARTMENT:

Procurement

FISCAL IMPACT:

Funding is requested from undesignated fund balance, 101-0000-271-2010, in the amount of \$3,316. Funding will be transferred to the following accounts: \$2,843 to 001-1510-513-1210; \$217 to 001-1510-513-2110; \$256

to 001-1510-513-2210.

RECOMMENDATION:

Motion to allocate undesignated fund balance to the Procurement Department personnel accounts in order to modify the Procurement Position Control Plan.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Valentino Perez, Chief Building Official

DATE: 10/21/2021

RE: Consideration of appropriating funds from the Building Department Undesignated Enterprise Fund for the purchase of a hybrid vehicle for the Building Department (\$28,960).

The Building Department is requesting to increase its budget to cover the cost of one Ford Escape Hybrid Vehicle. Currently the Building Department has vehicles that are assigned to Building Inspectors, Building Official, and Deputy Building Official. There are currently no backup vehicles. In the event one of the assigned vehicles is out of service, the employee will be out of service the same length of time their vehicle is down. Also, on the occasion a staff member who does not have an assigned vehicle needs to attend an out of Department meeting or a Building related task there are no spare vehicles to utilize and they must use their personal vehicle. In an effort to save on fuel expenses, the Building Official will utilize the Hybrid Vehicle, as his take home vehicle, and the current Ford Explorer, will be serve as this administrative/pool vehicle.

The Building Department will utilize the Florida Sheriff's Association Co-Operative Program Contract FSA20-VEL 28.0 to purchase one Ford Escape Hybrid at the cost of \$28,381. There will also be accessory charges of \$579 for Window Tinting, GPS Unit, GPS Install, GPS Monitoring. The total for vehicle will be \$28,960.

REQUESTING DEPARTMENT:

Building Department

FISCAL IMPACT:

Transfer funds available of \$28,960 in Building Department Undesignated Enterprise Fund Balance account number 451-0000-392-3006 to Capital Machinery and Equipment account 451-3120-524-6403 (\$28,381) and Operating Account 451-3120-524-4106 (\$194) 451-3120-524-5208 (\$385).

RECOMMENDATION:

Motion to approve budget amendment from Building Department Undesignated Enterprise Fund Balance account 451-0000-392-3006 to Building Department Capital Equipment account 451-3120-524-6403 & Operating account 451-3120-524-4106 & 451-3120-524-5208.

ATTACHMENTS:

Description

Vehicle Quote

Budget Amendment

Budget Adjustment Request



August 2, 2021

JOY BARNETT
PALM BAY

Bozard Ford is pleased to submit the following quote based on FSA Contract FSA 20-VEL28.0

SPEC333	FORD ESCAPE SE HYBRID AWD (U9B)	\$25,561.00
3KPS	THIRD KEY WITH PROGRAMMED REMOTE FOR PUSH BUTTON START VEHICLES	\$499.00
THMS1000	1000 WATT MODEIFIED SINE WAVE POWER INVERTER WITH REMOTE	\$645.00
4CSTV	4 ROUND STYLE LED CORNER STROBES (WHITE) FRONT MOUNTED OUTSIDE HEAD LAMPS, REARS INSTALLED IN CLEAR OF TAIL LIGHT LENS	\$799.00
BUA	AUDIBLE AFTERMARKET BACK UP ALARM	\$129.00
WTSUV2	WEATHERTECH FLOOR LINER FOR SUV FRONT AND REAR	\$299.00
WTCL	WEATHERTECH CARGO LINER BEHIND REAR SEAT	\$199.00
YZ/4H	OXFORD WHITE EXTERIOR / EBONY CLOTH INTERIOR	STD

Total	\$28,131.00
--------------	--------------------

Sincerely,

Jeffrey Eason
Government Sales Director

City Council Approval Date

Justification for Budget Amendment Request

--

Justification, if "No" →

Budget Office Representative

H.T.E. Entry Date
Entered By
Date Journalized

Operating Adjustment Request

Submitted requests impacting all operating related funding for the fiscal year

FY 2022 Total Cost/(Savings):28,960

Title:

Administration Vehicle

Fund (Name/#):

451 Building

Department:

Building

Division:

Priority:

6 → Only one per Funding Source Allowed

Priority 1 CODE:

Select A/B/C

Deadline:

Category:

Increase

FOR INTERNAL SERVICE DEPARTMENTAL REVIEW

Department	Reviewed	Reviewed By
Select From List	Select Yes/No	
Select From List	Select Yes/No	
Select From List	Select Yes/No	
Select From List	Select Yes/No	

Comments:

Description & Justification For Request:

Funds needed to purchase 1 Ford Escape Hybrid & Tag/Title \$28,381, GPS Monitoring \$194 annually, and \$385 for safety Lights. Currently the Building Department only has assigned vehicles to Building Inspectors, Building Official, and Deputy Building Official. In the event a current assigned vehicle is out of service, the employee will be out of service the same length of time their vehicle is down. Also, on the occasion an individual need's to attend an out of Department meeting, or a Building related task there are no spare vehicle for the employee to utilize. Funds available in Building Enterprise Undesignated Fund Balance.

EXPENDITURE DETAILS - ACCOUNT NUMBERS & DESCRIPTIONS

Use Full GL Accounting String & Description			Enter GL Accounting String Click Cells for Samples	Amounts
Fleet	6403-Light Vehicles	451-3120-524-6403		28,381
Other	Add Full GL String →	451-3120-524-4106		194
Other	Add Full GL String →	451-3120-524-5208		385
Select Category	Select From Drop-Down			-
Select Category	Select From Drop-Down			-
Select Category	Select From Drop-Down			-
Select Category	Select From Drop-Down			-
Select Category	Select From Drop-Down			-
Select Category	Select From Drop-Down			-
Select Category	Select From Drop-Down			-
Select Category	Select From Drop-Down			-
Select Category	Select From Drop-Down			-
Select Category	Select From Drop-Down			-
Select Category	Select From Drop-Down			-
Select Category	Select From Drop-Down			-

Page 2 Sub-Total (Additional Expenditures)-

Total Expenditures:28,960

Recurring Costs Must Be Completed →

One-Time:28,960

Recurring:-

Specify Identifiable Revenue Funding Source (Excluding Fund Balance):

Total Revenues:-

Total Expenditures Minus Revenues:28,960

Impact of Denial:

Denial will cause Inspectors to be out of seviceis in the event there is no Admin Vehicle available and if needed Admin personnel will be required to use their personal vehicles for department tasks

Title:

Administration Vehicle

Fund (Name/#):

451 Building

Department:

Building

Division:

EXPENDITURE DETAILS - ACCOUNT NUMBERS & DESCRIPTIONS

Use Full GL Accounting String & Description

Enter GL Accounting String
Click Cells for Samples

Amounts

Select Category	Select From Drop-Down		-
Select Category	Select From Drop-Down		-
Select Category	Select From Drop-Down		-
Select Category	Select From Drop-Down		-
Select Category	Select From Drop-Down		-
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Select Category	Select From Drop-Down		-
Select Category	Select From Drop-Down		-
Select Category	Select From Drop-Down		-
Select Category	Select From Drop-Down		-
Page 2 Sub-total			-



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Patricia Smith, City Attorney

DATE: 10/21/2021

RE: Consideration of travel and training for specified City employees (Office of the City Attorney).

I hereby request your authorization for the following travel for the City Attorney's Office for November 7, 2021 - November 8, 2021:

25th Annual Florida Eminent Domain Conference

Registration: \$895
Lodging November 7-November 9, 2021 \$248
Mileage: \$165.76
Self Parking: \$70
Per Diem: \$111
Total: \$1,489.76

REQUESTING DEPARTMENT:

City Attorney's Office

FISCAL IMPACT:

Funds are available in 512-1425-519-4001.

RECOMMENDATION:

Motion to approve training and travel request for the City Attorney's Office.

ATTACHMENTS:

Description

Florida Eminent Domain Conference Agenda

FLORIDA EMINENT DOMAIN

The Bert Harris Act, Land Use, Environmental Law & More!



November 8-9, 2021 • Hilton Downtown • Tampa

Monday, November 8

- 8:30 Registration and Continental Breakfast
- 9:00 Introduction and Welcome
Overview of Day One
- Andrew Brigham, Esq., Program Co-Chair
Brigham Property Rights Law Firm, Jacksonville
- Jacob Cremer, Esq., Program Co-Chair
Stearns Weaver Miller Weissler Alhadeff & Sitterson, Tampa
- 9:15 Florida Land Use and Environmental Law Update
2020-2021
- Darrin Quam, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, Tampa
- 10:00 Networking Break
- 10:15 Eminent Domain Cross-Training
Acquisition, Code Enforcement, Environment, and Land Use Issues
- Vivian Arenas-Battles, Esq.
Dean DiRose, Esq., Senior Assistant County Attorney
Mary Dorman, Esq. and
Ken Pope, Esq.
Hillsborough County Attorney's Office, Tampa
- 11:15 The Lawyer-Appraiser Relationship
What Works and What Doesn't
- Heyward Cantrell, MAI
Cantrell Ray Real Estate, LLC, Jacksonville
- Ron Moody, MAI, SRA, CEO
Moody Williams Appraisal Group
- 12:15 Lunch Break (on your own)
- 1:30 Crossroads
I4 Ultimate
- Summer DeGel, Esq. and
Kent Hipp, Esq.
GrayRobinson, Orlando

Monday, November 8

- 2:30 Insights for Ensuring Success at Mediation
Strategies That Work...and Some That Don't
- Tobyn DeYoung, Esq. and
Jim Helinger, Esq.
Helinger DeYoung, St. Petersburg
- 3:15 Networking Break
- 3:30 Property Rights Highlights
Discussion of Selected Decisions During the Past Year
- Amy Boulris, Esq.
Gunster, Miami
- 4:15 Appraisal Issues that Shape the Case
Panel Discussion
- Amy Boulris, Esq.
- Heyward Cantrell, MAI
- Kent Hipp, Esq.
- Ron Moody, MAI, SRA, CEO
- Moderator: Andrew Brigham, Esq., Program Co-Chair
- 5:15 Adjourn

FLORIDA EMINENT DOMAIN

The Bert Harris Act, Land Use, Environmental Law & More!



November 8-9, 2021 • Hilton Downtown • Tampa

Tuesday, November 9

- 8:00 Continental Breakfast
- 8:30 Welcome Back
Overview of Day Two

Andrew Brigham, Esq., Program Co-Chair

Jacob Cremer, Esq., Program Co-Chair
- 8:45 Ethics
Panel Discussion

Moderator: Jacob Cremer, Esq., Program Co-Chair
- 9:45 Evolving Issues with Customary Use

Will Dunaway, Esq.
Clark Partington, Pensacola, Destin and Santa Rosa Beach
- 10:30 Networking Break
- 10:45 Preparing and Presenting an Eminent Domain Trial Based on Themes

Laura Camp, Esq. and
Andy Schuster, Esq.
Camp & Schuster, Miami
- 11:30 State Law, Sovereign Immunity and Pipelines
Takings Under the Natural Gas Act

Scott Copeland, Esq.
Brigham Property Rights Law Firm, Jacksonville
- 12:15 Lunch Break (on your own)
- 1:30 Lessons from a Penn Central Trial (in Key West)
Case Study

Robert H. Thomas, Esq.
Pacific Legal Foundation, Sacramento, CA

Kady Valois, Esq.
Pacific Legal Foundation, Palm Beach Gardens
- 2:15 Resolving Property Rights Disputes Through the Florida Land Use
and Environmental Dispute Resolution Act

Jacob Cremer, Esq., Program Co-Chair
- 3:00 Networking Break

Tuesday, November 9

- 3:15 eDiscovery and Eminent Domain
Practical Tips and Suggestions

Frederick E. Owens Jr., Electronic Discovery Project
Manager
Gunster, Fort Lauderdale
- 4:00 Voluntary Acquisitions Projects
Similarities and Dissimilarities to Eminent Domain, and
Considerations for Both the Landowner and Attorney

Ryan C. Reese, Esq.
Moore Bowman & Reese, Tampa
- 4:45 Evaluations and Adjourn





LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Patrick J. Murphy, Acting Growth Management Director

DATE: 10/21/2021

RE: Ordinance 2021-66, granting approval of a Final Development Plan for a proposed Planned Unit Development (PUD) residential subdivision to be known as 'Gardens at Waterstone Phase II' on property located south of and adjacent to Melbourne Tillman Water Control District Canal 38, in the vicinity west of Mara Loma Boulevard (52.26 acres) (Case FD-33-2021, Waterstone Farms, LLC), final reading. (Quasi-Judicial Proceeding)

A public hearing is to be held on the above subject ordinance and the caption read for the second and final time at tonight's Council meeting.

Mr. Benjamin E. Jefferies, Waterstone Farms, LLC (Jake Wise, P.E., P. Michael Evans, and Rochelle W. Lawandales, FAICP, Reps.) have submitted for Final Development Plan PUD approval of a 174-unit residential subdivision to be known as Gardens at Waterstone Phase II PUD. The vacant 52.26-acre parcel is located north of and adjacent to Mara Loma Boulevard SE, and west of Babcock Street SE.

This phase of the Gardens at Waterstone PUD proposes 174 single-family homes to be constructed in one phase. The proposed density is 3.33 units per acre, which is below the maximum density allowed for Single-Family Residential Use. The development will consist of 1,600 square-foot minimum sized homes, a neighborhood park, passive recreation areas, and meandering walking trails connecting the subdivision to Mara Loma Boulevard and other future sections of the overall PUD. The recreation areas will be available to the residents of Phases I, II, and III. All roads within the development will be private, and there will be one access point off the newly created Granger Circle SE, which will connect to the newly extended Mara Loma Boulevard.

The developer for the PUD should request a cost-share analysis from the Public Works Department to ensure that each project (Waterstone and Cypress Bay) will only pay the cost of their Proportionate Fair Share of the traffic signal warranted, prior to the issuance of a Certificate of Completion for this phase of Gardens at Waterstone, since each project will generate traffic for the Mara Loma Boulevard and Babcock Street intersection.

Upon review, the proposed request appears to conform with the applicable requirements for Final Development Plan approval.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case FD-33-2021, subject to the staff comments contained in the staff report being addressed upon submission of the administrative construction plans as follows:

- Fully engineered construction drawings.
- A Subdivision Plat meeting Ch.177 of Florida State Statute requirements and a title opinion.
- The technical comments generated by the Development Review Staff (attached) shall be observed and incorporated into the engineered construction drawings.
- No roads shall be accepted by the City of Palm Bay for operation and maintenance until and unless the Developer requests acceptance through the process promulgated in Chapter 182 of the City of Palm Bay's Code of Ordinances. Upon commencement of said process, staff will determine if acceptance of any roads would provide a public benefit and that current City of Palm Bay construction standards are met.
- The traffic signal at Mara Loma Boulevard and Babcock Street shall be constructed and operational prior to the issuance of the Certificate of Completion of The Gardens at Waterstone Phase II.

Planning and Zoning Board Recommendation:

Unanimous approval of the request, subject to the staff comments contained in the staff report.

ATTACHMENTS:**Description**

Case FD-33-2021 - Staff Report - Revised

Case FD-33-2021 - Final Development Plan

Case FD-33-2021 - Narrative

Case FD-33-2021 - Application

Case FD-33-2021 - Board Minutes

Ordinance 2021-66 (REVISED)

Ordinance 2021-66, Exhibit A

Ordinance 2021-66, Exhibit B

Ordinance 2021-66, Exhibit C

Ordinance 2021-66, Exhibit D

**REVISED**

STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

landdevelopmentweb@palmbayflorida.org

Prepared by

Christopher Balter, Senior Planner

CASE NUMBER

FD-33-2021

PLANNING & ZONING BOARD HEARING DATE

September 1, 2021

PROPERTY OWNER & APPLICANT

Benjamin E. Jefferies - Waterstone Farms, LLC. Represented by Jake T. Wise P.E. of CEG, and Michael Evans of PB&J Investments, and Rochelle Lawandales

PROPERTY LOCATION/ADDRESS

Tract 1, San Sebastian Farms, Section 5, Township 30, Range 37, and Part of Tax Parcel 250, Section 4, Township 30, Range 37, Brevard County, Florida

SUMMARY OF REQUEST

Final Planned Unit Development approval for a 174-unit residential subdivision to be known as Gardens at Waterstone Phase 2 PUD.

Existing Zoning

PUD, Planned Unit Development

Existing Land Use

Single-Family Residential Use

Site Improvements

Vacant Unimproved Land (Former Orange Groves)

Site Acreage

52.26 acres

SURROUNDING ZONING & USE OF LAND

North

Melbourne-Tillman Drainage Canal No. 38

East

PUD; Gardens at Waterstone Phase 1; Under Construction

South

PUD; Proposed Cypress Bay West Phase 3; Undeveloped Land

West

PUD; Rolling Meadow Lakes; Undeveloped Land

COMPREHENSIVE PLAN COMPATIBILITY

The future land use designation of the subject property is Single-Family Residential Use. The development of a single-family planned unit development is compliant with the Single-Family Residential Use future land use designation. The proposed density is 3.33 units per acre, which is below the maximum density defined in the City's Comprehensive Plan for Single-Family Residential Use (up to 5 units per acre).

BACKGROUND:

The subject property is located north of and adjacent to Mara Loma Boulevard SE, and west of Babcock Street SE. Specifically a portion of Tax parcels 250, Section 4, Township 30, Range 37, and a portion of Tract 1 of San Sebastian Farms Subdivision, of Brevard County Florida. This Final PUD request includes approximately 52.26 acres of land.

In 2004 the subject property was annexed into the City via Ordinance 2004-35 as port of a larger property totaling 1,167 acres. The original Future Land Use amendment designated all of the lands as Single-Family Residential Use via Ordinance 2004-52, which stated that 1,800 units could be placed on the lands of Waterstone or Cypress Bay Preserve. Site specific conditions were placed on the amendment via Ordinance 2004-48. Between 2005 and 2018, a series of 37 future land use map amendments were made bringing the total units entitled to 2,596.

The total encumbered remaining units (received Final Development Plan Approval) without this current application being counted are as follows: 1,548 units on the west side of Babcock Street and 362 units on the east side of Babcock Street.

ANALYSIS:

The applicant is requesting Final Development Plan (FDP) approval for a Planned Unit Development (PUD) to construct a single-family residential subdivision called Gardens at Waterstone Phase II PUD. The planned unit development is a concept that encourages and permits variation in residential developments by allowing deviation in lot size, bulk or type of dwellings, density, lot coverage, setbacks, and open space, from those elements required in any singular zoning classification found in the city's Zoning Code.

Specifically, this FDP proposes a 174-unit single-family development that will be constructed in one phase. Per the FDP, average lots within the residential development are 50' x 125' and 60' x 125'. The proposed minimum sized home is 1,600 square feet. There will be 1 access point off of the newly created Granger Circle, which connects to the newly extended Mara Loma Boulevard. All roads within the subdivision will be private. The Gardens at Waterstone Phase II will have a neighborhood park, passive recreation areas, and meandering walking trails connecting the subdivision to Mara Loma, and other future sections of the larger community, all under control of the Gardens at Waterstone Homeowners Association, Inc. The recreation areas will be used by all homes in the Gardens at Waterstone Phases 1, 2, and 3. There are 3 neighborhood parks within Gardens Phase 2, totaling 1.8 acres more or less. These will be primarily passive parks, used for multi-purpose playing fields, a dog park and other outdoor activities. All the residents will have access to the Phase 1 pool and cabana.

Lastly, technical staff review comments are attached to this report.

CONDITIONS:

In order to receive FDP approval, the proposal must meet the requirements of Section 185.067 of the City of Palm Bay's Code of Ordinances. Upon review, the request appears to conform with the applicable requirements of this section. The following items shall be addressed upon submission of the administrative construction plans:

- Fully engineered construction drawings.
- A Subdivision Plat meeting Ch.177 of Florida State Statute requirements and a title opinion.
- The technical comments generated by the Development Review Staff (attached) shall be observed and incorporated into the engineered construction drawings.
- No roads shall be accepted by the City of Palm Bay for operation and maintenance until and unless the Developer requests acceptance through the process promulgated in Chapter 182 of the City of Palm Bay's Code of Ordinances. Upon commencement of said process, staff will determine if acceptance of any roads would provide a public benefit and that current City of Palm Bay construction standards are met.
- The traffic signal at Mara Loma Boulevard and Babcock Street shall be constructed and operational prior to the issuance of the Certificate of Completion of The Gardens at Waterstone Phase II.

NOTE:

Per, Kady Dearing of the Lassiter Transportation Group, the traffic signal warrant study completed for the intersection of Mara Loma Boulevard and Babcock Street, a signal is warranted at the completion of 355 354 units. A cost-share analysis should be requested by the Developer to the Public Works Department to ensure that each project (Waterstone and Cypress Bay) pays only their Proportionate Fair Share of cost, as each project will contribute to the traffic at that intersection.

STAFF RECOMMENDATION:

Case FD-33-2021 is recommended for approval, subject to the staff comments contained in this report.

TECHNICAL COMMENTS

CASE FD-33-2021 – GARDENS AT WATERSTONE PHASE 2 PUD

PUBLIC WORKS (Natalie Shaber, Engineer II):

Survey:

- Will need a Boundary Survey (provided is Sketch and Description) for plat review.
- Please provide Closure reports in digital format to Public Works and in hard copy to Growth Management at plat review.
- Final plat will need to provide ORB and PAGES of DCCRs.
- Note 11 on the Plat shall be amended to include all drainage easements as well as the stormwater management system for emergency access by the City if needed.

Driveway/ROW:

- ~~S/w extension to south and western limits.~~
- Brevard County traffic concurrency (Babcock corridor).
- Mara Loma Blvd. shall comply with the City's right-of-way width standards.
- All design and performance criteria per Ch.174 of the City's code of ordinances shall be adhered.
- All agency having jurisdiction permits shall be submitted prior to pre-sitework meeting.

Engineering /Traffic:

- The Cypress Bay West CDD shall be responsible for all landscaping in the right-of-way
- Updated traffic counts for Gardens at Waterstone Phase II shall be provided, and a determination of the Proportionate Fair Share due from the Developer towards traffic impact improvements at associated segments along Babcock St. that have been recommended in the 2017 Waterstone Traffic Impact Study for 2025 build out.
- Drainage easement granted to the City of Palm Bay for emergency access to the final outfall. Maintenance or outfall pipe replacement based on the condition of the outfall may be necessary.
- ~~All roadway improvements and driveways shall per City PW manual requirements; turn lane dimensions associated with Cypress Bay West II shall be per traffic study requirements. All D/W radii shall be minimum 35 ft. include Utility chase pipes under roadways for future development.~~
- The traffic signal at Mara Loma shall be constructed at the 355th Certificate of Occupancy granted and prior to the 1st CO for Gardens at Waterstone II.

UTILITIES (Christopher Little, Utilities Director):

1. The applicant/owner, at their expense, will be required to design, permit, install, inspect and test water & sewer systems of adequate size to accommodate the development and to connect to the City's water and sewer system [Section 200.11(d)(1) - On-site Facilities]. At this time the nearest point of connection to the mainline water distribution system is a 16" PVC pipe on the South side of Mara Loma Blvd. The nearest point of connection to the mainline wastewater collection system force main is a 10" PVC pipe on the North side of Mara Loma Blvd Intersection.
2. The applicant/owner will be responsible for the property's hydraulic share for the new utilities. Oversizing of utilities at the request of the Utilities Department will be subject to a refunding agreement or refundable advance [Section 200.11(D) &(E)]. The City of Palm Bay's 2017 Wastewater Master Plan & 2017 Water Master Plan, both of which are available upon request, identify proposed mainline extensions with the current piping size requirements.
3. A City of Palm Bay "Utility Agreement" shall be executed between the Property Owner and the City. All Utility impact/connection charges noted in the "Utility Agreement" must be paid as outlined in the terms and conditions of the Utility Agreement. All fees are subject to change annually on October 1. The Property Owner shall submit a certified copy of the property deed as verification of ownership as part of the Utility Agreement.
4. All Utility construction, materials, and testing shall be in accordance with the latest revision of the Palm Bay Utilities Department Policies, Procedures, and Standards Handbook and the Standard Detail Drawings.
5. Prior to any construction, all required FDEP Permit applications for the Water and Sanitary Sewer Construction shall be processed through and copies of the Permits filed with the Utilities Department.

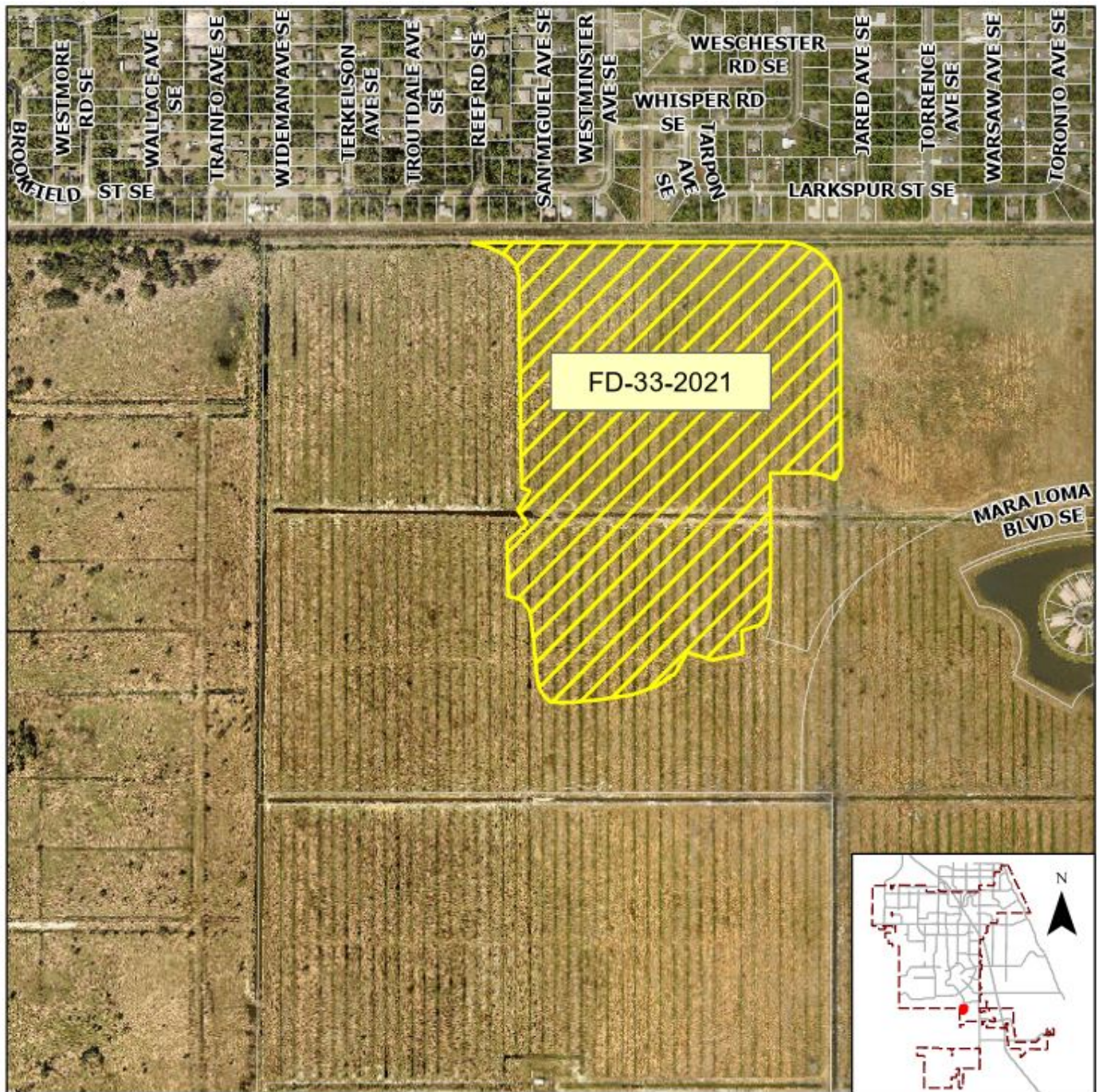
FIRE (Mark Whorton, Fire Consultant):

No comments.

BUILDING (James Williams, Certified Floodplain Manager):

No floodplain permits required, entire project floodzone X.

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.

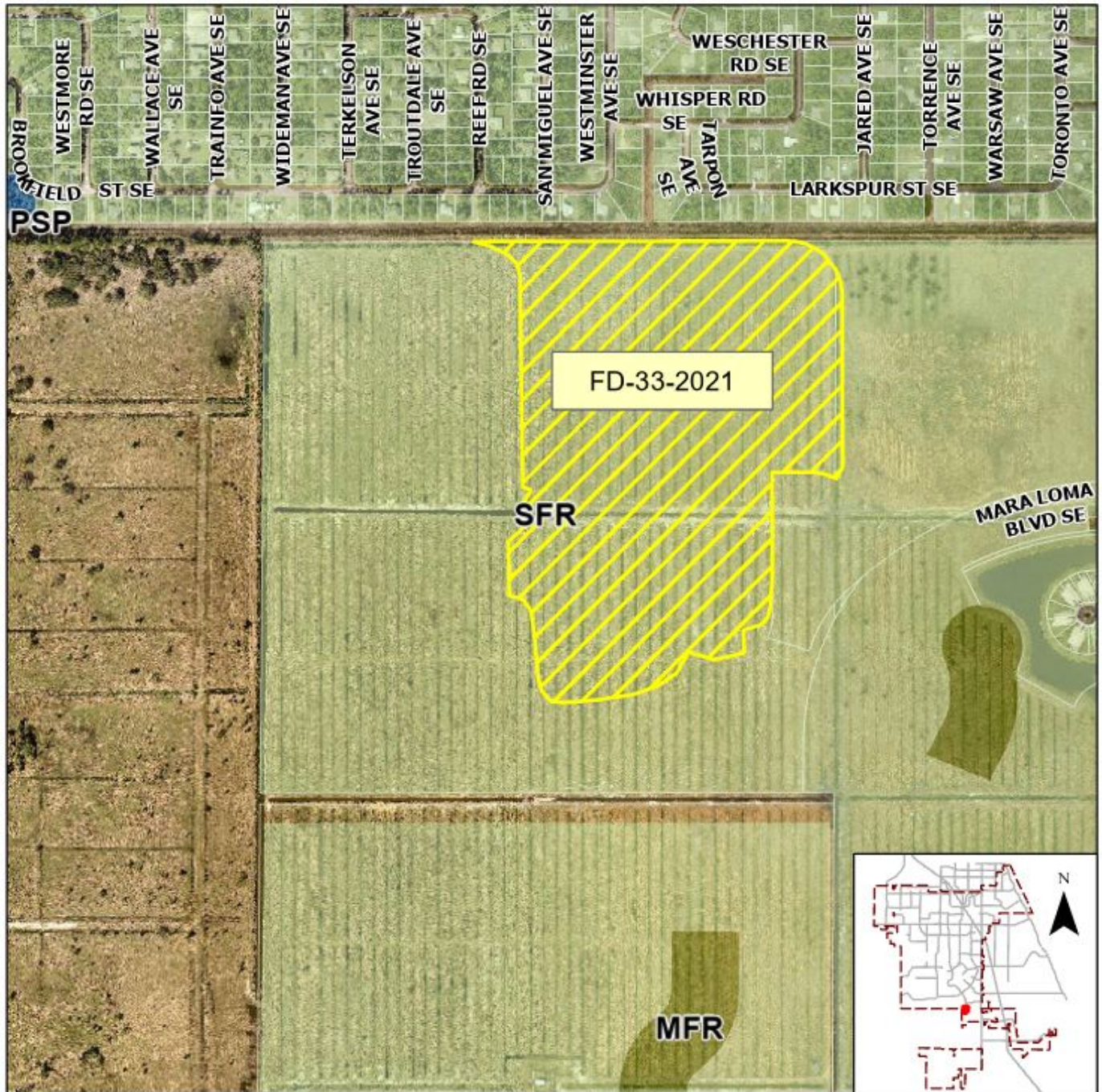


AERIAL LOCATION MAP CASE: FD-33-2021

Subject Property

In the vicinity west of Mara Loma Boulevard SE and south of Melbourne Tillman Water Control District Canal 38

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



FUTURE LAND USE MAP

CASE: FD-33-2021

Subject Property

In the vicinity west of Mara Loma Boulevard SE and south of Melbourne Tillman Water Control District Canal 38

Future Land Use Classification

SFR – Single Family Residential Use

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



ZONING MAP

CASE: FD-33-2021

Subject Property

In the vicinity west of Mara Loma Boulevard SE and south of Melbourne Tillman Water Control District Canal 38

Current Zoning Classification

PUD – Planned Unit Development

GARDENS AT WATERSTONE - PHASE II
FINAL DEVELOPMENT PLAN

PALM BAY, FL

DATE:

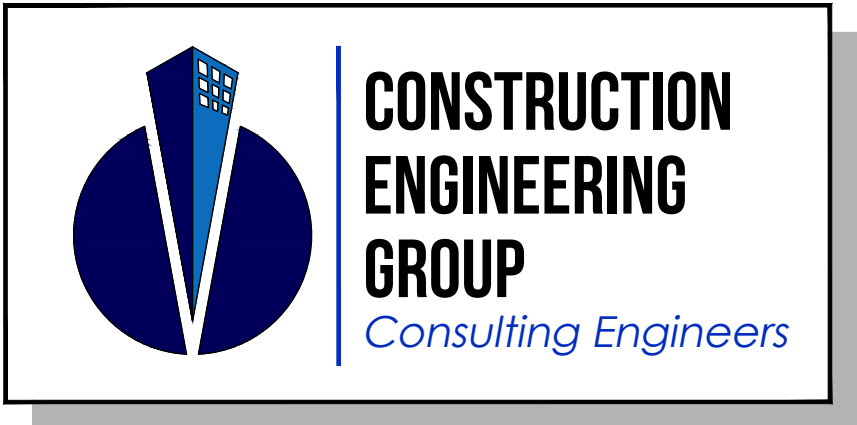
JULY 2, 2021

PREPARED FOR:

PB & J GARDENS INVESTMENT, LLC

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF SECTION 4, TOWNSHIP 30 SOUTH, RANGE 37 EAST, ALL OF LOTS 2 AND 3 AND PORTION OF LOTS 1, 4, 5, 28, 29, 30, 31 AND 32 OF SAN SEBASTIAN FARMS, SECTION 5, TOWNSHIP 30 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, AS RECORDED IN PLAT BOOK 6, PAGE 77 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 5; THENCE RUN N89°52'37"E ALONG THE NORTH LINE OF SAID SECTION 5 FOR A DISTANCE OF 1172.67 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE N89°52'37"E ALONG THE NORTH LINE OF SAID SECTION 5 FOR A DISTANCE OF 1222.35 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 250.00 FEET, AND A CHORD WHICH BEARS S45°07'23"E FOR A DISTANCE OF 353.55 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00", FOR A DISTANCE OF 392.70 FEET TO A POINT OF TANGENCY; THENCE RUN S00°07'23"E FOR A DISTANCE OF 788.06 FEET; THENCE RUN S29°28'07"W FOR A DISTANCE OF 60.48 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 235.00 FEET, AND A CHORD WHICH BEARS N75°19'38"W FOR A DISTANCE OF 120.03 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 29°35'30", FOR A DISTANCE OF 121.37 FEET TO A POINT OF TANGENCY; THENCE RUN S89°52'37"W FOR A DISTANCE OF 177.29 FEET; THENCE RUN S00°07'23"E FOR A DISTANCE OF 660.00 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE NORTHWEST, HAVING A RADIUS OF 225.00 FEET, AND A CHORD WHICH BEARS S44°52'35"W FOR A DISTANCE OF 318.20 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 353.43 FEET TO A POINT OF TANGENCY THEREOF; THENCE RUN S89°52'37"W FOR A DISTANCE OF 178.45 FEET TO A POINT; THENCE RUN S00°00'46"E FOR A DISTANCE OF 97.55 FEET; THENCE RUN S63°14'51"W FOR A DISTANCE OF 158.48 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE NORTHWEST, HAVING A RADIUS OF 375.00 FEET, AND A CHORD WHICH BEARS S76°33'44"W FOR A DISTANCE OF 172.73 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 26°37'46", FOR A DISTANCE OF 174.29 FEET TO A POINT OF TANGENCY; THENCE RUN S89°52'37"W FOR A DISTANCE OF 104.86 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE NORTHEAST, HAVING A RADIUS OF 125.00 FEET, AND A CHORD WHICH BEARS N44°49'10"W FOR A DISTANCE OF 177.71 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°36'27", FOR A DISTANCE OF 197.67 FEET TO A POINT OF TANGENCY; THENCE RUN N00°29'04"E FOR A DISTANCE OF 244.67 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 225.00 FEET, AND A CHORD WHICH BEARS N27°09'38"W FOR A DISTANCE OF 208.80 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 55°17'25", FOR A DISTANCE OF 217.12 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN N01°07'37"W FOR A DISTANCE OF 195.75 FEET; THENCE RUN N38°34'31"E FOR A DISTANCE OF 125.00 FEET; THENCE RUN N51°25'29"W FOR A DISTANCE OF 21.23 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 150.00 FEET, AND A CHORD WHICH BEARS N57°42'21"W FOR A DISTANCE OF 32.82 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 12°33'43", FOR A DISTANCE OF 32.89 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN N26°00'48"E FOR A DISTANCE OF 175.00 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 325.00 FEET, AND A CHORD WHICH BEARS N64°54'00"W FOR A DISTANCE OF 10.36 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 01°49'36", FOR A DISTANCE OF 10.36 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN N00°29'04"E FOR A DISTANCE OF 886.48 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 225.00 FEET, AND A CHORD WHICH BEARS N44°49'10"W FOR A DISTANCE OF 319.88 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°36'29", A DISTANCE OF 355.81 FEET TO THE POINT OF BEGINNING; CONTAINING 52.26 ACRES, MORE OR LESS.



