



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

AGENDA

Regular Council Meeting 2024-01 Thursday

**January 4, 2024 - 6:00 PM
Council Chambers, 120 Malabar Road SE, Palm Bay FL 32907**

CALL TO ORDER:

INVOCATION:

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

1. Three (3) terms expiring and one (1) vacancy on the Disaster Relief Committee Executive Board.++

AGENDA REVISIONS:

1. A proclamation for Human Trafficking Awareness Month/National Human Trafficking Awareness Day has been added as Item 2, under Proclamations and Recognitions.
2. The Legislative Memorandum for Item 6, under New Business (Flag Program Nominee), has been revised to include additional information.

PROCLAMATIONS AND RECOGNITIONS:

1. Proclamation: Florida Arbor Day - January 19, 2024.
2. Proclamation: Human Trafficking Awareness Month - January 2024; National Human Trafficking Awareness Day - January 11, 2024. (AGENDA REVISION)

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.

APPROVAL OF 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 under the agenda heading Consideration of Items Removed from Consent Agenda.

1. Adoption of Minutes: Meeting 2023-31; December 14, 2023.
2. Adoption of Minutes: Meeting 2023-32; December 14, 2023.
3. Award of Bid: Construction of Building E, City Hall Campus – IFB 01-0-2024 – Parks and Facilities Department (W&J Construction Corp. - \$15,028,033).
4. Award of Bid: General construction services – IFB 06-0-2024 – Parks and Facilities Department (Multiple Vendors – \$250,000 (estimated annual expenditure)).
5. Ordinance 2024-01, amending the Fiscal Year 2023-2024 budget by appropriating and allocating certain monies (first budget amendment), first reading.
6. Consideration of City Council Flag Program nominee, Earl Johnson. (Deputy Mayor Felix) (AGENDA REVISION)
7. Consideration of a Ground Lease Agreement with Verizon Wireless for a new telecommunications tower at Fred Poppe Regional Park.
8. Consideration of a Transportation Improvement Cost Allocation Agreement with Pulte Home Company, LLC, for development project 'Lipscomb Street PUD'.
9. Consideration of three (3) new full-time equivalent (FTE) positions for a Grants Manager, Records Specialist, and NPDES Coordinator within the Public Works Department (\$172,485 for the remainder of Fiscal Year 2024).
10. Consideration of reclassifying the Secretary position within the Parks and Facilities Department from part-time to full-time.
11. Consideration of utilizing Stormwater Utility Funds to budget for culvert pipe replacement at Yukon Street NE and Melbourne Tillman Water Control District C-50 canal (\$100,000 (Project 24SU09)).
12. Acknowledgement of the City's monthly financial report for September 2023 (Unaudited).

PUBLIC HEARINGS:

1. Ordinance 2023-106, rezoning property located south of and adjacent to Alcantarra Street, in the vicinity between Calcutta and Chamberlin Avenues, from RS-2 (Single-Family Residential District) and SRE (Suburban Residential Estate Category) to RR (Rural Residential District) (10.58 acres) (Case Z23-00013, Michael and Rebecca Crews), final reading. (Quasi-Judicial Proceeding)
2. Ordinance 2023-107, rezoning property located west of and adjacent to Glenham Drive, in the vicinity south of Palm Bay Road, from RS-1 (Single-Family Residential District) to RS-2 (Single-Family Residential District) (15.53 acres) (Case Z23-00014, SKA Properties, LLC), final reading. (Quasi-Judicial Proceeding)
3. Ordinance 2023-109, rezoning property located south of and adjacent to Malabar Road, in the vicinity west of Melbourne Tillman Drainage District Canal 7, from AU (Agricultural Residential) (Brevard County) to CC (Community Commercial District) (6.00 acres) (Case CPZ23-00009, Diaz Treasures, LLC), final reading. (Quasi-Judicial Proceeding)
4. Resolution 2024-01, granting a conditional use to allow retail automotive gas/fuel sales in CC (Community Commercial District) zoning on property located south of and adjacent to Malabar Road, in the vicinities west of Melbourne Tillman Drainage District Canal 7 and south of St.

Johns Heritage Parkway. (6.00 acres) (Case CU23-00012, Diaz Treasures, LLC). (Quasi-Judicial Proceeding)

5. Ordinance 2023-111, rezoning property located south of and adjacent to Malabar Road, in the vicinity southwest of St. Johns Heritage Parkway and west of Melbourne Tillman Drainage District Canal 7, from AU (Agricultural Residential) (Brevard County) to CC (Community Commercial District) (13.05 acres) (Case CPZ23-00011, City of Palm Bay), final reading. (Quasi-Judicial Proceeding)
6. Ordinance 2023-114, amending the Code of Ordinances, by creating a new Chapter 71, to be titled 'School Zone Speed Infractions', final reading; authorize the establishment of a speed detection system on roadways maintained as school zones within the City.
7. Ordinance 2023-115, amending the Code of Ordinances, Chapter 185, Zoning Code, Subchapter 'Planned Unit Development (PUD)', by modifying the timelines related to preliminary development plan submittals (Case T23-00028, City of Palm Bay), final reading.
8. Ordinance 2023-116, amending the Code of Ordinances, Chapter 184, Subdivisions, by modifying the process for submission of preliminary and final plat applications (Case T23-00029, City of Palm Bay), final reading.
9. Consideration of a Settlement Agreement and Release of Claims with FAR Research, Inc. and MLEF2-1, LLC.

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA:

UNFINISHED AND OLD BUSINESS:

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

NEW BUSINESS:

1. Consideration of councilmembers attending the Florida League of Cities Leadership Inaugural Class in Kissimmee, February 9, 2024.

COUNCIL REPORTS:

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: 1/4/2024

RE: Adoption of Minutes: Meeting 2023-31; December 14, 2023.

ATTACHMENTS:

Description

Minutes - SCM 2023-31

CITY OF PALM BAY, FLORIDA

SPECIAL COUNCIL MEETING 2023-31

Held on Thursday, the 14th day of December 2023, 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 5:31 P.M.

ROLL CALL:

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

BUSINESS:

1. Consideration of Memorandums of Understanding with the International Association of Fire Fighters (IAFF) regarding out of contract increases and bonuses for paramedics and non-paramedics.

Staff Recommendation: Approve the allocation of funding in the amount of \$840,000 for one-time Paramedic, non-Paramedic, and hiring bonuses.

Richard Stover, Fire Chief, and members of IAFF, responded to questions posed by councilmembers.

Mr. Foster suggested that the paramedic incentive pay be increased from \$12,500 to \$13,500. Ms. Sherman suggested that Council approve as is and modify, if needed, in the future. Council concurred.

Motion by Mr. Johnson, seconded by Deputy Mayor Felix, to approve the allocation of funding in the amount of \$840,000 for one-time Paramedic, non-Paramedic, and hiring bonuses. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea.

ADJOURNMENT:

There being no further business, the meeting adjourned at the hour of 5:54 P.M.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK



LEGISLATIVE MEMORANDUM

DATE: 1/4/2024

RE: Adoption of Minutes: Meeting 2023-32; December 14, 2023.

ATTACHMENTS:

Description

Minutes - SCM 2023-32

CITY OF PALM BAY, FLORIDA

SPECIAL COUNCIL MEETING 2023-32

Held on Thursday, the 14th day of December 2023, 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 6:01 P.M.

ROLL CALL:

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

Councilman Foster attended the meeting via teleconference.

Also present was 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. Flachmeier v. City of Palm Bay, Case 05-2021-CA-021271.

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 6:25 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: Greg Minor, Parks & Facilities; George Barber, Chief Procurement Officer

DATE: 1/4/2024

RE: Award of Bid: Construction of Building E, City Hall Campus – IFB 01-0-2024 – Parks and Facilities Department (W&J Construction Corp. - \$15,028,033).

Background:

The approved Contractor will complete the construction of a three-story, 38,611 SF office building on the existing City of Palm Bay municipal campus, located at 120 Malabar Rd, SE. The building shall house the Building, Utilities, and Information Technology Departments. Additionally, the building will provide space for a City Emergency Operations Center (EOC).