LOCATION MAP
NTS

PROJECT DATA:

GENERAL STATEMENT: THE PROPOSED PROJECT CONSISTS OF INFRASTRUCTURE AND SITE IMPROVEMENTS TO ACCOMMODATE A 174 LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION INCLUDING ROADWAYS, SIDEWALKS, PEDESTRIAN/EXERCISE TRAILS, LANDSCAPING, WATER, SEWER AND STORMWATER SYSTEMS. IT INCLUDES SIGNALIZATION AND OTHER INTERSECTION IMPROVEMENTS AT BABCOCK STREET AND MARA LOMA BOULEVARD.			
DEVELOPER: PB&J GARDENS INVESTMENT, LLC P. MICHAEL EVANS 1698 W. HIBISCUS BLVD. SUITE A MELBOURNE, FL 32901 TEL: (321) 953-3300		CIVIL ENGINEER: JAKE T. WISE, P.E. 2651 EAU GALLIE BLVD, SUITE A MELBOURNE, FLORIDA 32935 TEL: (321) 610-1760 E-MAIL: JWISE@CEENGINEERING.COM	
SURVEYOR: HORIZON SURVEYORS 390 POINCIANA DRIVE MELBOURNE, FL 32935 TEL: (321) 254-8133		LOCATION: SECTION: 35 TOWNSHIP: 25 RANGE: 36E PARCEL ID: 30-37-05-HF-1 TAX ACCOUNT NUMBER: 3000217	
SETBACKS	PROPOSED:	LOT COUNT:	
FRONT:	25 FT	50'x125' = 130 LOTS	
SIDE:	5 FT	60'x125' = 44 LOTS	
REAR:	20 FT	MAXIMUM BUILDING HEIGHT:	
SIDE CORNER:	15 FT	2 STORY: 25 FT	
		MINIMUM WIDTHS:	
		SIDEWALKS: 5 FT	
		RIGHT-OF-WAY WIDTH: 50 FT	
CALCULATED STORMWATER BASIN COVERAGE:			
IMPERVIOUS:	SF	ACRE	PERCENT
RESIDENTIAL (60%):	755,553	17.34	33
RIGHT-OF-WAY	268,234	6.16	11
RECREATIONAL AREA:	63,031	1.45	3
TOTAL IMPERVIOUS:	1,086,818	24.95	48
PERVIOUS:	615,351	14.12	27
POND:	574,391	13.19	25
TOTAL:	2,276,560	52.26	100
OPEN SPACE REQUIREMENTS:			
OVERALL AREA (52.3 ACRES):			
ON-SITE PONDS		9.81 AC	(75%)
OPEN SPACE:		1.23 AC	(9%)
RECREATION AREA:		1.81 AC	(14%)
PHASE I ADDITIONAL OPEN SPACE:		0.23 AC	(2%)
PROVIDED:		13.08 AC	(100%)
REQUIRED (25% OF OVERALL AREAS):		13.08 AC	
CONDITIONS OF APPROVAL:			
1. DEVELOPER SHALL INSTALL THE TRAFFIC SIGNAL AND INTERSECTION IMPROVEMENTS AT BABCOCK STREET AND MARA LOMA BOULEVARD AS PART OF THIS PROJECT PRIOR TO THE FINAL CERTIFICATE OF OCCUPANCY.			
2. CITY SHALL PROVIDE IMPACT FEE CREDITS FOR ALL COSTS ASSOCIATED WITH THESE IMPROVEMENTS INCLUDING DESIGN AND PERMITTING.			

REVISION

DATE

REV#

2651 Eau Gallie Blvd, Suite A
Melbourne, FL 32935
Tel: 321.253.1221
www.ceengineering.com
COA #000897

CONSTRUCTION
ENGINEERING
GROUP
Consulting Engineers

GARDENS AT WATERSTONE
PHASE II

PB & J GARDENS INVESTMENT, LLC
MARA LOMA BOULEVARD, PALM BAY, FLORIDA

DRAWING TITLE
CIVIL COVER SHEET

DATE
7/02/21

SCALE
NTS

PROJ. NO. :
210059

DESIGNED BY:
CCM

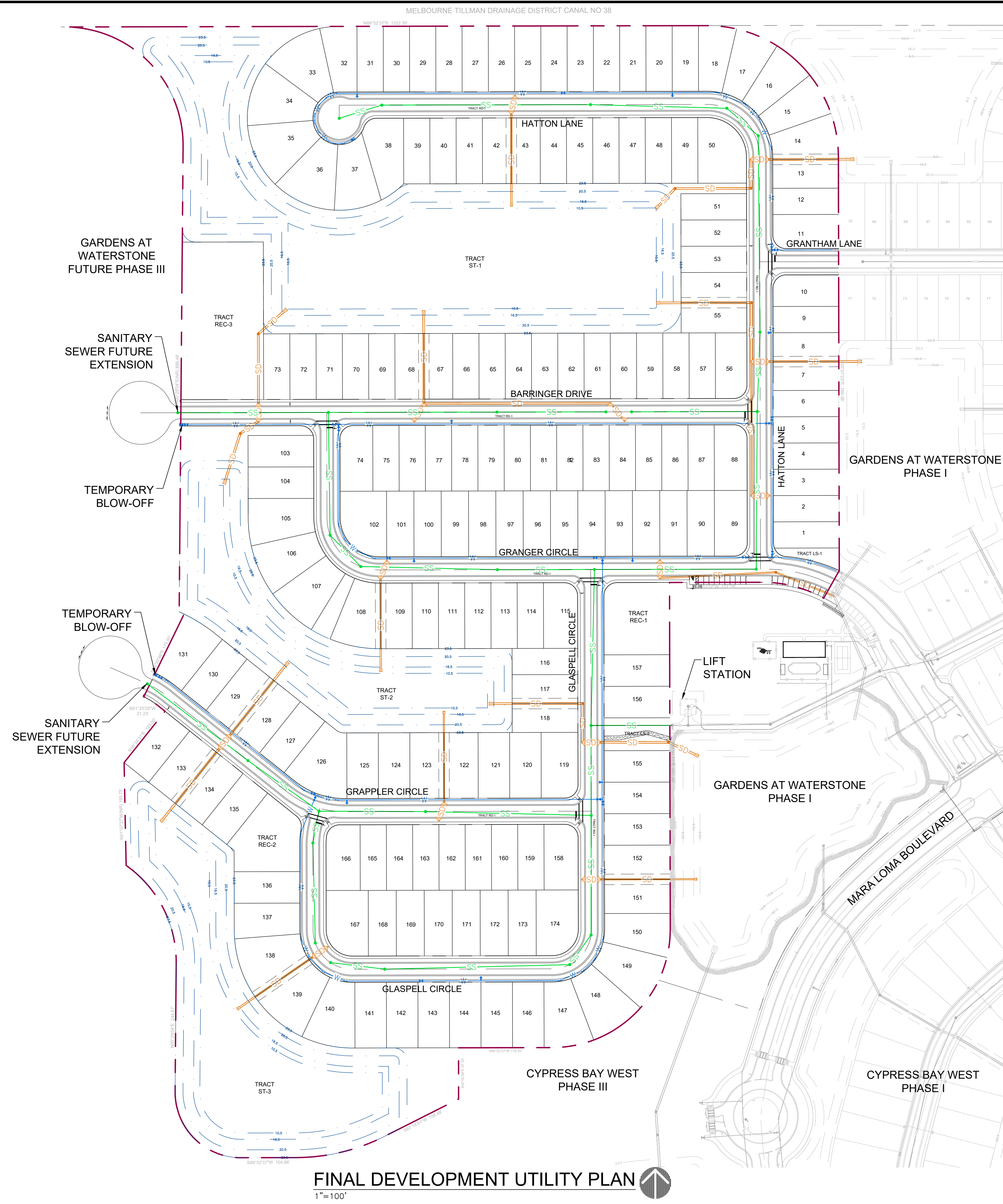
DRAWN BY:
SMB

CHECKED BY:
JTW

DRAWING NO.
GW-1

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GW-2



LEGEND:

PROJECT BOUNDARY	---
POND CONTOURS	- - -
STORM PIPE	SD
WATER MAIN	W
SANITARY SEWER LINE	SS

REVISION	
DATE	
REV	
2681 Egu Galle Blvd, Suite A Melbourne, FL 32935 www.cegeengineering.com Tel: 321.253.1221 COA #000897	
CONSTRUCTION ENGINEERING GROUP Consulting Engineers	
GARDENS AT WATERSTONE PHASE II PB & J GARDENS INVESTMENT, LLC MARA LOMA BOULEVARD, PALM BAY, FLORIDA DRAWING TITLE FINAL DEVELOPMENT UTILITY PLAN	
DATE 7/02/21	
SCALE 1"=100'	
PROJ. NO. : 210059	
DESIGNED BY: CCM	
DRAWN BY: SMB	
CHECKED BY: JTW	
DRAWING NO. GW-3	

**Gardens at Waterstone Phase 2
Final Development Plan
Compliance and Justification Report**

**Prepared by:
Rochelle W. Lawandales, FAICP
Waterstone Development Company, LLC
Applicant: PB&J Gardens Investment, LLC
Owner: Waterstone Farms, LLC**

July 28, 2021

PROJECT: GARDENS AT WATERSTONE

Gardens 2 is a 172 lot single family subdivision on 52.21 acres +/- with supporting infrastructure and site improvements including roadways, sidewalks, pedestrian/exercise trails, landscaping, water, sewer and stormwater systems. It includes signalization and other intersection improvements at Babcock Street and Mara Loma Boulevard. The Developer, PB &J Gardens Investment, LLC and the City have agreed to 2 conditions:

1. The developer shall install the traffic signal and intersection improvements at Babcock Street and Mara Loma Boulevard as part of this project; and,
2. The City shall provide impact fee credits for all costs associated with these improvements. Map A shows the project location.

PROPERTY OWNER: Waterstone Farms, LLC, Managing Member, Benjamin E. Jefferies.

APPLICANT: PB&J Gardens Investment, LLC

EXISTING ZONING: Planned Unit Development

LAND USE: Single Family Residential

REQUEST:

The applicant seeks approval for a new Final Development Plan in an existing PUD zoning district for a project to be called "Gardens at Waterstone Phase 2", which is a portion of the prior approved Master development plan located west of Heron Bay. It was originally part of the Heron Bay subdivision, designed for 38' and 40' lots and this project seeks to construct 174 lots, which average 50' X 125' and 60' X 125'.

EXECUTIVE SUMMARY

Property owned by Wheeler Farms was annexed into the City in 2004 via Ordinance 2004-35 totaling 1167 acres. The original Future Land Use amendment designating all the lands single family residential was accomplished in 2004 via Ordinance 2004-52 and 1800 residential units could be placed on either Waterstone (west of Babcock Street) or the original acres owned by Wheeler on lands currently known as Cypress Bay Preserve (east of Babcock Street). Site specific conditions were placed on the amendment in Ordinance 2004-48, in Policy FU 8.3 (G), adopted the same date as Ordinance 2004-52. Between 2005 and 2018, a series of 37 future land use map amendments have been made bringing the total units entitled for construction to be over 2,500. The Table 1 below shows the current entitlements:

PB&J GARDENS INVESTMENT, LLC
FINAL DEVELOPMENT PLAN NARRATIVE FOR GARDENS AT WATERSTONE PHASE 2

Table 1
Current Residential Entitlements

WATERSTONE AND CYPRESS BAY a/o July, 2021 Gardens 2				
ORIGINAL APPROVALS	WESTSIDE*	DEVELOPMENTS	TOTAL WESTSIDE	EASTSIDE*
As of October 2014 David Watkins' letter	2191			1058**
Less platted (Heron Bay and Lakes)		296		
Total as of October 2014 David Watkins' letter	1895		1895	1058
	Additions	Reductions		
Modifications required for City failure to process small scale amendments by Divosta:				
Less 41 acreage as multifamily @ 10 units per acre		-417		
Plus 41 acres single family @1.5 units/ac	60			
Revised Total as of 2017:	1955	-417	1538	1058
2018-2021 STARTING TOTALS:	1538			1058
	ADDITIONS	REDUCTIONS		
Cypress Bay Farms Residential PUD	(FD 18-2018/ Ord 2019-02 APPROVED JANUARY, 2019)			-396
Courtyards PD	(FD-19-2019/Ord 2019-69 APPROVED JANUARY 2, 2020)	-201	-201	
Waterstone Small Scale Amendments from SF to MF totalling 16.487 @ 10 units/ac	(CP-6-7-8 2018 approved by Ordinances 2018-20, 21, 22)	165	165	
Transfer of 300 to West Side per Original approval and David Watkins letter	300		300	-300
Gardens at Waterstone Phase 1	Resolution 2020-58 December 3, 2020/Ordinance 2021-02 Adopted January 21, 2021	-154	-154	
Cypress Bay West Phase 1	Ordinance 2021-27 May 21, 2021	-229	-229	
Cypress Bay West FLUM Amendment for Townhomes 9.5 acres at 20 units/ac	Completed July, 2021	190	95	
Cypress Bay West Phase 2	Pending Hearings August/September 2021	-566	-566	
Gardens at Waterstone Phase 2	Current Submittal	-172		
Sub-total:		2193	-1322	871
GRAND TOTAL UNIT COUNTS AS OF MAY 2021:			871	362
*WESTSIDE refers to the area on the west side of Babcock Street known as Waterstone (including Waterstone Farms, LLC and Waterstone Holdings, LLC)				
*EASTSIDE refers to the lands on the east side of Babcock Street referred to Cypress Bay owned by Cypress Bay Farms, LLC				
**300 original units were able to go to west side. Total includes 454 multi--family units from CP 7-09				

PB&J GARDENS INVESTMENT, LLC
FINAL DEVELOPMENT PLAN NARRATIVE FOR GARDENS AT WATERSTONE PHASE 2

The Project underwent an ownership change and Pulte (Divosta Division) brought forth a Preliminary Development Plan for the 1167 acres and obtained Final Development Plan approval and PUD zoning in 2005 (See Map B) and began to permit, develop and complete several phases, including Heron Bay and the Lakes of Waterstone, which included 296 units, an elementary school site, and recreational amenities which are built and sold out today. The approval also included concurrency for 900 units, water and sewer, and other infrastructure. Map C shows the original development plan, and the area now proposed for the Gardens.

Waterstone revised the project lay-out in 2017 and submitted a new Preliminary Development Plan for the lands on the west side of Babcock Street to amend the 2005 development plan. The City Council granted Preliminary Development Plan approval on January 18, 2018. Final Development Plan/Preliminary Plat approval was granted by City Council action on June 7, 2018 for the 'Gardens at Waterstone', a phase of Waterstone in the northwest segment. That project was not adopted properly by the City and became void, rendering the 2018 revised Preliminary Development Plan void and maintaining the 2005 adopted plan.

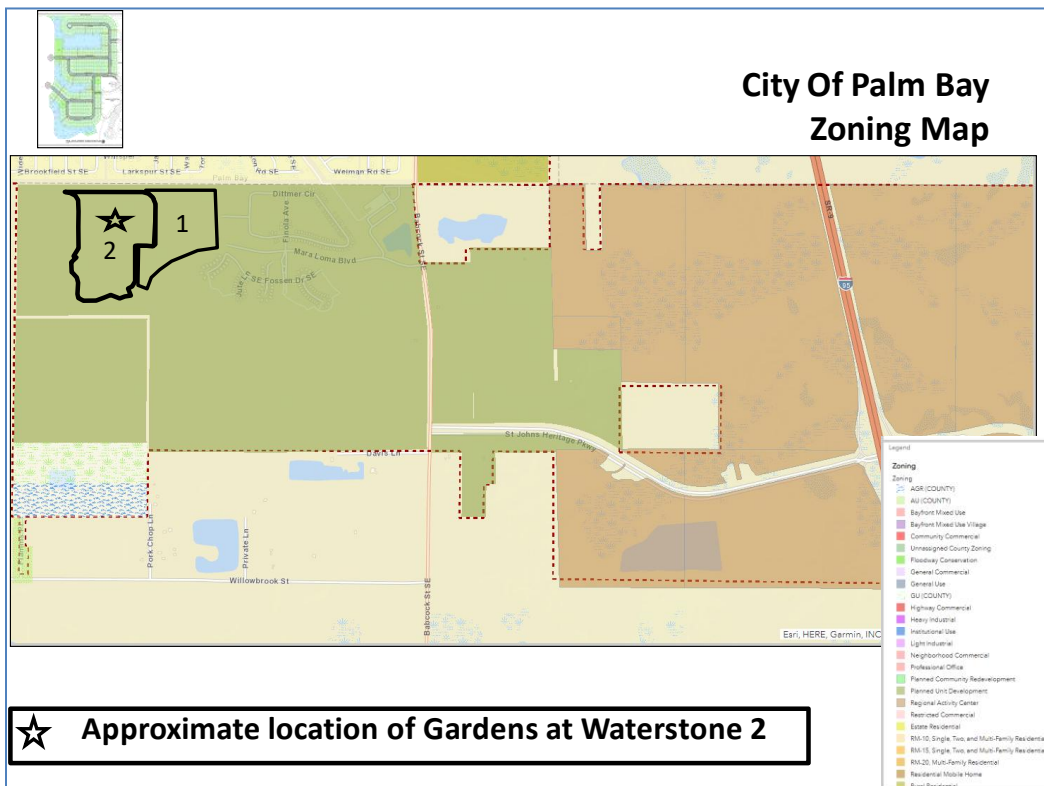
With this new application, the applicant, PB&J, as authorized by the owner, Waterstone Farms, LLC, is petitioning the City for approval of a Final Development Plan for the Gardens Phase 2. Construction would begin after approval of a Final Development Plan, Preliminary Plat and construction plans and the developer obtaining all permits. Map D shows the design, layout, vehicular and pedestrian circulation, open space, utilities, and stormwater system to meet the code requirements.

PB&J GARDENS INVESTMENT, LLC
FINAL DEVELOPMENT PLAN NARRATIVE FOR GARDENS AT WATERSTONE PHASE 2

MAP A
LOCATION MAP



MAP B
CITY ZONING MAP



HISTORY OF WATERSTONE

During the period from 2006 to 2010, Pulte Homes and their subsidiary, DiVosta Homes, completed a wide variety of permits, agency approvals, traffic and engineering studies, environmental studies, comprehensive land use and zoning approvals for Waterstone. Pulte constructed a .6 mile long connector roadway off of Babcock Street called Mara Loma Boulevard, obtained County and City traffic concurrency for 900 units and provided for lands for an elementary school. Regional water and sewer mains were extended from just north of Valkaria Road to the western terminus of Mara Loma Boulevard. 296 Single family homes were constructed in the communities of Heron Bay and The Lakes at Waterstone. The Brevard County School Board constructed Sunrise Elementary School. Pulte Homes left the City of Palm Bay as a result of the financial crash in 2008. Pulte closed out Heron Bay and The Lakes at Waterstone communities by the end of 2010. The remaining PUD property was acquired by the applicants.

As required by the original land use approvals, Waterstone provides a mix of uses with the Waterstone Commercial Center with its significant frontage on the west side of Babcock Street. It will contain 133 acres, more or less, broken into lots and tracts sufficient in size for a variety of retail, office and related commercial uses to support the region. FDOT has completed the I-95 Interchange and the City has completed construction of the St. Johns Heritage Parkway (SJHP) from Babcock Street east to I-95. Numerous commercial developers and commercial project owners are ready to come into the City of Palm Bay, and with the roadway network now available and more residential units being planned and constructed, the demand for and support of commercial ventures will rise.

A three mile water and sewer main running along Babcock Street from Valkaria Road south to Mara Loma Boulevard was installed completely at the developer's expense for the Waterstone project. In addition, when Mara Loma Boulevard was extended west from Babcock Street approximately 2,600 feet, large force mains, water mains, and three sewer lift stations were installed. All totaled, over \$10 million has been spent over the course of time on infrastructure improvements, including Mara Loma Blvd., 3 lift stations and utilities, permits, traffic/planning/environmental studies, stormwater management, environmental mitigation, and dedication of Rights-of-Way for the Parkway, among other items for the Waterstone project. The City has made commitments to assure future capacity through wastewater plant expansions.

Additionally, over the last 3 years, numerous meetings regarding the Waterstone/Cypress Bay master plans, transportation and infrastructure requirements and improvements, utility needs and extensions, have been held not only with Palm Bay officials and staff, but also with Brevard County, FDOT, Florida Power and Light, environmental regulatory agencies, and others to assure not only the highest quality product, but one that also will be a signature project for the City of Palm Bay.

The remaining land outside of the first phases developed by Pulte Homes(Heron Bay and Lakes of Waterstone) is under the ownership of Waterstone Farms, LLC, and Waterstone Holdings, LLC; Forestar;

PB&J GARDENS INVESTMENT, LLC
FINAL DEVELOPMENT PLAN NARRATIVE FOR GARDENS AT WATERSTONE PHASE 2

and PB&J, LLC. Actions by the owners, predominately Waterstone Farms and Waterstone Holdings, over the last 10 years have included, but are not limited to the following:

1. Obtained environmental permits from the Army Corps of Engineers and conceptual SJRWMD for the proposed residential areas of Waterstone;
2. Submitted traffic studies to the City and County for the developments planned for Waterstone;
3. Performed a signal warrant study for the Babcock/St. Johns Heritage Parkway (SJHP) intersection; and submitted requests for County permits for driveways and an access management plan for Babcock Street;
4. Obtained Final SJRWMD permits for the Waterstone Commercial Center;
5. Obtained Final PUD approval for Waterstone (lands west of Babcock) in January, 2018;
6. Obtained Conceptual SJRWMD permits for 803 acres under a master stormwater system (on file with SJRWMD;)
7. Obtained Final PUD approval for a 283 lot subdivision called the Gardens Phase 1 at Waterstone on June 7, 2018;
8. Obtained Final SJRWMD permit for 101 acres, covering the Gardens Phase 1 at Waterstone, for a the stormwater system to serve the subdivision;
9. Obtained Final PUD approval for 201 lot subdivision called 'Courtyards at Waterstone' in January, 2020. That project is under construction.
10. Obtained Final Development Plan approval for Gardens Phase 1 at Waterstone' in December, 2020.
11. Obtained Final Development Plan approval for Cypress Bay West Phase 1, May, 2021.
12. Obtained approval for a Future Land Use Map amendment in July, 2021 to convert 7 acres +/- from single family to multi-family residential to allow for townhomes within the CBW 2 project under the City's Comprehensive Plan.

On January 18, 2018, Waterstone Holdings, LLC, Waterstone Farms, LLC and DR Horton, as co applicants, obtained approval of a revised Preliminary Development Plan amending the 2005 Master Plan for the undeveloped property on the west side of Babcock Street for a 1770 unit residential development. This approval included the Waterstone Commercial Center containing 133 acres fronting Babcock Street and Waterstone at Palm Bay consisting of 604 acres west of the commercial center, south and west of The Lakes at Waterstone and Heron Bay communities for a series of residential subdivisions.

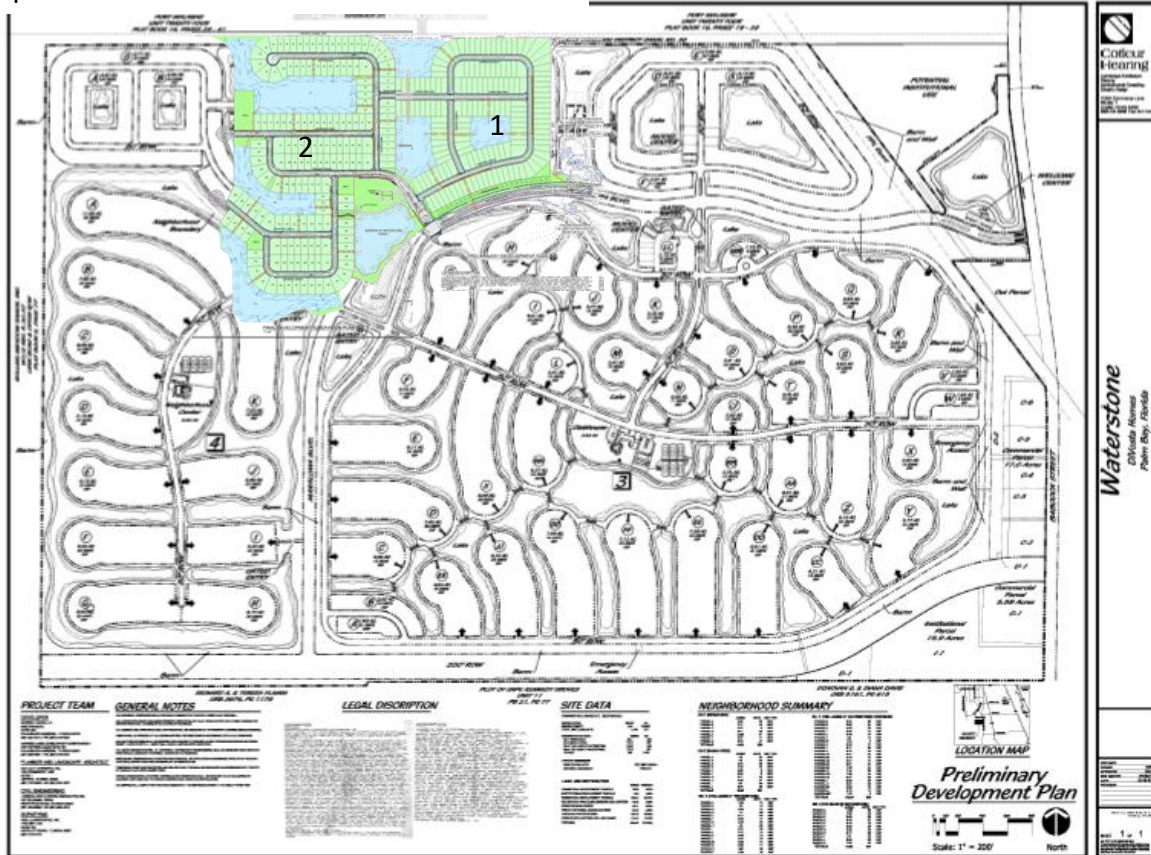
Final Development Plan/Preliminary Plat approval was granted by City Council action on June 7, 2018 for the 'Gardens at Waterstone', a phase of Waterstone in the northwest segment. That project was not adopted properly by the City and became void, rendering the 2018 revised Preliminary Development Plan void and maintaining the 2005 adopted plan.

Map C shows the new proposed Gardens at Waterstone overlaid on the existing approved Preliminary Development Plan.

MAP C

ORIGINAL PRELIMINARY DEVELOPMENT PLAN FOR WATERSTONE AT PALM BAY WITH APPROXIMATE LOCATION OF GARDENS AT WATERSTONE PHASES 1 AND 2(SUBJECT PROPERTY)

Proposed Gardens at Waterstone on 2005 PDP



*Approximate location. Not to scale. Graphic exhibit only.

FINAL DEVELOPMENT PLAN (Map D) for 'GARDENS OF WATERSTONE'

Gardens is a 174 lot subdivision. The project will use a new access point to be created off an extended Mara Loma Boulevard onto a new private road to be called Granger Circle. There are utilities available to service the development. The project will have to apply for concurrency review as all but 20 trips in the original concurrency approval of 900 units are allotted.

The following discussion relates specifically to this proposed subdivision and application. Map D-1 shows the proposed Gardens Final development plan and Map D-2 shows the Preliminary Plat. The project data table, Table 2, below identifies the number and type of lots, percentages for categorical site areas and improvements, and open space.

PB&J GARDENS INVESTMENT, LLC
FINAL DEVELOPMENT PLAN NARRATIVE FOR GARDENS AT WATERSTONE PHASE 2

Table 2
PROJECT DATA

PROJECT DATA:

GENERAL STATEMENT:

THE PROPOSED PROJECT CONSISTS OF INFRASTRUCTURE AND SITE IMPROVEMENTS TO ACCOMMODATE A 174 LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION INCLUDING ROADWAYS, SIDEWALKS, PEDESTRIAN/EXERCISE TRAILS, LANDSCAPING, WATER, SEWER AND STORMWATER SYSTEMS. IT INCLUDES SIGNALIZATION AND OTHER INTERSECTION IMPROVEMENTS AT BABCOCK STREET AND MARA LOMA BOULEVARD.

OWNER:

PB&J GARDENS INVESTMENT, LLC
P. MICHAEL EVANS
1698 W. HIBISCUS BLVD. SUITE A
MELBOURNE, FL 32901
TEL: (321) 953-3300

CIVIL ENGINEER:

JAKE T. WISE, P.E.
2651 EAU GALLIE BLVD, SUITE A
MELBOURNE, FLORIDA 32935
TEL: (321) 610-1760
E-MAIL: JWISE@CEENGINEERING.COM

SURVEYOR:

HORIZON SURVEYORS
380 POINCIANA DRNE
MELBOURNE, FL 32935
TEL: (321) 254-8133

LOCATION:

SECTION: 35
TOWNSHIP: 25
RANGE: 36E
PARCEL ID: 30-37-05-HF-1
TAX ACCOUNT NUMBER: 3000217

SETBACKS

FRONT: 25 FT
SIDE: 5 FT
REAR: 20 FT
SIDE CORNER: 15 FT

PROPOSED:

LOT COUNT:

50'x125' = 130 LOTS
60'x125' = 44 LOTS

MAXIMUM BUILDING HEIGHT:

2 STORY: 25 FT

MINIMUM WIDTHS:

SIDEWALKS: 5 FT
RIGHT-OF-WAY WIDTH: 50 FT

CALCULATED STORMWATER BASIN COVERAGE:

	SF	ACRE	PERCENT
IMPERVIOUS:			
RESIDENTIAL (60%):	755,553	17.34	33
RIGHT-OF-WAY	268,234	6.16	11
RECREATIONAL AREA:	63,031	1.45	3
TOTAL IMPERVIOUS:	1,086,818	24.95	48
PERVIOUS:	615,351	14.12	27
POND:	574,391	13.19	25
TOTAL:	2,276,560	52.26	100

OPEN SPACE REQUIREMENTS:

OVERALL AREA (52.3 ACRES):

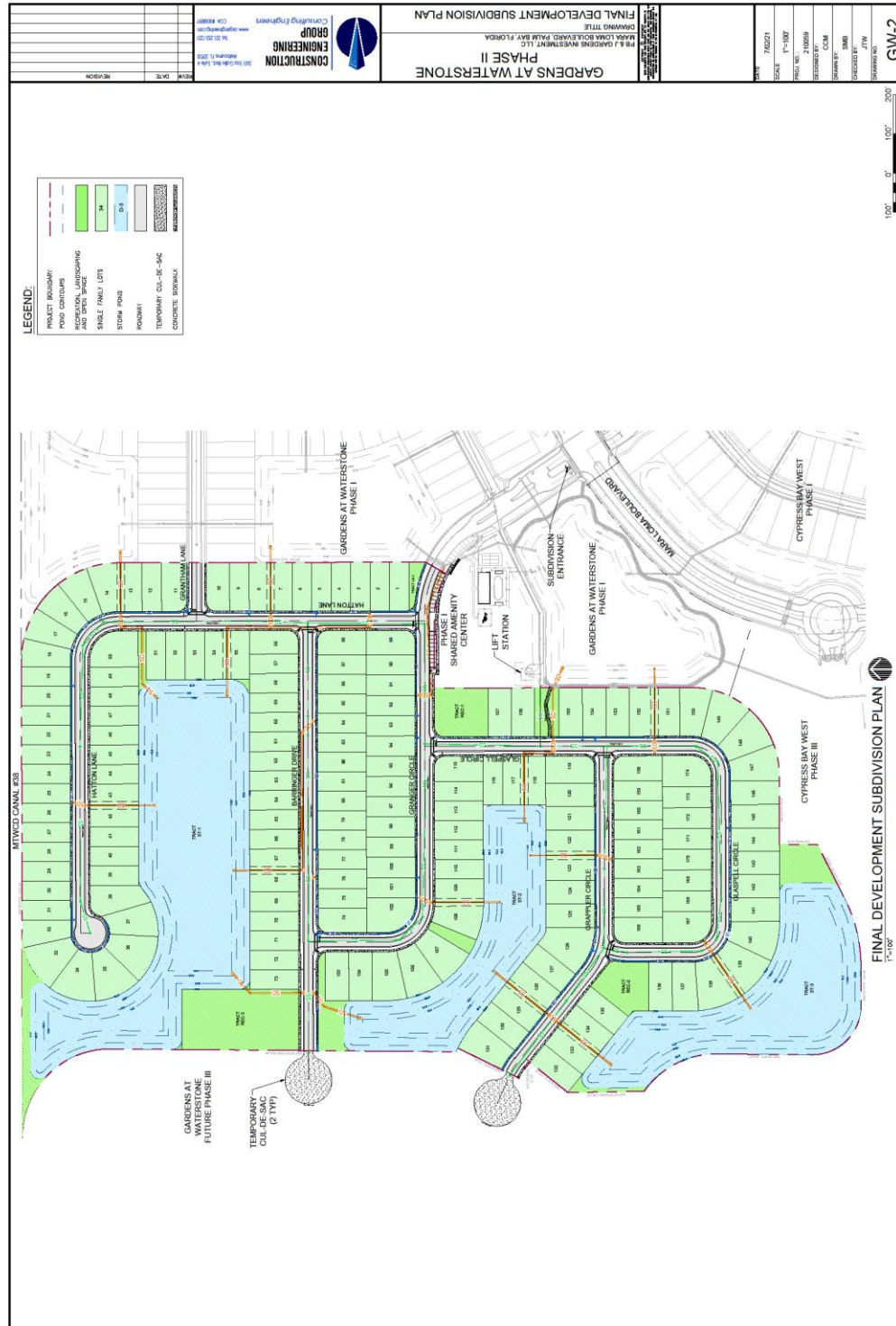
ON-SITE PONDS	9.81 AC	(75%)
OPEN SPACE:	1.23 AC	(9%)
RECREATION AREA:	1.81 AC	(14%)
PHASE I ADDITIONAL OPEN SPACE:	0.23 AC	(2%)
PROVIDED:	13.08 AC	(100%)
REQUIRED (25% OF OVERALL AREAS):	13.08 AC	

CONDITIONS OF APPROVAL:

1. DEVELOPER SHALL INSTALL THE TRAFFIC SIGNAL AND INTERSECTION IMPROVEMENTS AT BABCOCK STREET AND MARA LOMA BOULEVARD AS PART OF THIS PROJECT.
2. CITY SHALL PROVIDE IMPACT FEE CREDITS FOR ALL COSTS ASSOCIATED WITH THESE IMPROVEMENTS INCLUDING DESIGN AND PERMITTING.

PB&J GARDENS INVESTMENT, LLC
FINAL DEVELOPMENT PLAN NARRATIVE FOR GARDENS AT WATERSTONE PHASE 2

MAP D-1
PROPOSED FINAL DEVELOPMENT PLAN FOR GARDENS AT WATERSTONE 2 SUBDIVISION
(Large version provided by CEG to the City under separate Cover)



Page 11

DEVELOPMENT PHASING

Phase 2 will be built in one phase, building off of the Phase 1 extension of Mara Loma. Utilities, stormwater, and other needed infrastructure will commence first, followed by home construction.

DEVELOPMENT SCHEDULE

The project will commence upon receipt of construction plan approval as early as 1st or 2nd quarter of 2022. Anticipated build out is estimated to be in 1 year, with approximately 18 per month. Primary open space and recreational amenities will be completed in Phase 1, followed by neighborhood 'pocket' passive parks in the Phase 2 subject project.

CONSISTENCY WITH THE COMPREHENSIVE PLAN and FUTURE LAND USE MAP

Based upon my knowledge of the City's Comprehensive Plan and its contents, Gardens Final development plans are consistent with the Goals, Objectives and Policies of the Comprehensive Plan and the Future Land Use Map. The City received a compliance determination for the initial approved land uses and subsequent amendments on the property. Those documents are on public record with the City and State Department of Economic Opportunity.

LAND USE

Map E uses the City's GIS system to depict the future land uses for the project which is all Single Family Residential (SFR). Gardens 2 is a single-family subdivision and continuation from Gardens Phase 1, including ancillary infrastructure, stormwater management, open space and recreational amenities. Stormwater or lands devoted to infrastructure can be done in any category. No land use changes are necessary. The Zoning is Planned Unit Development "PUD" awarded in 2005. Therefore, the project site and single family uses are in conformance with the City's Comprehensive Plan, Future Land Use Map and Existing Zoning Map.

MAP E
FUTURE LAND USE MAP FROM CITY WEBSITE

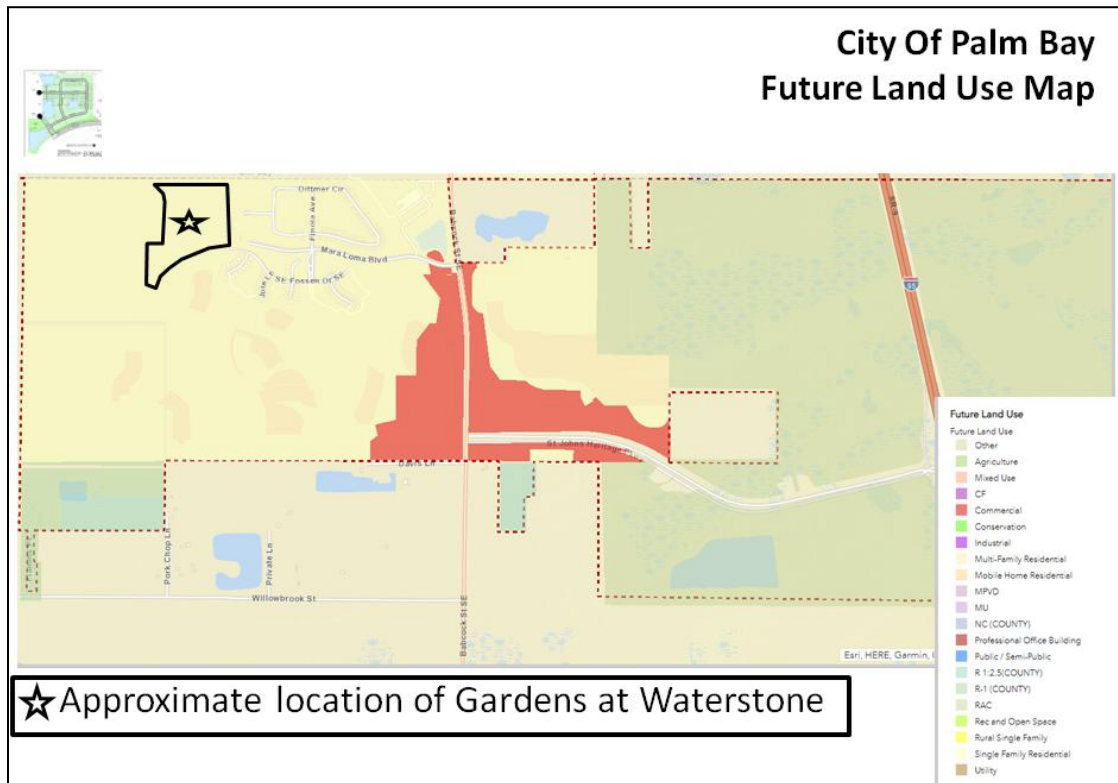


Figure 1 below also shows the land uses within the City's Study Area Boundary taken from the Comprehensive Plan in the City's website. Figure 2 shows the project is contained within the urban service boundary and also shows the historic location of the western St. Johns Heritage Parkway.

PB&J GARDENS INVESTMENT, LLC
FINAL DEVELOPMENT PLAN NARRATIVE FOR GARDENS AT WATERSTONE PHASE 2

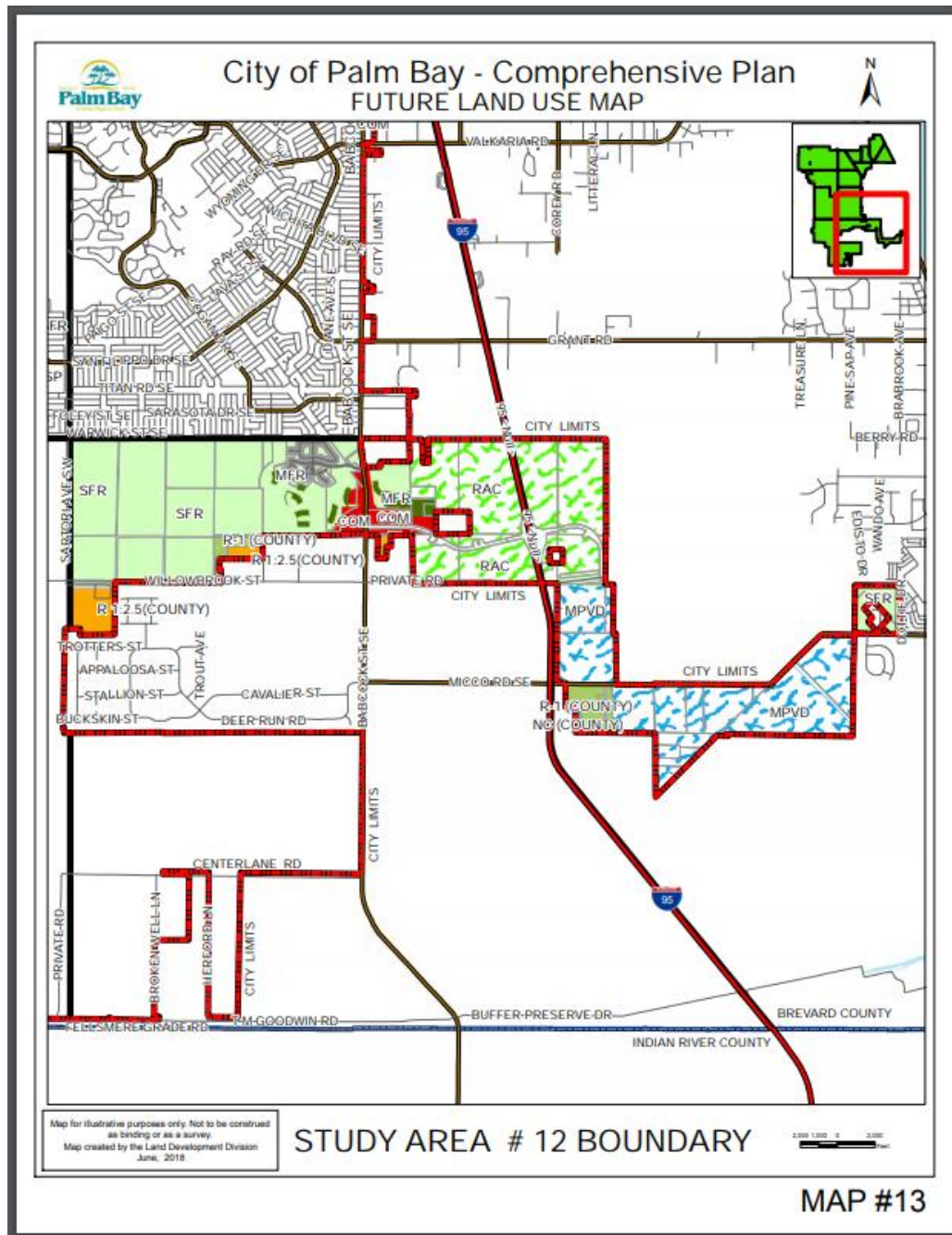


Figure 1: Future Land Use Map taken from the City's Comprehensive Plan on the City of Palm Bay Website, April, 2019

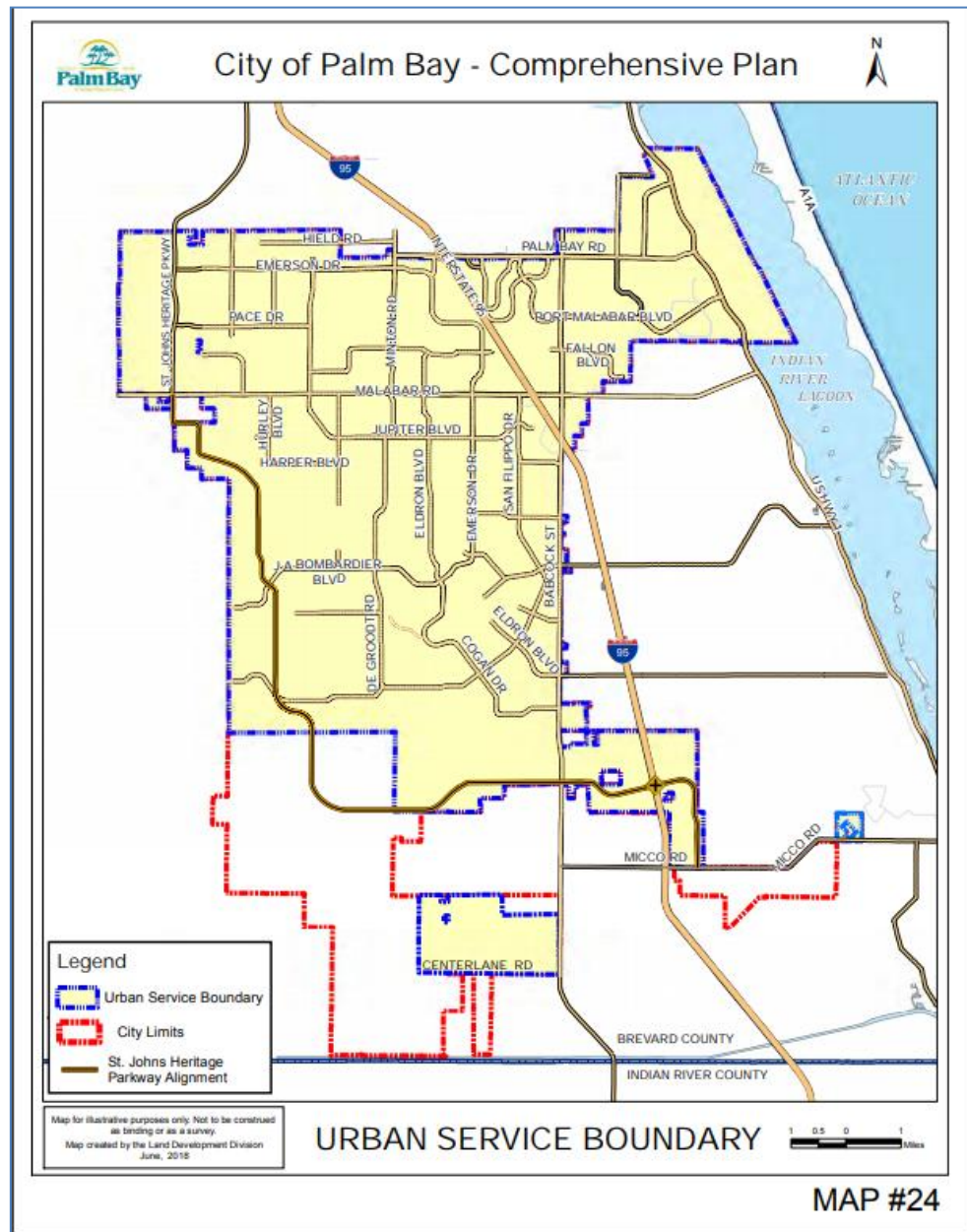


Figure 2 Urban Services Boundary Map adopted by the City in the EAR, October 2017; as shown on the City of Palm Bay website, April, 2019.

The following Objectives or Policies are implemented via this proposed development plan:

- OBJECTIVE FLU-1.3 Land Development Regulations shall provide for planned unit developments, planned commercial developments, planned industrial developments, planned residential developments, and mixed-use developments.

- POLICIES FLU-1.3A The City shall continue to implement Land Development Regulations for Planned Unit Developments.
- OBJECTIVE FLU-1.4 Establish an Urban Service Area to control urban sprawl.
 - POLICIES FLU-1.4A The Urban Service Area maps shall be adopted for the ten-year time frame of the Comprehensive Plan as depicted in the adopted Urban Service Boundary Map.
- OBJECTIVE FLU-2.1 By 2001, adopt land development regulations which create a full range of types and styles, including planned unit developments, multi- family housing, ranges of single family densities, and mixed use with residential/nonresidential consistent with the needs of all age groups, incomes and lifestyles.
 - POLICIES FLU-2.1A The Zoning Code shall be amended to provide for a variety of types and densities of residential development in conformance with this Element and the Future Land Use Map.
 - POLICIES FLU-2.1B Continue to utilize Planned Unit Development (PUD) techniques to protect environmentally sensitive areas, protect amenities, and mitigate flood hazards.
- OBJECTIVE FLU-2.2 Residential development which can be served by public and community services meeting all LOS standards.
 - POLICIES FLU-2.2A Base residential development decisions on the adopted LOS standards for community facilities and services, the Future Land Use Map, and the policies of the Comprehensive Plan.
 - (Original Wheeler) FLU-8.3G The following special conditions shall be applicable to Case No. CP-12-2003 adopted by City Council as Ordinance No. 2004-52.
 1. Maximum residential density is capped at 1,800 residential units. **(THIS HAS INCREASED OVER TIME DUE TO 37 LAND USE AMENDMENTS)**
 2. A future school site be designated on the property at a suitable location and of suitable size as determined by negotiation between the developer and the Brevard County School Board. **(SCHOOL SITE CONSTRUCTED-SUNRISE ELEMENTARY)**
 3. The developer is required to identify and apply for the necessary Future Land Use Map amendment to provide commercial and public/semipublic uses necessary to service the proposed development within 5 years or prior to development of 600 units, whichever occurs first. **(133+/- ACRES HAVE BEEN DESIGNATED FOR COMMERCIAL LAND USE)**

PB&J GARDENS INVESTMENT, LLC
FINAL DEVELOPMENT PLAN NARRATIVE FOR GARDENS AT WATERSTONE PHASE 2

CITIZEN PARTICIPATION/COUNTY COORDINATION

A Citizen Participation Plan is provided with this application for Final Development Plan. Labels for notifying everyone within 500' are provided to the City for mailing the courtesy notice.

JOINT PLANNING AGREEMENT

The City's Growth Management staff regularly distributes the required courtesy copies of documents to the County planning staff pursuant to a 2016 Joint Planning Agreement.

UTILITIES

The development will connect to City water and wastewater. One additional lift station is proposed to be extended into the development from Mara Loma Boulevard to provide utility services for all the Gardens development. The City has long planned for an expansion to its wastewater plant and has made expansions to the water plant. The City recently approved the staff to proceed with planning/design/permitting of the expansion.

STORMWATER/DRAINAGE

Permit #96251-24 is shown as Figure 3. It is for a larger area than the 54 acres currently being applied for, which includes all phases of Gardens subdivision. All retention areas shall be owned and maintained by the residential homeowners association and shall be permitted through the Water Management District. The project will be designed to meet all pre and post development stormwater management as currently regulated by the various agencies and the City by obtaining all required permits.

ENVIRONMENTAL ISSUES

The property was originally a citrus grove. It was later converted into the existing cattle pasture. The proposed project is designed to and will be consistent with the following Goals, Objectives and Policies of the City's Comprehensive Plan.

GOAL FLU-6 Wise and efficient use of the City's natural resources.


ST. JOHNS RIVER WATER MANAGEMENT DISTRICT	
Post Office Box 1429 Palatka, Florida 32178-1429	
PERMIT NO: 96251-24	DATE ISSUED: April 26, 2018
PROJECT NAME: Waterstone at Palm Bay - Phase I	
A PERMIT AUTHORIZING: Authorization of a Stormwater Management System for Waterstone at Palm Bay - Phase I, a 101.37 - acre project to be constructed and operated as per plans received by the District on April 4, 2018.	
LOCATION: Section(s): 4 Brevard County	Township(s): 30S Range(s): 37E
Receiving Water Body:	
Name Sotile Canal	Class III Fresh
ISSUED TO: Waterstone Farms, LLC 235 West Dr Melbourne, FL 32904-1043	
The permittee agrees to hold and save the St. Johns River Water Management District and its successors harmless from any and all damages, claims, or liabilities which may arise from permit issuance. Said application, including all plans and specifications attached thereto, is by reference made a part hereof.	
This permit does not convey to the permittee any property rights nor any rights or privileges other than those specified herein, nor relieve the permittee from complying with any law, regulation or requirement affecting the rights of other bodies or agencies. All structures and works installed by permittee hereunder shall remain the property of the permittee.	
This permit may be revoked, modified or transferred at any time pursuant to the appropriate provisions of Chapter 373, Florida Statutes.	
PERMIT IS CONDITIONED UPON:	
See conditions on attached "Exhibit A", dated April 26, 2018	
AUTHORIZED BY: St. Johns River Water Management District Division of Regulatory Services	
	
By: _____ John Julianna Regulatory Coordinator	

Figure 3 SJRWMD Permit covering the proposed 44 acre project

- OBJECTIVE FLU-6.1 An intensity and distribution of land use and development which minimizes the impact on the natural environment.
 - POLICIES FLU-6.1A Land use decisions shall be based upon the support capability of the natural environment as determined by conformance to the Floodplain Management Ordinance, the Stormwater Management and Conservation Ordinance, the Trees and Shrubbery Ordinance, and the Zoning Ordinance.

An environmental assessment and feasibility study was conducted by Jon Shepherd, Atlantic Environmental Services (AES) for Gardens Phase 1, 2, and 3 and their resulting report is attached to this narrative. In addition, a Caracara assessment was conducted and that report is included as well.

Their summary and recommendations from the environmental assessment states:

"Atlantic Environmental determined that the Property contains +143.72 acres of uplands, approximately 0.22 acres of SJRWMD wetlands (all contained within Phase III), and +1.86 acre of surface waters (in addition to the acreage of the on-site furrows that are included in the upland acreage above for the purposes of this report). The Property also has the potential to support protected wildlife. These natural resources must be addressed in the development process, through permitting, avoidance, mitigation, or some combination thereof.

As the next step in the development process as it relates to environmental issues, Atlantic Environmental recommends delineating the on-site wetland within Phase III. As development of this phase is not planned for quite some time, this task should be postponed until development of Phase III is imminent. In addition to the above task, Atlantic Environmental recommends conducting formal crested caracara survey on the Property to demonstrate that no caracara is nesting on the Property or within 985 feet of the Property. As you are aware, Atlantic Environmental is scheduled to initiate this survey in January 2021."

Map F-1 shows the location of the .22 acre wetland and overall conditions of the site.

The results of their Cara Cara study states:

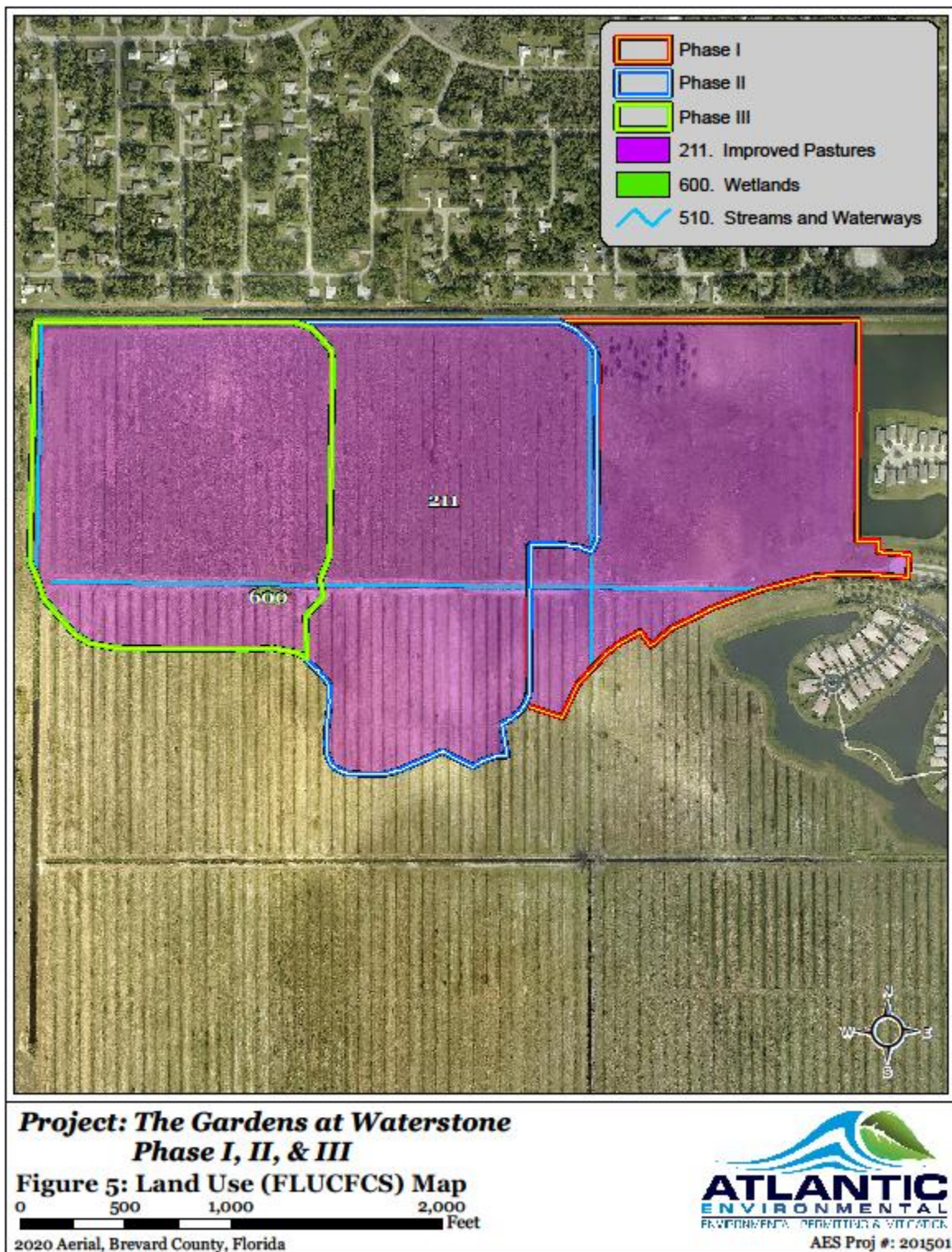
"Atlantic Environmental has conducted a formal Crested Caracara survey of The Gardens @ Waterstone Phase I, II, and III project site (as well as visual surveys of surrounding lands) according to the parameters approved by the FWC and FWS guidelines. Our survey identified consistent nesting behavior, sustained nesting, and one successful immature Crested Caracara. The survey data suggests that a small portion of The Gardens @ Waterstone Phase III will occur within an occupied Caracara nesting Primary zone, while the remaining portion of Phase III and all of Phases I and II are located within the Secondary buffer zone. Crested Caracara activity

occurred almost exclusively off-site to the west of Phase III of this project, on lands on the west side of a canal that is owned by others. This survey should be submitted to the regulatory agencies upon submittal of any development plan applications."

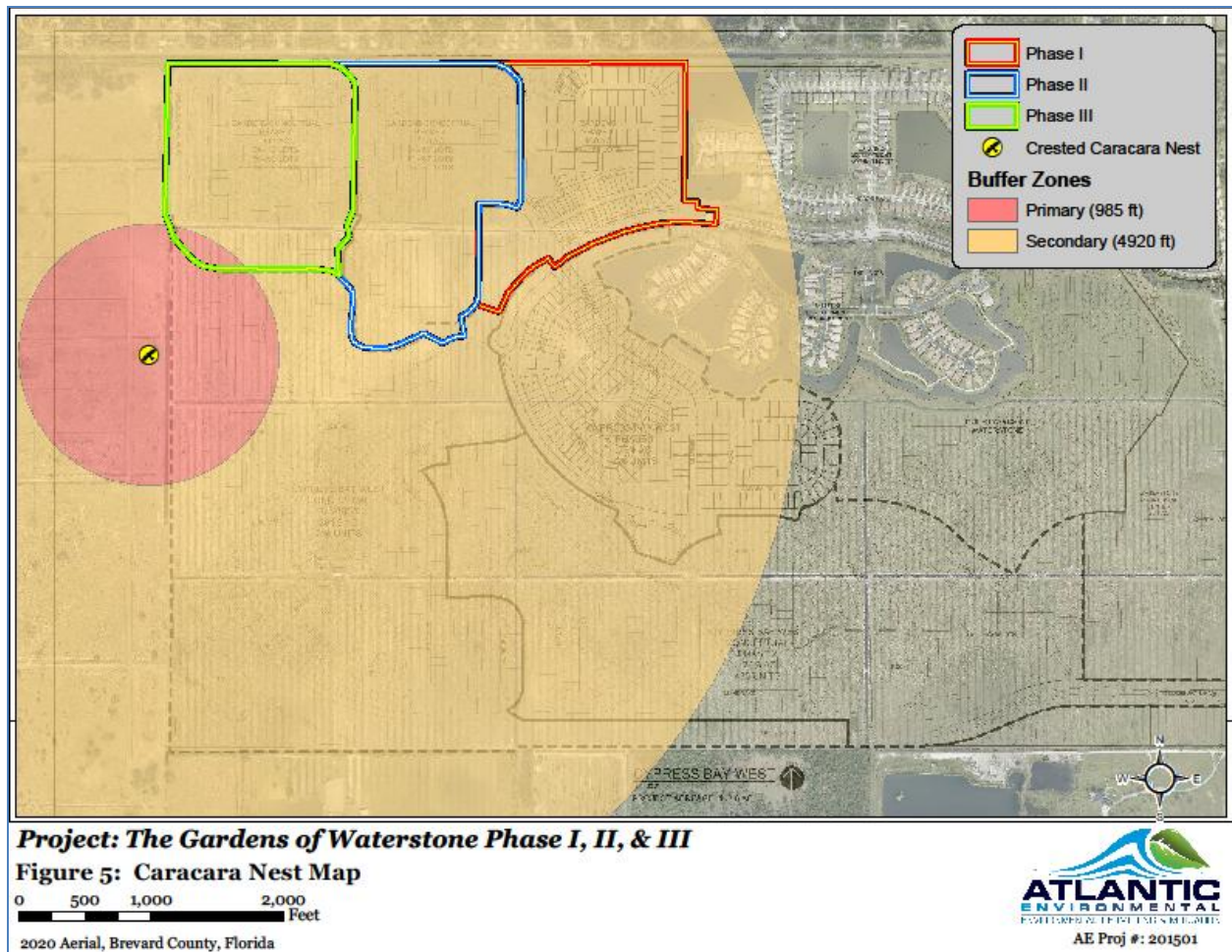
Map F-2 shows the location and impact/buffer areas for the Caracara.

Map F-1

Environmental Assessment Map from AES Report for Gardens at Waterstone



Map F-2
Caracara Nest Map



PB&J GARDENS INVESTMENT, LLC
FINAL DEVELOPMENT PLAN NARRATIVE FOR GARDENS AT WATERSTONE PHASE 2

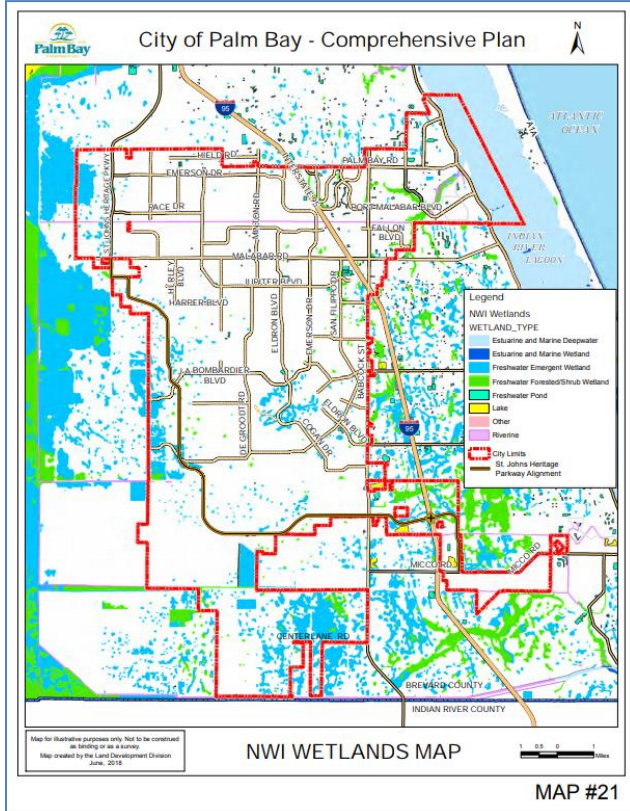


Figure 4 Comprehensive Plan Wetlands Map, dated June, 2018, taken from the City of Palm Bay's website, April, 2019

TRANSPORTATION CONCURRENCY AND MOBILITY

In 2005, traffic concurrency was approved by the City and County for 900 residential units, Sunrise Elementary School, and the current intersection of Mara Loma and Babcock St.

Table 3 shows the allocation of those original units for concurrency approval. With only 20 units remaining, the project and all future projects within the Waterstone communities will have to obtain concurrency, meet proportionate fair share and abide by the impact fee codes of the City.

In this instance, developers have agreed to design and install a traffic signal at Mara Loma and Babcock Street as a condition of approval of their Final Development Plan, based upon a recent warrant analysis done by Lassiter Transportation Group(LTG). The signal is scheduled to be in place prior to the final Certificate of Occupancy of this Phase 2.

Street names have been approved by the Brevard County Address assignment office and are on file with the City's Planning Department.

Figures 4 and 5 are taken from the City's Comprehensive Plan as found on the City's website. If the project is found to be in a Flood Zone, the applicant will comply with FEMA requirements and obtain requisite permits.

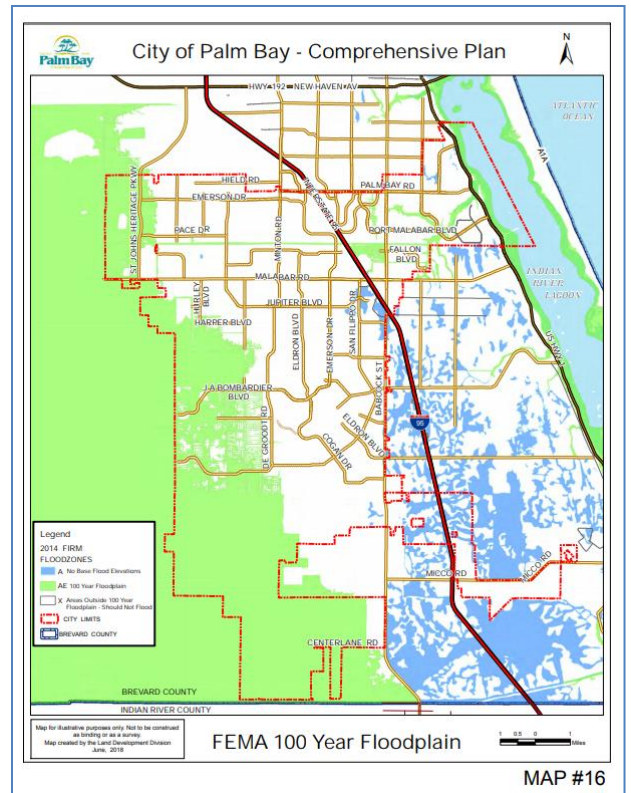


Figure 5 Comprehensive Plan FEMA 100 Year Floodplain Map,

Table 3	
Concurrency Table	
Traffic Concurrency	
Original	900
Heron Bay/Lakes	-296
Courtyards	-201
Gardens 1	-154
CBW1	-229
Remaining trips	20

The PD application requires a vehicular circulation plan, which is shown as part of the development plan. All of Gardens will be served by extending the existing Mara Loma Boulevard to the intersection of the new subdivision on Granger Circle. Mara Loma, as a 2 lane collector, has capacity and meets concurrency requirements to serve the new subdivision. The existing section of Mara Loma has been dedicated to the City and the Mara Loma extension is intended to be dedicated the City. All streets within the project are to be private and amenities will be maintained by the Gardens at Waterstone Homeowners Association, Inc.

SCHOOL CONCURRENCY

The owners worked with the School Board on land for an elementary school, and Sunrise Elementary is now open and serving the public. There are no other schools to be provided by Waterstone as a result of the proposed project. School Capacity and Concurrency applications have been completed by the applicant. The City is responsible for submitting the application and required Local Determination form to the School Board.

OPEN SPACE/RECREATION/AMENITIES

Gardens will have a neighborhood park, passive recreation areas, and interconnected meandering walking trails connecting the subdivision to Mara Loma and other future sections of the larger community all under control of the Gardens at Waterstone Homeowners Association, Inc. The recreation areas will be used by all homes in the Gardens at Waterstone Phases 1, 2, and 3. There are 3 neighborhood parks within Gardens Phase 2, totaling 1.8 acres more or less. These will be primarily passive parks, used for multi-purpose playing fields, a dog park and other outdoor activities. All the residents will be using the Phase 1 pool and Cabana.

DEVELOPMENT STANDARDS AND GOVERNANCE

Section 185.061 (A) The planned unit development is a concept which encourages and permits variation in residential developments by allowing deviation in lot size, bulk or type of dwellings, density, lot coverage, setbacks, open space, and other Land Development Regulations and open space from than required in any one (1) residential land use classification under the zoning regulations of the city. The purpose of a planned unit development is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types as well as commercial uses designed to serve the inhabitants of the planned unit development. It is recognized that only through ingenuity, imagination and flexibility can residential developments be produced which are in keeping with the intent of this subchapter, while departing from the strict application of conventional use and dimension requirements of other zoning districts and subdivision regulations.” (Source: City Code, American Legal Publishing)

The project’s zoning of Planned Unit Development gives the applicant the ability to establish and restrict the allowable uses within the project and set the development standards. This will be done through Declaration of Covenants, Bylaws and Articles of Incorporation for the Homeowners Association provided in the Final Development Plan application package submittal. There will also be areas that are

dedicated to the public and governed by either a regulatory agency or local government (streets and utilities). Subdivisions will be governed by the City and Chapter 177 Florida Statutes. Building permits and construction plan approval will be required by the City.

Therefore, this entire PUD has been creatively designed to assure a diverse mix of residential units and styles with non-residential and commercial uses that serve the community and region. The Gardens Deed restrictions will provide for specific uses, development standards, architectural and site design features, required landscaping/lighting/signage/materials, architectural review boards, maintenance, and the like. Draft Covenants are provided in the application package. The project has been designed to be consistent with the Comprehensive Plan and Land Development Codes, and compatible with the surrounding area.

The following is a general overview of the proposed uses, as well as dimensional information.

GENERAL RESIDENTIAL USES

The proposed project is a subdivision within a planned unit development zoning district consisting solely of 174 single family homes on 50' or 60' (on average) by 125' lots, ancillary recreation, utilities, and infrastructure. Residential uses will be controlled by the Deed Restrictions submitted with the application for final development plan approval. A Homeowner's Association will provide for maintenance.

Single Family Minimum Yard requirements (Setbacks):

All single family:

Front Yard:	25 feet
Rear Yard:	20 feet
Side yard:	5 feet
Side Corner:	15 feet
Pool Setback:	5 feet

Single Family Height: 2 stories (25 feet)

Minimum Square Footage: 1600

COMPATIBILITY WITH SURROUNDING AREA

The project is being placed on former groves and is a phase of a Master Planned community started in 2005. Heron Bay and the Lakes of Waterstone are 2 subdivisions that have been constructed containing 296 units. Homes on the Gardens lots will range from 1200 square feet minimum with values from \$225,000 to over \$350,000 depending on size and amenity packages. This project will be compatible in style, type, value, and amenities with its surrounding area, including the large scale planned Regional Activity Center Emerald Lakes (approved in 2011 and 2016) and Cypress Bay PUD (2018) to the east. With over 1500 units remaining to be developed in the Waterstone project, the developers will not build

any product that will destroy the future potential of various planned subdivisions. Therefore, the Gardens will be comparable to and compatible with the remaining subdivisions with the planned development in size, scale, character, intensity, and design as well.

COMFORMANCE WITH LAND DEVELOPMENT CODE (REVIEW CRITERIA)

All of the lands in Waterstone are zoned Planned Unit Development. The applications submitted for the Gardens project recognizes the expiration of the Waterstone at Palm Bay preliminary development plan as approved January 2018 and seeks to amend the 2005 Master Development Plan by obtaining approval of a new Final Development Plan for the specific area of the Gardens at Waterstone.

This document and narrative demonstrates how the Gardens project is consistent with the Comprehensive Plan, compliant with Land Development Code, and meets the review criteria in Chapter 185.066 of the City's Code, warranting approval. Since the project is zoned Planned Unit Development Zoning, therefore, a rezoning is not required.

FINAL DEVELOPMENT PLAN COMFORMANCE WITH LAND DEVELOPMENT CODE (REVIEW CRITERIA)

The procedure for approval of the Final PUD is found in the City's Land Development Code section 185.067:

§ 185.067 PROCEDURE FOR SECURING APPROVAL OF A FINAL DEVELOPMENT PLAN. The developer shall have one (1) year from the approval of the preliminary development plan for a planned unit development zone in which to file a final development plan application. At the request of the developer, and for good cause shown, the City Council may extend the period required for the filing of the application for a time certain not to exceed one (1) year. The final development plan application may request approval for the entire planned unit development plan or any stage. If approval is not requested for the entire planned unit development, the developer shall have one (1) year from approval of the final development plan application to file another final development plan application for approval of any or all of the remaining stages specified in the preliminary development plan. At the request of the developer, and for good cause shown, the City Council may extend for a time certain not to exceed one (1) year, the period for the filing of the application.

(A) *Required exhibits.* The exhibits identified in § [185.066](#)(B)(2)(a) shall be attached to the final development plan application.

Response: The application was determined to be complete by the Growth Management Department.

(1) In addition to the requirements of (A) above, a boundary and topographic map shall be submitted and shall include the location, size and type of all trees (per the standards identified in [Chapter 180](#)).

(2) Development schedule. The development schedule shall contain the following information:

(a) The order of construction of the proposed stages delineated in the development plan.

Response: Gardens Phase 2 will be constructed as all one phase starting with the site development and infrastructure.

(b) The proposed date for the beginning of construction of such stages.

Response: Gardens Phase 2 is desired to start in the 4th quarter of 2021, but that may not be until the 1st quarter of 2022 depending on permits and City approval.

(c) The proposed date for the completion of construction on such stages.

Response: Build out is anticipated to be in 1 year.

(d) The proposed schedule for the construction and improvement of common open space within such stages, including any complementary buildings.

Response: Open space will be provided during the site development work.

(3) Deed restrictions. Deed restriction proposals to preserve the character of the common open space as set forth in § [185.064](#). The deed restrictions shall include a prohibition against partition by any residential property owner.

Response: Draft Deed restrictions are included with this submittal.

(4) Instruments dedicating all rights-of-way, easements and other public lands shown on the final development plan from all persons having any interest in the land.

NOTE: THESE ARE SHOWN ON THE PRELIMINARY PLAT ATTACHED TO THIS APPLICATION

(5) Title opinion. A title opinion from an attorney showing the status of the title to the site encompassed by the final development plan and all liens, encumbrances and defects, if any.

Response: The application was determined to be complete.

(B) *Procedure.*

(1) A fee as established by resolution pursuant to § 169.004 shall accompany the final development plan application for the purpose of administration, additionally, engineering, plat filing, necessary copies and travel fees will be incurred.

Response: The application included the required fee.

(2) The Planning and Zoning Board shall recommend the approval, approval subject to conditions, or disapproval of the final development plan with the preliminary development plan, **the sufficiency and accurateness of the required exhibits, and the requirements and purposes of this subchapter and any other applicable provision of this code of ordinances and any other regulation of the city.** The Planning and Zoning Board shall recommend the approval, approval subject to change, or denial of the final development plan.

Response: The Planning and Zoning Board will hear and recommend approval, approval with conditions, or denial of the project after a duly noticed public hearing. Their action will be forwarded to the City Council with the Staff Report.

A reiteration of the justification statement with the Planning Board Review criteria follows.

CHAPTER 185.066 PRELIMINARY DEVELOPMENT PLAN PROJECT JUSTIFICATION: COMPLIANCE WITH REVIEW CRITERIA TAKEN FROM THE CITY'S LAND DEVELOPMENT CODE ON AMERICAN LEGAL'S WEB-SITE.

This applications for Gardens at Waterstone Phase 2 Final PUD submittal included all the required documents and exhibits requested under the code. The Gardens at Waterstone is almost completely the same configuration as it was in 2005 and in 2018 when approved by the City Council.