Procurement Process:

Prequalification Solicitation

On April 28, 2023 the City of Palm Bay solicited for Construction of Building E Prequalification pursuant to Section 38.13(B)(1) of the City Code of Ordinances. On June 6, 2023 the City received three (3) prequalification submittals. All three firms were unanimously determined to be qualified to submit a bid for the construction of Building E. All three firms were approved by Council at the 7/6/2023 City Council Meeting.

Construction Solicitation

On September 29, 2023, the City of Palm Bay solicited for the Construction of Building E, where only the three pre-qualified firms would be allowed to view and submit bids. On December 12, the Procurement Department received bids from all three firms. The Procurement Department staff reviewed the bids for responsiveness. The Parks & Facilities Department evaluated the bids for responsibility and ability to perform the identified scope of services. The Department reviewed the pay items, proposed subcontractors and is satisfied with the evidence provided by the lowest most responsive and responsible bidder.

Staff recommends W & J Construction Corp of Rockledge, Florida for the award of IFB # 01-0-2024/SZ, Construction of Building E.

REQUESTING DEPARTMENT:

Parks and Facilities, Procurement

FISCAL IMPACT:

The estimated budget for this project was \$16,519,379. Total project award will be \$15,028,033.00. Funds are available in ARPA and Building Department accounts, #128-34143-559-6201, \$9,156,336 and, account #451-3120-524-6201 \$5,871,697, project 20BD01.

RECOMMENDATION:

Motion to approve project award to W & J Construction Corp of Rockledge, Florida for award of IFB # 01-0-2024/SZ, Construction of Building E in the amount of \$15,028,033 from the two designated accounts above.

ATTACHMENTS:

Description

Tabulation Sheet



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Greg Minor, Parks & Facilities Department Director; George Barber, Chief Procurement Officer

DATE: 1/4/2024

RE: Award of Bid: General construction services – IFB 06-0-2024 – Parks and Facilities Department (Multiple Vendors – \$250,000 (estimated annual expenditure)).

On October 13, 2023, the Procurement Department issued a solicitation on behalf of the Parks and Facilities Department for "General Construction Services". The intent of this solicitation is to outsource minor renovation and construction projects to supplement City Staff. The services shall include small to medium renovation and construction projects which may utilize several trades. The City anticipates spending about \$250,000 annually for these services. The City intends to award to a pool of contractors.

For projects less than \$25,000, City staff will choose any one of the awarded contractors to perform the work. The chosen contractor will be provided the Scope of Work and a deadline to return the quote. Site visits will be scheduled as necessary. Contractor will provide a quote and a schedule via return email to perform the work using hourly rates, material markup and other costs as agreed to on the contractor's contract price schedule. No invoices will be paid unless material, labor and appropriate markups are broken out separately on the invoice.

For projects over \$25,000 and less than \$99,999.00, City staff will provide the Scope of Work and a deadline for all quotes to be received to all awarded contractors. The low quote submitted will be awarded that project. Pricing received after the quote deadline will not be considered.

On November 7, 2023, eight bids were received. The Procurement Department staff reviewed the bids for responsiveness. Parks & Facilities Department evaluated the bids for responsibility and ability to perform the scope of services/provide the services specified.

Staff recommends award of IFB #06-0-2024/SZ to all eight contractors: A1A Builders of Florida, Inc. of Melbourne Beach, FL; Dane Contracting, Inc. of Palm Bay, FL; Done Right Contracting, LLC of Palm Bay, FL; FSV Construction Company of Miami, FL; Jim's Complete Construction, LLC of St. Cloud, FL; Lawson Masonry & Construction Co., Inc. of Titusville, FL; MGM Contracting, Inc. of Cocoa, FL and Universal Contracting and Construction, Inc. of Melbourne, FL.

REQUESTING DEPARTMENT:

FISCAL IMPACT:

The estimated annual expenditure is \$250,000. Charges for these expenditures will be posted to department accounts in which the work takes place.

RECOMMENDATION:

Motion to approve award of IFB #06-0-2024/SZ, General Construction Services to all eight contractors: A1A Builders of Florida, Inc., Dane Contracting, Inc., Done Right Contracting, LLC, FSV Construction Company, Jim's Complete Construction, LLC, Lawson Masonry & Construction Co., Inc., MGM Contracting, Inc., and Universal Contracting and Construction, Inc.. Council approval is requested to establish a one-year term contract, renewable by the Procurement Department for four (4) additional 1-year terms.

ATTACHMENTS:

Description

Tabulation Sheet

	IFB #06-0-2024/SZ General Contractor Services	A1A Builders of Florida, Inc.	Dane Contracting, Inc.	Done Right Contracting, LLC	FSV Construction Company	Jim's Complete Construction, LLC	Lawson Masonry & Construction Co., Inc.	MGM Contracting, Inc.	Universal Contracting and Construction, Inc.
		5255 Palm Dr.	2680 Kirby Cir. NE	1950 Palm Bay Rd. NE	8163 NW 60th St.	1031 Exchange Pl. Suite 109	1190 Queen St.	1121 Peachtree St.	9075 Ellis Rd.
		Melbourne Beach, FL 32951	Palm Bay, FL 32905	Palm Bay, FL 32905	Miami, FL 33166	Saint Cloud, FL 34769	Titusville, FL 32780	Cocoa, FL 32922	Melbourne, FL 32904
		321-389-7457	321-768-1361	321-952-0505	407-733-0401	407-593-8550	321-267-5143	321-639-6365	321-508-4444
		A1Abuildit@gmail.com	danecontracting@cfl.rr.com	craig@donerightcontracting.com	info@fsvconstruction.com	info@ccservicepros.com	lawsonmasonry@gmail.com	mqmmark@cfl.rr.com	jasonwadsworth@gmail.com
ITEM	ITEM DESCRIPTION	Standard hourly rate 7:30 am -4:30 pm	Standard hourly rate 7:30 am -4:30 pm	Standard hourly rate 7:30 am -4:30 pm	Standard hourly rate 7:30 am -4:30 pm	Standard hourly rate 7:30 am -4:30 pm	Standard hourly rate 7:30 am -4:30 pm	Standard hourly rate 7:30 am -4:30 pm	Standard hourly rate 7:30 am -4:30 pm
1	Foreman	\$89.00	\$45.00	\$80.00	\$65.00	\$65.00	\$40.00	\$90.00	\$62.00
2	Journeyman	\$85.00	\$40.00	\$110.00	\$60.00	\$60.00	\$40.00	\$78.00	\$50.00
3	Licensed / Certified HVAC	\$148.00	\$90.00	No Bid	\$80.00	\$80.00	\$40.00	\$250.00	No Bid
4	Licensed / Certified Plumber	\$145.00	\$98.00	No Bid	\$80.00	\$80.00	\$40.00	\$250.00	No Bid
5	Licensed / Certified Electrician	\$155.00	\$85.00	\$110.00	\$80.00	\$100.00	\$40.00	\$250.00	No Bid
6	Helper / Laborer	\$42.00	\$28.00	\$55.00	\$38.00	\$40.00	\$30.00	\$48.00	\$35.00
7	Project Manager	\$89.00	\$80.00	\$140.00	\$70.00	\$45.00	\$75.00	\$144.00	\$85.00
8	Estimator	\$55.00	\$50.00	\$100.00	\$62.00	\$45.00	\$40.00	\$120.00	\$60.00
9	Equipment Operator	\$125.00	\$75.00	\$80.00	\$45.00	\$45.00	\$40.00	\$84.00	\$50.00
10	Carpenter	\$85.00	\$40.00	\$80.00	\$45.00	\$45.00	\$75.00	\$50.00	\$70.00
11	Roofer	\$75.00	\$40.00	No Bid	\$42.00	\$80.00	\$40.00	\$90.00	No Bid
12	Painter	\$75.00	\$32.00	\$80.00	\$40.00	\$40.00	\$40.00	\$40.00	\$35.00
13	Percentage Markup % (NTE 15%)	4.8%	15%	15%	15%	10%	15%	15%	15%



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Larry Wojciechowski, Finance Director

DATE: 1/4/2024

RE: Ordinance 2024-01, amending the Fiscal Year 2023-2024 budget by appropriating and allocating certain monies (first budget amendment), first reading.