185.066 (B) (5) Review criteria. The decision of the Planning and Zoning Board on the preliminary development plan application shall include the findings of fact that serve as a basis for its recommendation. In making its recommendation, the Planning and Zoning Board shall consider the following facts:

(a) Degree of departure of proposed planned unit development from surrounding residential areas in terms of character and density.

JUSTIFICATION: Gardens at Waterstone is part of an approved project and plan that was given Planned Unit Development Zoning in 2005. The project is west of the built subdivisions of Heron Bay and Lakes of Waterstone, which were begun by Pulte/Divosta around 2006. Completed with 296 homes and an elementary school, utilities are permitted, sized and installed to serve the entire planned development in lines running from Valkaria Road to Mara Loma Blvd, and 2600' feet of Mara Loma Blvd is constructed and dedicated. The Courtyards at Waterstone, approved in 2020, will be owned by the same developers and contain the same amenities and design features. Therefore, there is complete compatibility with the existing, approved, and planned future developments.

Land use entitlements exist on 1200+/- acres straddling both sides of south Babcock Street. The proposed project is one of several large scale developments stimulated and supported by the new I-95 interchange and Parkway. Therefore, there is little departure from the current or proposed residential areas by the proposed project, which is in complete conformance with the character, density, and intensity of development approved by the State and City for this area.

(b) Compatibility within the planned unit development and relationship with surrounding neighborhoods.

JUSTIFICATION: Projects on adjacent lands have received City and/or State approval for similar mixed use, large scale developments with commensurate land use and zoning. As an extension of the original planned development, Gardens is compatible in size, scale, character, intensity, and design with both built subdivisions and future planned subdivisions.

(c) Prevention of erosion and degrading of surrounding area.

JUSTIFICATION: Gardens will meet all required agency permitting processes and procedures and create no off-site drainage issues. Preliminary St. John's River Water Management District Permits have been received and are on file with the City. The other phases of the project by this and other developers have met all SJRWMD permitting requirements and are under construction.

(d) Provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control and soil conservation as shown in the preliminary development plan.

JUSTIFICATION: The original Waterstone Development donated land for an elementary school, Sunrise Elementary, which is open and serving the public. There are no other schools to be provided by Waterstone. Gardens will have on site recreation amenities for use by its residents. All utilities will be planned for and installed by the developer(s), approved by the City, served by the City and permitted by the required Agencies. All required environmental permits will be obtained through the respective agencies. Currently, ST. JOHN'S RIVER WATER MANAGEMENT DISTRICT PERMIT #96251-24 gives conceptual approval to the master planned drainage system for the Gardens multiple phases on 101 acres. That permit is on public record and filed with the City.

(e) The nature, intent and compatibility of common open space, including the proposed method for the maintenance and conservation of the common open space.

JUSTIFICATION: The overall Waterstone project's residential areas will ultimately provide approximately 180 acres of recreational and open space amenities in both active and passive recreational areas. The Gardens will have its own smaller localized recreation areas that may include such elements as tot-lots and other active or passive play amenities, and may contain fountains, gazebos, and trails. A 'Gardens at Waterstone Homeowners Owner's Association, Inc.' (HOA) will be responsible for operation and maintenance of the amenities within the residential areas.

(f) The feasibility and compatibility of the development plan to function as an independent development.

JUSTIFICATION: Each neighborhood within the Waterstone project will function on its own. Utilities installed by the owner to serve the existing Waterstone community will serve this project. The Gardens will have its own deed restrictions, HOA/POA, articles of incorporation and by-laws, permits, and plat.

(g) The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned unit development.

JUSTIFICATION: Numerous Traffic Studies by Lassiter Transportation Group analyzing the roadway impacts and what improvements are necessary have been submitted over the years and are on file with the City and County. A Technical Memorandum was prepared for the Courtyards submittal with the 2020 application and is on file with the City. It shows that when the Cypress Bay Residential project of 400 is complete and the Gardens Phase 1 is complete, a traffic signal warrant study will be

needed for the Mara Loma intersection with Babcock Street. In anticipation and advance of that, LTG was hired to conduct a warrant study to validate the need and timing of the signal. It has been approved and is under design and permitting. The signal construction is a condition of approval of this phase's Final Development Plan. It is to be constructed prior to the last CO for a house in this phase. Brevard County is conducting a PDE for widening of the roadway. The new interchange and Parkway is open. There are adequate roadways to support the project.

(h) The availability and adequacy of water and sewer service to support the proposed planned unit development.

JUSTIFICATION: Gardens will utilize the lines provided for the existing Waterstone Communities and tie into the City's water and wastewater system. The City began long range planning in 2012 with its consultants Wade-Trim for the utility needs for the new communities planned for Northwest and Southern Palm Bay. The City has begun the long planned expansion to its wastewater plant and has made expansions to the water plant. The City will be the provider of the requisite services. The owner/applicant's engineer, CEG, working in concert with the City's Utilities department, has been advised that there is capacity available to serve this project.

(i) The benefits within the proposed development and to the general public to justify the requested departure from standard land use requirements inherent in a planned unit development classification.

JUSTIFICATION: Unlike using singular zoning districts and subdivision practices, Gardens is planned to be a quality, integrated, creative development similar in style and value to the existing Waterstone and Bayside Lakes Subdivisions. Landscaped roads, themed signage, entry features, underground utilities, specialty lighting, and deed restrictions will dictate and govern the uses, standards, character and quality of the development. In most cases, the requirements will be stricter than the City code. Because it's within the PUD district, there is greater control and quality than in a single development zone.

(j) The conformity and compatibility of the planned unit development within any adopted development plan of the city.

JUSTIFICATION: This project is in compliance with the Comprehensive Plan of the City.

(k) The conformity and compatibility of the proposed common open space, primary residential and secondary nonresidential uses within the proposed planned unit development.

JUSTIFICATION: This project includes active and passive recreational uses for common enjoyment by the residents. There are no commercial uses within the Gardens.

CONCLUSION

Several supporting documents are included in the Appendices. Exhibits required by the applications are under separate cover. Based upon my review of the documents, in my opinion, as a Fellow of the American Institute of Certified Planners, with 40 years of professional planning practice in the state of Florida, the proposed Gardens Final Development Plan is:

- **consistent with the Planned Unit Development Zoning Classification currently on the property,**

PB&J GARDENS INVESTMENT, LLC
FINAL DEVELOPMENT PLAN NARRATIVE FOR GARDENS AT WATERSTONE PHASE 2

- **consistent with the Comprehensive Plan,**
- **compliant with the City's land development code, and,**
- **compatible with the surrounding community.**

This narrative report, required by the application, is intended to serve as substantial competent evidence and testimony in all public hearings or proceedings related to the Gardens at Waterstone projects.

Respectfully submitted,



Rochelle W. Lawandales, FAICP
Waterstone Development Company, LLC

MAPS AND FIGURES

MAPS

MAP A:	GARDENS LOCATION MAP
MAP B:	CITY ZONING MAP
MAP C:	ORIGINAL PRELIMINARY DEVELOPMENT PLAN FOR WATERSTONE AT PALM BAY WITH APPROXIMATE LOCATION OF GARDENS
MAP D-1:	PROPOSED FINAL DEVELOPMENT PLAN
MAP D-2:	PRELIMINARY PLAT
MAP E:	CITY FUTURE LAND USE MAP
MAP F-1:	ENVIRONMENTAL ASSESSMENT MAP
MAP F-2:	CARACARA NEST MAP

FIGURES

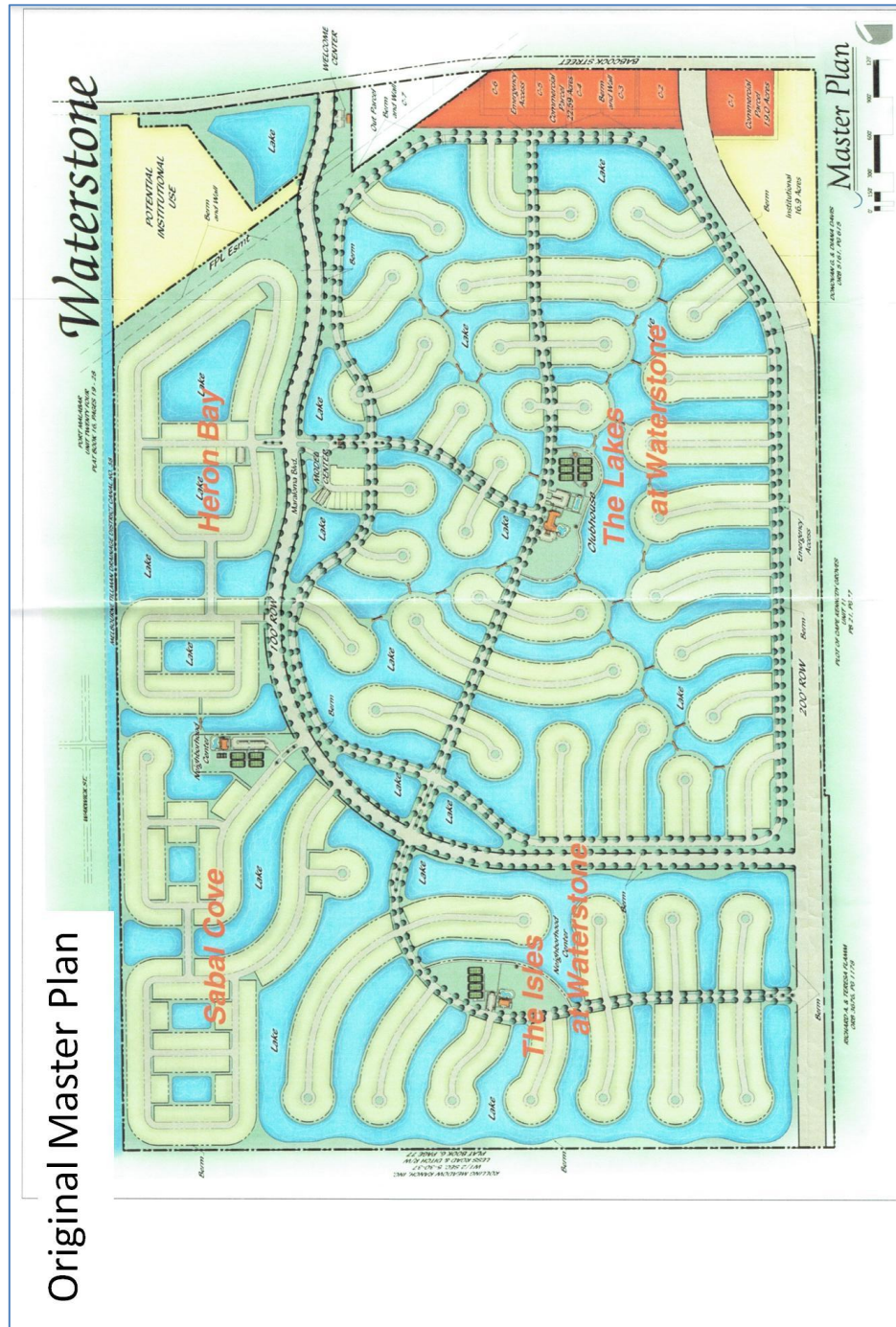
FIGURE 1	Future Land Use Map taken from the City's Comprehensive Plan on the City of Palm Bay Website, April, 2019
FIGURE 2	Urban Services Boundary Map adopted by the City in the EAR, October 2017; as shown on the City of Palm Bay website, April, 2019.
FIGURE 3	SJRWMD Permit covering the proposed 44 acre project
FIGURE 4	Comprehensive Plan Wetlands Map, dated June, 2018, taken from the City of Palm Bay's website, April, 2019
FIGURE 5	Comprehensive Plan FEMA 100 Year Floodplain Map, taken from the City of Palm Bay's website, April, 2019

APPENDICES

- 1. APPROVED PRELIMINARY DEVELOPMENT PLAN 2005 ESTABLISHING ZONING**
- 2. RESUME OF ROCHELLE W. LAWANDALES, FAICP**
- 3. ENVIRONMENTAL ASSESSMENT BY JON SHEPHERD, Atlantic Environmental of Florida, LLC, dated December 13, 2020**
- 4. CRESTED CARACARA SURVEY REPORT, BY JON SHEPHERD, Atlantic Environmental of Florida, LLC, dated May 5, 2021**

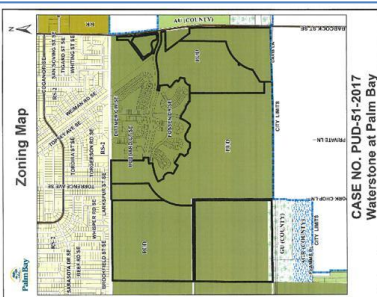
APPENDICES

1. APPROVED ORIGINAL MASTER PLAN



May 15, 2005 FINAL PUD Approval

July 28, 2021

<p>May 18, 2005</p> <p>Mr. Ben Jefferson City of Palm Bay 3301 Bayview Lane, Suite 200 Palm Bay, FL 32909</p> <p>Dear Mr. Jefferson:</p> <p>This letter is to officially notify you that the City Council of the City of Palm Bay, at its regular meeting on May 17, 2005, approved the final Planned Unit Development application for Waterstone Phase 2.</p> <p>The approval by Council is subject to all staff comments being addressed prior to the recording of the plat.</p> <p>If you should have any questions or desire additional information, please contact Mr. Dave Winkler, Growth Management Director, at 735-3042.</p> <p>Sincerely,</p> <p><i>[Signature]</i> CITY OF PALM BAY Erikson, Land Development Division Staff Report City Clerk</p> <p>Case No. PUD-20-2005</p>	<p>DATE: May 4, 2005 CASE: PUD-20-2005</p> <p>Palm Bay CITY OF PALM BAY</p> <p>LAND DEVELOPMENT DIVISION</p> <p>STAFF REPORT</p> <p>APPLICATION PROPOSAL: Planned Unit Development for Waterstone Phase One and Waterstone Phase Two LOCATION: West of and adjacent to Railroad Street SE, south of and adjacent to Mulberry Street West Control District No. 18 APPLICANT: DIVONA HOMES, L.P. and Bayview Lake Development Corporation</p> <p>SITE DATA PRESENT ZONING: AU, Agricultural Use and PUD, Planned Unit Development ACREAGE: 924.93 acres ± HARVEST: Maximum of 2 units per acre (overall)</p> <p>ADJACENT ZONING N → B-2, Single Family Residential District, home and vacant land S → AU, Agricultural Use and GP, General Use District, rural W → GQ, General Use District, urban Required to be provided</p> <p>WATER & SEWER Planned Zone X, outside of 100-year flood zone, Flood Zone A and Flood Zone AE, and residential</p> <p>PAGE 3</p>	<p>CASE NO. PUD-20-2005 May 4, 2005</p> <p>BACKGROUND</p> <p>1. Preliminary Planned Unit Development is requested for Waterstone PUD.</p> <p>2. The property is located west of and adjacent to Railroad Street SE, south of and adjacent to Mulberry Street West Control District No. 18. The parcel contains 924.93 acres.</p> <p>3. The current zoning is PUD, Planned Unit Development District and AU, Agricultural Use District (Brevard County). Surrounding zoning is as follows:</p> <p>North: B-2, Single Family Residential District East: GQ, General Use District and AU, Agricultural Use District South: GQ, General Use District and AU, Agricultural Use District West: GQ, General Use District (Brevard)</p> <p>ANALYSIS</p> <p>1. The proposed development consists of 1,700 total units, with 1,014 single family lots and 686 townhomes. The development is located within the Waterstone PUD, which is a Planned Unit Development. The development is located within the Waterstone PUD, which is a Planned Unit Development. The development is located within the Waterstone PUD, which is a Planned Unit Development.</p> <p>2. The natural stream, drainage and the location area are to be maintained by the private owner. The development is located within the Waterstone PUD, which is a Planned Unit Development. The development is located within the Waterstone PUD, which is a Planned Unit Development. The development is located within the Waterstone PUD, which is a Planned Unit Development.</p> <p>3. In order to receive Preliminary Planned Unit Development approval, the proposal must be approved by the City of Palm Bay Council. The City of Palm Bay Council is the governing body for the City of Palm Bay. The City of Palm Bay Council is the governing body for the City of Palm Bay. The City of Palm Bay Council is the governing body for the City of Palm Bay.</p> <p>A. Additional information is requested during final PUD approval for all additional information requested.</p> <p>B. All units must be located within the Waterstone PUD.</p> <p>C. Final deed restrictions must be submitted prior to recording.</p> <p>D. Show owner must be provided on the final PUD plat to record.</p> <p>E. Title opinion must be provided prior to recording.</p>	<p>Zoning Map</p>  <p>CASE NO. PUD-20-2005 Waterstone at Palm Bay</p>
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Resulted in PUD Zoning
Shown on City's GIS today

Proposed Gardens at Waterstone on 2005 PDP



3. RESUME OF ROCHELLE W. LAWANDALES, FAICP

EDUCATION

Graduate Degree: MASTER OF CITY AND REGIONAL PLANNING
CLEMSON UNIVERSITY, CLEMSON, S.C. 1979

Bachelor of Arts: SOCIOLOGY/PSYCHOLOGY
CLEMSON UNIVERSITY, CLEMSON, S.C. 1977

Other Studies: ALLIANCE FRANÇAISE, PARIS, FRANCE (1976)

Certifications: American Institute of Certified Planners

Honors: Inducted into the College of Fellows by the American Planning Association/American Institute of Certified Planners, 2018

EXPERIENCE

Private Consultation Service: Lawandales Planning Affiliates, Inc.,(LPA), owned by Rochelle W. Lawandales, AICP, has been serving communities and individuals with planning services since 1989, including, but not limited to:

- Local governments including, Palm Bay, Palm Shores, Melbourne Beach, Malabar, Melbourne, Fellsmere, Cocoa Beach, Satellite Beach, New Smyrna Beach, Tampa, Savannah, Georgia, South Daytona, Rockledge, Cocoa, Port Orange
- National and Local developers, including, but not limited to: American Tower Systems, a subsidiary of CBS, Inc.(site selection for telecommunication towers across Florida), Lennar Homes(zoning, land development), Mercedes Homes(zoning/land development approvals), Heritage Properties, St. Mary's Catholic Community Church(zoning/conditional use), Mattress Barn(comp plan and zoning), Boozer Properties, Plymel Realty, Charlie Boyd (zoning), FBC of Brevard(zoning), Richard Stottler d/b/a Cape Kennedy Shores, Inc., Ben Jefferies d/b/a Bayside Lakes Development Corporation, Waterstone Development Company, LLC; Mike Erdman, d/b/a as KEW, Inc., Roy Pence, Coy Clark, Centex Homes (zoning/land development), among others.
- Many noted Land Use/Real Estate Lawyers, individuals or developers who have needed expert planning services for development reviews and approvals, eminent domain, or expert witness testimony for quasi-judicial or legislative hearings. Ms. Lawandales has been certified as an expert witness in local government hearings, Circuit and District Courts in Florida, and Chapter 120 Administrative hearings.

Comprehensive and Neighborhood Planning experience includes:

- West Melbourne, Malabar, and Cocoa Comprehensive Plans
- Amendments for Melbourne Beach, Brevard County, Fellsmere, Palm Shores, South Daytona, Indian Harbor Beach, Cocoa, Palm Bay
- South Daytona Evaluation and Appraisal Report
- Neighborhood Strategic Plan for the City of Melbourne's North CDBG Target Area "Booker T. Washington Neighborhood
- Former City of Fellsmere Consulting Planner, Comprehensive Plan 2003 completion and several large scale Updates

Redevelopment, Urban Design and Historic Preservation experience includes:

- City of Titusville: Land Development Codes and Urban Design Manual with Kimley-Horn and Associates
- City of Port Orange: TDM/TSM Strategic Plan with Kimley-Horn and Associates

- City of Rockledge: Community Redevelopment Area consulting Director, 2003-2010; CRA Plan Update 2009; Redevelopment Mixed Use District-Comprehensive Plan amendment, Land Development Code amendment, and Design Manual; Barton Boulevard Streetscape design;
- City of Fellsmere: Mixed-Use District Code and Urban Design/Streetscape Concepts; Findings of Necessity and established district with the Community Redevelopment Area Plan, 2005; City Hall Master Plan; Preparing Design Manual and Streetscape Plan for downtown;
- City of Palm Bay: Bayfront Redevelopment Area projects; Waterstreet Development Master Plan, Waterstreet Strategic Funding Plan, with Brad Smith Associates; Award winning Powell Subdivision Visioning, streetscape design; Palm Bay Road streetscape; Indian River Scenic By-ways establishment and Corridor Management Plan; Design Manual/Pattern Book for urban design in CRA district
- City of Cocoa: Redevelopment Area Streetscape/Urban Design Project; Heart of Cocoa, Delannoy Avenue, and Whitley Bay; in association with Baskerville-Donovan, Inc.
- City of Melbourne: Booker T. Washington Neighborhood Strategic Plan. Redevelopment, Urban Design and Streetscape concepts; *Eau Gallie Urban Infill and Community Redevelopment Plan, Streetscape, and Urban Design Concepts; CRA Expansion-Blight Study. This project won the 2003 National APA Community Initiative Award*; Blight Study for Downtown Melbourne Area Expansion; Downtown Blight Study and Evaluation/Audit of the CRA Redevelopment Plan; Babcock Street Blight Study and first Community Redevelopment Plan, with HDR, Inc and Brad Smith Associates.
- Town of Melbourne Beach: Ocean Avenue Redevelopment, Streetscape and Design Guidelines; Ocean Avenue Traffic Light, Pavers, Colors, and Lighting Design; TEA-21 Enhancement Project Design/Streetscape Elements; Melbourne Beach Municipal Complex with Rood and Zwick, Architects in Association and Brad Smith Associates;
- City of South Daytona: Assisted in creation of redevelopment district, Redevelopment Plan and Urban Design Concepts
- City of Indian Harbor Beach: Mixed Use District Code and Urban Design/Streetscape Concepts
- City of Satellite Beach: Blight Study, creation of redevelopment district, Community Redevelopment Plan and Urban design recommendation
- Town of Palm Shores: Community Redevelopment Blight Study and Urban Design recommendations
- Harris Corporation Master Plan-a micro-"urban design" project, with Brad Smith Associates
- Cocoa Beach Redevelopment Area-SR 520 Urban Design/Beautification Project, with Brad Smith Associates
- Blight Study, Redevelopment Plan, Comprehensive Plan amendment and Land Development Code amendments for the Merritt Island Redevelopment Agency area expansion
- Conceptual redevelopment plan for the Max Brewer Causeway, part of the Titusville Redevelopment Area
- Conceptual Master Plan, Sandpoint Park, Honeycutt and Associates, part of Titusville Redevelopment Area

Historic Preservation and Main Street

- Eau Gallie Arts District (EGAD) Economic Restructuring Plan, 2012
- Henegar Center for the Arts, Building Feasibility Study for use of 1920's High School, 2008
- Melbourne Main Street Strategic Plan
- Hamilton County Main Street Historic District Survey and Recommendations, Hamilton County, Florida
- Established an Historic District for the downtown area in Cocoa (Cocoa Village) and wrote Preservation and Development Guidelines
- Secured funding, assisted in the planning and supervised the \$500,000 rehabilitation of the E.P. Porcher House, a National Register Property in Cocoa
- Drafted a Model Historic Preservation Ordinance for graduate school

Public Participation Workshop Facilitation and Visioning Processes

South Daytona, Melbourne, Melbourne Beach, Fellsmere, Zion Christian Church, Florida Air Academy, Eau Gallie, Satellite Beach, Cocoa, Palm Shores, Indian River Scenic Highway Coalition, Cocoa Beach, Rockledge,

ROCHELLE W. LAWANDALES, FAICP

Palm Bay, Melbourne Main Street, Interstate Business Park, Le Centre, Savannah, Tampa Downtown Development Authority; New Smyrna Beach Redevelopment Agency

Land Development Regulations include:

Complete Land Development Regulations for West Melbourne, Malabar, South Daytona, Fellsmere and Cocoa; and updates or changes to LDR's for Titusville(Form Based Code), Rockledge, Palm Shores, Fellsmere, Melbourne, Cocoa, Melbourne Beach, Indian Harbor Beach, and Satellite Beach. Performance Standards Zoning Code for Cocoa Redevelopment Agency, with Frielich-Leitner, Esq. Architectural and Site Design Guidelines; Recreation Impact Fee Ordinances; Performance Standards Zoning Codes; Historic Preservation Districts and Historic Preservation Land Development Code; Downtown Redevelopment Codes; Mixed-Use District Codes

Grants experience:

Successes have included Historic Preservation, Florida Communities Trust, FRDAP, FIND, FCMP, Brownfields, Enterprise Zones/Foreign Trade zone designations, for a variety of programs, services and facilities; and overall obtaining over \$5M for a variety of local or county public improvements.

Recreation projects:

Recreation master planning services have included Wabasso Causeway Park and Round Island Park with Brad Smith Associates for Indian River County; Melbourne Community Park Location and Design Study, Front Street Park, Sherwood Park and Carver Park for the City of Melbourne; City of Fellsmere Senior League, Little League Community Parks, and Grant Ave. Neighborhood Park; Waterstreet Redevelopment Plan with several Park Components for the City of Palm Bay; Westbrook Community Park for Lennar Homes; Indian River Lagoon Scenic Highway Program; Ryckman and Loggerhead Parks for the Town of Melbourne Beach; Palm Shores Shoreside Park; Sandpoint Park and Max Brewer Causeway, (Brevard County) with Honeycutt and Associates, Inc.

Public Service:

Ms. Lawandales' first 10 years of practice were spent serving the public sector:

- West Melbourne, Florida: Planning Director, 1979-1980
- Melbourne, Florida: Special Projects and Grants Administrator, 1980-1983
- Cocoa, Florida: Redevelopment Director 1986; Community Improvement Administrator, 1986-1989.

Other Employment

Since 2011, Ms. Lawandales has continued to serve as a sole proprietor planning consultant to the public and private sectors to provide expert testimony, planning consultation, code changes, and sustainability programs for various clients. In 2014, she was hired as the Professional Planner for Waterstone Development Company, LLC in Melbourne, FL.

Miscellaneous talents and experience:

- Designing, Implementing, and Directing the We Care Program for the Brevard County Medical Society, Brevard County Health Unit, and area Hospitals, which brought private medical care to the indigent of Brevard County
- Counseling for troubled youth and their families as a caseworker for Devereux Outpatient Services
- Principal for religious schools for 4 years/teacher for 13
- Adjunct Professor, Planning and Urban Design, University of Central Florida, Fall, 2004
- Coldwater Creek, Retail Sales Associate, Part time, 2005-present

Prior Affiliations:

- Florida Redevelopment Association, President, 2009-2010; Legislative Policy Committee; Board member 2006-2011; Treasurer, 2007-2008
- Florida Chapter American Planning Association: Legislative Policy Committee (almost 20 years and currently)
- American Institute of Certified Planners/American Planning Association (current)
- Florida League of Cities: Legislative Policy Committee

ROCHELLE W. LAWANDALES, FAICP

- Florida Chambers, Six Pillars Committee
- Florida League of Cities: Keys to the Cities Task Force, 2010
- Brevard Tomorrow

Previous Community Service:

- Past Chair(13 years) and Member (16 years), Satellite Beach Planning and Zoning Board
- Past Chair (4 years), Satellite Beach Community Redevelopment Agency Advisory Board,
- Past service on Melbourne's Planning and Zoning Board and Architectural Review Board
- Junior League of South Brevard, Various Executive Board, Board positions and member 19 years
- Former Chair, State Public Affairs Committee for the Junior Leagues of Florida; established the Growth Management Task Force
- Former Committee Member, Land Use and Growth Management Subcommittee, Brevard Tomorrow, Tourist Development Council Signage Committee; Landscape and Tree Preservation Ordinance, Brevard County
- Leadership Brevard 1994 Graduate

4. ENVIRONMENTAL ASSESSMENT BY JON SHEPHERD, Atlantic Environmental of Florida, LLC, dated December 13, 2020



ENVIRONMENTAL ASSESSMENT

On the

**The Gardens at Waterstone
Phases I, II, and III
Palm Bay, Florida**

**Portions of Tax Account Numbers
3000216, 3000217, and 3010608**

Conducted for:

**Mr. Dan Evans
PB&J Gardens Investment of Brevard, LLC
1698-A West Hibiscus Boulevard
Melbourne, Florida 32901**

Conducted by:

**Atlantic Environmental of Florida, LLC
657 Montreal Avenue
Melbourne, Florida 32935**

December 13, 2020



657 Montreal Avenue • Melbourne, FL 32935

ph 321.676.1505 • fax 321.676.1730 • www.environmentalpermitting.com

December 13, 2020

Mr. Dan Evans
PB&J Gardens Investment of Brevard, LLC
1698-A West Hibiscus Boulevard
Melbourne, Florida 32901

Re: Environmental Assessment
The Gardens at Waterstone Phase I, II, and III in Palm Bay, Florida
Portions of Tax Account Numbers 3000216, 3000217, and 3010608
Atlantic Environmental File No. 201501

Dear Mr. Evans:

Atlantic Environmental of Florida, LLC (Atlantic Environmental) has completed an environmental assessment and feasibility study of the above-referenced property, an approximately 145.8-acre tract of land located west of the Mara Loma Boulevard SE western terminus in Palm Bay, Florida (Figures 1 and 2). The field assessment of this 3-phase tract, hereinafter referred to as "the Property", occurred on December 10, 2020. The three phases on the Property, starting on the eastern phase (Phase I) and ending on the western phase (Phase III) encompass approximately 44.6-acres, 53.2-acres, and 48.0-acres, respectively. This study is intended to assess any reasonably ascertainable environmental issues that might influence the developability of the subject property. Following are the results of our study.

Topography and Soils

Figure 3 shows the USGS Topographical Map for the Property and surrounding areas. According to this map, the Property is situated at an elevation of approximately 25 feet NGVD and abuts a levee on its north side that is situated at approximately 30 feet NGVD. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) map for Brevard County (Figure 4) depicts three soil types underlying the Property. Following is a description of the mapped soil types as occur in a natural environment.

Eau Gallie sand (17)

The Eau Gallie component makes up 85 percent of the map unit. This component is on flats on marine terraces on coastal plains. The natural drainage class is poorly drained. This soil is not flooded. It is not ponded. A seasonal zone of water saturation is at 12 inches during June, July, August, and September. This soil does not meet hydric criteria.

Riviera sand (19)

The Riviera component makes up 85 percent of the map unit. This component is on flats on marine terraces on coastal plains. The parent material consists of sandy and loamy marine deposits. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is poorly drained. Water movement in the most restrictive layer is moderately high. This soil is not flooded or ponded. A seasonal zone of water saturation is at 6 inches during June, July, August, September, and October. This soil meets hydric criteria.

Pineda sand (47)

The Pineda component makes up 85 percent of the map unit. This component is on flats on marine terraces on coastal plains. The parent material consists of sandy and loamy marine deposits. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is poorly drained. This soil is not flooded or ponded. A seasonal zone of water saturation is at 6 inches during June, July, August, September, and October. This soil meets hydric criteria.

Past agricultural activity within the Property appears to have altered some of the characteristics possessed by the underlying soils. However, for the most part, the soils underlying the Property appear fairly consistent with the above descriptions.

Vegetation and Community Types

Different combinations of natural and human-influenced factors, such as surface elevation, hydrology, vegetative species and structure, soil characteristics, and degree and type of historical disturbance, will give rise to a variety of distinct ecological systems and functions, known as communities and land uses. The Florida Land Use, Cover, and Forms Classification System (FLUCFCS) organizes most of the major categories of communities and land uses into particular descriptions, each corresponding to a different code number. Using our field observations and the FLUCFCS system as a guideline, Atlantic Environmental has identified the on-site communities as they currently exist on the Property. Figure 5 depicts the code numbers of the on-site FLUCFCS categories, specifically, Improved Pastures (FLUCFCS Code Number 211), Wetlands (600), and Streams and Waterways (510).

Following is a description of these classifications, as they exist on the Property, along with an assessment of the jurisdictional wetland status based on the rules and regulations of the St. Johns River Water Management District (SJRWMD) and the U.S. Army Corps of Engineers (USACE).

Improved Pastures (211)

The vast majority of the Property supports Improved Pastures that are currently housing cattle. Phase I supports 44.1 acres, Phase II supports 52.59 acres, and Phase III supports 47.03 acres this land use category. Here, the beds and furrows of the past citrus operation are still evident and the vegetation within the beds is dominated by mowed smutgrass, capeweed, bahiagrass, torpedograss, bermudagrass, Spanish needles, and broomsedge. The furrows here are dominated by paragrass, torpedograss, smartweed, marsh pennywort, maidencane, and sedges. The higher elevated areas will be claimed as uplands by the regulatory agencies while the shallow furrows will be claimed as surface waters by SJRWMD. No mitigation for impacts to these furrows will be required but the acreage will need to be accounted for throughout the permitting process.

Wetlands (600)

An approximately 0.22-acre low quality wetland is located in Phase III of the Property (see Figure 5). This area was previously identified as a wetland in the conceptual permitting of the Property and therefore it should be assumed that SJRWMD will likely claim this area as such in the future. USACE will not assert jurisdiction over this area. This lower elevated area is dominated by torpedograss, paragrass, marsh pennywort, soft rush, and an assortment of sedges. SJRWMD will require that permits be acquired and mitigation be provided to impact this wetland.

Streams and Waterways (510)

A series of manmade ditches bisect the Property. Phase I supports approximately 0.50 acres of manmade ditches while Phases II and III support approximately 0.61 acres and 0.75 acres, respectively. These vegetation within these ditches appear maintained via herbicide on a regular basis. Vegetation is dominated by sedges, primrose willow, cattails, smartweed, and marsh pennywort. USACE will not assert jurisdiction over these ditches while SJRWMD will claim them as surface waters and therefore will require a permit for proposed impacts.

Habitat Potential for Protected Wildlife Species

A preliminary survey for listed species and suitable listed species habitats was completed on the Property. This survey resulted in the determination that all three phases of the Property provides suitable habitat for Audubon's crested caracara and a variety of wading birds.

Audubon's crested caracara

The crested caracara (*Caracara cheriway*) is a raptor/scavenger which is state and federally listed as a threatened species in Florida. Caracaras prefer to nest in cabbage palms surrounded by open habitats with low ground cover and low density of tall or shrubby vegetation. Although no nest sites are located on the Property, the openness of the habitat combined with suitable nesting sites on lands to the west of the Property suggest that this species could use the Property on an opportunistic foraging basis. A single caracara was noted on the Property (within Phases I and II) at the time of our site inspection.

Wading Birds

Wading birds, including little blue herons (*Egretta caerulea*), tricolored herons (*E. tricolor*), reddish egrets (*E. rufescens*), roseate spoonbills (*Platalea ajaja*), and wood storks (*Mycteria americana*), depend on freshwater marshes and shorelines for foraging and typically roost in forested wetland systems. Although no evidence of these species was noted during the preliminary survey, it is possible that any or all of these birds use the on-site surface water ditches on a transitory and/or opportunistic foraging basis.

Summary

The results of our survey indicate that the Property contains ± 143.72 acres of uplands, approximately 0.22 acres of SJRWMD wetlands (all contained within Phase III), and ± 1.86 acre of surface waters (in addition to the acreage of the on-site furrows that are included in the upland acreage above for the purposes of this report). Following is a discussion of the protected natural resource on the site, along with any permitting requirements that may need to be addressed prior to site development.

Wetlands

Wetlands, including those located on the Property, are protected by state, federal, and/or local government rules against impacts from development. Should development be proposed which would affect these natural resources, permits authorizing these impacts would be needed, and mitigation for alterations to these wetlands can be required. Following is a general discussion of mitigation alternatives that may be applicable to the wetlands proposed to be impacted by development of the Property.

Prior to impacting a wetland on a particular piece of property it is required that all efforts have been made to eliminate wetland impacts. If elimination of wetland impacts is not practicable, it is then required that site development alternatives be considered that reduce wetland impacts. This elimination and reduction exercise will be required should impacts to wetlands be proposed on the Property.

Once it has been determined that all reasonable efforts have been made to reduce wetland impacts, the wetland regulatory agencies will consider compensation for wetland impacts through compensatory mitigation. Although mitigation can take on many forms, mitigation usually consists of restoration, enhancement, creation, or preservation of wetlands, other surface waters, or uplands. However, the federal government (i.e. USACE) will not accept straight preservation (of wetlands or uplands) as a valid form of mitigation; some form of wetland improvement (enhancement, restoration, or creation) must be provided.

The amount of compensatory mitigation required is determined by the amount of biological lift needed to offset the proposed impacts. The quantity of biological lift required is dependent on the acreage of proposed wetland impact, the location and landscape support of the proposed impact site, the habitat value of the proposed impact site, the functionality of the proposed impact site, as well as the vegetative and hydrologic quality of wetlands proposed for impact.

To determine the amount of biological lift provided by a mitigation site, an applicant must take into account all of the above criteria, as the mitigation site exists prior to mitigation action, and determine how the proposed mitigation action will biologically improve the mitigation site. If the biological lift provided by completing the mitigation action outweighs the biological loss incurred by the proposed impact, the regulatory agencies are expected to permit the proposed project.

As for this particular site, SJRWMD will require that efforts be made to reduce wetland impacts to the greatest extent possible. However, if an applicant were to employ one of the SJRWMD out-provisions in which mitigation was offered that has a greater long-term ecological value than that of the wetlands proposed for impact and mitigation that implements all or part of a plan that provides regional ecological value, one could bypass SJRWMD's elimination and reduction criteria. Currently, two mitigation banks fall within the basin of this project that could provide such mitigation. If one should choose to purchase mitigation credits from one of these available banks, one should budget approximately \$12,000.00 to impact the 0.22 acres of on-site wetlands located in Phase III of the Property.