Summary of the proposed budget amendment:

General Fund (001)

Revenues – Total \$1,545,048

- Recognize additional FY 2024 State-Shared revenues published by the Florida Department of Revenue's Office of Tax Research at a 96.0% collection rate – \$983,630.
- Recognize the Florida Inland Navigation District (FIND) Waterway Assistance Program (WAP) Agreement for continued improvements to the Castaways Point Park project (22PK12) – a matching grant of 50.0% not to exceed \$100,000; approved by City Council 10/19/2023 - \$100,000.
- Recognize the Florida Department of Transportation (FDOT) "Know Your Limits" grant; approved by City Council 10/19/2023 - \$48,000.
- Recognize Florida Department of Transportation (FDOT) grant funding received through the Ped-Bike Program; approved by City Council 09/07/2023 - \$47,450.
- Recognize the Bureau of Justice Assistance (BJA) FY 2023 Edward Byrne Memorial Justice Assistant Grant (JAG); approved by City Council 10/19/2023 - \$34,713.
- Recognize the Victims of Crime Act 2023-2024 (FY 2024) Grant award; funding utilized to offset personnel costs for one (1) Victim Advocate position and one (1) Senior Victim Advocate position - \$59,910.
- Recognize insurance proceeds from Moving Targets at the Police Gun Range; equipment was damaged due to a lightning strike - \$121,345.
- Recognize the Department of Justice (DOJ) FY 2023 CPD De-Escalation Grant award; approved by City Council 12/07/2023 - \$150,000.

Expenditures – Total \$8,938,395

- Appropriate additional training & travel funding for Deputy City Manager, Joan Junkala-Brown, for travel to Washington D.C. to meet with U.S. Senate Representatives to discuss the City's 2024-2025 Federal Legislative Priorities; approved by City Council 12/07/2023 – \$990.
- Appropriate additional funding for Professional Auditing Services for MSL, P.A. through RFP 48-0-2023 for General Government \$7,557 and Housing \$8; approved by City Council 10/05/2023 – Net Impact \$7,565.
- Appropriate funding to the Growth Management (GM) Department and Public Works (PW) Department as follows; approved by City Council 12/07/2023 – Total Impact \$210,687.

GM – Outsource Planning & Engineering Reviews – \$100,000

PW – Outsource Planning & Engineering Reviews – \$100,000

GM – Additional Funding for Rental Costs for Folding Machine – \$2,187

GM – Additional Funding for Postage & Freight (Fire Inspection Code Compliance Cases) – \$7,000

GM – Funding for Beautify Palm Bay Cleanup – \$1,500

- Appropriate funding to purchase one (1) Code Compliance vehicle replacement \$30,000 and fund training and travel for the Florida Association of Code Enforcement (FACE) conference \$8,000; approved by City Council 11/02/2023 - \$38,000.
- Appropriate funding to the Growth Management Department – Land Development Division Office Space Expansion; approved by City Council 11/14/2023 - \$22,156.
- Appropriate additional funding for Clerk of Courts filing costs for further action on property foreclosures, demolition of vacant/uninhabitable homes, and nuisance property clean-up; approved by City Council 10/19/2023 - \$37,500.
- Fund the Storage Area Network/SANs project (24IT04) as follows (SANs solution approaching end-of-life and has reached storage capacity); approved by City Council 11/02/2023 – Net Impact \$87,001.

Undesignated Fund Balance portion - \$87,001

Transferring (\$108,700) from the Cybersecurity project (22IT03) to the SANs solution project \$108,700 – Net Impact \$0

- Appropriate the Florida Inland Navigation District (FIND) Waterway Assistance Program (WAP) Agreement funding to the Castaways Point Park project (22PK12) \$100,000; in addition, appropriate the required 50.0% city match, not to exceed \$100,000 – Total Impact \$200,000.
- Appropriate funding to the Lagoon House Shoreline Stabilization project (24PK28) – Task Order 23-COPB-Q07; approved by City Council 10/19/2023 - \$38,165.
- Appropriate Florida Department of Transportation (FDOT) grant funding received through the Ped-Bike Program towards Police Personnel Service costs including Overtime Salary and Social Security/Medicare; approved by City Council 09/07/2023 - \$47,450.
- Allocate additional funding towards the purchase of six (6) Police CSU vehicles and one (1) K9 SUV; approved by City Council 12/07/2023 - \$301,685.
- Appropriate the Department of Justice (DOJ) FY 2023 CPD De-Escalation Grant award towards the purchase of a Virtual Reality (VR) Training System; approved by City Council 12/07/2023 - \$150,000.
- Re-allocate Police DNA Service funding (\$14,000) to the replacement purchase of one (1) refrigerated evidence storage unit \$14,000; approved by City Council 10/05/2023 – Net Impact \$0.
- Appropriate the Florida Department of Transportation (FDOT) “Know Your Limits” grant funding towards Overtime Salary and Speed Measurement Devices; approved by City Council 10/19/2023 - \$48,000.
- Appropriate the Bureau of Justice Assistance (BJA) FY 2023 Edward Byrne Memorial Justice Assistant Grant (JAG) towards the purchase of Police rifles to complete the replacement of the currently issued DRMO rifles; approved by City Council 10/19/2023 - \$34,713.
- Appropriate funding received via insurance proceeds for Moving Targets at the Police Gun Range; equipment was damaged due to a lightning strike - \$121,345.
- Appropriate funding for the following additional citywide funding requests approved by City Council 09/07/2023 – Total Impact \$6,496,285

Department	Request	Amount
City Manager's Office	Assistant City Manager	\$60,000
Procurement	Administrative Assistant	\$73,588
Information Technology	Rugged Laptops Storage Area Network (SAN) Citywide Access Control	\$596,050
Community & Economic Development (CED)	Veterans Service Officer – Brevard County Agreement	\$100,000
Recreation	Position Reclassification of Part-Time to Full-Time Recreation Leader	\$56,233
Parks & Facilities	Scoreboard – Lynbrook & Fred Poppe Regional Park Fred Lee Tennis Court Replacements	\$1,036,160

	Fred Poppe Regional Park Playground Equipment Replacement Three (3) Truck Replacements One (1) Van	
Police	27 Marked Patrol Replacements Five (5) Admin SUVs Five (5) Unmarked Sedans One (1) Unmarked K9 SUV FARO Livescan Fingerprint Flock Increase	\$2,555,635
Fire	P25 Radio Replacements Air Bottle/Pack Replacements Ladder 7 Equipment Package FS #1 Rebuild – Air Filler Station Thermal Image Camera Replacement Air Pack Cert. Machine Replacement HAS Monitor Replacements Class B Foam Replacement EMS Training Fire Command Staff Salary Adjustments	\$1,628,119
Public Works	Traffic Signal Respans Two (2) Asphalt Roller Replacements One (1) Truck Replacement One (1) Flatbed Replacement Two (2) Zero Turn Mower Replacements	\$390,500

- Appropriate funding for the Memorandum of Understanding (MOU) with the International Association of Fire Fighters (IAFF) regarding out of contract increases and bonuses for paramedics and non-paramedics; approved by City Council 12/14/2023 - \$840,000.
- Per the additional citywide funding requests approved by City Council 09/07/2023, transfer cash from the General Fund (001) to the Building Fund (451) for the purchase of seven (7) vehicles - \$110,332.
- Unspent FY 2023 Approved Fund Re-appropriations Not Rolled to FY 2024: Police Department – Total Impact \$71,500.
 - SWAT Drones (Approved Budget) - \$19,500
 - SWAT Rifles (Budget Transfer #97 Utilizing Savings) - \$52,000
- Unspent FY 2023 Approved Fund Re-appropriations Not Rolled to FY 2024: Public Works Department – Total Impact \$64,114.
 - Fleet Tag/Title for Information Technology Vehicle (Approved Budget) - \$164
 - NAGE Contract Personnel Increases (Budget Amendment #3) - \$27,334
 - Survey Truck (Approved Budget, Budget Transfer #14 & #86, Budget Amendment #3) - \$12,616
 - Operations Supervisor Truck (Budget Transfer #126 Utilizing Savings) - \$24,000
- Approved Budget Correction: Remove the 10.0% General Fund (001) personnel service cost budget for the

Assistant Community & Economics Development (CED) Director position; this position is fully grant funded and the 10.0% allocation should have been budgeted in the SHIP Fund (111) – (\$13,113).