Wildlife

Audubon's crested caracara

During discussions with SJRWMD on January 25, 2018, Ms. Karen Garrett-Kraus stated that she was aware of a past caracara nest west of the Property, on the adjacent owner's land. At that time, Ms. Garrett-Kraus recommended that limited surveying be completed to determine if this species was utilizing the Property. On January 31, 2018, Ms. Garrett-Kraus emailed the approximate location of the nest she had observed previously. On January 30 and February 1, 2, and 6, 2018, Atlantic Environmental conducted surveys to note if caracaras were utilizing the Property. At that time, we observed a single crested caracara flying over the Property into the general vicinity relayed by Ms. Garrett-Kraus on February 1, 2018 and then a pair of caracaras flying away from this same general vicinity on February 6, 2018. On February 9, 2018 Atlantic Environmental relayed our

observations to the US Fish and Wildlife Service (USFWS) and requested guidance. On March 2, 2018, USFWS provided Atlantic and SJRWMD guidance with regards to this species that if the project boundary is located outside of any caracara primary zone (i.e. 985-feet away from a potential nest tree), development of a particular project could occur with no further action for this species. The Property, and certainly Phases I and II, currently appear to meet this guidance and therefore should be allowed to proceed with no further action. With this being said, out of an abundance of caution, Atlantic Environmental will be proceeding with a formal crested caracara survey on the Property per the recommended Florida Fish and Wildlife Conservation Commission's survey methodology in January 2021.

Wading Birds

Although no evidence of these species was noted during our survey, it is possible that any or all of these birds use the on-site ditch systems from time to time on an opportunistic foraging basis. The only wading bird species that will require compensation for impacts to its suitable foraging habitat on the Property is the wood stork. Per our past communication with SJRWMD, SJRWMD has agreed that proposed littoral shelves within the stormwater tracts of the developable area will compensate for the loss of suitable wood stork foraging habitat contained within the on-site ditches assuming these littoral shelves are constructed equal to or greater than a 1 to 1 ratio with the proposed impacts to suitable foraging habitat of wood storks.

Conclusions

Atlantic Environmental determined that the Property contains ± 143.72 acres of uplands, approximately 0.22 acres of SJRWMD wetlands (all contained within Phase III), and ± 1.86 acre of surface waters (in addition to the acreage of the on-site furrows that are included in the upland acreage above for the purposes of this report). The Property also has the potential to support protected wildlife. These natural resources must be addressed in the development process, through permitting, avoidance, mitigation, or some combination thereof.

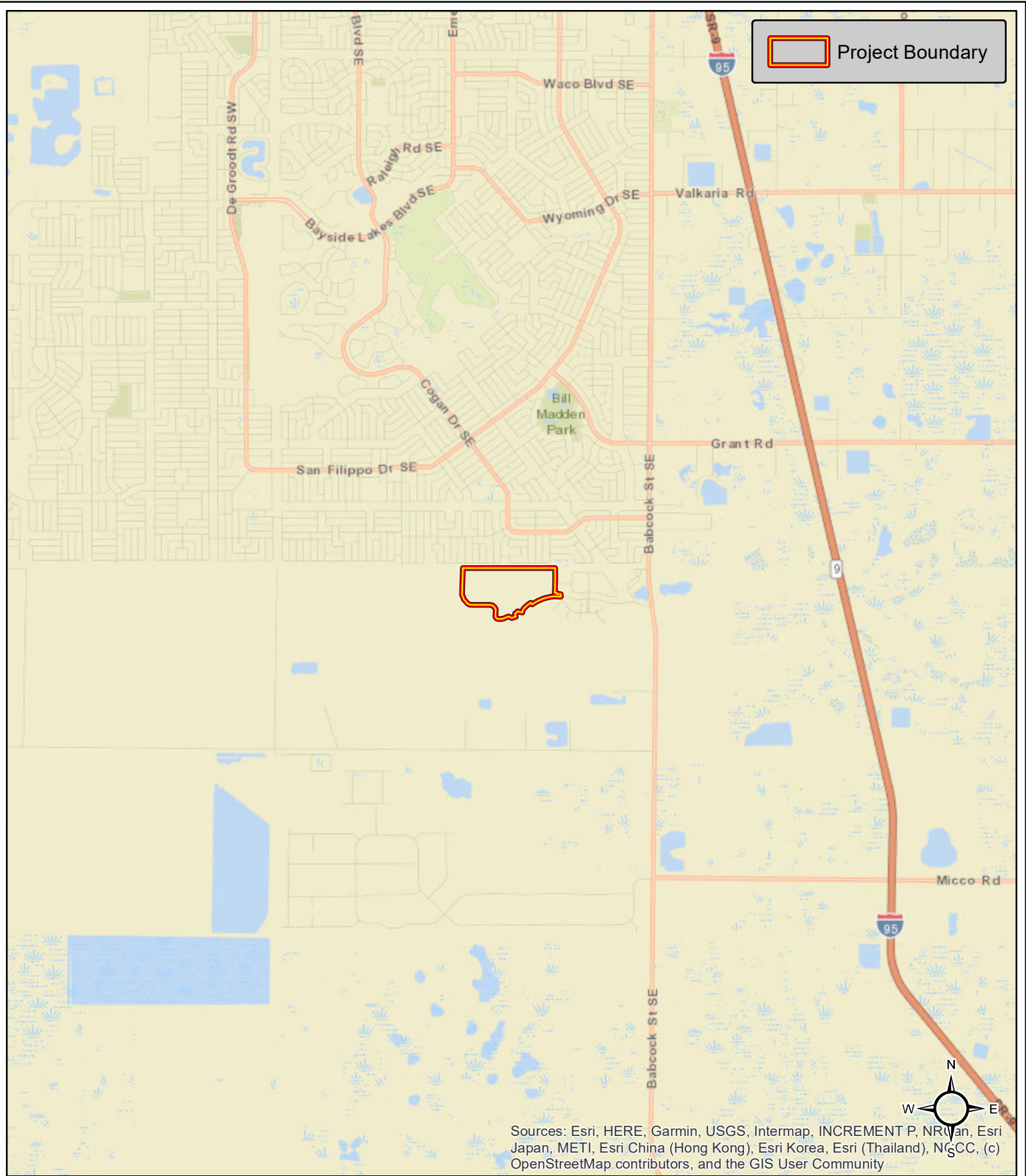
As the next step in the development process as it relates to environmental issues, Atlantic Environmental recommends delineating the on-site wetland within Phase III. As development of this phase is not planned for quite some time, this task should be postponed until development of Phase III is imminent. In addition to the above task, Atlantic Environmental recommends conducting formal crested caracara survey on the Property to demonstrate that no caracara is nesting on the Property or within 985 feet of the Property. As you are aware, Atlantic Environmental is scheduled to initiate this survey in January 2021.

Should you have any questions or need additional information, please do not hesitate to contact our office. We look forward to working further with you on this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Shepherd", with a stylized flourish at the end.

Jon H. Shepherd, MS, PWS
President/Ecologist



Project: The Gardens at Waterstone Phase I, II, & III

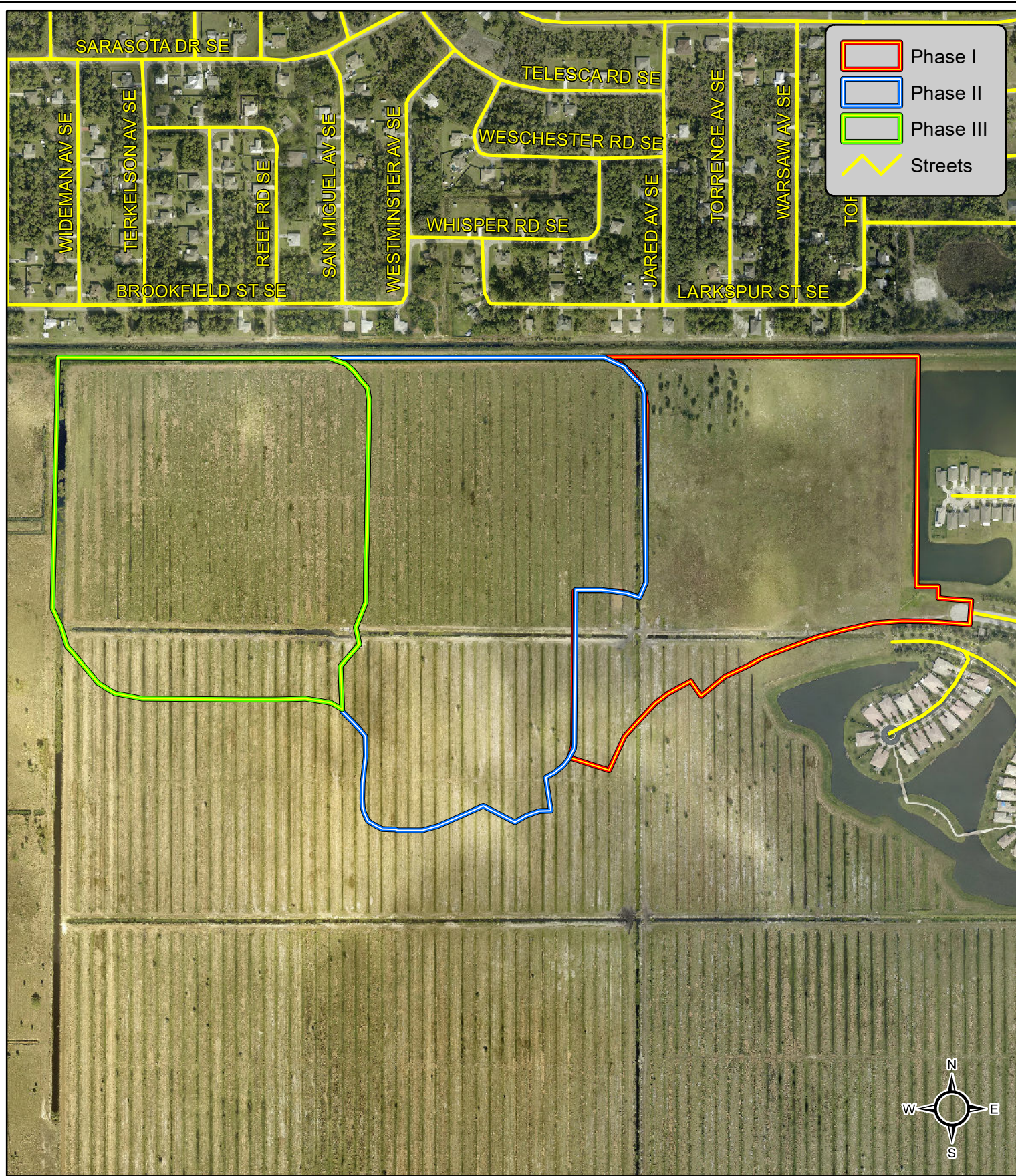
Figure 1: Location Map

0 0.5 1 2 Miles

Brevard County, Florida



AES Proj #: 201501



Project: The Gardens at Waterstone
Phase I, II, & III

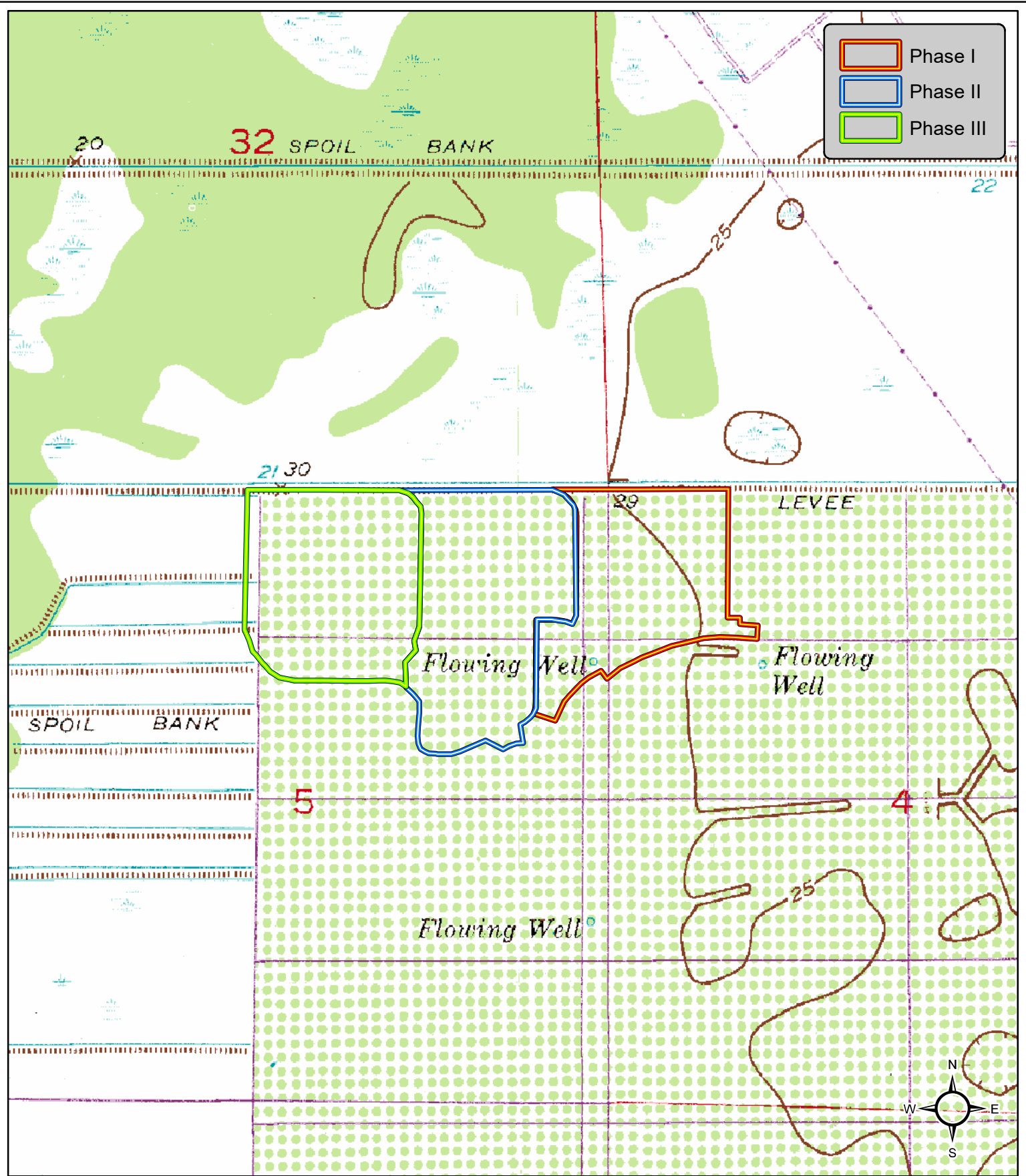
Figure 2: Aerial Map

0 500 1,000 2,000 Feet

2020 Aerial, Brevard County, Florida



AES Proj #: 201501



Project: The Gardens at Waterstone
Phase I, II, & III

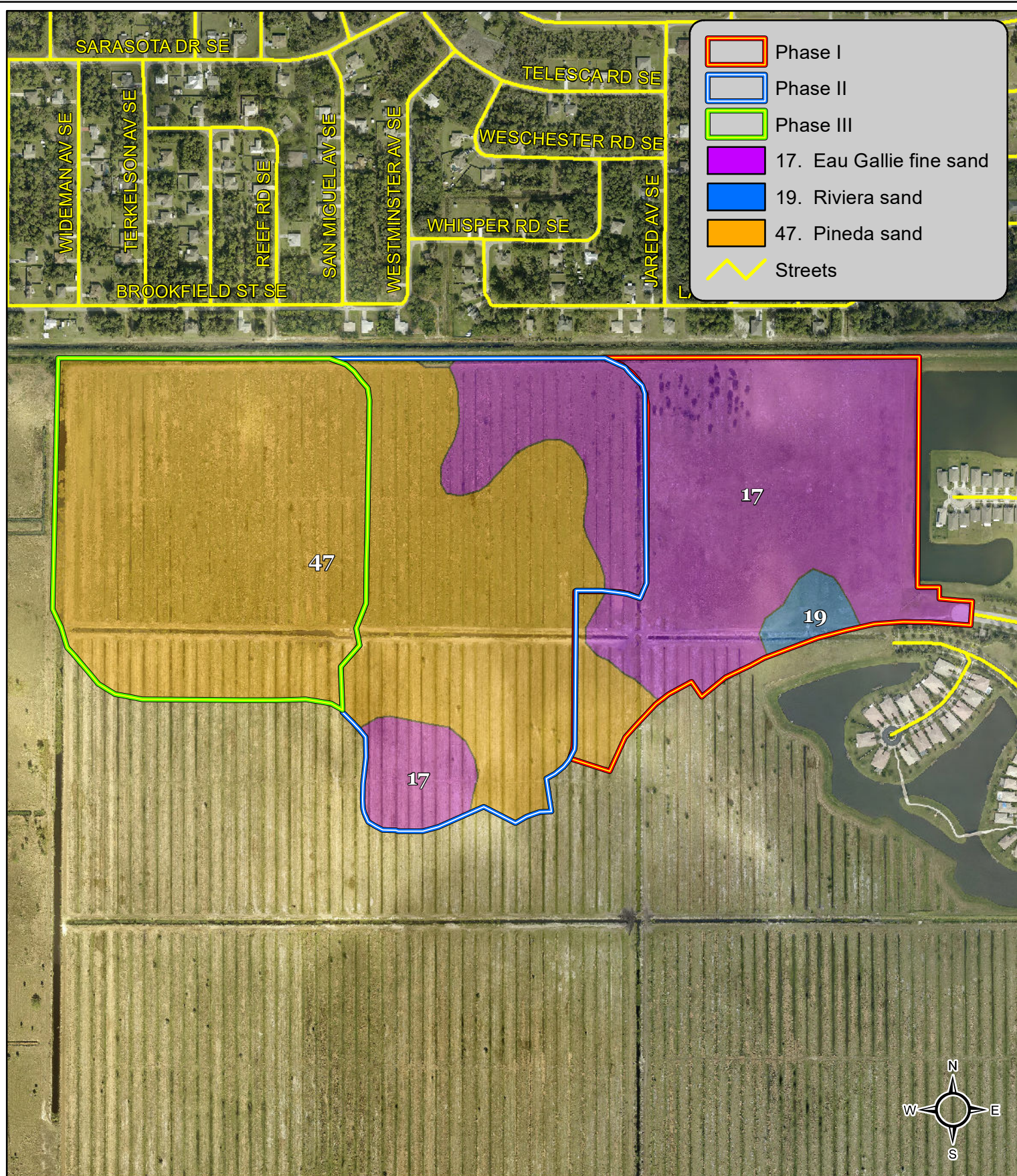
Figure 3: USGS Topo Map

0 500 1,000 2,000
 Feet

Fellsmere NW Quadrangle, Brevard County, Florida



AES Proj #: 201501

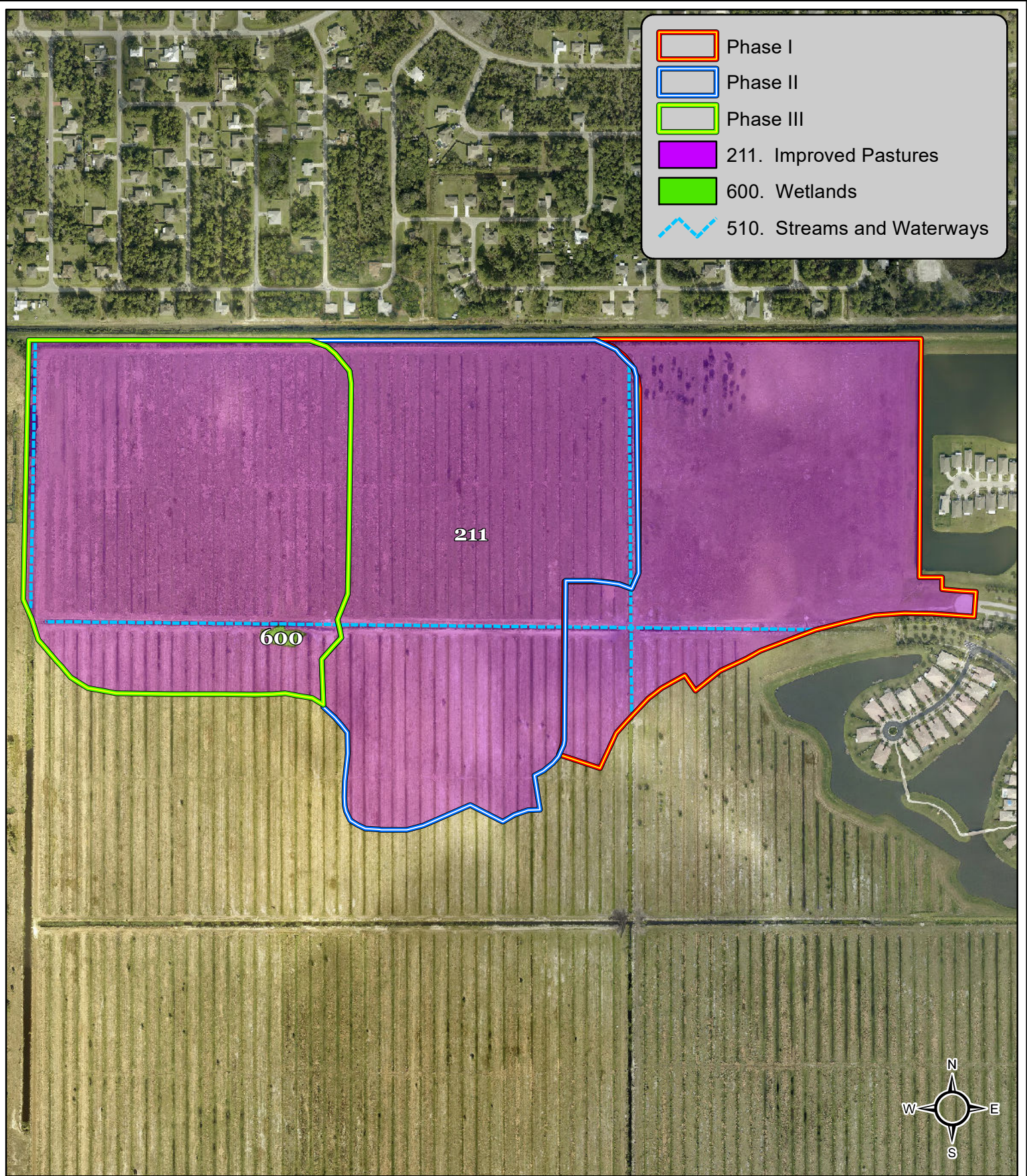


Project: The Gardens at Waterstone
Phase I, II, & III

Figure 4: NRCS Soils Map

0 500 1,000 2,000 Feet

2020 Aerial, Brevard County, Florida



Project: The Gardens at Waterstone
Phase I, II, & III

Figure 5: Land Use (FLUCFCS) Map

0 500 1,000 2,000 Feet

2020 Aerial, Brevard County, Florida



AES Proj #: 201501

5. CRESTED CARACARA SURVEY REPORT, BY JON SHEPHERD, Atlantic Environmental of Florida, LLC, dated May 5, 2021



CRESTED CARACARA SURVEY REPORT

On

**The Gardens @ Waterstone Phase I, II, & III
Palm Bay, Florida**

**±145.8-acres
Parcel No. 30-37-04-00-500**

Conducted for:

**Mr. Dan Evans
PB&J Gardens Investment of Brevard, LLC
1698-A West Hibiscus Boulevard
Melbourne, Florida 32901**

Conducted by:

**Atlantic Environmental of Florida, LLC
657 Montreal Avenue
Melbourne, Florida 32935**

May 5, 2021



657 Montreal Avenue • Melbourne, FL 32935
ph 321.676.1505 • fax 321.676.1730 • www.environmentalpermitting.com

CRESTED CARACARA REPORT
The Gardens @ Waterstone Phase I, II, & III
Palm Bay, Florida

May 2021

INTRODUCTION

This report describes the methodology and results of an eight-day survey for Crested Caracara (*Caracara cheriway*) on The Gardens @ Waterstone Phase I, II, and III project site. Also included is a description of all on-site communities, habitat suitability for caracaras, and applicable recommendations. The survey was conducted on January 15 and 29, February 12 and 26, March 11 and 26, and April 9 and 23, 2021.

DESCRIPTION AND LOCATION OF PROJECT SITE

The subject project site is located northwest of the Babcock Street SE - St. Johns Heritage Parkway SE in Sections 4 and 5, Township 30 South, Range 37 East, Palm Bay, Brevard County, Florida (Figure 1). The site consists of an overall ± 145.8 -acres of primarily improved pasture that is separated into three phases. Phase I is 44.6-acres, Phase II is 53.2-acres, and Phase III is 48.0-acres (Figure 2).

ECOLOGICAL COMMUNITIES

Different combinations of natural and human-influenced factors, such as surface elevation, hydrology, vegetative species and structure, soil characteristics, and degree and type of historical disturbance, will give rise to a variety of distinct ecological systems and functions, known as communities and land uses. The Florida Land Use, Cover, and Forms Classification System (FLUCFCS) organizes most of the major categories of communities and land uses into descriptions, each corresponding to a different code number. Using our field observations and the FLUCFCS system as a guideline, Atlantic Environmental of Florida, LLC (Atlantic Environmental) has identified the on-site communities as they currently exist on the Property. Figure 3 depicts the code numbers of the project site FLUCFCS categories, specifically, Improved Pastures (FLUCFCS Code Number (211) Improved Pastures, (510) Streams and Waterways, and (600) Wetlands.

Improved Pastures (211)

The property site primarily supports Improved Pastures that are currently housing cattle. Phase I supports 44.1 acres, Phase II supports 52.59 acres, and Phase III supports 47.03 acres this land use category. Here, the beds and furrows of the past citrus operation are still evident and the vegetation within the beds is dominated by mowed smutgrass (*Sporobolus indicus*), capeweed (*Phyla nodiflora*), bahiagrass (*Paspalum notatum*), torpedograss (*Panicum repens*), bermudagrass (*Cynodon dactylon*), Spanish needles (*Bidens alba*), and chalky bluestem

(*Andropogon virginicus*). The furrows here are dominated by paragrass (*Urochloa mutica*), torpedograss, dotted smartweed (*Persicaria punctata*), marsh pennywort (*Hydrocotyle umbellata*), maidencane (*Panicum hemitomon*), and sedges (*Cyperus spp.*).

(510) Streams and Waterways

A series of manmade ditches bisect the Property. Phase I supports approximately 0.50 acres of manmade ditches while Phases II and III support approximately 0.61 acres and 0.75 acres, respectively.

Wetlands (600)

An approximately 0.22-acre low quality wetland is in Phase III of the Property (see Figure 3).

CRESTED CARACARA HABITAT SUITABILITY

The Crested Caracara is a raptor/scavenger which is state and federally listed as a threatened species in Florida. Caracaras prefer to nest in cabbage palms surrounded by open habitats with low ground cover and low density of tall or shrubby vegetation. The project site habitat includes Improved Pastures with well maintained and grazed pasture and little to no woody vegetation. The overall survey area, specifically west of the project sites, includes ideal foraging and nesting habitat for Crested Caracara.

SURVEY METHODOLOGY

Site assessment and survey methodology was based on the procedure outlined by the Florida Fish and Wildlife Conservation Commission (FWC) in their technical report publications, Recommended Management Practices and Survey Protocols for Audubon's Crested Caracara (*Polyborus plancus*) in Florida (September 2001) and revised suggestions published in the USFWS Crested Caracara Draft Survey Protocol – Additional Guidance (2016-2017 Breeding Season).

FWC recommends timing of caracara surveys between January and April when nesting within the overall population is at its peak and adults are most likely to be feeding nestlings. A complete survey of the project area occurred every two weeks starting January 15, 2021 and continued through April 23, 2021. Caracara surveys were initiated 15 minutes prior to sunrise and lasted a minimum of 3 hours on each survey date. A preliminary survey was also conducted to gauge the suitability of Caracaras throughout the project site. A 1,500- meter (m) buffer was created surrounding the project site to establish the survey area. Survey observation blocks and stations were created in the areas that Caracaras were most likely to be active (Figure 4). Each survey station included an unobstructed view of each survey block (Appendix A). These surveys were generally conducted between the hours of 6:30 and 11:00 am.

RESULTS

Crested Caracara nesting and forage activity was observed on multiple surveys at The Gardens @ Waterstone Phase I, II, and III survey area. Crested Caracara nesting was confirmed on February 12, 2021 following clear nesting behavior. One fledgling was observed within the nest on March 11, 2021. The adult Caracara pair continued to care for their fledgling for the remainder of

productivity surveying, including defending territory from juveniles Bald Eagles (Appendix B).

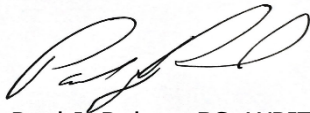
The Primary (985 ft) buffer zone covers a small portion of Phase III and a secondary buffer zone (4,920 ft) covers all three phases of The Gardens @ Waterstone project site (Figure 5). With this being said, no impact to this species should occur in association with Waterstone @ Cypress Bay West Phase I or Phase II.

SUMMARY AND RECOMMENDATIONS

Atlantic Environmental has conducted a formal Crested Caracara survey of The Gardens @ Waterstone Phase I, II, and III project site (as well as visual surveys of surrounding lands) according to the parameters approved by the FWC and FWS guidelines. Our survey identified consistent nesting behavior, sustained nesting, and one successful immature Crested Caracara. The survey data suggests that a small portion of The Gardens @ Waterstone Phase III will occur within an occupied Caracara nesting Primary zone, while the remaining portion of Phase III and all of Phases I and II are located within the Secondary buffer zone. Crested Caracara activity occurred almost exclusively off-site to the west of Phase III of this project, on lands on the west side of a canal that is owned by others. This survey should be submitted to the regulatory agencies upon submittal of any development plan applications.

Should you have any questions or concerns please feel free to contact our office.