- Approved Budget/Account Correction: Fiber Optics Expansion project (24IT02); transfer approved funding of \$264,000 from Operating Accounts to 6337-Capital Account/Fiber Optics – Net Impact \$0.
- Budget Correction: Appropriate funding to the Compound Analysis Project (23ED02); FY 2023 Budget Transfer was missed and budget did not roll to FY 2023 - \$23,000.
- Close Housing NSP Project (09CD03) – (\$1,533).
- Appropriate funding from vending machine revenue (through Undesignated Fund Balance) to city-wide General Fund departments to utilize towards 2023 departmental holiday events based on active FTE count – Net Impact \$2,044.
- Transfer available Community & Economics Development (CED) operating funds from the Economic Development account (\$30,444) to Operating Supplies \$1,904 and Capital Machinery and Equipment \$28,540 to support the previously City Council approved purchase of two (2) CRU Golf Carts for the Police Department on 05/18/2023. Initial purchase was expensed to the CDBG Fund (112); however, items are no longer HUD eligible – Net Impact \$0.
- Transfer funding to the Utilities Operating Fund (421) from vending machine revenue (through Undesignated Fund Balance) to utilize towards 2023 departmental holiday events based on active FTE count – \$417.
- Transfer funding to the Building Fund (451) from vending machine revenue (through Undesignated Fund Balance) to utilize towards 2023 departmental holiday events based on active FTE count – \$92.

Law Enforcement Trust Fund (101)

Expenditures – Total \$69,800

- LETF 24-01: Appropriate funding for legal fees/forfeiture costs \$5,000; bank fees \$500; and the December 2023 Reindeer Run \$9,300; approved by City Council 11/14/2023 – Total Impact \$14,800.
- Unspent FY 2023 Approved Fund Re-appropriations Not Rolled to FY 2024: Police Department – Total Impact \$55,000.

LETF 23-05: Crash Data Retrieval Tool (Budget Amendment #4) - \$55,000

Code Nuisance Fund (105)

Expenditures – Total \$96,000

- Appropriate additional funding for further action on property foreclosures, demolition of vacant/uninhabitable homes, and nuisance property clean-up; approved by City Council 10/19/2023 - \$96,000.

SHIP Fund (111)

Expenditures – Total (\$215,751)

- Approved Budget Correction: Appropriate the 10.0% SHIP Fund (111) personnel service cost budget for the Assistant Community & Economics Development (CED) Director position as this position is fully grant funded; in error, this 10.0% allocation was budgeted in the General Fund (001) – \$13,113.
- Close the following SHIP Rehab projects – Total Impact (\$228,864)
 - 3270 Haddon Avenue NE (23CD26) – (\$75,000)
 - Delmedico 825 Damask NE (22CD29) – (\$4,767)
 - Schmitt 285 Alcanara NE (22CD30) – (\$36,048)
 - Lock 836 Serenade St NW (22CD31) – (\$1,679)
 - Snow 366 Evergreen St NE (22CD32) – (\$3,800)
 - Drennen 1648 Elmhurst SE (22CD33) – (\$25,950)
 - SHIP-Rehab-Owner Occupied (22CD35) – (\$600)
 - Shafer 807 American Blvd (22CD36) – (\$31,927)
 - O'Conner 713 Coconut St (22CD40) – (\$17,796)
 - 1445 Malibu Circle #106 NE (22CD43) – (\$31,297)

CDBG Program Fund (112)

Expenditures – Total (\$143,829)

- Remove funding for the Police Department CRU Golf Carts (project 23PD04) as equipment is no longer HUD eligible; close project upon completion – (\$49,000).
- Close the following CDBG Program projects – Total Impact (\$94,829)

Uncommitted & Available Funds (14CDBG) – (\$90,898)
Liberty Parks Upgrades (22CD38) – (\$74)
Liberia Park Benches (23CD07) – (\$3,857)

HOME Fund (114)

Expenditures – Total (\$9,368)

- Due to an increase in construction costs, appropriate additional funding to the Community Housing Initiative project (22CD07) for the construction of four (4) affordable housing units; approved by City Council 11/04/2023 – \$85,953.
- Close Homes for Warriors project (14CDBG) – (\$95,321).

NSP Program Fund (123)

Expenditures – Total (\$528)

- Close Homes for Warriors project (14CDBG) – (\$528).

CDBG CV-Coronavirus Fund (126)

Expenditures – Total (\$52,001)

- Close the FY 19-20 CDBG-CV Sharing project (22CD15) – (\$52,001).

ARPA Fund (128)

Expenditures – Total \$420,000

- Unspent FY 2023 Approved Fund Re-appropriations Not Rolled to FY 2024: Community & Economic Development – Housing Division – Total Impact \$420,000.
Utility Hook-Up Assistance (Budget Amendment #2) - \$420,000

Police Impact Fee Fund – Nexus 32907 (183)

Expenditures – Total \$120,000

- Appropriate funding for the expansion of the vehicle and equipment storage at the Police Main Station and Police Range (project 24PD04); approved by City Council 10/05/2023 - \$120,000.

Police Impact Fee Fund – Nexus 32908 (184)

Expenditures – Total \$254,635

- Appropriate funding for one (1) Carport for Range Facility heavy equipment and vehicles (project 24PD05); approved by City Council 10/05/2023 - \$50,000.
- Appropriate funding for the purchase of two (2) Marked Patrol SUVs and one (1) Marked Training Truck for newly onboarded Police Officer positions in FY 2024; approved by City Council 10/05/2023 – Total Impact \$191,635.
- Appropriate funding for the purchase of one (1) Radar Trailers; approved by City Council 11/14/2023 - \$13,000.

Police Impact Fee Fund – Nexus 32909 (186)

Expenditures – Total \$357,650

- Appropriate funding for the purchase of four (4) Marked Patrol SUVs and one (1) Unmarked Traffic SUV for newly onboarded Police Officer positions in FY 2024; approved by City Council 10/05/2023 – Total Impact \$344,650.
- Appropriate funding for the purchase of one (1) Radar Trailers; approved by City Council 11/14/2023 - \$13,000.

Fire Impact Fee Fund – Nexus 32907 (188)

Expenditures – Total \$54,700

- Appropriate additional funding to the following Brush Truck projects to reach 100.0% readiness status; approved by City Council 10/19/2023 – Total Impact \$50,000.
Brush Truck Station #2 (22FD06) - \$40,000
Brush Truck Station #5 – High Water (22FD07) - \$10,000
- Unspent FY 2023 Approved Fund Re-appropriations Not Rolled to FY 2024: Fire Department – Total Impact

\$4,700.

Bunker Gear & Protective Equipment (Budget Amendment #5) - \$4,700

Fire Impact Fee Fund – Nexus 32908 (189)

Expenditures – Total \$50,000

- Appropriate additional funding to the following Brush Truck projects to reach 100.0% readiness status; approved by City Council 10/19/2023 – Total Impact \$50,000.

Brush Truck Station #6 (22FD01) - \$10,000

Brush Truck Station #2 (22FD06) - \$40,000

Fire Impact Fee Fund – Nexus 32909 (190)

Expenditures – Total \$245,000

- Appropriate additional funding to the following Brush Truck projects to reach 100.0% readiness status; approved by City Council 10/19/2023 – Total Impact \$245,000.