Sincerely,

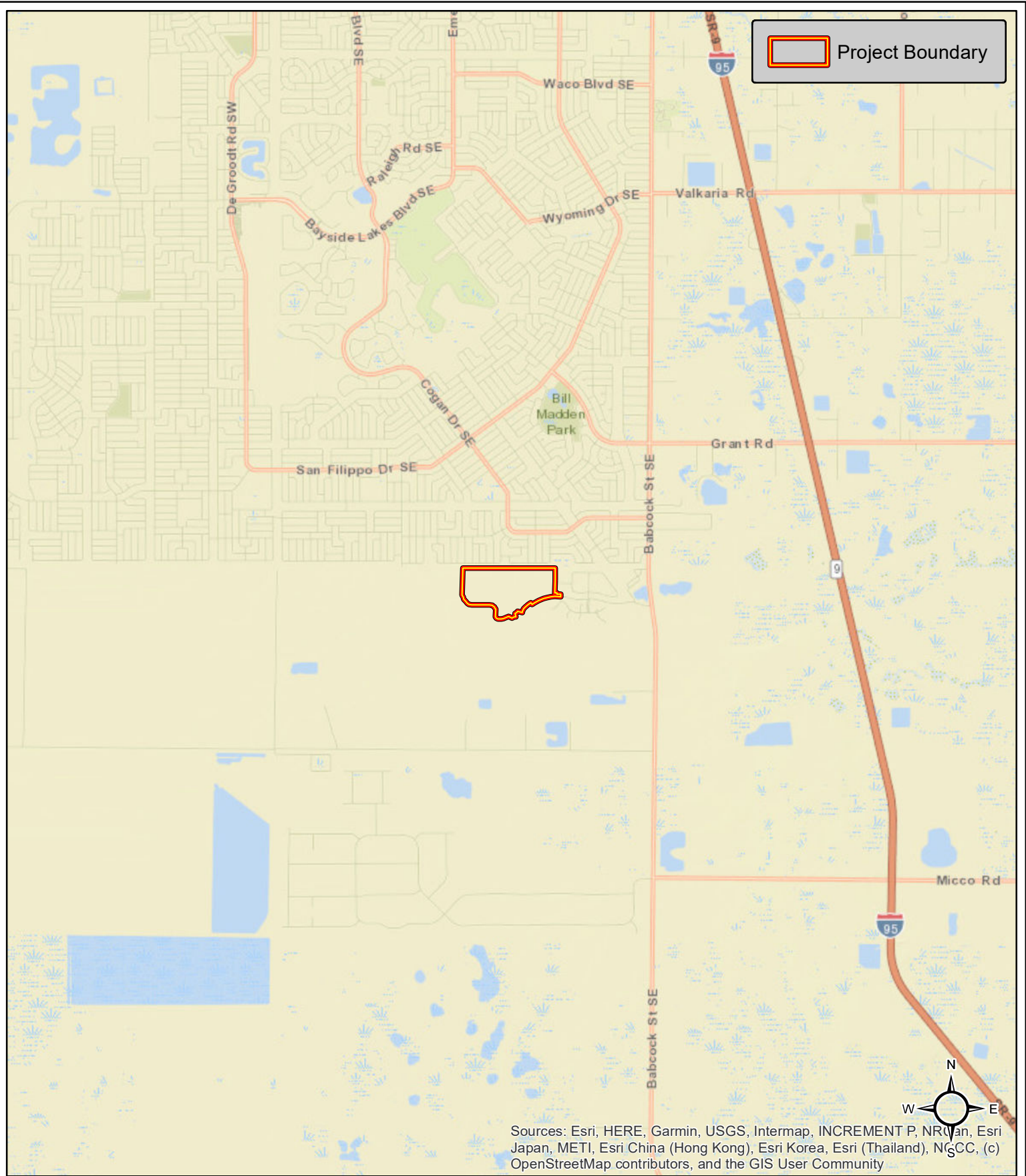


Paul J. Ruben, BS, WPIT
Project Ecologist



Jon H. Shepherd, MS, PWS
President/Ecologist

FIGURES



Project: The Gardens at Waterstone Phase I, II, & III

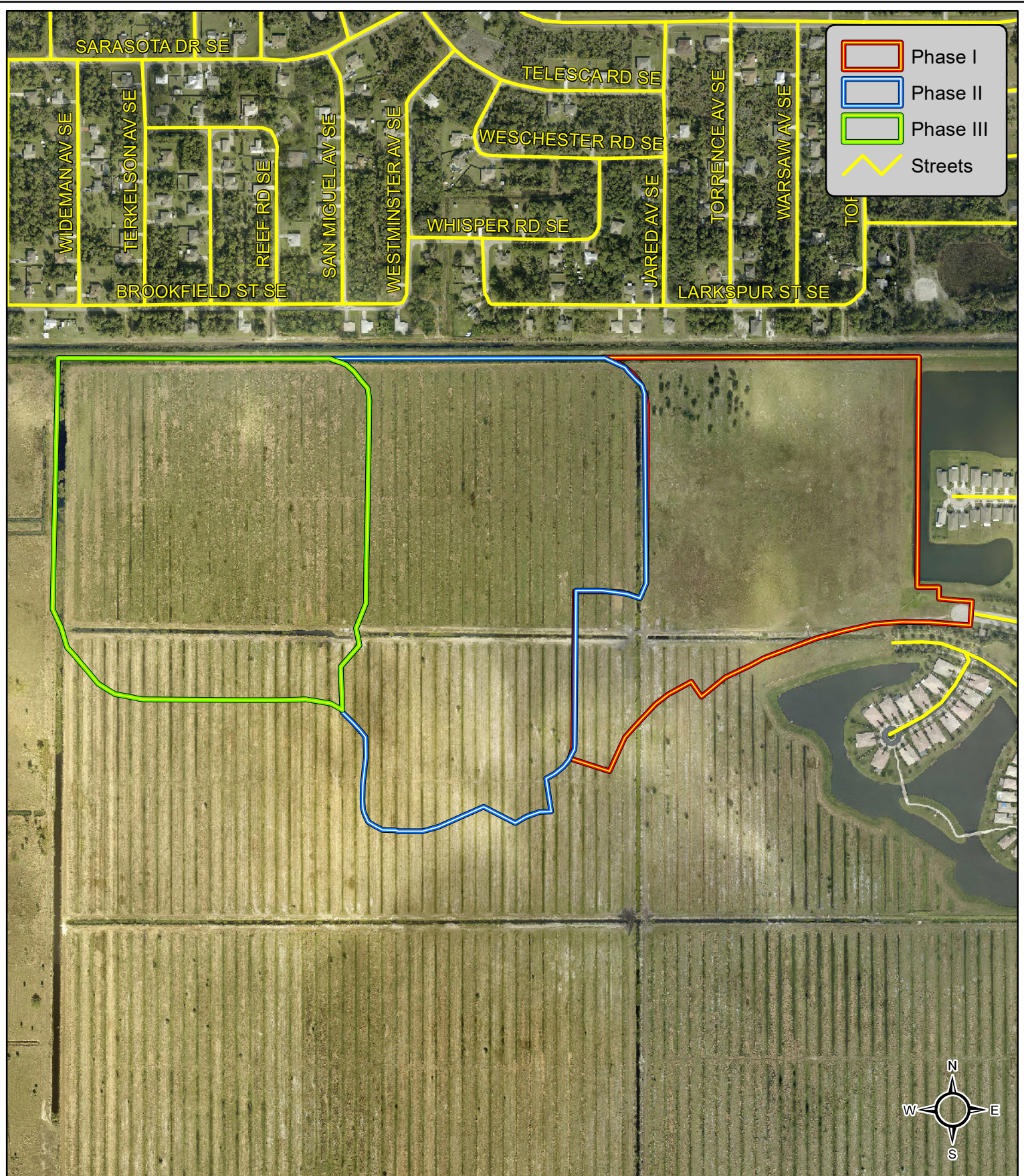
Figure 1: Location Map

0 0.5 1 2 Miles

Brevard County, Florida



AES Proj #: 201501

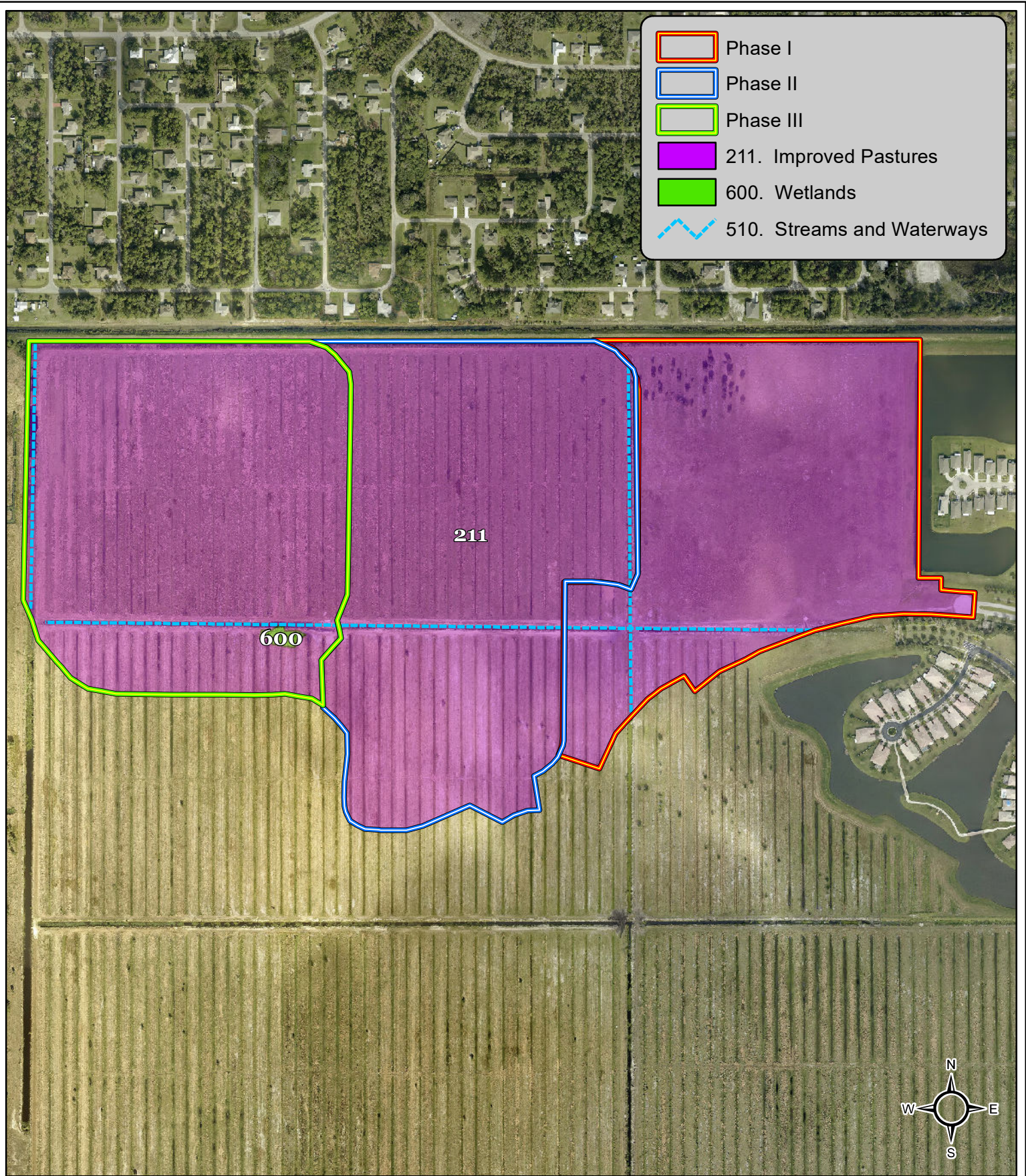


Project: The Gardens at Waterstone Phase I, II, & III

Figure 2: Aerial Map

0 500 1,000 2,000
Feet

2020 Aerial, Brevard County, Florida

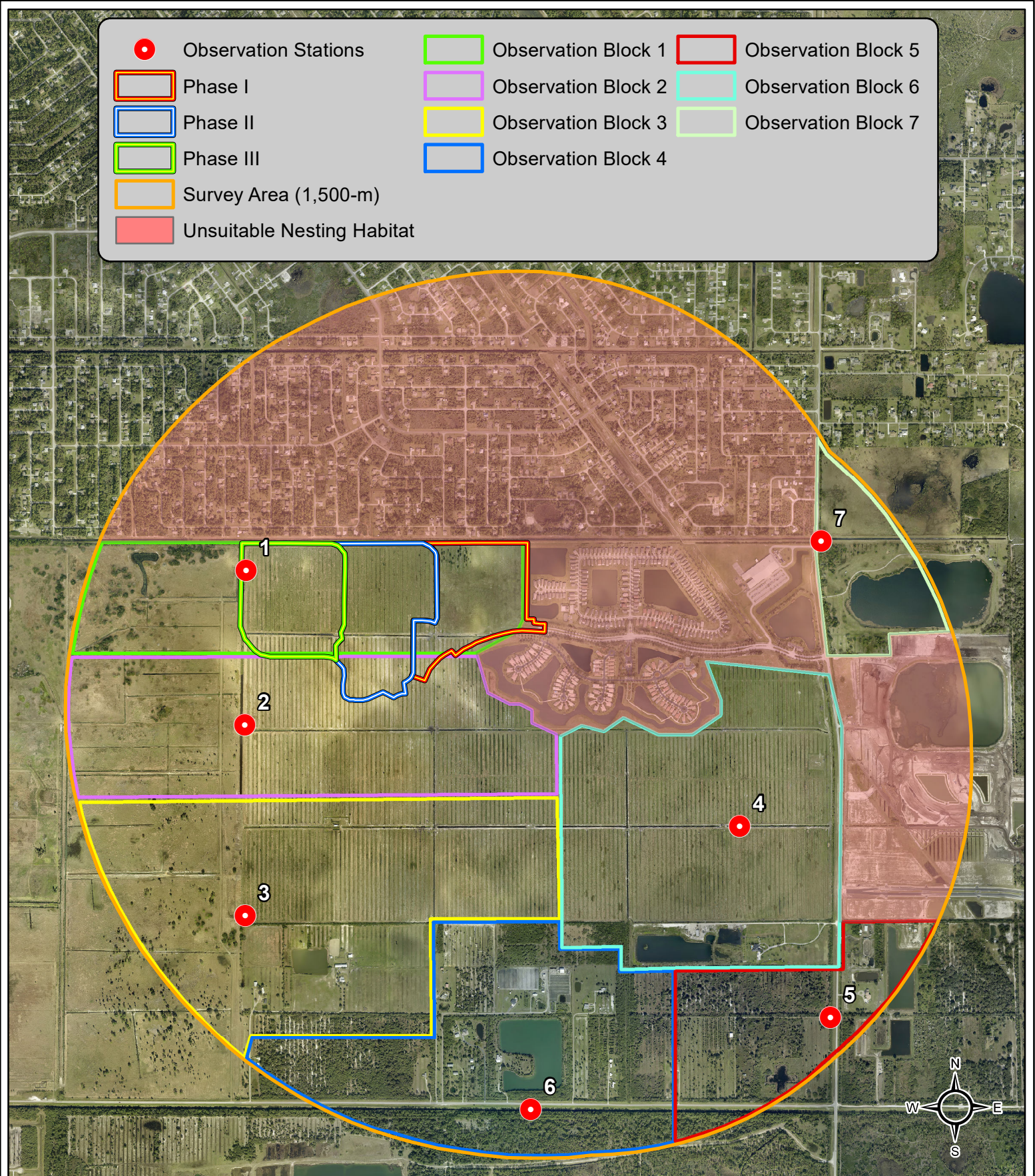


Project: The Gardens at Waterstone Phase I, II, & III

Figure 3: Land Use (FLUCFCS) Map

0 500 1,000 2,000 Feet

2020 Aerial, Brevard County, Florida

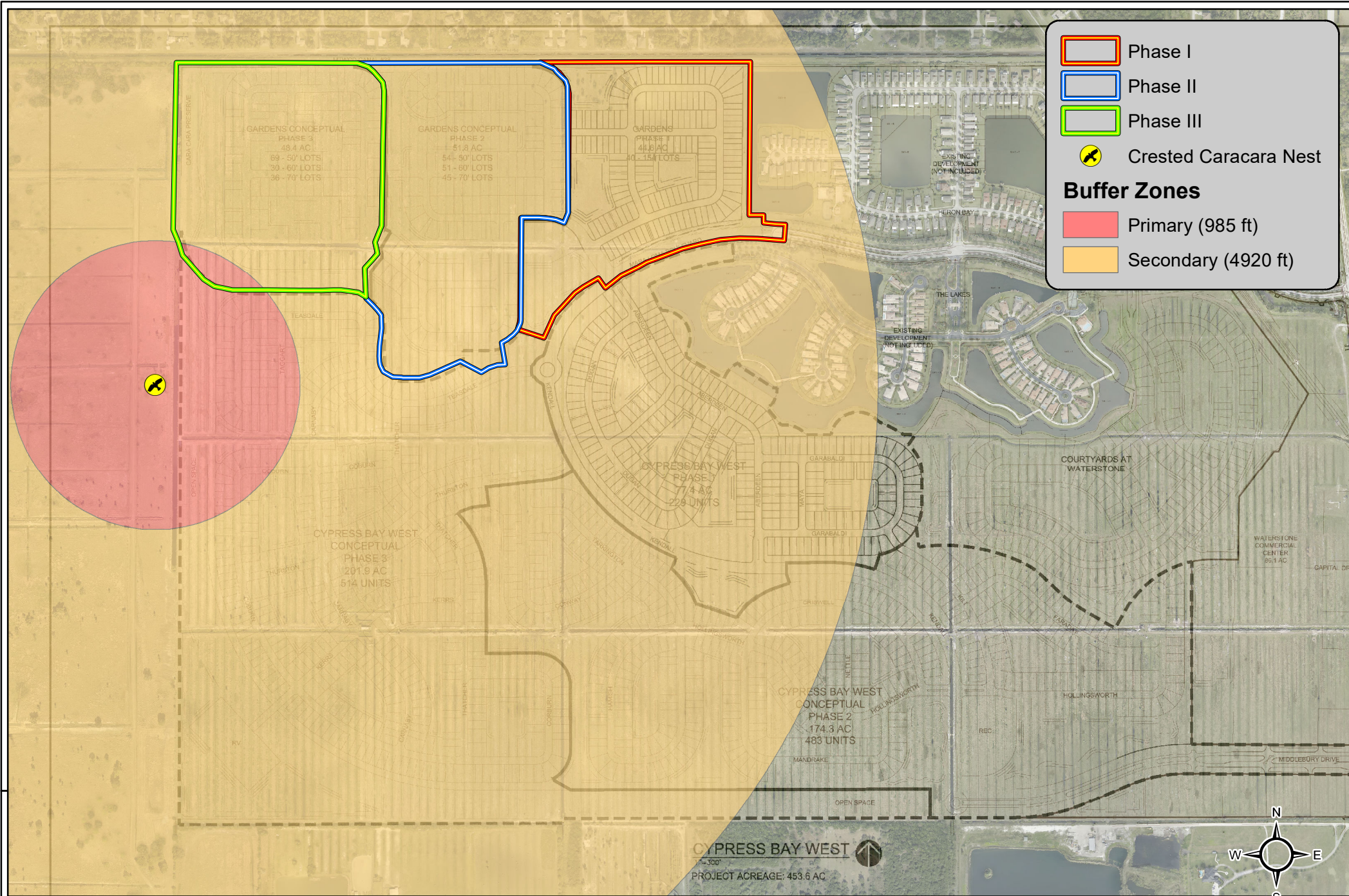


Project: The Gardens of Waterstone Phase I, II, & III

Figure 4: Crested Caracara Survey Station Map

0 0.25 0.5 1 Miles

2020 Aerial, Brevard County, Florida



Project: The Gardens of Waterstone Phase I, II, & III
Figure 5: Caracara Nest Map

APPENDIX A

Survey Station and Nesting Photos



Nest tree and Pine perch – Facing Northwest



Cabbage Palm Nest tree– Facing West



Slash Pine perch – Facing Southwest



Snag perch – Facing West



Adult Crested Caracara – Landing in Nest tree



Adult Crested Caracara – Perched on Slash Pine with Forage



Immature Crested Caracara – In Nest



Immature/Adult Crested Caracaras – Perched on Snag

APPENDIX B

Data Sheets

**USFWS Crested Caracara Draft Survey Protocol –
Additional Guidance (2016-2017 Breeding Season)**

Caracara Survey Form (updated 12/9/2016)

Project Name: The Gardens @ Waterstone

Location/Observation Block/Lat-Long: 27.902956, -80.647498

Date	Start Time	Stop Time	Observer Name(s) and Experience Level(s)
1/15/21	6:55am	9:55am	Jon Shepherd: 100 hours, 2 nests (Primary)

Weather

Time	Air Temp	Wind Speed and Direction	% Cloud Cover	Cloud Type	Rain/Fog
Start: 6:55am	50°F	7 mph S	0%	N/A	N/A
Finish: 9:55am	60°F	10 mph SW	0%	N/A	N/A

Observation Point Information

General Site and Habitat Conditions; Other Activities in the Area
The entire project area was scanned for suitable Crested Caracara (CRCA) habitat a week before beginning the CRCA survey. Blocks 1 through 3 had the highest potential for CRCA activity. Weather conditions were ideal for survey. CRCA activity observed near Block 1 in early morning.

Observations

(flight data, perching, preening, courtship, feeding, nest building, incubation, head throwback, diving, reaction to passing planes/traffic/pedestrians, other bird species, etc)

Observer Location	Age A/Im	Time	Description of behavior, flight path, etc
Block 1	A	6:45am	(1) CRCA observed perched in slash pine.
Block 1	A	7:00am	(1) CRCA left the pine and flew northwest out of sight in field.
Block 1	A	7:05am	(1) CRCA observed foraging in field south, again out of sight.
Block 1	A	7:08am	(1) CRCA flew back into pine and remained briefly before flying west out of sight for the remainder of the survey.

**USFWS Crested Caracara Draft Survey Protocol –
Additional Guidance (2016-2017 Breeding Season)**

Caracara Survey Form (updated 12/9/2016)

Project Name: The Gardens @ Waterstone

Location/Observation Block/Lat-Long: 27.902956, -80.647498

Date	Start Time	Stop Time	Observer Name(s) and Experience Level(s)
1/29/21	6:55am	10:15am	Paul Ruben: 43 hours, 8 nests (Primary)

Weather

Time	Air Temp	Wind Speed and Direction	% Cloud Cover	Cloud Type	Rain/Fog
Start: 6:55am	44°F	12 mph NW	0%	N/A	N/A
Finish: 10:15am	59°F	10 mph NW	0%	N/A	N/A

Observation Point Information

General Site and Habitat Conditions; Other Activities in the Area
Moderate to heavy wind from northwest late morning. Block 1 (on-site) is a generally well maintained agricultural field with little Crested Caracara (CRCA) nesting habitat, although foraging habitat exists throughout. Many suitable cabbage palm (Sabal palmetto) and other perchable large trees are present scattered throughout Block 2.

Observations

(flight data, perching, preening, courtship, feeding, nest building, incubation, head throwback, diving, reaction to passing planes/traffic/pedestrians, other bird species, etc)

Observer Location	Age A/Im	Time	Description of behavior, flight path, etc
Block 2	A	7:30am	(1) CRCA flew ~100ft off-site along the western project site boundary and landed in a slash pine snag.
Block 2	A	7:32am	(1) CRCA left the snag and flew north out of sight.
Block 2	A	9:10am	(2) CRCA flew south ~100ft west of the western project site boundary and landed in a living slash pine. The likely pair preened until 9:21am.
Block 2	A	9:21am	(1) CRCA flew into a cabbage palm ~50ft from the project site western boundary.

USFWS Crested Caracara Draft Survey Protocol – Additional Guidance (2016-2017 Breeding Season)

[illegible]

USFWS Crested Caracara Draft Survey Protocol –
Additional Guidance (2016-2017 Breeding Season)

Caracara Survey Form (updated 12/9/2016)

Project Name: The Gardens @ Waterstone

Location/Observation Block/Lat-Long: 27.902956, -80.647498

Date	Start Time	Stop Time	Observer Name(s) and Experience Level(s)
2/12/21	6:45am	9:45am	Paul Ruben: 49 hours, 8 nests (Primary)

Weather

Time	Air Temp	Wind Speed and Direction	% Cloud Cover	Cloud Type	Rain/Fog
Start: 6:45am	66°F	Variable SW	65%	Scattered	Light Fog
Finish: 9:45am	79°F	12 mph SSW	95%	Overcast	N/A

Observation Point Information

General Site and Habitat Conditions; Other Activities in the Area
Nest location confirmed, occupied off site of western central boundary of project site. Very active CRCA (2) pair bringing food continuously to cabbage palm.

Observations

(flight data, perching, preening, courtship, feeding, nest building, incubation, head throwback, diving, reaction to passing planes/traffic/pedestrians, other bird species, etc)

Observer Location	Age A/Im	Time	Description of behavior, flight path, etc
Block 2	A	6:58am	(2) CRCA observed flying northeast to north boundary and then east off site.
Block 2	A	7:15am	(1) CRCA landed in pine near highly suspected nest and other (1) CRCA joined shortly after. First (1) CRCA held food in bill (chicken bone).
Block 2	A	7:18am	(1) CRCA flew behind highly suspected nest tree holding food. Other (1) CRCA left pine and landed on the ground.
Block 2	A	7:22am	(1) CRCA returned to pine from the ground and remained perched in pine preening.

**USFWS Crested Caracara Draft Survey Protocol –
Additional Guidance (2016-2017 Breeding Season)**

Block 2	A	7:24am	(1) CRCA left pine and flew north along canal/ditch off site.
Block 2	A	7:57am	(1) CRCA flew from northwest and landed in northwest portion of highly suspected nest tree.
Block 2	A	8:12am	(1) CRCA flew from highly suspected nest tree and landed in adjacent pine. Remained perched in pine and preened.
Block 2	A	8:18am	(1) CRCA flew from pine north along canal/ditch out of sight.
Block 2	A	8:38am	(1) CRCA flew from north with food and landed in pine adjacent to highly suspected nest tree.
Block 2	A	8:43am	(1) CRCA flew to highly suspected nest tree, landed, and quickly entered into the interior of the tree. Nesting confirmed.
Block 2	A	9:43am	(1) CRCA flew from nest tree and landed in pine. (1) CRCA flew from pine, circled, and landed again in pine.
Block 2	A	9:44am	(1) CRCA flew from pine, circled area, and landed on the ground.
Block 2	A	9:45am	(1) CRCA flew from ground and landed in nest tree.

**USFWS Crested Caracara Draft Survey Protocol –
Additional Guidance (2016-2017 Breeding Season)**

Block 2	A	9:52am	(1) CRCA flew from nest and landed back in nest.
Block 2	A	9:53am	(1) CRCA flew from pine, landed on the ground momentarily, and landed again in nest tree.
Block 2	A	9:54am	(1) CRCA left nest tree and landed on the ground. Another (1) CRCA left nest tree and landed on pine.
Block 2	A	9:55am	(1) CRCA remained on pine while the other (1) CRCA flew to the ground and back to nest. (1) CRCA repeated flights from the ground and back to nest for 15 minutes. (2) CRCA pair called back and forth to each other. (1) CRCA on pine made head jerking motion during calls while other (1) CRCA remained on nest.
Block 2	A	10:15am	(2) CRCA pair flew northwest out of sight.

USFWS Crested Caracara Draft Survey Protocol –
Additional Guidance (2016-2017 Breeding Season)

Caracara Survey Form (updated 12/9/2016)

Project Name: The Gardens @ Waterstone

Location/Observation Block/Lat-Long: 27.902956, -80.647498

Date	Start Time	Stop Time	Observer Name(s) and Experience Level(s)
2/26/21	6:30am	9:30am	Paul Ruben: 55 hours, 8 nests (Primary)/Austin Beard: 3 hours (Secondary)

Weather

Time	Air Temp	Wind Speed and Direction	% Cloud Cover	Cloud Type	Rain/Fog
Start: 6:30am	55°F	Calm	0%	N/A	N/A
Finish: 9:30am	77°F	Variable	5%	N/A	N/A

Observation Point Information

General Site and Habitat Conditions; Other Activities in the Area
Productivity surveying observed CRCA nest tree. Para motorists observed recreating near nest tree. Attempts made to contact and make group aware of nest and potential disturbances.

Observations

(flight data, perching, preening, courtship, feeding, nest building, incubation, head throwback, diving, reaction to passing planes/traffic/pedestrians, other bird species, etc)

Observer Location	Age A/Im	Time	Description of behavior, flight path, etc
Nest	A	7:00am	(1) CRCA perched in snag north of nest tree.
Nest	A	7:16am	(1) CRCA flew from snag out of sight. Likely on ground near snag.
Nest	A	7:30am	(1) CRCA flew to pine adjacent to nest tree and landed holding food in bill.
Nest	A	7:33am	(1) CRCA flew into nest tree with food and disappeared in to the interior of the tree.

**USFWS Crested Caracara Draft Survey Protocol –
Additional Guidance (2016-2017 Breeding Season)**

Nest	A	7:38am	(1) CRCA flew from nest tree to ground.
Nest	A	7:39am	(1) CRCA flew from ground to pine adjacent to nest tree and preened.
Nest	A	8:05am	(1) CRCA flew from pine to nest tree and then to north snag. Remained perched on snag.
Nest	A	8:09am	(1) CRCA flew from snag out of sight.
Nest	A	8:26am	(1) CRCA flew from the N heading south out of sight.
Nest	A	8:27am	(1) CRCA flew from the south heading north out of sight.
Nest	A	8:27am	Another (1) CRCA flew over observation location heading north northeast out of sight.
Nest	A	8:47am	(1) CRCA flew to north snag.
Nest	A	8:55am	(1) CRCA flew from snag to the ground.

**USFWS Crested Caracara Draft Survey Protocol –
Additional Guidance (2016-2017 Breeding Season)**

Nest	A	8:58am	(1) CRCA flew back to north snag.
Nest	A	9:15am	(1) CRCA flew to pine adjacent to nest tree with food and remained perched.
Nest	A	9:16am	(1) CRCA flew from pine to ground out of sight.
Nest	A	9:24am	(1) CRCA flew north near snag and landed on ground out of sight. Other (1) CRCA remained perched on snag.
Nest	A	9:30am	(1) CRCA remained on snag during the end of the survey.

USFWS Crested Caracara Draft Survey Protocol –
Additional Guidance (2016-2017 Breeding Season)

Caracara Survey Form (updated 12/9/2016)

Project Name: The Gardens @ Waterstone

Location/Observation Block/Lat-Long: 27.902956, -80.647498

Date	Start Time	Stop Time	Observer Name(s) and Experience Level(s)
3/11/21	8:45am	10:05am	Paul Ruben: 61 hours, 8 nests (Primary)

Weather

Time	Air Temp	Wind Speed and Direction	% Cloud Cover	Cloud Type	Rain/Fog
Start: 8:45am	68°F	10mph E	10%	N/A	N/A
Finish: 10:05am	75°F	10mph E	25%	N/A	N/A

Observation Point Information

General Site and Habitat Conditions; Other Activities in the Area
Productivity surveying observed CRCA nest tree. Tractor mowing ground around CRCA nest tree. Pair landed in nest confirming continued activity. Screeching from young heard coming from nest tree after arrival of (1) CRCA adult. High wind exposed interior of nest. Both (2) CRCA adults observed on or near nest. A second pair of (2) CRCA observed defending territory from two foraging juvenile Bald eagles.

Observations

(flight data, perching, preening, courtship, feeding, nest building, incubation, head throwback, diving, reaction to passing planes/traffic/pedestrians, other bird species, etc)

Observer Location	Age A/Im	Time	Description of behavior, flight path, etc
Nest	A	8:45am	(1) CRCA perched in snag north of nest tree.
Nest	A	8:50am	(1) CRCA flew from snag and landed in nest tree.
Nest	A	9:15am	(1) CRCA flew and perched on pine adjacent to nest tree. Preened and vocalized to second (1) CRCA.
Nest	A	9:30am	(1) CRCA flew to fence post west of nest tree.

**USFWS Crested Caracara Draft Survey Protocol –
Additional Guidance (2016-2017 Breeding Season)**

Nest	A	9:37am	(1) CRCA flew from fence post and landed on ground.
Nest	A	9:39am	(1) CRCA returned to pine adjacent to nest tree carrying food.
Nest	A	9:40am	(1) CRCA flew from pine to ground carrying food.
Nest	A	9:45am	Other (1) CRCA flew from nest.
Nest	A	9:52am	(1) CRCA that left nest returned to nest tree. High screech vocalizations heard from nest.
Nest	A	9:53am	First observed (1) CRCA in pine remained perched and joined second (1) CRCA in nest tree.
Nest	A	10:05am	Second pair of (2) CRCA observed defending territory from two juvenile Bald eagles. Observation occurred north of nest productivity surveying.

USFWS Crested Caracara Draft Survey Protocol –
Additional Guidance (2016-2017 Breeding Season)

Caracara Survey Form (updated 12/9/2016)

Project Name: The Gardens @ Waterstone

Location/Observation Block/Lat-Long: 27.902956, -80.647498

Date	Start Time	Stop Time	Observer Name(s) and Experience Level(s)
3/26/21	9:00am	10:30am	Paul Ruben: 67 hours, 8 nests (Primary)

Weather

Time	Air Temp	Wind Speed and Direction	% Cloud Cover	Cloud Type	Rain/Fog
Start: 9:00am	73°F	9mph SSE	5%	N/A	N/A
Finish: 10:30am	81°F	11mph S	5%	N/A	N/A

Observation Point Information

General Site and Habitat Conditions; Other Activities in the Area
Mostly clear conditions with breeze from south. No direct activity observed of CRCA nesting. However, (2) CRCA actively perched around nest vicinity.

Observations

(flight data, perching, preening, courtship, feeding, nest building, incubation, head throwback, diving, reaction to passing planes/traffic/pedestrians, other bird species, etc)

Observer Location	Age A/Im	Time	Description of behavior, flight path, etc
Nest	A	9:00am	(1) CRCA observed perched in snag north of nest tree.
Nest	A	9:14am	(1) CRCA flew from north snag out of sight.
Nest	A	9:20am	(1) CRCA flew behind nest tree out of sight.
Nest	A	9:24am	(2) CRCA landed in pine adjacent to nest tree. (1) CRCA calling to other (1) CRCA.

**USFWS Crested Caracara Draft Survey Protocol –
Additional Guidance (2016-2017 Breeding Season)**

Nest	A	9:35am	(1) CRCA flew from pine to north snag. (1) CRCA flew to ground from pine and joined other (1) CRCA at N snag.
Nest	A	9:36am	(2) CRCA preening each other on north snag.
Nest	A	9:54am	(1) CRCA flew from north snag. The other (1) CRCA remained at north snag.
Nest	A	10:02am	(1) CRCA returned to north snag, joining other (1) CRCA.
Nest	A	10:10am	(1) CRCA flew from north snag. The other (1) CRCA remained at north snag.
Nest	A	10:20am	(1) CRCA returned to north snag, joining other (1) CRCA. Both (2) CRCA perched on north snag at the end of the survey event.

USFWS Crested Caracara Draft Survey Protocol –
Additional Guidance (2016-2017 Breeding Season)

Caracara Survey Form (updated 12/9/2016)

Project Name: The Gardens @ Waterstone

Location/Observation Block/Lat-Long: 27.902956, -80.647498

Date	Start Time	Stop Time	Observer Name(s) and Experience Level(s)
4/9/21	1:45pm	2:45pm	Paul Ruben: 71.5 hours, 8 nests (Primary)

Weather

Time	Air Temp	Wind Speed and Direction	% Cloud Cover	Cloud Type	Rain/Fog
Start: 1:45pm	78°F	12mph E	10%	Scattered	N/A
Finish: 2:45pm	79°F	12mph E	5%	Scattered	N/A

Observation Point Information

General Site and Habitat Conditions; Other Activities in the Area
Three (3) CRCA observed on N snag. One (1) CRCA is highly suspected to be fledged juvenile from nest tree. Afternoon lighting made plumage difficult to distinguish maturity, but (1) CRCA looked lighter and immature compared to the other (2) CRCA adults.

Observations

(flight data, perching, preening, courtship, feeding, nest building, incubation, head throwback, diving, reaction to passing planes/traffic/pedestrians, other bird species, etc)

Observer Location	Age A/Im	Time	Description of behavior, flight path, etc
Nest	A	1:59pm	A pair of (2) CRCA observed perched on north snag.
Nest	A/Im	2:00pm	A third (1) CRCA flew and landed on north snag, joining (2) CRCA pair. Suspected fledged immature.
Nest	A	2:08pm	(1) CRCA flew from north snag out of sight.
Nest	A/Im	2:12pm	Highly suspected immature (1) CRCA flew from north snag foraging low to the ground out of sight. A (1) CRCA adult perched on the north snag for the remainder of the survey event.

**USFWS Crested Caracara Draft Survey Protocol –
Additional Guidance (2016-2017 Breeding Season)**

Caracara Survey Form (updated 12/9/2016)

Project Name: The Gardens @ Waterstone

Location/Observation Block/Lat-Long: 27.902956, -80.647498

Date	Start Time	Stop Time	Observer Name(s) and Experience Level(s)
4/23/21	2:00pm	2:45pm	Paul Ruben: 75.5 hours, 8 nests (Primary)

Weather

Time	Air Temp	Wind Speed and Direction	% Cloud Cover	Cloud Type	Rain/Fog
Start: 2:00pm	75°F	11mph E	75%	Scattered	N/A
Finish: 2:45pm	75°F	12mph E	80%	Mostly Cloudy	N/A

Observation Point Information

General Site and Habitat Conditions; Other Activities in the Area
Immature (1) CRCA observed on north snag during the last survey. No CRCA observed during the last survey event near the nest tree.

Observations

(flight data, perching, preening, courtship, feeding, nest building, incubation, head throwback, diving, reaction to passing planes/traffic/pedestrians, other bird species, etc)

Observer Location	Age A/Im	Time	Description of behavior, flight path, etc



LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

Landdevelopmentweb@palmbayflorida.org

FINAL DEVELOPMENT PLAN APPLICATION

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

APPLICATION AMENDMENT TYPE:

- ☒ **PUD** - Planned Unit Development ([Section 185.067](#))
- ☐ **PMU** - Parkway Mixed Use District (Final Design Plan) ([Section 185.057\(C\)](#))
- ☐ **PCRD** - Planned Community Redevelopment District ([Section 185.055\(L\)](#))
- ☐ **RAC** - Regional Activity Center District ([Section 185.056\(C\)](#))

PROPOSED DEVELOPMENT NAME:

Gardens at Waterstone Phase II

PARCEL ID(S):

30-37-05-HF-1, 30-37-04-00-250

TAX ACCOUNT NUMBER(S):

3000217, 3010608

LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION: (attach additional sheets if necessary):

See attached

CITY OF PALM BAY, FLORIDA
FINAL DEVELOPMENT PLAN APPLICATION
PAGE 2 OF 4

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage):

+/- 52.26 acres

TOTAL LOTS PROPOSED (list by use):

174

DEVELOPER P. Michael Evans- PB & J Gardens Investment, LLC

Full Address 1698 W Hibiscus Blvd; Suite A; Melbourne, FL 32901

Telephone 321- 258-7984 Email mike.fmdc@gmail.com

ENGINEER Jake Wise, PE- Construction Engineering Group, LLC

Full Address 2651 W Eau Gallie Blvd; Suite A; Melbourne, FL 32935

Telephone 321-953-3300 Email jwise@cegengineering.com

SURVEYOR AAL Land Surveying Services, Inc

Full Address 3970 Minton Road; West Melbourne, FL 32904

Telephone 321-768-8110 Email aalsurvey@aalsurvey.com

FINAL DEVELOPMENT PLAN CRITERIA FOR SUBMITTAL:

- 1) Two (2) copies of the Final Development Plan and supporting documentation shall be attached to the application. The final plan and supporting documentation **must also be provided on memory drive.**
- 2) Layout of the development plan shall be in plat form that meets the requirements of Florida Statute Chapter 177.
- 3) The Final Development Plan shall contain the information required per the City of Palm Bay Land Development Code section for a PUD, PMU, PCRD, or RAC. **Additional conditions must be met and incorporated into the site plan for the specific type of development requested (PUD, PMU, PCRD, RAC).** The additional criteria is listed in the Code of Ordinances and available from staff.

CITY OF PALM BAY, FLORIDA
FINAL DEVELOPMENT PLAN APPLICATION
PAGE 3 OF 4

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS FINAL DEVELOPMENT PLAN APPLICATION:

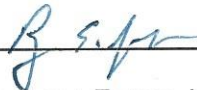
- ☐ *A \$1,500.00 application fee shall accompany the Final Development Plan application for the purposes of administration. Make Check payable to "City of Palm Bay."
- ☐ Final Development Plan (see aforementioned Final Development Plan Criteria for Submittal).
- ☐ Boundary Survey.
- ☐ Site Sketch to scale with legal descriptions of properties covered by this application.
- ☐ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☐ Citizen Participation Plan. Required when a Preliminary Development Plan application was not submitted. Refer to [Section 169.005](#) of the Land Development Code for guidelines.
- ☐ School Board of Brevard County School Impact Analysis Application (if applicable). The application is obtained from the Planning and Project Management Department of the School Board of Brevard County at (321) 633-1000, extension 11418.
- ☐ Sign(s) posted on the subject property. Refer to [Section 51.07\(C\)](#) of the Legislative Code for guidelines. Staff will provide a sign template.
- ☐ **Where the property owner is not the representative for the request, a [LETTER](#) must be attached giving the notarized consent of the property owner(s) to a representative.**

Name of Representative Jake Wise, PE- Construction Engineering Group, LLC

I, THE UNDERSIGNED UNDERSTAND THAT THIS APPLICATION MUST BE COMPLETE AND ACCURATE BEFORE CONSIDERATION BY THE PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY AND CERTIFY THAT ALL THE ANSWERS TO THE QUESTIONS IN SAID APPLICATION, AND ALL DATA AND MATTER ATTACHED TO AND MADE A PART OF SAID APPLICATION ARE HONEST AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

CITY OF PALM BAY, FLORIDA
FINAL DEVELOPMENT PLAN APPLICATION
PAGE 4 OF 4

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING FINAL DEVELOPMENT PLAN APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.

Owner Signature  Date 7/29/21
Printed Name Waterstone Farms, LLC - Benjamin E. Jefferies as Managing Member
Full Address 2040 Highway A1A; Suite 207; Indian Harbour Beach, FL 32937
Telephone 321- 258-7984 Email ben@waterstonefla.com

*NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY

July 29, 20 21

Re: Letter of Authorization

As the property owner of the site legally described as:

30-37-05-HF-1

I, Owner Name: Waterstone Farms, LLC

Address: 2040 Highway A1A; Suite 207; Indian Harbour Beach, FL 32937

Telephone: 321- 258-7984

Email: ben@waterstonefla.com

hereby authorize:

Representative: Jake Wise, PE- Construction Engineering Group, LLC

Address: 2651 W Eau Gallie Blvd; Suite A; Melbourne, FL 32935

Telephone: 321-610-1760

Email: jwise@cegengineering.com

to represent the request(s) for:

FDP and any associated submittals

[Signature]

(Property Owner Signature)

STATE OF Florida

COUNTY OF Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29 day of July, 20 21 by

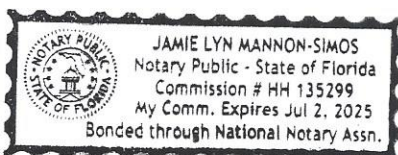
Benjamin E. Jefferies

, property owner.

[Signature]

Jamie Mannon-Simos, Notary Public

☒ Personally Known or ☐ Produced the Following Type of Identification:



July 29, 20 21

Re: Letter of Authorization

As the property owner of the site legally described as:

30-37-05-HF-1

I, Owner Name: Waterstone Farms, LLC

Address: 2040 Highway A1A; Suite 207; Indian Harbour Beach, FL 32937

Telephone: 321-258-7984

Email: ben@waterstonefla.com

hereby authorize:

Representative: P. Michael Evans- PB & J Gardens Investment, LLC

Address: 1698 W Hibiscus Blvd; Suite A; Melbourne, FL 32901

Telephone: 321-953-3300

Email: mike.fmdc@gmail.com

to represent the request(s) for:

FDP and any associated submittals

B. C. Evans

(Property Owner Signature)

STATE OF Florida

COUNTY OF Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29 day of July, 20 21 by

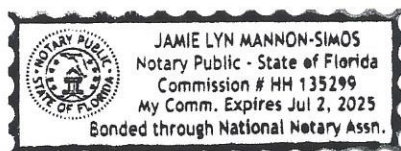
Benjamin & Jefferies

, property owner.

J. Mannon-Simos

Jamie Mannon-Simos, Notary Public

☒ Personally Known or ☐ Produced the Following Type of Identification:



July 29, 2021

Re: Letter of Authorization

As the property owner of the site legally described as:

30-37-05-HF-1

I, Owner Name: Waterstone Farms, LLC

Address: 2040 Highway A1A; Suite 207; Indian Harbour Beach, FL 32937

Telephone: 321-258-7984

Email: ben@waterstonefla.com

hereby authorize:

Representative: Rochelle W. Lawandales, FAICP

Address: 335 Sherwood Ave, Satellite Beach, FL 32937

Telephone: 321-223-4664

Email: rochelle.lawandales@gmail.com

to represent the request(s) for:

FDP and any associated submittals

R. L. H.

(Property Owner Signature)

STATE OF Florida

COUNTY OF Brevard

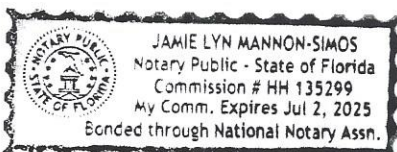
The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29 day of July, 2021 by

Benjamin E. Jefferies, property owner.

Jamie Mannon-Simos

Jamie Mannon-Simos, Notary Public

☒ Personally Known or ☐ Produced the Following Type of Identification:



CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
REGULAR MEETING 2021-10

Held on Wednesday, September 1, 2021, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Ms. Leeta Jordan led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIRPERSON:	Philip Weinberg	Present	
VICE CHAIRPERSON:	Leeta Jordan	Present	
MEMBER:	Donald Boerema	Present	
MEMBER:	James Boothroyd	Present	
MEMBER:	Richard Hill	Absent	(Excused)
MEMBER:	Khalilah Maragh	Present	
MEMBER:	Rainer Warner	Absent	(Excused)
NON-VOTING MEMBER:	David Karaffa	Absent	(Excused)
	(School Board Appointee)		

The absence of Mr. Hill and Mr. Warner were excused.

CITY STAFF: Present were Mr. Patrick Murphy, Acting Growth Management Director; Mr. Christopher Balter, Senior Planner; Mr. Grayson Taylor, Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney; Mr. Christopher Little, Utilities Director.

ADOPTION OF MINUTES:

1. **Regular Planning and Zoning Board/Local Planning Agency Meeting 2021-09 August 4, 2021.**

accommodate new growth in the area. He asked if the development would be a gated community or would public access facilities be available to the general public.

In response to the public comments, Mr. Balter explained that in 2004, total entitlements were obtained for the Waterstone development on both the east and west sides of Babcock Street in entirety and deemed interchangeable densities. Mr. Wise stated that this was correct, and in response to the City's regional expansion of its water and wastewater plants, he explained that utility mains would be extended by the developer of the subject project to the subject site. The mains would also benefit other developments in the area and the neighborhoods to the north. He stated that the communities would be gated, but Mara Loma Boulevard would be open to the public. Mr. Chris Tyree with Forestar (USA) Real Estate Group (Cypress Bay West and East landowner and co-representative for the applicant) added that the amenities within the development would be private and managed by a homeowner's association.

The floor was closed for public comments, and there was no correspondence in the file.

Motion to submit Case PD-32-2021 to City Council for approval, subject to the staff comments contained in the staff report.

Motion by Ms. Jordan, seconded by Ms. Maragh. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Maragh.

3. ****FD-33-2021 - Gardens at Waterstone Phase II - Benjamin E. Jefferies, Waterstone Farms, LLC (Jake Wise, P.E., P. Michael Evans, Rochelle W. Lawandales, FAICP, Reps.) - Final Development Plan to allow a proposed PUD for a 174-unit residential development called Gardens at Waterstone Phase II. Tract 1, San Sebastian Farms, Section 5, Township 30, Range 37, and Part of Tax Parcel 250, Section 4, Township 30, Range 37, Brevard County, Florida, containing approximately 52.26. In the vicinity west of Mara Loma Boulevard SE and south of Melbourne Tillman Water Control District Canal 38**

Mr. Balter presented the staff report for Case FD-33-2021. Staff recommended Case FD-33-2021 for approval, subject to the staff comments contained in the staff report.

Mr. Jake Wise with Construction Engineering Group, LLC (civil engineer for the project and co-representative for the applicant) stated that the density for the subject development was just over three units per acre, and there had been no attendees to the Citizen Participation Plan (CPP) meeting. He indicated how proposed Phase II of the overall development would have small pocket parks since Phase I had a larger amenity center. An update to the 2017 traffic study would be completed, and a traffic signal would be installed at the Mara Loma Boulevard and Babcock Street intersection. Roads would be built to City standards and privately maintained, and water and wastewater utilities would be extended to the gated community. He noted how the technical comments by the Public Works Department that did not pertain to the subject request would be removed prior to the City Council hearing. He also wanted relief from the condition that required the traffic signal at Mara Loma Boulevard and Babcock Street to be constructed and operational before the issuance of the Certificate of Completion of Phase II since delays could be caused by the Brevard County permitting process, the City's review, and shortages in construction materials. Bonding the traffic signal at 125 percent of cost estimate would be a solution for situations that could occur outside the development's control.

Mr. Balter stated that in speaking with the City Traffic Engineer, staff could not recommend the traffic signal for bonding. Completion of the roads, infrastructure, stormwater ponds, and all utilities prior to issuance of a Certificate of Completion was a sufficient and reasonable amount of time to meet the traffic signal deadline. Mr. Wise commented that scarce products and hurricanes were uncontrollable factors that had caused projects in the past to undergo nine-month delays. He did not want the subject project to be delayed so that house permits could not be issued based on circumstances that the development could not control. Mr. Balter stated that the applicant could ask City Council to remove the condition in the future if a timing problem was to arise.

Ms. Maragh asked for clarification on the timing of the traffic signal. Mr. Balter explained that the signal warrant analysis for the project required a traffic signal to be operational at the completion of 354 units. The City wanted the traffic signal to

be operational prior to the issuance of the Certificate of Completion for the project, and prior to any homes being built.

Mr. Boothroyd inquired whether a temporary traffic signal could be installed if there were delays.

Ms. Cockcroft advised the board that the traffic signal fell under the purview of the Public Works Department. Land Development staff could not opine upon bonding and other suggestions regarding the signal.

The floor was opened for public comments.

Mr. Bill Battin (resident at Ocean Spray Street SW) stated that public roads in a gated community that were inaccessible to the public must be maintained privately and not with City funds. He was concerned about the thousands of acres with Babcock Street as the sole access point out of the area. He questioned whether there was a plan to allow traffic to cross the canal to travel north. A secondary access would help the subject area, but the southwest residential areas of Palm Bay would be impacted by the large amount of traffic.

In response to the public comments, Mr. Balter stated that all roads in the development would be private except for Mara Loma Boulevard that might become a public road in the future subject to Section 182 of the Code of Ordinances. He said that the St. Johns Heritage Parkway would eventually extend to the north once all studies were completed and funding was secured. There would be additional traffic trips onto Babcock Street; however, most of the traffic would travel the Parkway to reach Interchange 95 directly, which was now open.

Mr. Wise asked the board to consider allowing the traffic signal to be installed and operational by the issuance of the project's 354th Certificate of Occupancy; prior to the first issuance of a Certificate of Occupancy for Gardens at Waterstone Phase II; and with the ability to revisit the timeframe if there were uncontrollable delays. Mr. Murphy stated that the condition as proposed by the Public Works Department was reconfirmed by the City Engineer earlier in the day; thus, the stated condition could not be superseded by the Land Development staff. The board, however, had the ability to make recommendations.

Mr. Weinberg stated that the board could approve the request with the condition that the case could come back in the future regarding the timeline for the traffic signal. Mr. Wise stated that he was amendable to the suggestion and would work with the City Engineer.

Ms. Jordan questioned whether the City Engineer had made changes to the conditions earlier. Mr. Murphy stated that no changes had been made. The City Engineer had confirmed his stance and had explained that the condition was based on the need for a traffic signal with a timeframe because of the multiple subdivisions developing in the vicinity that would impact the subject intersection.

Mr. Balter advised the board that a condition was not necessary for the applicant to approach City Council in the future to modify the timeline for the traffic signal.

Mr. Michael Evans (developer for the project and representative for the applicant) stated that there would not be any homes built for months in the Courtyards at Waterstone Phase I or the Gardens at Waterstone Phases I and II to generate traffic. He wanted to come back before the board and City Council in the future to give an update on the status of permits, which were done through Brevard County and reviewed by the City. He did not want uncontrollable delays in receiving a Certificate of Completion to risk a \$4 million project. Mr. Weinberg was in favor of a proviso to give the applicant the ability to come back before City Council to amend the timeline.

The floor was closed for public comments, and there was no correspondence in the file.

Motion to submit Case FD-33-2021 to City Council for approval, subject to the staff comments contained in the staff report with the condition that the applicant could petition City Council in the future to remove the timing condition for the traffic signal.

Motion by Ms. Maragh, seconded by Mr. Boerema.

Mr. Wise asked if the motion could also stipulate the removal of the technical comments by the Public Works Department that did not apply to the project.

Following discussion to clarify the motion, Ms. Cockcroft suggested potential language to approve the request.

Motion amended to submit Case FD-33-2021 to City Council for approval, subject to the staff comments contained in the staff report, with the exception of an option for the applicant to come back before City Council to remove the timing of the installation of the traffic signal, and a condition to remove all inapplicable staff comments.

Motion amended by Ms. Maragh, seconded by Mr. Boerema. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Maragh.

4. ****PD-34-2021 - Malabar Springs - Sadique Jaffer, Malabar Holdings Group, LLC (BSE Consultants, Inc., Rep.) - Preliminary Development Plan to allow a proposed PUD for an 879-unit residential development called Malabar Springs. Tax Parcels 250, 251, 252, and 500 of Section 32, Township 28, Range 36, Brevard County, Florida, containing approximately 294.70 acres. North of and adjacent to Malabar Road NW, in the vicinity west of St. Johns Heritage Parkway NW amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, Section 185.045, to modify provisions within the LI, Light Industrial and Warehousing District to allow for tree and landscape businesses as a conditional use**

Mr. Murphy presented the staff report for Case PD-34-2021. Staff recommended Case PD-34-2021 for approval, subject to the staff comments.

Mr. Boothroyd asked who would be responsible for paving the dirt road from Malabar Road to the subject site. Mr. Murphy stated that the developer was required to complete the paving from Malabar Road to their entrance and possibly to the end of the parcel.

Ms. Ana Saunders, P.E. with BSE Consultants, Inc. (representative for the applicant) stated that all conditions of approval would be complied with, and a Citizen Participation Plan meeting was held with one resident in attendance.

ORDINANCE 2021-66

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, APPROVING A FINAL DEVELOPMENT PLAN TO BE KNOWN AS 'GARDENS AT WATERSTONE PHASE II' IN PUD (PLANNED UNIT DEVELOPMENT) ZONING; WHICH PROPERTY IS LOCATED SOUTH OF AND ADJACENT TO MELBOURNE TILLMAN WATER CONTROL DISTRICT CANAL 38, IN THE VICINITY WEST OF MARA LOMA BOULEVARD, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A COMMENCEMENT PERIOD; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, application for Final Development Plan approval in PUD (Planned Unit Development) zoning to permit a 174-unit residential subdivision to be known as 'Gardens at Waterstone Phase II' on property legally described herein as Exhibit 'A', has been made by Waterstone Farms, LLC, and

WHEREAS, the request was duly considered by the Planning and Zoning Board of the City of Palm Bay on September 1, 2021, which voted to recommend to the City Council approval, with condition(s), of the application, and

WHEREAS, all provisions applicable to the Planned Unit Development (PUD) under Chapter 185, Zoning, of the Palm Bay Code of Ordinances, have been satisfied by the applicant, and

WHEREAS, the City Council of the City of Palm Bay, after due deliberation and consideration, reviewed and considered the reports, documents, testimony, and other materials presented, and has determined that such development plan will neither be injurious to the neighborhood nor otherwise detrimental to the public welfare.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City Council of the City of Palm Bay hereby grants Final Development Plan approval for 'Gardens at Waterstone Phase II' on property zoned PUD (Planned Unit Development), which property is legally described herein as Exhibit 'A'.

SECTION 2. The Final Development Plan is granted subject to the staff comments contained in the Staff Report being addressed upon submission of the administrative construction plans as follows:

- A. The property shall be developed in substantial conformance with the Final Development Plan, which is, by reference, incorporated herein as Exhibit 'B', except as may be modified by the conditions of approval;
- B. The Land Development Division Staff Report, which is, by reference, incorporated herein as Exhibit 'C';
- C. Fully engineered construction drawings;
- D. A Subdivision Plat meeting Chapter 177 of the Florida State Statute requirements and a title opinion;
- E. The technical comments generated by the Development Review Staff, hereby incorporated as Exhibit 'D', shall be observed and incorporated into the engineered construction drawings;
- F. No roads shall be accepted by the City of Palm Bay for operation and maintenance until and unless the Developer requests acceptance through the process promulgated in Chapter 182 of the Palm Bay Code of Ordinances. Upon commencement of said process, staff shall determine if acceptance of any roads would provide a public benefit and that current City of Palm Bay construction standards are met;
- G. ~~The traffic signal at Mara Loma Boulevard and Babcock Street shall be constructed and operational prior to the issuance of the Certificate of Completion of The Gardens at Waterstone Phase II~~>>A permanent traffic signal with mast arm shall be constructed and operational prior to April 30, 2023, at the intersection of Mara Loma Boulevard and Babcock Street; the developer shall be required to have the final design of the traffic signal approved no later than September 30, 2022; the developer shall provide a bond by December 31, 2021, to cover the cost for the signal installation in case these deadlines are not met<<; and

H. All provisions of the Code of Ordinances of the City of Palm Bay and all other state and federal rules, regulations, and statutes.

SECTION 3. This ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2021- , held on , 2021; and
read in title only and duly enacted at Meeting 2021- , held on , 2021.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Applicant: Waterstone Farms, LLC

Case: FD-33-2021

cc: (date) Brevard County Recording
Applicant
Case File

Strikethrough words shall be deleted; highlighted words that will be included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF SECTION 4, TOWNSHIP 30 SOUTH, RANGE 37 EAST, ALL OF LOTS 2 AND 3 AND PORTION OF LOTS 1, 4, 5, 28, 29, 30, 31 AND 32 OF SAN SEBASTIAN FARMS, SECTION 5, TOWNSHIP 30 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, AS RECORDED IN PLAT BOOK 6, PAGE 77 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 5; THENCE RUN N89°52'37"E ALONG THE NORTH LINE OF SAID SECTION 5 FOR A DISTANCE OF 1172.67 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE N89°52'37"E ALONG THE NORTH LINE OF SAID SECTION 5 FOR A DISTANCE OF 1222.35 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 250.00 FEET, AND A CHORD WHICH BEARS S45°07'23"E FOR A DISTANCE OF 353.55 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00", FOR A DISTANCE OF 392.70 FEET TO A POINT OF TANGENCY; THENCE RUN S00°07'23"E FOR A DISTANCE OF 788.06 FEET; THENCE RUN S29°28'07"W FOR A DISTANCE OF 60.48 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 235.00 FEET, AND A CHORD WHICH BEARS N75°19'38"W FOR A DISTANCE OF 120.03 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 29°35'30", FOR A DISTANCE OF 121.37 FEET TO A POINT OF TANGENCY; THENCE RUN S89°52'37"W FOR A DISTANCE OF 177.29 FEET; THENCE RUN S00°07'23"E FOR A DISTANCE OF 660.00 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE NORTHWEST, HAVING A RADIUS OF 225.00 FEET, AND A CHORD WHICH BEARS S44°52'35"W FOR A DISTANCE OF 318.20 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 353.43 FEET TO A POINT OF TANGENCY THEREOF; THENCE RUN S89°52'37"W FOR A DISTANCE OF 178.45 FEET TO A POINT; THENCE RUN S00°00'46"E FOR A DISTANCE OF 97.55 FEET; THENCE RUN S63°14'51"W FOR A DISTANCE OF 158.48 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE NORTHWEST, HAVING A RADIUS OF 375.00 FEET, AND A CHORD WHICH BEARS S76°33'44"W FOR A DISTANCE OF 172.73 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 26°37'46", FOR A DISTANCE OF 174.29 FEET TO A POINT OF TANGENCY; THENCE RUN S89°52'37"W FOR A DISTANCE OF 104.86 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE NORTHEAST, HAVING A RADIUS OF 125.00 FEET, AND A CHORD WHICH BEARS N44°49'10"W FOR A DISTANCE OF 177.71 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°36'27", FOR A DISTANCE OF 197.67 FEET TO A POINT OF TANGENCY; THENCE RUN N00°29'04"E FOR A DISTANCE OF 244.67 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 225.00 FEET, AND A CHORD WHICH BEARS N27°09'38"W FOR A DISTANCE OF 208.80 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 55°17'25", FOR A DISTANCE OF 217.12 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN N01°07'37"W FOR A DISTANCE OF 195.75 FEET; THENCE RUN N38°34'31"E FOR A DISTANCE OF 125.00 FEET; THENCE RUN N51°25'29"W FOR A DISTANCE OF 21.23 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 150.00 FEET, AND A CHORD WHICH BEARS N57°42'21"W FOR A DISTANCE OF 32.82 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 12°33'43", FOR A DISTANCE OF 32.89 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN N26°00'48"E FOR A DISTANCE OF 175.00 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 325.00 FEET, AND A CHORD WHICH BEARS N64°54'00"W FOR A DISTANCE OF 10.36 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 01°49'36", FOR A DISTANCE OF 10.36 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN N00°29'04"E FOR A DISTANCE OF 886.48 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 225.00 FEET, AND A CHORD WHICH BEARS N44°49'10"W FOR A DISTANCE OF 319.88 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°36'29", A DISTANCE OF 355.81 FEET TO THE POINT OF BEGINNING; CONTAINING 52.26 ACRES, MORE OR LESS.

GARDENS AT WATERSTONE - PHASE II

FINAL DEVELOPMENT PLAN

PALM BAY, FL

DATE:

JULY 2, 2021

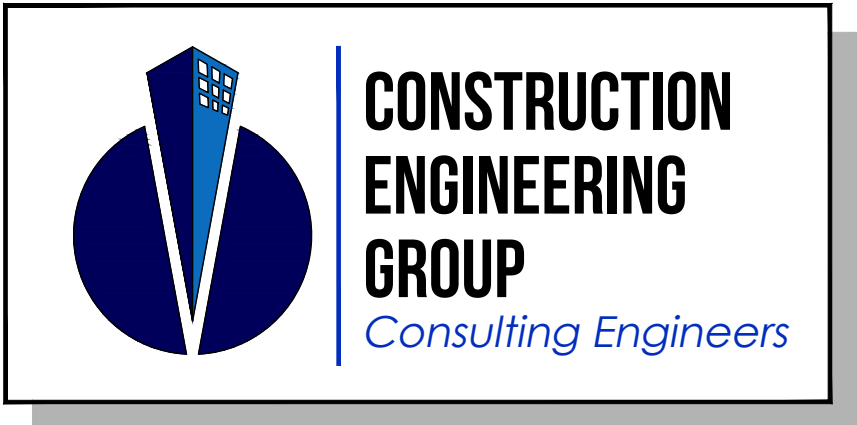
PREPARED FOR:

PB & J GARDENS INVESTMENT, LLC

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF SECTION 4, TOWNSHIP 30 SOUTH, RANGE 37 EAST, ALL OF LOTS 2 AND 3 AND PORTION OF LOTS 1, 4, 5, 28, 29, 30, 31 AND 32 OF SAN SEBASTIAN FARMS, SECTION 5, TOWNSHIP 30 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, AS RECORDED IN PLAT BOOK 6, PAGE 77 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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LOCATION MAP

NTS

PROJECT DATA:

GENERAL STATEMENT: THE PROPOSED PROJECT CONSISTS OF INFRASTRUCTURE AND SITE IMPROVEMENTS TO ACCOMMODATE A 174 LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION INCLUDING ROADWAYS, SIDEWALKS, PEDESTRIAN/EXERCISE TRAILS, LANDSCAPING, WATER, SEWER AND STORMWATER SYSTEMS. IT INCLUDES SIGNALIZATION AND OTHER INTERSECTION IMPROVEMENTS AT BABCOCK STREET AND MARA LOMA BOULEVARD.			
DEVELOPER: PB&J GARDENS INVESTMENT, LLC P. MICHAEL EVANS 1698 W. HIBISCUS BLVD. SUITE A MELBOURNE, FL 32901 TEL: (321) 953-3300		CIVIL ENGINEER: JAKE T. WISE, P.E. 2651 EAU GALLIE BLVD, SUITE A MELBOURNE, FLORIDA 32935 TEL: (321) 610-1760 E-MAIL: JWISE@CEGENGINEERING.COM	
SURVEYOR: HORIZON SURVEYORS 390 POINCIANA DRIVE MELBOURNE, FL 32935 TEL: (321) 254-8133		LOCATION: SECTION: 35 TOWNSHIP: 25 RANGE: 36E PARCEL ID: 30-37-05-HF-1 TAX ACCOUNT NUMBER: 3000217	
SETBACKS	PROPOSED:	LOT COUNT: 50'x125' = 130 LOTS 60'x125' = 44 LOTS MAXIMUM BUILDING HEIGHT: 2 STORY: 25 FT MINIMUM WIDTHS: SIDEWALKS: 5 FT RIGHT-OF-WAY WIDTH: 50 FT	
FRONT: 25 FT SIDE: 5 FT REAR: 20 FT SIDE CORNER: 15 FT			
CALCULATED STORMWATER BASIN COVERAGE:			
IMPERVIOUS:		SF	ACRE PERCENT
RESIDENTIAL (60%):		755,553	17.34 33
RIGHT-OF-WAY		268,234	6.16 11
RECREATIONAL AREA:		63,031	1.45 3
TOTAL IMPERVIOUS:		1,086,818	24.95 48
PERVIOUS:		615,351	14.12 27
POND:		574,391	13.19 25
TOTAL:		2,276,560	52.26 100
OPEN SPACE REQUIREMENTS:			
OVERALL AREA (52.3 ACRES):			
ON-SITE PONDS		9.81 AC	(75%)
OPEN SPACE:		1.23 AC	(9%)
RECREATION AREA:		1.81 AC	(14%)
PHASE I ADDITIONAL OPEN SPACE:		0.23 AC	(2%)
PROVIDED:		13.08 AC	(100%)
REQUIRED (25% OF OVERALL AREAS):		13.08 AC	
CONDITIONS OF APPROVAL:			
1. DEVELOPER SHALL INSTALL THE TRAFFIC SIGNAL AND INTERSECTION IMPROVEMENTS AT BABCOCK STREET AND MARA LOMA BOULEVARD AS PART OF THIS PROJECT PRIOR TO THE FINAL CERTIFICATE OF OCCUPANCY.			
2. CITY SHALL PROVIDE IMPACT FEE CREDITS FOR ALL COSTS ASSOCIATED WITH THESE IMPROVEMENTS INCLUDING DESIGN AND PERMITTING.			

REVISION

DATE

REV

2651 Eau Gallie Blvd, Suite A
Melbourne, FL 32935
Tel: 321.253.1221
www.cegeengineering.com
COA #000897

CONSTRUCTION
ENGINEERING
GROUP
Consulting Engineers

GARDENS AT WATERSTONE
PHASE II

PB & J GARDENS INVESTMENT, LLC
MARA LOMA BOULEVARD, PALM BAY, FLORIDA

DRAWING TITLE

CIVIL COVER SHEET

DATE

7/02/21

SCALE

NTS

PROJ. NO. :

210059

DESIGNED BY:

CCM

DRAWN BY:

SMB

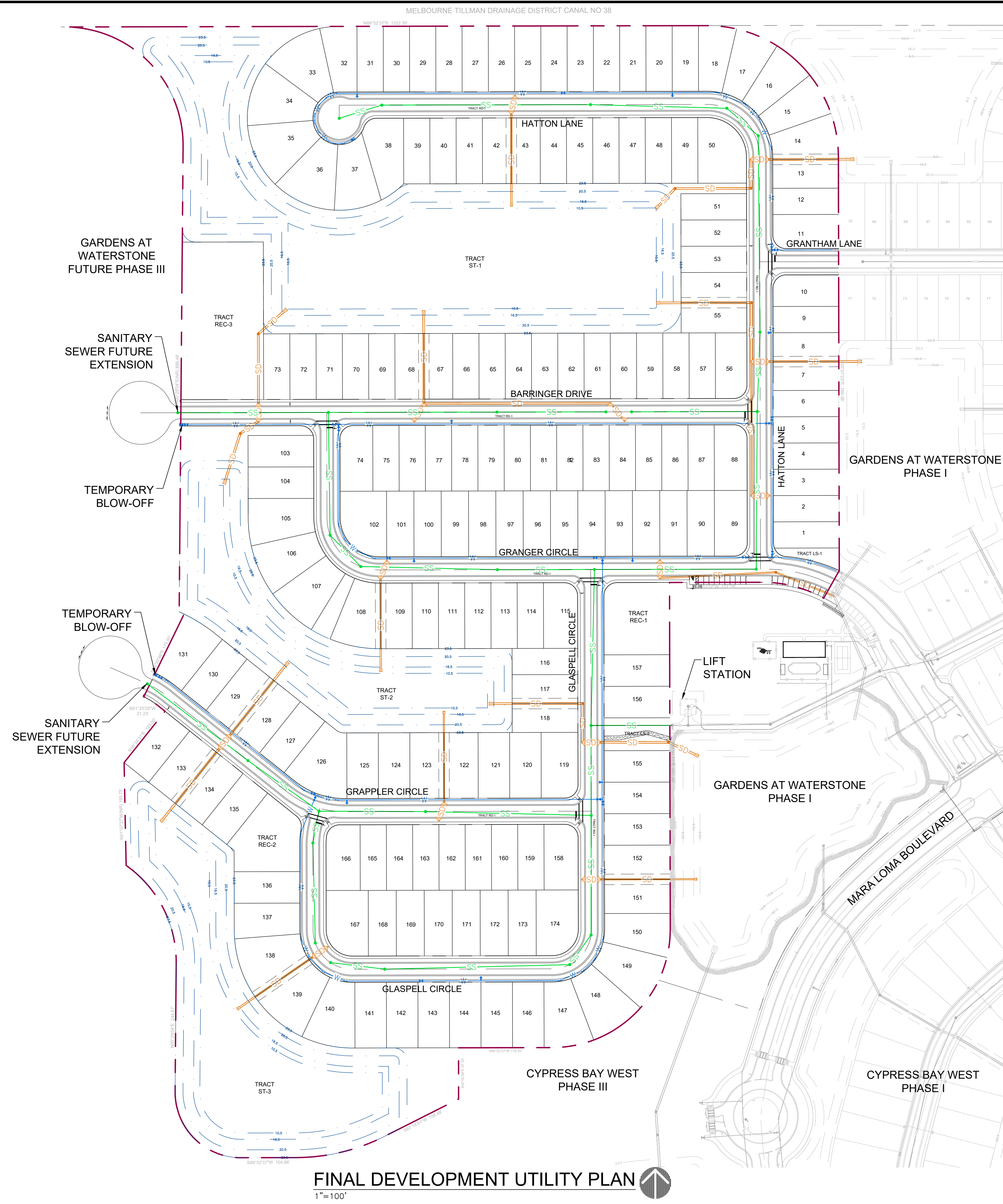
CHECKED BY:

JTW

DRAWING NO.

GW-1

GW-2



LEGEND:

PROJECT BOUNDARY	---
POND CONTOURS	- - -
STORM PIPE	SD
WATER MAIN	W
SANITARY SEWER LINE	SS

REVISION	
DATE	
REV	
2681 Egu Galle Blvd, Suite A Melbourne, FL 32935 Tel: 321.253.1221 www.cegerengineering.com COA #000897	
CONSTRUCTION ENGINEERING GROUP Consulting Engineers	
GARDENS AT WATERSTONE PHASE II PB & J GARDENS INVESTMENT, LLC MARA LOMA BOULEVARD, PALM BAY, FLORIDA DRAWING TITLE FINAL DEVELOPMENT UTILITY PLAN	
DATE 7/02/21	
SCALE 1"=100'	
PROJ. NO. : 210059	
DESIGNED BY: CCM	
DRAWN BY: SMB	
CHECKED BY: JTW	
DRAWING NO. GW-3	



REVISED

STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

landdevelopmentweb@palmbayflorida.org

Prepared by

Christopher Balter, Senior Planner

CASE NUMBER

FD-33-2021

PLANNING & ZONING BOARD HEARING DATE

September 1, 2021

PROPERTY OWNER & APPLICANT

Benjamin E. Jefferies - Waterstone Farms, LLC. Represented by Jake T. Wise P.E. of CEG, and Michael Evans of PB&J Investments, and Rochelle Lawandales

PROPERTY LOCATION/ADDRESS

Tract 1, San Sebastian Farms, Section 5, Township 30, Range 37, and Part of Tax Parcel 250, Section 4, Township 30, Range 37, Brevard County, Florida

SUMMARY OF REQUEST

Final Planned Unit Development approval for a 174-unit residential subdivision to be known as Gardens at Waterstone Phase 2 PUD.

Existing Zoning

PUD, Planned Unit Development

Existing Land Use

Single-Family Residential Use

Site Improvements

Vacant Unimproved Land (Former Orange Groves)

Site Acreage

52.26 acres

SURROUNDING ZONING & USE OF LAND

North

Melbourne-Tillman Drainage Canal No. 38

East

PUD; Gardens at Waterstone Phase 1; Under Construction

South

PUD; Proposed Cypress Bay West Phase 3; Undeveloped Land

West

PUD; Rolling Meadow Lakes; Undeveloped Land

COMPREHENSIVE PLAN COMPATIBILITY

The future land use designation of the subject property is Single-Family Residential Use. The development of a single-family planned unit development is compliant with the Single-Family Residential Use future land use designation. The proposed density is 3.33 units per acre, which is below the maximum density defined in the City's Comprehensive Plan for Single-Family Residential Use (up to 5 units per acre).

BACKGROUND:

The subject property is located north of and adjacent to Mara Loma Boulevard SE, and west of Babcock Street SE. Specifically a portion of Tax parcels 250, Section 4, Township 30, Range 37, and a portion of Tract 1 of San Sebastian Farms Subdivision, of Brevard County Florida. This Final PUD request includes approximately 52.26 acres of land.

In 2004 the subject property was annexed into the City via Ordinance 2004-35 as port of a larger property totaling 1,167 acres. The original Future Land Use amendment designated all of the lands as Single-Family Residential Use via Ordinance 2004-52, which stated that 1,800 units could be placed on the lands of Waterstone or Cypress Bay Preserve. Site specific conditions were placed on the amendment via Ordinance 2004-48. Between 2005 and 2018, a series of 37 future land use map amendments were made bringing the total units entitled to 2,596.

The total encumbered remaining units (received Final Development Plan Approval) without this current application being counted are as follows: 1,548 units on the west side of Babcock Street and 362 units on the east side of Babcock Street.

ANALYSIS:

The applicant is requesting Final Development Plan (FDP) approval for a Planned Unit Development (PUD) to construct a single-family residential subdivision called Gardens at Waterstone Phase II PUD. The planned unit development is a concept that encourages and permits variation in residential developments by allowing deviation in lot size, bulk or type of dwellings, density, lot coverage, setbacks, and open space, from those elements required in any singular zoning classification found in the city's Zoning Code.

Specifically, this FDP proposes a 174-unit single-family development that will be constructed in one phase. Per the FDP, average lots within the residential development are 50' x 125' and 60' x 125'. The proposed minimum sized home is 1,600 square feet. There will be 1 access point off of the newly created Granger Circle, which connects to the newly extended Mara Loma Boulevard. All roads within the subdivision will be private. The Gardens at Waterstone Phase II will have a neighborhood park, passive recreation areas, and meandering walking trails connecting the subdivision to Mara Loma, and other future sections of the larger community, all under control of the Gardens at Waterstone Homeowners Association, Inc. The recreation areas will be used by all homes in the Gardens at Waterstone Phases 1, 2, and 3. There are 3 neighborhood parks within Gardens Phase 2, totaling 1.8 acres more or less. These will be primarily passive parks, used for multi-purpose playing fields, a dog park and other outdoor activities. All the residents will have access to the Phase 1 pool and cabana.

Lastly, technical staff review comments are attached to this report.

CONDITIONS:

In order to receive FDP approval, the proposal must meet the requirements of Section 185.067 of the City of Palm Bay's Code of Ordinances. Upon review, the request appears to conform with the applicable requirements of this section. The following items shall be addressed upon submission of the administrative construction plans:

- Fully engineered construction drawings.
- A Subdivision Plat meeting Ch.177 of Florida State Statute requirements and a title opinion.
- The technical comments generated by the Development Review Staff (attached) shall be observed and incorporated into the engineered construction drawings.
- No roads shall be accepted by the City of Palm Bay for operation and maintenance until and unless the Developer requests acceptance through the process promulgated in Chapter 182 of the City of Palm Bay's Code of Ordinances. Upon commencement of said process, staff will determine if acceptance of any roads would provide a public benefit and that current City of Palm Bay construction standards are met.
- The traffic signal at Mara Loma Boulevard and Babcock Street shall be constructed and operational prior to the issuance of the Certificate of Completion of The Gardens at Waterstone Phase II.

NOTE:

Per, Kady Dearing of the Lassiter Transportation Group, the traffic signal warrant study completed for the intersection of Mara Loma Boulevard and Babcock Street, a signal is warranted at the completion of 355 354 units. A cost-share analysis should be requested by the Developer to the Public Works Department to ensure that each project (Waterstone and Cypress Bay) pays only their Proportionate Fair Share of cost, as each project will contribute to the traffic at that intersection.

STAFF RECOMMENDATION:

Case FD-33-2021 is recommended for approval, subject to the staff comments contained in this report.

TECHNICAL COMMENTS

CASE FD-33-2021 – GARDENS AT WATERSTONE PHASE 2 PUD

PUBLIC WORKS (Natalie Shaber, Engineer II):

Survey:

- Will need a Boundary Survey (provided is Sketch and Description) for plat review.
- Please provide Closure reports in digital format to Public Works and in hard copy to Growth Management at plat review.
- Final plat will need to provide ORB and PAGES of DCCRs.
- Note 11 on the Plat shall be amended to include all drainage easements as well as the stormwater management system for emergency access by the City if needed.

Driveway/ROW:

- ~~S/w extension to south and western limits.~~
- Brevard County traffic concurrency (Babcock corridor).
- Mara Loma Blvd. shall comply with the City's right-of-way width standards.
- All design and performance criteria per Ch.174 of the City's code of ordinances shall be adhered.
- All agency having jurisdiction permits shall be submitted prior to pre-sitework meeting.

Engineering /Traffic:

- The Cypress Bay West CDD shall be responsible for all landscaping in the right-of-way
- Updated traffic counts for Gardens at Waterstone Phase II shall be provided, and a determination of the Proportionate Fair Share due from the Developer towards traffic impact improvements at associated segments along Babcock St. that have been recommended in the 2017 Waterstone Traffic Impact Study for 2025 build out.
- Drainage easement granted to the City of Palm Bay for emergency access to the final outfall. Maintenance or outfall pipe replacement based on the condition of the outfall may be necessary.
- ~~All roadway improvements and driveways shall per City PW manual requirements; turn lane dimensions associated with Cypress Bay West II shall be per traffic study requirements. All D/W radii shall be minimum 35 ft. include Utility chase pipes under roadways for future development.~~
- The traffic signal at Mara Loma shall be constructed at the 355th Certificate of Occupancy granted and prior to the 1st CO for Gardens at Waterstone II.

UTILITIES (Christopher Little, Utilities Director):

1. The applicant/owner, at their expense, will be required to design, permit, install, inspect and test water & sewer systems of adequate size to accommodate the development and to connect to the City's water and sewer system [Section 200.11(d)(1) - On-site Facilities]. At this time the nearest point of connection to the mainline water distribution system is a 16" PVC pipe on the South side of Mara Loma Blvd. The nearest point of connection to the mainline wastewater collection system force main is a 10" PVC pipe on the North side of Mara Loma Blvd Intersection.
2. The applicant/owner will be responsible for the property's hydraulic share for the new utilities. Oversizing of utilities at the request of the Utilities Department will be subject to a refunding agreement or refundable advance [Section 200.11(D) &(E)]. The City of Palm Bay's 2017 Wastewater Master Plan & 2017 Water Master Plan, both of which are available upon request, identify proposed mainline extensions with the current piping size requirements.
3. A City of Palm Bay "Utility Agreement" shall be executed between the Property Owner and the City. All Utility impact/connection charges noted in the "Utility Agreement" must be paid as outlined in the terms and conditions of the Utility Agreement. All fees are subject to change annually on October 1. The Property Owner shall submit a certified copy of the property deed as verification of ownership as part of the Utility Agreement.
4. All Utility construction, materials, and testing shall be in accordance with the latest revision of the Palm Bay Utilities Department Policies, Procedures, and Standards Handbook and the Standard Detail Drawings.
5. Prior to any construction, all required FDEP Permit applications for the Water and Sanitary Sewer Construction shall be processed through and copies of the Permits filed with the Utilities Department.

FIRE (Mark Whorton, Fire Consultant):

No comments.

BUILDING (James Williams, Certified Floodplain Manager):

No floodplain permits required, entire project floodzone X.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Patrick J. Murphy, Acting Growth Management Director

DATE: 10/21/2021

RE: Ordinance 2021-67, amending the Code of Ordinances, Chapter 185, Zoning Code, Subchapter 'District Regulations', by including tree and landscape businesses as a conditional use within LI (Light Industrial and Warehousing District) zoning (Case T-36-2021, Michael and Lisa Cram), final reading.

A public hearing is to be held on the above subject ordinance and the caption read for the second and final time at tonight's Council meeting.

Mr. Michael Cram and Ms. Lisa Cram, owners of Flawless Lawn Care and Landscaping, have submitted for a textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, to allow for tree and landscape recycling businesses as a Conditional Use in the LI – Light Industrial and Warehousing District. The applicants would like to expand their current operations to include a tree and landscape recycling business in Palm Bay.

Staff has drafted the proposed amendment to meet the purpose and intent of the zoning ordinance and the LI, Light Industrial and Warehousing District. Lot sizes and other restrictions within the district ensures there is sufficient open space and minimizes the adverse impacts of the LI uses offsite and to non-industrial uses. The proposed amendment creates an option that will allow tree and landscape recycling businesses to operate in LI districts provided a conditional use permit is received and the provisions of the amendment are adhered to. The provisions include a minimum lot size of 5 acres, an 8-foot-tall opaque fence or wall, increased setbacks between operations and the property line, a minimum buffer between operations and any residentially zoned land, a limitation on operating hours, and adherence to the City's Noise Ordinance.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case T-36-2021.

Planning and Zoning Board Recommendation:

Unanimous approval of the request as written.

ATTACHMENTS:

Description

Case T-36-2021 - Staff Report

Case T-36-2021 - Application

Case T-36-2021 - Narrative

Case T-36-2021 - Board Minutes

Ordinance 2021-67



STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

landdevelopmentweb@palmbayflorida.org

Prepared by

Grayson Taylor, Planner

CASE NUMBER

T-36-2021

PLANNING & ZONING BOARD HEARING DATE

September 1, 2021

APPLICANT

Michael and Lisa Cram

PROPERTY LOCATION/ADDRESS

Not Applicable

SUMMARY OF REQUEST

A textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, to allow for Tree and Landscape Recycling businesses as a Conditional Use in the LI – Light Industrial and Warehousing District.

Existing Zoning

Not Applicable

Existing Land Use

Not Applicable

Site Improvements

Not Applicable

Site Acreage

Not Applicable

SURROUNDING ZONING & USE OF LAND

North

Not Applicable

East

Not Applicable

South

Not Applicable

West

Not Applicable

BACKGROUND:

A textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, Section 185.045 LI – Light Industrial and Warehousing District, creating 185.045(D)(6).