Brush Truck Station #6 (22FD01) - \$10,000

Brush Truck Station #2 (22FD06) - \$40,000

Brush Truck Station #5 – High Water (22FD07) - \$10,000

Brush Truck Station #4 (22FD08) - \$185,000

Parks Impact Fee Fund – Nexus 32907 (192)

Expenditures – Total (\$527,926)

- Close the Campground @ Palm Bay Regional Parks project (16PK08) – (\$527,926).

Parks Impact Fee Fund – Nexus 32908 (193)

Expenditures – Total (\$462,637)

- Close the Campground @ Palm Bay Regional Parks project (16PK08) – (\$462,637).

Community Investment Fund (301)

Revenues – Total \$1,250,000

- Recognize Florida Department of Law Enforcement (FDLE) state appropriations for the Police Range Training Facility project (24PD06); approved by City Council 09/21/2023 – \$1,250,000.

Expenditures – Total (\$981,692)

- Assign Florida Department of Law Enforcement (FDLE) state appropriation funding to the Police Range Training Facility project (24PD06) for planning, engineering, and construction of the multi-purpose training facility; approved by City Council 09/21/2023 – \$1,250,000.

- Close the Campground @ Palm Bay Regional Parks project (16PK08) – (\$2,231,692).

2019 G.O. Road Bond Fund (309)

Expenditures – Total \$2,400,000

- Open and allocate funding to the following G.O. Road Program projects; approved by City Council 09/19/2023 – \$2,400,000.

Minto Road Paving (project 24GO10) - \$1,200,000

Waco Road Paving (project 24GO11) - \$1,200,000

Utilities Operating Fund (421)

Revenues – Total \$13,610

- Transfer from the General Fund (001) - vending machine revenue to utilize towards 2023 departmental holiday events based on active FTE count – \$417.

- Recognize FEMA Public Assistance (PA) Reimbursement – Hurricane Ian for Fence Damage Repairs (Removal & Install) - \$13,193.

Expenditures – Total \$1,132,085

- Appropriate vending machine revenue to utilize towards 2023 departmental holiday events based on active FTE count – \$417.

- Appropriate additional funding for Professional Auditing Services for MSL, P.A. through RFP 48-0-2023; approved by City Council 10/05/2023 – Net Impact \$2,428.

- Close the South Regional Water Reclamation Facility (SRWRF) Sludge Dewatering Facility project (23WS06) – (\$250,000).
- Appropriate funding for Spent Lime Removal; approved by City Council 10/19/2023 - \$75,000.
- Appropriate funding for Task Order 23-15-WT for contractual services assisting with Lead and Copper Rule (LCR) requirements; approved by City Council 11/14/2023 - \$302,840.
- Approved Budget Correction: Fund the Utility's portion of the Fiber Optics Expansion project (24IT02) - \$1,001,400.

Utilities Connection Fee Fund (423)

Expenditures – Total \$250,000

- Appropriate additional funding to the South Regional Water Reclamation Facility (SRWRF) expansion project (22WS14) for Task Order 23-13-WT for design and permitting services; approved by City Council 11/02/2023 - \$250,000.

Utilities Renewal & Replacement Fund (424)

Expenditures – Total (\$2,300,000)

- Reduce funding to the following projects – (\$2,300,000).
 - Lift Station RTU Replacement (18WS10) – (\$700,000)
 - Public Works Utility Relocation (19WS02) – (\$500,000)
 - Fire Hydrant Replacements (19WS13) – (\$150,000)
 - Sewer System Repair/Replacement (21WS07) – (\$800,000)
 - Dual Check Replacement Program (21WS18) – (\$150,000)

Utilities SRF Loan Fund (433)

Revenues – Total \$6,938,800

- Recognize additional State Revolving Fund (SRF) Loan proceeds to be allocated towards the construction of the South regional Water Reclamation Facility - \$6,938,800.

Expenditures – Total \$6,938,800

- Appropriate State Revolving Fund (SRF) Loan proceeds towards the construction of the South Regional Water Reclamation Facility (project 16WS05) - \$6,938,800.

Building Fund (451)

Revenues – Total \$110,424

- Per the additional citywide funding requests approved by City Council 09/07/2023, transfer cash from the General Fund (001) to the Building Fund (451) for the purchase of seven (7) vehicles - \$110,332.
- Transfer from the General Fund (001) - vending machine revenue to utilize towards 2023 departmental holiday events based on active FTE count – \$92.

Expenditures – Total \$581

- Appropriate additional funding for Professional Auditing Services for MSL, P.A. through RFP 48-0-2023; approved by City Council 10/05/2023 – Net Impact \$489.
- Appropriate vending machine revenue to utilize towards 2023 departmental holiday events based on active FTE count – \$92.

Stormwater Utility Fund (461)

Expenditures – Total \$1,278,433

- Appropriate additional funding for Professional Auditing Services for MSL, P.A. through RFP 48-0-2023; approved by City Council 10/05/2023 – Net Impact \$1,343.
- Appropriate additional funding to the Cured-In-Place Pipe project (22SU01) for extra footage and work plan adjustments; approved by City Council 11/02/2023 - \$114,720.
- Open the Highland @ C68 Pipe Replacement project (24SU08); approved by City Council 10/05/2023 - \$450,000.
- Unspent FY 2023 Approved Fund Re-appropriations Not Rolled to FY 2024: Public Works Department – Total Impact \$712,370.
 - Insurance Claims – 2004 CAT Loader (Budget Amendment #5) - \$73,947
 - Vacuum Truck Accessories (Budget Amendment #5) - \$35,000

Forestry Head (Budget Transfer #126 Utilizing Savings) - \$21,417
Zero-Turn Mower (Budget Transfer #126 Utilizing Savings) - \$15,000
Vacuum Truck (Budget Amendment #5) - \$506,483
Operations Utility Truck (Budget Amendment #5) - \$60,523

Solid Waste Fund (471)

Expenditures – Total \$1,175

- Appropriate additional funding for Professional Auditing Services for MSL, P.A. through RFP 48-0-2023; approved by City Council 10/05/2023 – Net Impact \$1,175.

Fleet Services Fund (521)

Expenditures – Total \$116,364

- Unspent FY 2023 Approved Fund Re-appropriations Not Rolled to FY 2024: Public Works Department – Total Impact \$116,364.

Insurance Claims – 2004 CAT Loader (Budget Amendment #4) - \$110,458
Auction Proceeds – Pool Vehicle Sale (Budget Amendment #4) - \$5,906

REQUESTING DEPARTMENT:

Finance

FISCAL IMPACT:

Please refer to Exhibit A for Fiscal Impact.

RECOMMENDATION:

Motion to adopt, by Ordinance, the FY 2024 First Budget Amendment.

ATTACHMENTS:

Description

Ordinance 2024-01

Exhibit A - FY 24 BA #1 Appropriations

ORDINANCE 2024-01

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE FISCAL YEAR 2024 BUDGET BY APPROPRIATING AND ALLOCATING FUNDS IDENTIFIED IN EXHIBIT 'A', CONSISTING OF FIVE (5) PAGES AND INCORPORATED IN ITS ENTIRETY HEREIN; RECOGNIZING THAT SUCH APPROPRIATIONS MUST BE MADE PURSUANT TO THE CODE OF ORDINANCES OF THE CITY OF PALM BAY, CHAPTER 35; ADOPTING, RATIFYING, CONFIRMING, AND VALIDATING THE ALLOCATIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Bay recognizes that non-budgeted items must be appropriated and that such appropriation must be allocated by Ordinance, and

WHEREAS, transfers between funds and departments must be approved by City Council, and

WHEREAS, Chapter 35, Finance, Budget, Section 35.035, of the City of Palm Bay Code of Ordinances, provides for the transfer of funds and appropriation of unbudgeted funds.

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, in accordance with the City of Palm Bay, Code of Ordinances, Chapter 35, Finance, Budget, Section 35.035, hereby appropriates the funds as identified in Exhibit 'A'.

SECTION 2. The City Council adopts, ratifies, and approves the appropriations as identified in Exhibit 'A'.