The applicants for this amendment are Michael and Lisa Cram, owners of Flawless Lawn Care and Landscaping. The applicants are looking to expand their operations and to include a Tree and Landscape recycling business within the City of Palm Bay. At present, the only property zoned HI – Heavy Industrial, where this use would be allowed, is a 1.25-acre parcel on Wilhelmina Court NE.

A tree and landscape recycling business typically involves large industrial equipment, including chippers, grinders, shredders, and other related machinery to break down tree and yard waste into mulch, compost, and biomass. The mulch, compost, or other broken-down material is then typically sold to customers onsite, by placing the material directly in a truck bed or into bags.

Proposed language for this amendment is attached in legislative style with additions between >>arrow<< symbols and deletions in ~~strike through~~ format.

ANALYSIS:

The city zoning code is based on, consistent with, related to, and adopted to effectuate and implement the policies of the city comprehensive plan in order to protect, preserve and improve the public health, safety, order, appearance, convenience, and welfare of the inhabitants of the city, including, but not limited to:

- (A) Lessening congestion in the streets;
- (B) Encouraging the most appropriate use of land, water and resources;
- (C) Providing adequate light and air;
- (D) Securing safety from fire and other dangers;
- (E) Preventing the overcrowding of land;
- (F) Presenting the character and stability of residential, commercial, industrial and other areas;
- (G) Facilitating the adequate provisions for transportation, water supply, sewerage, drainage, sanitation, recreation, schools, housing, and other services; and

(H) Conserving and enhancing the standard of living within the city.

The provisions of the Light Industrial and Warehousing district are intended to apply to an area which can serve light manufacturing, warehousing, distribution, wholesaling and other light industrial functions for the city and the region. Lot sizes and other restrictions are intended to ensure sufficient open space and minimize adverse impacts of industrial uses off site and to nonindustrial uses.

While the applicant has proposed the text amendment for Tree and Landscape Recycling as a Conditional Use in the Light Industrial and Warehousing District, staff has drafted this amendment best suited for this proposed use in this district, with regard to the purpose of the zoning ordinance and the intent of the Light Industrial and Warehousing District.

This amendment would create the option for a Tree and Landscape Recycling business to operate within the LI district provided they received a conditional use permit, and adhere to the provisions of the proposed amendment, as they are drafted to preserve and protect the health, safety, and welfare of the public. These provisions include a minimum lot size of 5 acres, an 8-foot tall opaque fence or wall, increased setbacks between operations and the property line, a minimum buffer between operations and any residentially zoned land, limitation on operating hours, and adherence to the City's Noise Ordinance.

STAFF RECOMMENDATION:

Case T-36-2021 is recommended for approval.

TITLE XVII: LAND DEVELOPMENT CODE

CHAPTER 185: ZONING CODE

§ 185.045 LI — LIGHT INDUSTRIAL AND WAREHOUSING DISTRICT.

(A) *Intent.* The provisions of this district are intended to apply to an area which can serve light manufacturing, warehousing, distribution, wholesaling and other light industrial functions for the city and the region. Lot sizes and other restrictions are intended to ensure sufficient open space and minimize adverse impacts of industrial uses off site and to nonindustrial uses.

(B) *Principal uses and structures:*

- (1) Warehousing within an enclosed structure.
- (2) Wholesaling within an enclosed structure.
- (3) Dry cleaning and laundry plants, printing plants, welding shops, machine shops, taxidermists and similar service and repair establishments and uses.
- (4) Light manufacturing, processing and assembly including precision manufacturing, electrical machinery, instrumentation, bottling plants, dairy products plants, bakeries, fruit packing and similar uses.
- (5) Building materials supply and storage, provided that any outside display and/or storage area shall be screened on all sides to avoid any deleterious impact on adjacent properties; includes contractor storage yards.
- (6) Automotive, truck, major recreational equipment and mobile home sales, storage and repair establishment including, body shops, dry docking facilities, paint shops, upholstery shops and similar uses provided that outside storage of vehicles not for sale shall be effectively screened on four (4) sides so as to avoid off-site visual impacts.
- (7) Vocational and trade schools.
- (8) Veterinary hospitals and clinics including boarding of animals.
- (9) Radio or television transmitter, towers or broadcasting facilities.
- (10) Research and development facilities provided all activities are within an enclosed structure.
- (11) Public utility equipment and facilities.
- (12) Public uses.

(13) Communication towers and facilities.

(14) Medical Recycling Facility.

(C) *Accessory uses and structures:*

(1) Customary accessory uses clearly incidental and subordinate to one (1) or more principal uses.

(2) Retail sales of products manufactured, processed or stored on the premises, provided the sales area constitutes no more than 15% of the total area of the space occupied by the business.

(3) Offices clearly accessory to one (1) or more principal uses.

(D) *Conditional uses.*

(1) Automotive fuel, propane, and natural gas dispensaries and refueling stations subject to the following provisions:

(a) Location of facilities: All pumps, storage tanks and other service island equipment shall be at least twenty (20) feet from all property lines, fifteen (15) feet from any building and one hundred (100) feet from the nearest residentially owned land. No pump, storage tank or other equipment shall be located closer than one thousand (1,000) feet from any municipal or public supply well.

(b) Liquid gasoline, liquid kerosene, or liquid diesel fuels may be stored onsite for use by the operator of the property and stored onsite for offsite delivery to the general public, and stored, dispensed, and sold onsite to the general public for onsite sales of such substances.

(c) Liquid and non-liquid propane, and liquid and non-liquid natural gas and other petroleum-based fuel products (including liquid gasoline, liquid kerosene, or liquid diesel fuel) may be stored onsite for the use of the operator of the property, stored and sold onsite for offsite delivery to the general public, and stored, dispensed, and sold onsite to the general property.

(d) The proposed use will not constitute a nuisance or hazard because of vehicular travel movement, delivery of fuel movement, noise or fume generation.

(e) Development and operation of the fuel pumps and attendant storage tanks shall be in compliance with §§ [176.01](#) *et seq.*

(2) Freight handling and transportation terminals.

(3) Planned industrial developments including office and business parks.

(4) Corrections facilities subject to the following:

(a) Minimum area required: 20 acres.

(b) Shall not be located within 1,000 feet of any residentially zoned property.

(5) Public and private schools.

>>(6) Tree and Landscape Recycling, subject to the following:

(a) A minimum lot size of 5 acres;

(b) An 8-foot opaque fence or wall surrounding the site on all sides;

(c) A 100-foot setback between any property line and any operation of tree or landscape recycling machinery (with the exception of vehicle or product storage);

(d) A 250-foot buffer between any residentially zoned land and any operation of tree or landscape recycling machinery (with the exception of vehicle or product storage);

(e) Tree and Landscape Recycling operations restricted to 8:00 a.m. to 6:00 p.m.;

(f) Strict adherence to Maximum Permissible Sound Levels for Industrial Land, as set forth in Table 1 of Section 92.06 of the Palm Bay Code of Ordinances.<<

(E) *Prohibited uses and structures:*

(1) All uses not specifically or provisionally permitted herein.

(F) *Lot and structure requirements:*

(1) Minimum lot area — twenty thousand (20,000) square feet.

(2) Minimum lot width — one hundred (100) feet.

(3) Minimum lot depth — two hundred (200) feet.

(4) Maximum building coverage — fifty percent (50%).

(5) Minimum floor area — None.

(6) Maximum height — one hundred (100) feet.

(7) Minimum yard requirements:

(a) Front — forty (40) feet minimum building setback, parking areas may be located in the front yard except within ten (10) feet of the front lot line.

(b) Side interior — twenty (20) feet minimum building setback. Parking areas may be located in the side yard except within ten (10) feet of the side lot line.

(c) Side corner — twenty-five (25) feet minimum building setback. Parking areas may be located in the side corner yard except within ten (10) feet of the side corner lot line.

(d) Rear — twenty-five (25) feet.

(8) An eight (8) foot high completely opaque masonry wall, or wood fence shall be provided along the entire length of any side or rear property line abutting property zoned residential. Landscaping shall be provided in accordance with the landscape requirements of this zoning code.



LAND DEVELOPMENT DIVISION
120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042
Landdevelopment@palmbayflorida.org

CODE TEXTUAL AMENDMENT APPLICATION

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

ORDINANCE SECTION(S) PROPOSED TO BE CHANGED:

185.045 (D) (6) Tree and Landscape Recycling.

PROPOSED LANGUAGE (attach addendum if necessary):

See Attached

JUSTIFICATION FOR PROPOSED CHANGE (attach other documents if necessary)

To allow for a tree and landscape recycling business in the Light Industrial District

CITY OF PALM BAY, FLORIDA
CODE TEXTUAL AMENDMENT APPLICATION
PAGE 2 OF 2

THE APPLICATION FEE MUST BE SUBMITTED WITH APPLICATION TO PROCESS THIS REQUEST:

☒ *\$1,500.00 Application Fee. Make Check payable to "City of Palm Bay."

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, I declare that I have read the foregoing code textual amendment application and that the facts stated in it are true.

Signature of Applicant Michael Cram Date 7/26/21

Printed Name of Applicant Michael & Lisa Cram

Full Address Flawless Lawncare and Landscaping, 1901 Danr Drive NE, Palm Bay, FL 32905

Telephone 321.514.4928 Email flawless@flawlesslawninc.com

PERSON TO BE NOTIFIED (If different from above):

Printed Name _____

Full Address _____

Telephone _____ Email _____

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**



Green Recycling Project

Scope: To create a commercial recycling business committed to maximizing the benefits of recycling green organic materials which are an essential part of community growth.

Scope of Work: To intake land clearing related waste and recycle it into material that is wholesaled out and repurposed to promote sustainability. Wood waste can be recycled and used as valuable growth products such as a building material, recycled into mulch for landscaping or pulp for paper production, and used profitably as biomass fuel.

Benefits of Green Recycling:

1. Promotes growth of community by offering vendors a more affordable central location to dispose of land clearing debris.
2. Recycling wood waste frees up landfill space.
3. Recycling wood reduces the need to cut down trees.
4. Contributes to sequestering of carbon.
5. Assists in the reduction of water and air pollution.
6. Reduces carbon dioxide emissions from processing virgin material.
7. Contributes to sustainable use of natural resources.
8. Creates job opportunities.

Notes of Importance:

- There will be no home / personal waste products recycled at this facility.
- Proposed site will not participate in brush fire burning.

Sample Pictures of Proposed Site Plan:





Our Story:

Mother and Son team with an entrepreneurial spirit serving the Palm Bay Community for over 17 years.

Michael Cram:

In 2005, with just a push mower in hand, Michael Cram had a vision that created Flawless Lawncare & Landscaping. Over a decade of experience later, his vision has grown into a corporation with over 70 skilled team members. Through diligence and dedication, he continues to set the bar for lawncare and landscaping across Florida's Space Coast.

Michael manages the skilled teams in the field to ensure every customer is cared for with the same level of flawless excellence. From tenured foremen to in-house mechanics, to lawn maintenance and landscape designers, Michael takes a hands-on approach to staying involved every step along the way.

Lisa Cram:

A Regent University Leadership graduate with over 25 years of business experience. Coupled with her son Michael's vision, she strongly believes in delivering 100% integrity and flawless customer care by staying proactive and hands-on to support each clients' business needs.

Lisa manages the day-to-day operations, Account Managers, customer service, and back-office teams ensuring every call is answered with a response and that all the Flawless customers' needs are met on-time and to their satisfaction or better.

Together Michael and Lisa will bring a successful Green Recycling Business to the growing community of Palm Bay. Which will support community growth and offer many benefits to our environment while doing so.

Respectfully,

Michael and Lisa Cram

Flawless Lawncare and Landscaping Inc.

Office: 321-724-9007 Fax: 321-837-1673

Flawless@flawlesslawninc.com

CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
REGULAR MEETING 2021-10

Held on Wednesday, September 1, 2021, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Ms. Leeta Jordan led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIRPERSON:	Philip Weinberg	Present	
VICE CHAIRPERSON:	Leeta Jordan	Present	
MEMBER:	Donald Boerema	Present	
MEMBER:	James Boothroyd	Present	
MEMBER:	Richard Hill	Absent	(Excused)
MEMBER:	Khalilah Maragh	Present	
MEMBER:	Rainer Warner	Absent	(Excused)
NON-VOTING MEMBER:	David Karaffa	Absent	(Excused)
	(School Board Appointee)		

The absence of Mr. Hill and Mr. Warner were excused.

CITY STAFF: Present were Mr. Patrick Murphy, Acting Growth Management Director; Mr. Christopher Balter, Senior Planner; Mr. Grayson Taylor, Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney; Mr. Christopher Little, Utilities Director.

ADOPTION OF MINUTES:

1. **Regular Planning and Zoning Board/Local Planning Agency Meeting 2021-09 August 4, 2021.**

The floor was opened for public comments.

Mr. Tom Velie (resident at Malabar Road West) stated his concern about the approximate 1,600 cars he believed the project would bring into the area. The additional traffic would also increase the current morning and evening congestion at Heritage High School. He suggested a second access for the development.

Mr. Kevin Velie (resident at Seeley Circle NW) stated that there was traffic congestion each morning at the Malabar Road and St. Johns Heritage Parkway intersection, and cars were usually backed up during evening events at Heritage High School.

In response to comments from the audience, Ms. Saunders stated that the traffic study required for the project would include in its analysis the traffic from the high school and the surrounding communities to the north and east to determine traffic improvements and timing thresholds. The methodology of the analysis would be agreed upon prior to the study. She noted that the St. Johns Preserve community located east of Heritage High school had installed a locked emergency access that would allow the school to bypass the busy intersection during emergencies.

The floor was closed for public comments, and there was no correspondence in the file.

Motion to submit Case PD-34-2021 to City Council for approval, subject to the staff comments.

Motion by Ms. Jordan, seconded by Mr. Boerema. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Maragh.

5. **T-36-2021 - Tree and Landscape Recycling in LI - Michael and Lisa Cram - A textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, Section 185.045, to modify provisions within the LI, Light Industrial 185: Zoning Code, Section 185.045, to modify provisions within the LI, Light Industrial use**

Mr. Taylor presented the staff report for Case T-36-2021. Staff recommended Case T-36-2021 for approval.

Mr. William Alcock (representative for the applicant) stated that the applicant wanted to expand their Palm Bay landscaping business to include land clearing recycling, and staff was cooperative in determining LI as the appropriate zoning district for the proposed use. The land clearing debris that was currently being dumped in landfills could now be recycled into mulch, landscaping, and biofuels. He stated that the applicant was in agreement with the conditions in the amendment.

Mr. Boothroyd asked if the applicant had a specific location for the subject recycling. Mr. Alcock stated that a site was being considered. Mr. Weinberg clarified that the applicant would still have to apply for conditional use approval to permit the subject use on any LI property.

Ms. Maragh commented that noise would be a concern that would need to be addressed during conditional use reviews. Mr. Alcock stated that the noise data submitted to staff regarding the subject use was in compliance with the code.

The floor was opened for public comments.

Mr. Bill Battin (resident at Ocean Spray Street SW) wanted to know if the mulch material would be maintained onsite and in a secondary containment because of the degrading that would be caused by the biowaste material. He was also concerned about ongoing noise from mulching machinery.

In response to public comments, Mr. Taylor explained that although mulch could be stored near property lines, there was a 100-foot setback requirement between any operation of machinery and property lines. LI properties adjacent to residential land would have to meet a 250-foot buffer between machinery and residential lines. In addition, the City's noise ordinance must be met.

Mr. Michael Cram (applicant and owner of Flawless Lawn Care & Landscaping, Inc.) stated that at approximately 150 feet of distance, the largest recycling machinery would be quieter than the average consistent traffic on Babcock Street. He wanted to expand his business and create a hub for the City to bring landscape debris during

hurricanes. He explained that mulch would be trucked offsite as soon as possible with no onsite storage for more than 60 days, which would not allow for decomposition or odors.

Mr. Taylor stated that the board and City Council could add conditions to the proposed amendment, and that site-specific conditions could be added when conditional use applications were submitted for the subject use.

The floor was closed for public comments, and there was no correspondence in the file.

Motion to submit Case T-36-2021 to City Council for approval.

Motion by Mr. Boerema, seconded by Ms. Jordan. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Maragh.

6. ****CU-37-2021 - Cabot Drive Lift Station Relocation - City of Palm Bay (Utilities Department) - A conditional use to allow a proposed public utilities facility/equipment (lift station) in an RS-2, Single-Family Residential District. Lot 22, Block 9, Port Malabar Unit 2, Section 25, Township 28, Range 37, Brevard County, Florida, containing approximately .29 acres. South of and adjacent to Cabot Drive NE, in the vicinity east of Bianca Drive NE**

Mr. Balter presented the staff report for Case CU-37-2021. Staff recommended Case CU-37-2021 for approval.

Ms. Maragh asked if the proposed facility would be hidden in the center of the property and fenced, and she wanted to know about potential noise. Mr. Balter indicated the relocation of the lift station from the southwest portion of the site to the center of the parcel. The facility would be camouflaged and would meet the Utilities Department's standard guidelines for lift stations.

Mr. Clayton McCormack, P.E. with Infrastructure Solution Services, LLC (engineer for the project) stated that in 2007 the Utilities Department had indicated the subject site as one of their worst lift station sites because of its location in an easement in

ORDINANCE 2021-67

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 185, ZONING CODE, SUBCHAPTER 'DISTRICT REGULATIONS', BY INCLUDING TREE AND LANDSCAPE BUSINESSES AS A CONDITIONAL USE WITHIN LI (LIGHT INDUSTRIAL AND WAREHOUSING DISTRICT) ZONING; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title XVII, Land Development Code, Chapter 185, Zoning Code, Subchapter 'District Regulations', Section 185.045, LI – Light Industrial and Warehousing District, is hereby amended and shall henceforth read as follows:

“Section 185.045 LI – LIGHT INDUSTRIAL AND WAREHOUSING DISTRICT.

* * *

(D) *Conditional uses.*

* * *

>>(6) Tree and Landscape Recycling, subject to the following:

(a) A minimum lot size of five (5) acres.

(b) An eight (8) foot opaque fence or wall surrounding the site on all sides.

(c) A one hundred (100) foot setback between any property line and any operation of tree or landscape recycling machinery (with the exception of vehicle or product storage).

(d) A two hundred fifty (250) foot buffer between any residentially zoned land and any operation of tree or landscape recycling machinery (with the exception of vehicle or product storage).

(e) Tree and landscape recycling operations restricted to 8:00 a.m. to 6:00 p.m.

(f) Strict adherence to Maximum Permissible Sound Levels for Industrial Land, as set forth in Table 1 of Section 92.06, Palm Bay Code of Ordinances.<<

* * *

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of ordinances and the sections may be renumbered to accomplish such intention.

SECTION 4. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 5. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2021- , held on , 2021; and
read in title only and duly enacted at Meeting 2021- , held on , 2021.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Applicant: Michael and Lisa Cram
Case: T-36-2021

cc: ALP

Strikethrough words shall be deleted; highlighted words that will be included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Terese Jones, City Clerk

DATE: 10/21/2021

RE: Appointment of one (1) member to the Community Development Advisory Board.

The vacancy has been announced at several Council meetings and applications solicited for same.

The board is comprised of members representing various fields. The aforementioned vacancy could represent one of the following positions: 'residential home builder', 'actively engaged in home building', 'for-profit provider' or 'not-for-profit provider'.

The following application has been received to represent the 'not-for-profit' position:

Kera L. Beard
363 Royal Street, SE
Palm Bay, FL 32909

REQUESTING DEPARTMENT:
Legislative

FISCAL IMPACT:
None

RECOMMENDATION:
Motion to approve the appointment of one (1) member to represent the 'not-for-profit' position on the Community Development Advisory Board.

ATTACHMENTS:
Description
K.Beard

Office of The
SEP 28 2021
City Clerk



APPLICATION FOR MEMBERSHIP / City Boards or Committees

City of Palm Bay • 120 Malabar Road • Palm Bay, FL 32907
Phone: 321-952-3414 • www.palmbayflorida.org • Fax: 321-953-8971

BOARD/COMMITTEE

Name of Board/Committee: Community Development Advisory Board
Full Name: Kera L Beard
Home Address: 363 Royal St SE
City: Palm Bay Zip Code: 32909
Telephone Number: 321-223-2936 Fax Number:
Email Address: kbeard@voa-fla.org

EMPLOYMENT

Employer: Volunteers of America of Florida Occupation: Affordable Housing Developer
Address: 405 Central Avenue, Suite 100
City: St Pete State: FL Zip Code: 33701
Telephone Number: 321-223-2936 Fax Number:
Email Address: kbeard@voa-fla.org
Job Responsibilities: Develop affordable housing in Florida

EDUCATION

High School Name: Melbourne High
Location: Melbourne Years Completed: 4 Major/Degree: Diploma
College Business or Trade School: Velencia Community College
Location: Orlando Years Completed: 1 Major/Degree:
Professional School: Real Estate
Location: Orlando Years Completed: Major/Degree:
Other:
Location: Years Completed: Major/Degree:

APPLICANT INFORMATION

Have you ever held a business tax receipt? ☐ Yes ☒ No *If yes, please provide the following:*

Title:

Issue Date: Issuing Authority:

If any disciplinary action has been taken, please state the type and date of the action taken:

Disciplinary Action: Disciplinary Date:

Are you a resident of the City? ☒ Yes ☐ No *If yes, how long?* 25 Years Months

How long have you been a resident of Brevard County? 25+ Years Months

Are you a United States citizen? ☒ Yes ☐ No

Are you a registered voter of the City? ☒ Yes ☐ No

Are you employed by the City? ☐ Yes ☒ No *If yes, what department?*

Do you presently serve on a City board(s)? ☐ Yes ☒ No *If yes, please list board(s):*

Have you previously served on a City board(s)? ☐ Yes ☒ No *If yes, please list board(s):*

Are you currently serving on a board, authority, or commission for another governmental agency?

☐ Yes ☒ No *If yes, what board(s):*

Have you ever been convicted or pled guilty to a criminal charge or pled nolo contendere (no contest) to a criminal charge? ☐ Yes ☒ No *If yes, what charge:*

Where: When:

Disposition was: ☐ Convicted ☐ Pled Guilty ☐ Pled No Contest

Have your civil rights been restored? ☐ Yes ☐ No

Are you a member or participant of any community organizations? ☒ Yes ☐ No

If yes, please list:

What are your hobbies / interests? Dance, Chocheting and the outdoors

Why do you want to serve on this board / committee? I am a passionate Palm Bay resident that would like

to see more affordable housing in Palm Bay

Section 760.80, Florida Statutes, requires certain information on statutorily created boards to be filed on an annual basis. Please complete the following.

Race: White Gender: Female Physically Disabled: ☐

APPLICATION CERTIFICATION

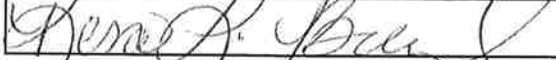
By filing this application with the City of Palm Bay and placing my signature below, I do hereby acknowledge the following:

1. This Application, when completed and filed with the Office of the City Clerk, is a PUBLIC RECORD under Chapter 119, Florida Statutes, and is open to public inspection.
2. I am responsible for keeping the information on this form current and that any changes or updates will be provided to the Office of the City Clerk.
3. I consent to filing the Statement of Financial Interests if required for this board.
<http://www.ethics.state.fl.us>
4. If appointed to a board/committee, I acknowledge that it is my obligation and duty to comply with the following:

Code of Ethics for Public Officials (Florida Statutes, Chapter 112, Part III)
Florida Sunshine Law (Florida Statutes, Chapter 286)
<http://www.flsenate.gov/Statutes>

5. I understand the responsibilities associated with being a board/committee member, and I will have adequate time to serve on this board/committee.

The information provided on this form is true and correct, and consent is hereby given to the City Council or its designated representative to verify any and/or all information provided.

Signature:  Date: 9/28/2021

Mail the application to:
City of Palm Bay
Office of the City Clerk
120 Malabar Road, SE
Palm Bay, Florida 32907

Fax the application to:
321-953-8971

SUBMIT FORM



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Terese Jones, City Clerk

DATE: 10/21/2021

RE: Appointment of one (1) member to the Youth Advisory Board.

Vacancies for the 'at-large student member' have been announced at several regular Council meetings and applications have been solicited for same.

The following application has been received:

Darrien Gray
535 Sauders Road, SE
Palm Bay, FL 32909

REQUESTING DEPARTMENT:

Legislative

FISCAL IMPACT:

None

RECOMMENDATION:

Motion to approve the appointment of one (1) 'at-large student member' to serve on the Youth Advisory Board.

ATTACHMENTS:

Description

D.Grady



City of Palm Bay, Florida
YOUTH ADVISORY BOARD
APPLICATION

Office of The

SEP 30 2021

City Clerk

The vision for the City of Palm Bay's Youth Advisory Board is to empower caring youth dedicated to personal development and servant leadership. If you are interested in applying for membership to the Board, please complete the following application.

Applicants **MUST** be a City of Palm Bay resident for at least 1 year and be in grades 9-12. Please type or print clearly in blue or black ink. Attach additional sheets as requested. ALL information must be completed in order to be considered for the Palm Bay Youth Advisory Board.

Student Information:

Name: Darrien Grady Age: 16
School: Palm Bay Magnet High Grade: 10
Home Address: 535 Sanders rd. SE
City: PALM BAY State: Florida Zip Code: 32909
Home Telephone: 321-914-5649 Cell Phone: 321-544-1521
Email: darrien-grady123@gmail.com Date of Birth: 09/23/04
Parent/Guardian: Melissa Hardy

Do you have transportation to get to Youth Advisory Board meetings/events? ☒ Yes ☐ No

Please attach your response to the following:

1. Why do you want to serve as a member of the Youth Advisory Board?
2. What personal skills and characteristics do you possess that would make you a good member?
3. If you could bring one thing to this city or change one thing, what would it be?

And I'm thankful as a lot of positive things.
I think we'll be together (under)

2) My reason for not immediately leaving is because
I'm like to solve problems and help others solve
problems.

3) I think we really need a better recycling system and
more recycling bins.

Please provide two (2) adult references (non-relatives) with phone numbers. You must also attach letters of recommendation from these individuals. The letters of reference should be from a dean, principal, teacher, guidance counselor, pastor, coach, employer, neighbor, etc.

1. Name: Kenny Johnson Contact No.: 321-271-5346
2. Name: Carolyn Pudvash Contact No.: 321-952-5900

I have read and understand the commitment required for the City of Palm Bay's Youth Advisory Board and realize the importance of teamwork and cooperation, and I am willing to make this commitment.

Student Signature: Darrien Grady Date: 9/23/21

Parent/Legal Guardian Permission:

I hereby give my permission for Darrien Grady to seek the position of board member on the City of Palm Bay's Youth Advisory Board.

Parent/Guardian Signature: M. Grady Date: 9/23/21

Home Telephone: 321-914-5649 Cell Phone: Same

Emergency Contact Information: Call mother first.

Name: Jasmya Grady

Relationship: Sister Contact No.: 321-215-8443

Mail to or drop off at:

City of Palm Bay
Office of the City Clerk
120 Malabar Road, SE
Palm Bay, FL 32907

Email complete packet to:

Judy.Denis@pbfl.org

1) The reason why I want to join the Youth Advisory Board is because I feel like I have great ideas for our City to improve and be the best City. I love being apart of our Community And I'm involved in a lot of positive things. I would like to be a positive impact.

2) My personal skills are hardworking, humble, outgoing, Caring, I like to solve problems and help others solve problems.

3) I think we really need a better recycling system and more City sewer access.

September 12, 2021

To Whom It May Concern,

Please accept this letter as my recommendation for Darrien Grady as a member of the Palm Bay Youth Advisory Board. Darrien exhibits traits that would greatly benefit the Board.

From my observations of Darrien in my class last year, I found him to be intelligent, hardworking, dedicated, and respectful. Darrien is mature and exhibits leadership qualities. He is very caring and compassionate towards others, making him an impartial listener as well as good at offering advice and counseling his peers. He spreads his positive attitude and outlook to everyone around him. Darrien is also a compelling advocate for his own education. While he is not shy to ask questions or offer comments, he is always respectful to both peers and adults. He thinks before he speaks and speaks in a manner that reflects his maturity. Because of these characteristics, I believe he would be an asset to the Youth Advisory Board.

Darrien is not just strong in academics, but he also is a vital member of the Palm Bay Pirates Athletic programs. He has participated in basketball as well as swimming and track. He has demonstrated strong time management skills, juggling practice and games while maintaining honor roll status.

In my opinion, Darrien Grady is the perfect candidate for the position of Palm Bay Youth Advisory Board. If you need any additional information, please do not hesitate to contact me.

Thank you,

Carolyn Pudvah
English Teacher
Palm Bay Magnet High School
101 Pirate Lane
Melbourne, FL 32901
321-952-5900
pudvah.carolyn@brevardschools.org

October 6, 2021

TO WHOM IT MAY CONCERN

Letter of Recommendation – Darrien Grady

It is my pleasure to write this letter of recommendation for Darrien Grady.

I am Kenny Johnson, Deputy Mayor for the City of Palm Bay, Florida. Darrien is a young man who I have had the pleasure of watching grow for some time now. He has exhibited a deep interest in sports and helping others in need. He is a goal-oriented young man who is destined for greatness. I have had the opportunity to see him excel in sports and the classroom.

Darrien has been volunteering in his community for many years and as a student-athlete, he understands the importance of time management. He has taken the initiative to volunteer in his neighborhood providing needed assistance to neighbors.

His brother has already served on this board and now he wishes to follow in his footsteps.

I strongly recommend Darrien Grady.

Sincerely,

CITY OF PALM BAY

Kenny Johnson

Kenny Johnson
Deputy Mayor



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Terese Jones, City Clerk

DATE: 10/21/2021

RE: Committee/Council Reports

Committee Reports:

- Space Coast Transportation Planning Organization
- Space Coast League of Cities
- Tourist Development Council

Council Reports

REQUESTING DEPARTMENT:

Legislative



LEGISLATIVE MEMORANDUM

DATE: 10/21/2021

RE: Resolution 2021-60, declaring the position of Seat 5 on the Palm Bay City Council vacated as of August 10, 2021; scheduling a special municipal election for Tuesday, March 8, 2022.

ATTACHMENTS:

Description

Resolution 2021-60

RESOLUTION 2021-60

A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, DECLARING THE POSITION OF SEAT 5 ON THE PALM BAY CITY COUNCIL VACATED AS OF AUGUST 10, 2021, DUE TO THE RESIGNATION OF JEFF BAILEY; SCHEDULING A SPECIAL MUNICIPAL ELECTION FOR TUESDAY, MARCH 8, 2022, TO ELECT A SUCCESSOR TO SERVE THE REMAINDER OF THE INITIAL TERM OF CITY COUNCIL SEAT 5; ESTABLISHING THE QUALIFIED PERIOD TO FILE FOR COUNCIL; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on July 30, 2021, Jeff Bailey submitted his resignation from the position of Seat 5 on the Palm Bay City Council with an effective date of August 10, 2021, and

WHEREAS, such resignation created a vacancy on the City Council of the City of Palm Bay as of August 10, 2021, for Seat 5, of which more than fourteen (14) months would remain in the unexpired term, and

WHEREAS, Section 50.55(A)(2) of the Palm Bay Code of Ordinances provides that “When more than one (1) year is left remaining in the term of said office and no general municipal election is scheduled within one (1) year, a special election shall be scheduled to be held no sooner than ninety (90) days or more than one hundred eighty (180) days following the date of the vacancy. The individual elected shall serve the remainder of the unexpired term.”, and

WHEREAS, Section 50.18(A) of the Palm Bay Code of Ordinances provides that “A special election may be called by the City Council only after notice is given to the supervisor of elections and his/her consent obtained as to a date.”, and

WHEREAS, the City sought the consent of the Supervisor of Elections who informed the City that “March 8, 2022 has been determined as the first possible date to

conduct the requested Special Election. While previous statutory commitments prevent my office from conducting your Special Election before this date, a March 8th election day would mean overseas and military ballots would be sent on January 21st and domestic mail ballots would be sent February 3rd. Therefore, the 45-day election time period for the requested Special Election would be initiated during the requested 90 – 180-day timeframe.”

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The above recitals are true and correct and by this reference are hereby incorporated into and made an integral part of this resolution.

SECTION 2. The City Council position of Seat 5, to which Jeff Bailey was elected, is hereby declared vacated as of August 10, 2021, by virtue of Jeff Bailey submitting his resignation on July 30, 2021.

SECTION 3. The City Council is declaring the position of Palm Bay City Council Seat 5 vacated as of August 10, 2021, to provide for the scheduling of a special municipal election to be held on Tuesday, March 8, 2022, to elect a successor to serve the remainder of the initial term of City Council Seat 5, which expires November 8, 2022.

SECTION 4. Each person seeking to qualify for election to Palm Bay City Council Seat 5 shall file his or her qualification papers with, and pay the qualifying fee, which shall consist of the filing fee and election assessment, to the Office of the City Clerk during the qualifying period commencing at noon on Monday, December 6, 2021, and expiring at noon on Friday, December 10, 2021. Candidates for the Office of City Council shall be a

resident of the city and shall have been for at least two (2) years immediately preceding the election, shall be a registered voter residing at a city address, and shall qualify for such office by complying with the Florida Statutes and in such manner as may be prescribed by ordinance and shall continue to be a resident and an elector of the city during the term of office.

SECTION 4. This resolution shall take effect immediately upon the enactment date.

This resolution was duly enacted at Meeting 2021- , of the City Council of the City of Palm Bay, Brevard County, Florida, held on , 2021.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

cc: (date) Brevard County Supervisor of Elections



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Terese Jones, City Clerk

DATE: 10/21/2021

RE: Consideration of revising Council's Policies and Procedures with regard to the Order of Business at regular meetings.

As Council is aware, staff utilizes NovusAGENDA (Novus) electronic meeting management software to create agenda packets for City Council meetings. Implementation of the software caused staff to redesign the way items were placed on the agenda.

In the past, an item under consent agenda was indicated by an asterisk next to the item number and would be placed on the agenda where it would typically be discussed (Adoption of Minutes, Procurement, or New Business). In the Novus software, all consent items are now placed under the Consent Agenda heading; therefore, discussion of items pulled from consent occur before any other business on the agenda, such as Proclamations, Presentations, and Public Hearings. This can sometimes cause a significant wait time for individuals that have items on the agenda for consideration or recognition.

Staff is suggesting a revision to Section 7.3.1, Order of Business, of Council's Policies and Procedures. Business would be considered in the following order:

- Call to Order
- Invocation and Pledge of Allegiance to the Flag
- Roll Call
- Announcements
- Agenda Revisions
- Proclamations and Recognitions
- Presentations
- Public Comments/Responses (Non agenda items)
- Public Hearings
- Consent Agenda
- Procurements
- Unfinished and Old Business
- New Business
- Committee and Council Reports
- Administrative and Legal Reports
- Public Comments/Responses
- Adjournment

As reflected in the policies, Council will still have the option to modify the order of business, and add or delete agenda headings, upon a majority vote of Council.

REQUESTING DEPARTMENT:

City Manager's Office, Legislative

FISCAL IMPACT:

None

RECOMMENDATION:

Motion to revise Council's Policies and Procedures as recommended by staff.

ATTACHMENTS:

Description

Current Order of Business

CHAPTER 7

Section 3

MEETING RULES AND ORDER

ORDER OF BUSINESS

7.3.1 ORDER OF BUSINESS

A. The business of the city council shall be taken up for consideration and disposition in substantially the following order:

1. **Call to Order**

The presiding officer calls the meeting to order at the designated time.

2. **Invocation and Pledge of Allegiance to the Flag**

3. **Roll Call** (See Chapter 7, Section 5)

4. **Announcements**

The open positions on boards/committees are announced and applications solicited.

5. **Agenda Revisions**

6. **Consent Agenda** (See Chapter 7, Section 7)

7. **Proclamations and Recognitions**

Organizations, individuals, and groups are recognized through proclamations or certificates.

8. **Presentations**

Presentations are scheduled by city staff, individuals or businesses to inform council of issues, projects, etc. shall not exceed 10 minutes. No more than two (2) presentations shall be scheduled for any given council meeting.

The council shall not take formal action upon issues or matters presented by individuals or businesses under presentations at the same meeting. If formal action is desired, such matters shall be deferred and scheduled for a subsequent or future council meeting for consideration. Council may, by a majority vote, act on items that are declared by council to constitute an emergency. Items not requiring council action shall be directed to the city manager for consideration and further action.

Formal action may be taken by the City Council on presentations scheduled by city staff.

9. **Adoption of Minutes** (See Chapter 7, Section 6)

10. **Public Comments/Responses (Non agenda items)**(See Chapter 7, Section 8)

11. **Public Hearings**

12. **Procurements**

Consists of award of bids, change orders, waive of bid process, requests for proposals.

13. **Unfinished and Old Business**

This is unfinished business carried over from a previous meeting or items that are ongoing.

14. **Committee and Council Reports**

Boards in attendance make presentations to council. Councilmembers, representing the city on other agencies' boards, update council on issues, etc.

Councilmembers may present any business that he/she feels should be brought to council's attention.

For items which a councilmember would like council to act upon, a request must be made for the item to be scheduled for a subsequent meeting for formal consideration and action. The council may, by a majority vote of council to do so, act upon an item due to extenuating circumstances or emergency situation.

15. **New Business**

16. **Administrative and Legal Reports**

The city manager and city attorney make reports to council and may request action on same.

17. **Public Comments/Responses** (See Chapter 7, Section 8)

18. **Adjournment**

B. The city council may modify the order of business, and add or delete agenda headings, upon a majority vote of council.

Adopted: RCM 2001-08, 04-05-01

Revised: RCM 2004-29, 09-16-04; RCM 2008-15, 05-15-08; RCM 2009-25, 07-16-09; RCM 2008-15, 05-15-08; RCM 2009-25, 07-16-09; RCM 2013-04; 02-21-13; RCM 2015-16; 06-16-15