SECTION 3. The provisions within this Ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2024-XX, held on _____, 2024; and
read in title only and duly enacted at Meeting 2024-XX, held on _____, 2024.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

	Revenues	Expenditures
General Fund (001)		
FY 2024 State-Shared @ 96.0% Collection	983,630	
FIND WAP Agreement - Castaways Point Park (22PK12)	100,000	200,000
FDOT "Know Your Limits" Grant - Police Overtime Salary & Speed Measurement Devices	48,000	48,000
BJA FY 2023 JAG Grant - Police Rifle Purchase	34,713	34,713
VOCA 2023-2024 Grant	59,910	
FDOT Ped-Bike Program - Police Overtime Salary & Social Security/Medicare	47,450	47,450
Insurance Proceeds - Police Gun Range Moving Target Replacements	121,345	121,345
Deputy City Manager Training & Travel - Washington D.C.		990
Additional Funding Professional Auditing Services for MSL, P.A		7,565
One (1) Code Compliance Replacement Vehicle		30,000
Code Compliance FACE Conference/Training & Travel		8,000
Growth Management - Land Development Division Office Space Expansion		22,156
Clerk of Courts Fees - Nuisance Property Foreclosures		37,500
Storage Area Network/SANs Project (24IT04)		87,001
Lagoon House Shoreline Stabilization Project (24PK28)		38,165
Re-allocation of DNA Service Funding (\$14,000) Towards One (1) Refrigerated Evidence Storage Unit \$14,000		0
Additional Citywide Funding Requests - City Manager's Office		60,000
Additional Citywide Funding Requests - Procurement		73,588
Additional Citywide Funding Requests - IT		596,050
Additional Citywide Funding Requests - CED		100,000
Additional Citywide Funding Requests - Recreation		56,233
Additional Citywide Funding Requests - Parks & Facilities		1,036,160
Additional Citywide Funding Requests - Police		2,555,635
Additional Citywide Funding Requests - Fire		1,628,119
Additional Citywide Funding Requests - Public Works		390,500
Additional Citywide Funding Requests - Transfer Cash to the Building Fund (451) for the Purchase of Seven (7) Vehicles		110,332
IAFF MOU - Out of Contract Increases & Bonuses		840,000
FY 2023 Unspent Fund Re-Appropriation - Police		71,500
FY 2023 Unspent Fund Re-Appropriation - Public Works		64,114
Budget Correction - Asst. CED Director Personnel Cost Split		(13,113)
Budget Correction - Compound Analysis Project (23ED02)		23,000
Budget/Account Correction - Fiber Optics Expansion (24IT02) - Transfer Budget From Operating to Capital		0
Close Housing NSP Project (09CD03)		(1,533)
Vending Machine Revenue - 2023 Departmental Holiday Events		2,044
Re-allocation of Economic Development Funding (\$30,444) to Support the Purchase of Two (2) Police Department CRU Golf Carts (project 23PD04) \$30,444		0
Vending Machine Revenue - 2023 Departmental Holiday Events - Transfer to the Utilities Operating Fund (421)		417
Vending Machine Revenue - 2023 Departmental Holiday Events - Transfer to the Building Fund (451)		92
DOJ 2023 CPD De-Escalation Grant Award for Virtual Reality (VR) Training System	150,000	150,000

	Revenues	Expenditures
Growth Management & Public Works - Outsource Planning & Engineering Reviews		200,000
Growth Management - Folding Machine Rental Costs, Fire Inspection Code Compliance Case Postage & Freight, Beautify Palm Bay Clean-up		10,687
Additional Funding for Six (6) Police CSU Vehicles & One (1) K9 SUV		301,685
Undesignated Fund Balance	7,393,347	
Fund Subtotal	8,938,395	8,938,395
LETF Fund (101)		
FY 2023 Unspent Fund Re-Appropriation - Police/LETF 23-05		55,000
LETF 24-01 - Legal/Forfeiture Fees; Bank Fees & December 2023 Reindeer Run		14,800
Undesignated Fund Balance	69,800	
Fund Subtotal	69,800	69,800
Code Nuisance Fund (105)		
Additional Funding Nuisance Property Violations		96,000
Reserves		(96,000)
Fund Subtotal	0	0
SHIP Fund (111)		
Budget Correction - Asst. CED Director Personnel Cost Split		13,113
Close SHIP Rehab Projects		(228,864)
Undesignated Fund Balance	(215,751)	
Fund Subtotal	(215,751)	(215,751)
CDBG Fund (112)		
Remove Funding & Close Police Department CRU Golf Carts (project 23PD04)		(49,000)
Close CDBG Program Projects		(94,829)
Reserves		143,829
Fund Subtotal	0	0
HOME Fund (114)		
Additional Funding for the Community Housing Initiative Project (22CD07)		85,953
Close Homes for Warriors project (14CDBG)		(95,321)
Undesignated Fund Balance	(9,368)	
Fund Subtotal	(9,368)	(9,368)
NSP Fund (123)		
Close Homes for Warriors project (14CDBG)		(528)
Undesignated Fund Balance	(528)	
Fund Subtotal	(528)	(528)
CDBG CV-Coronavirus Fund (126)		
Close FY 19-20 CDBG-CV Sharing project (22CD15)		(52,001)
Undesignated Fund Balance	(52,001)	
Fund Subtotal	(52,001)	(52,001)

	Revenues	Expenditures
ARPA Fund (128)		
FY 2023 Unspent Fund Re-Appropriation - Housing/Utility		
Hook-Ups		420,000
Undesignated Fund Balance	420,000	
Fund Subtotal	420,000	420,000
Police Impact Fee Fund – Nexus 32907 (183)		
Expansion of Vehicle Storage @ Main Station & Range (project 24PD04)		120,000
Reserves		(120,000)
Fund Subtotal	0	0
Police Impact Fee Fund – Nexus 32908 (184)		
One (1) Carport for Range Facility (24PD05)		50,000
Two (2) Marked Police Vehicles & One (1) Marked Training Truck		191,635
Two (2) Radar Trailers		13,000
Reserves		(254,635)
Fund Subtotal	0	0
Police Impact Fee Fund – Nexus 32909 (186)		
Four (4) Marked Police Vehicles & One (1) Unmarked Traffic SUV		344,650
Two (2) Radar Trailers		13,000
Reserves		(357,650)
Fund Subtotal	0	0
Fire Impact Fee Fund – Nexus 32907 (188)		
FY 2023 Unspent Fund Re-Appropriation - Fire/Bunker Gear & Protective Equipment		4,700
Additional Funding - Brush Trucks Completion		50,000
Reserves		(54,700)
Fund Subtotal	0	0
Fire Impact Fee Fund – Nexus 32908 (189)		
Additional Funding - Brush Trucks Completion		50,000
Reserves		(50,000)
Fund Subtotal	0	0
Fire Impact Fee Fund – Nexus 32908 (190)		
Additional Funding - Brush Trucks Completion		245,000
Reserves		(245,000)
Fund Subtotal	0	0
Parks Impact Fee Fund – Nexus 32907 (192)		
Close Campground @ Palm Bay Regional Parks project (16PK08)		(527,926)
Reserves		527,926
Fund Subtotal	0	0

	Revenues	Expenditures
Parks Impact Fee Fund – Nexus 32908 (193)		
Close Campground @ Palm Bay Regional Parks project (16PK08)		(462,637)
Reserves		462,637
Fund Subtotal	0	0
Community Investment Fund (301)		
FDLE State Appropriations for the Police Range Training Facility Project (24PD06)	1,250,000	1,250,000
Close Campground @ Palm Bay Regional Parks project (16PK08)		(2,231,692)
Reserves		2,231,692
Fund Subtotal	1,250,000	1,250,000
2019 G.O. Road Bond Fund (Fund 309)		
Minto Road Paving (project 24GO10)		1,200,000
Waco Road Paving (project 24GO11)		1,200,000
Undesignated Fund Balance	2,400,000	
Fund Subtotal	2,400,000	2,400,000
Utilities Operating Fund (421)		
Vending Machine Revenue - 2023 Departmental Holiday Events - Transfer from the General Fund (001)	417	417
FEMA (PA) Reimbursement - Fence Damage	13,193	
Additional Funding Professional Auditing Services for MSL, P.A		2,428
Close the SRWRF Sludge Dewatering Facility Project (23WS06)		(250,000)
Spent Lime Removal		75,000
Task Order 23-15-WT for Contractual Services Sssisting with Lead & Copper Rule (LCR) Requirements		302,840
Budget Correction - Fiber Optics Expansion Project (24IT02)		1,001,400
Undesignated Fund Balance	1,118,475	
Fund Subtotal	1,132,085	1,132,085
Utilities Connection Fee Fund (423)		
Additional Funding for the South Regional Water Reclamation Facility (SRWRF) Expansion Project (22WS14)		250,000
Undesignated Fund Balance	250,000	
Fund Subtotal	250,000	250,000
Utilities Renewal & Replacement Fund (424)		
Reduce Funding - Lift Station RTU Replacement (18WS10)		(700,000)
Reduce Funding - Public Works Utility Relocation (19WS02)		(500,000)
Reduce Funding - Fire Hydrant Replacements (19WS13)		(150,000)
Reduce Funding - Sewer System Repair/Replacement (21WS07)		(800,000)
Reduce Funding - Dual Check Replacement Program (21WS18)		(150,000)
Undesignated Fund Balance	(2,300,000)	
Fund Subtotal	(2,300,000)	(2,300,000)

	Revenues	Expenditures
Utilities SRF Fund (433)		
State Revolving Fund (SRF) Loan proceeds for the South Regional Water Reclamation Facility Construction Project (16WS05)	6,938,800	6,938,800
Fund Subtotal	6,938,800	6,938,800
Building Fund (451)		
Additional Citywide Funding Requests - Transfer Cash to the Building Fund (451) for the Purchase of Seven (7) Vehicles	110,332	
Vending Machine Revenue - 2023 Departmental Holiday Events - Transfer from the General Fund (001)	92	92
Additional Funding Professional Auditing Services for MSL, P.A		489
Reserves		109,843
Fund Subtotal	110,424	110,424
Stormwater Utility Fund (461)		
Additional Funding Professional Auditing Services for MSL, P.A		1,343
FY 2023 Unspent Fund Re-Appropriation - Public Works		712,370
Additional Funding Cured In Place Pipe Project (22SU01)		114,720
Highland @ C68 Pipe Replacement project (24SU08)		450,000
Undesignated Fund Balance	1,278,433	
Fund Subtotal	1,278,433	1,278,433
Solid Waste Fund (471)		
Additional Funding Professional Auditing Services for MSL, P.A		1,175
Undesignated Fund Balance	1,175	
Fund Subtotal	1,175	1,175
Fleet Services Fund (521)		
FY 2023 Unspent Fund Re-Appropriation - Public Works		116,364
Reserves		(116,364)
Fund Subtotal	0	0
Total	20,211,464	20,211,464



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

DATE: 1/4/2024

RE: Consideration of City Council Flag Program nominee, Earl Johnson. (Deputy Mayor Felix)
(AGENDA REVISION)

>REVISED<

The approval criteria for the City Council Flag Program was established at the July 7, 2022 Regular Council Meeting. The program allows for each member of Council to nominate up to three (3) individuals from the stated categories of first responders, military personnel, veterans, and those that have served and lived in the community. The nomination could be active, retired, or deceased individuals. The flag will be raised at City Hall and flown for one day or less. At the end of the time, the flag will be lowered, folded, and be given to the individual or family members along with a certificate with the dates that the flag was raised. This Program will run once a year and will be reviewed and considered annually. All flags purchased must be made in America.

All nominees will be submitted for consideration to the City Council for a vote at a Regular Council meeting.

Deputy Mayor Donny Felix has nominated Earl Johnson, to be a recipient of the Flag Program. >Mr. Johnson is submitted under the category of Veteran, which is further defined as: nominee shall be a veteran as defined under Title 38 U.S.C 101 (2), an individual who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable. DD Form 214 shall be provided for proof of veteran status.

Staff has received and reviewed the DD Form 214 and confirmed veteran status and honorable discharge. Mr. Johnson served this country from 1968 to 1991 active duty in the U.S. Air Force. During his years of service, he was stationed in more than 10 different countries. After retiring from active duty, he returned as Air Force civilian service management. Mr. Johnson's combined years of service to the Air Force, both active duty and civilian, total 55 years of loyal service. Mr. Johnson was known as "Earl the Pearl" and retired in December 2023. He also has been an active member of the Greater Allen Chapel AME church for decades, and today he continues to serve his community in this way.

For these reasons, Earl Johnson is recommended for approval as a City of Palm Bay Flag Program recipient.<

REQUESTING DEPARTMENT:
City Manager's Office, Legislative

RECOMMENDATION:

Motion to approve Earl Johnson as a nominee for the City Council Flag Program.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Juliet Misconi, Deputy City Manager

DATE: 1/4/2024

RE: Consideration of a Ground Lease Agreement with Verizon Wireless for a new telecommunications tower at Fred Poppe Regional Park.

The City has various ground leases for telecommunications equipment on City property at multiple locations. The City Manager's Office and City Attorney have negotiated a lease agreement with Verizon wireless for 10,000 square feet of ground space to install a telecommunications tower. The location is adjacent to the Parks & Facilities maintenance facility at Fred Poppe Regional Park. The agreement is effective for five years and has four (4) five-year renewal periods, which is industry standard. Rent is \$25,000 per year in monthly installments, with a \$2,000 lump sum payment from execution of the agreement until tower construction.

The lessee is still responsible for obtaining all regulatory and statutory approvals, including all site plan submittal and approval requirements through the City's Growth Management process. The lessee understands the City will not countersign the agreement until those approvals are obtained, but requires a fully executed agreement prior to any work done onsite. As such, Council's approval is requested for the City Manager to execute the agreement, pending those conditions.

REQUESTING DEPARTMENT:

City Manager's Office, City Attorney's Office

FISCAL IMPACT:

Upon execution of the agreement, funds received will be deposited in the General Fund Revenue account for property leases.

RECOMMENDATION:

Motion to approve a Ground Lease Agreement with Verizon Wireless for a New Telecommunications Tower at Fred Poppe Regional Park and allow the City Manager to execute the agreement.

ATTACHMENTS:

Description

Fred Poppe Regional Park Ground Lease

GROUND LEASE AGREEMENT

This Ground Lease Agreement (the "Agreement") is made by and between City of Palm Bay, a municipality incorporated under the laws of Florida, with its principal offices at 120 Malabar Road SE, Palm Bay, FL 32907 ("CITY"), and Cellco Partnership, a Delaware general partnership d/b/a Verizon Wireless with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("LESSEE"). CITY and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WITNESSETH

Whereas, the CITY owns that certain plot, parcel or tract of CITY land (hereinafter referred to as the "**Property**") more particularly described on Exhibit A attached hereto and incorporated herein by reference. The address of the Property is 370 Championship Circle West, Palm Bay, Brevard County, Florida;

Whereas, LESSEE desires to operate at the Property in connection with its federally licensed communications business and therefore would like to enter into a lease with the CITY for the use of the Property;

Whereas, this Agreement serves a public purpose as LESSEE's communication's equipment is instrumental in providing telecommunications service to a significant portion of the population in this area and the LESSEE'S rental payments provide a source of revenue to the CITY.

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I. DEFINITIONS

For all purposes of this Agreement, each of the following terms shall have the meaning set out or referred to below.

"Base Rent" – As defined in Paragraph 4.1.

"Business Hours" – Monday through Friday from 8:00 a.m. to 5:00 p.m., e.s.t. and, specifically excluding any national and other holidays when the City of Palm Bay is not open for business to the general public.

"Claim" and "Claims" – all demands, claims, and causes of action, lawsuits, complaints, counterclaims, cross-claims, third party complaints, administrative actions, regulatory actions, code board and other governmental actions, arbitration and all other proceedings.

"Claim Notice Period" – five (5) Business Days from the delivery of the Claim Notice.

"Indemnified Party" and "Indemnitee" – the Party that is entitled to or is seeking or otherwise entitled to be indemnified under this Agreement.

"Indemnifying Party" and "Indemnitor" – the Party that has the obligation or purportedly has the duty to indemnify the other Party under the terms of this Agreement.

“Legal Requirements” – (a) all local, state and federal laws, orders and regulations applicable to the Premises and the Property and use of the Premises and the Property and the health and welfare of LESSEE’s employees, invitees, licensees or customers (b) any easements, agreements, restrictions and recorded matters affecting or Relating To the Premises, and (c) all agreements entered into by City and LESSEE with regard to the Premises, including LESSEE’s insurance policies, and all requirements under the policy.

“Relating To” and “Relate To” – by reason; based on; in connection with; to enforce; to interpret; relating to; arising from; pertaining to; for; and words of similar meaning.

"Removal Period"- At the expiration or termination of the Agreement, the LESSEE shall have ninety (90) days to remove improvements and return the Premises to their original condition, ordinary wear and tear and casualty damage excepted.

“Third Party” – a Person that is not a Party to this Agreement.

“Third Party Claim” – any Claim asserted, filed, and prosecuted, by any Third Party that may result in a Loss to a Party to this Agreement.

“Third Party Offer” – a settlement offer from the Third Party “Relating To” the Third Party Claim.

ARTICLE II. PREMISES

2.1 Grant. The CITY hereby grants to the LESSEE:

- a) The right to use approximately 10,000 square feet of ground space ("Land Space") as described in Exhibit B attached hereto and incorporated herein by reference, for the placement of LESSEE’s communications equipment; and
- b) LESSEE shall have the non-exclusive right of pedestrian and vehicular access to and from the Premises, from a public right-of-way, using the access way designated by the CITY or a public road (“Access Route”). Such Access Route is described in Exhibit B attached hereto. LESSEE may also use the Access Route for the installation, operation and maintenance of wires, cables, conduits and pipes for all necessary electrical, telephone, fiber and other similar support services (collectively, the “Support Services”) as deemed necessary or appropriate by LESSEE for the operation of its communications equipment; and
- c) The “Premises” shall include the Land Space and the Access Route; and
- d) The LESSEE shall abide by all terms and conditions set forth in this Agreement.

2.2 Site Plan. Exhibit C shall include a detailed site plan and a tower elevation. LESSEE shall obtain CITY’s prior written consent before LESSEE installs any additional structures, buildings, or fencing within the Land Space beyond what is depicted in Exhibit C. The same information shall be provided to the CITY as an amendment to the Agreement, if:

- a. The LESSEE is extending or replacing an existing or prior Agreement with this Agreement.
- b. The LESSEE desires to amend the LESSEE’s Land Space and/or Access Route.

The parties agree that the CITY's execution of this Agreement shall indicate its approval of LESSEE's survey, site plan, and tower elevation attached hereto.

2.3 Limitation on Installation of Equipment. LESSEE's installation of LESSEE's equipment on the Property shall be limited to the Premises, and LESSEE shall not have the right to use the CITY's equipment or other portions of the Property.

2.4 Ownership of Improvements. LESSEE's communications equipment, including the tower structure, antennas, conduits, fencing and other screening, and other improvements shall be at LESSEE's expense. LESSEE shall have the right to replace, repair, add to or otherwise modify its communications equipment and antennas on the tower, conduits, and the frequencies over which LESSEE's communications equipment operates. LESSEE shall only be required to obtain CITY consent for (a) modifications that increase the size of the Land Space and/or Access Route or (b) the installation of any additional structures, buildings, or fencing within the Land Space beyond what is depicted in Exhibit C. CITY shall respond in writing to any LESSEE consent request within thirty (30) days of receipt or CITY's consent shall be deemed granted.

ARTICLE III. TERM

3.1 Effective Date and Commencement of the Term. This Agreement shall be effective as of the date of execution by both Parties ("Effective Date"). The initial term of the Agreement shall be for a period of five (5) years, beginning on the first day of the month following the earlier of (a) the date LESSEE commences installation of its equipment at the Premises or (b) the date that is nine (9) months after the Effective Date (the "Commencement Date"). The parties agree to acknowledge the Commencement Date in writing, including electronic mail.

3.2 Renewal Option. While this Agreement is in full force and effect, and provided that LESSEE is not in default of any of the terms, covenants and conditions, and has notified CITY of LESSEE's desire to renew the Agreement, LESSEE shall have the right to extend the Initial Term of this Agreement for four (4) renewal periods of five (5) years each (the "Renewal Periods"). In the event LESSEE desires to exercise its right or option to renew or extend the Initial Term of this Agreement, as provided in this Article, LESSEE shall deliver to CITY, no later than ninety (90) days prior to the last day of the Initial Term, and if applicable, the last day of the then-current Renewal Period, written notice of LESSEE's election ("Renewal Notice") to exercise its right to extend the term of the Agreement. LESSEE's failure to provide such Renewal Notice shall automatically be deemed as a waiver of LESSEE's right to extend the term of this Agreement. In the event that LESSEE exercises its option to extend the Initial Term or any Renewal Period of this Agreement, all terms and provisions of this Agreement with all Base Rent adjustments shall remain in full force and effect.

ARTICLE IV. RENT

4.1 Rental Fees. LESSEE shall pay rent during the term of this Agreement to CITY as follows:

a. Beginning on the Commencement Date, LESSEE agrees to pay Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) annually to CITY (the "Base Rent"). Base Rent payments shall be due in equal monthly installments on the first day of the month, in advance, to CITY at 120 Malabar Road, SE, Palm Bay, FL 32907, Attn. Finance, or to such other person, firm, or place as CITY may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment due date by notice given in accordance with Paragraph 18.1 below. Notwithstanding anything contained herein to the contrary, initial Base Rent payments shall be delivered by LESSEE no later than sixty (60) days after the Commencement

Date. Upon agreement of the Parties, LESSEE may pay Base Rent by electronic funds transfer and in such event, CITY agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE.

b. Base Rent to be paid to CITY shall be paid in legal tender, without counterclaim, set off or deduction of any kind or nature whatsoever (except as otherwise stated in this Agreement) and without notice or demand.

c. Payment made more than thirty (30) calendar days after the date due shall be subject to a One Hundred and 00/100 Dollar (\$100.00) late fee.

d. Base rent shall automatically be increased by four percent (4%) at the beginning of any Option Period.

e. As additional consideration for this Agreement, LESSEE shall pay CITY a one-time, non-refundable, lump-sum signing bonus of Two Thousand and 00/100 Dollars (\$2,000.00), which shall be considered as "additional rent" for the Premises for the period beginning on the date of this Agreement until the Commencement Date, which shall be paid within sixty (60) days after the Effective Date. CITY recognizes that Paragraph 3.1 of this Agreement governs the Commencement Date and that this Paragraph 4(e) does not impact whether or not LESSEE chooses to commence the term of this Agreement.

f. Any modification that results in the expansion of the Land Space or Access Route shall result in an increase to the Base Rent, which shall be proportionate to the additional space being added to the Land Space or Access Route.

ARTICLE V. TAXES AND FEES

5.1 Taxes.

a. CITY shall invoice and LESSEE shall pay any applicable transaction tax (including sales, use, gross receipts, or excise tax) imposed on the LESSEE and required to be collected by the CITY based on any service, rental space, or equipment provided by the CITY to the LESSEE. LESSEE shall pay all personal property taxes, fees, assessments, or other taxes and charges imposed by any Government Entity (as defined below) that are imposed on the LESSEE and required to be paid by the LESSEE that are directly attributable to the LESSEE's equipment or LESSEE's use and occupancy of the Premises. Payment shall be made by LESSEE within sixty (60) days after presentation of a received bill and/or assessment notice which is the basis for such taxes or charges. CITY shall pay all ad valorem, personal property, real estate, sales and use taxes, fees, assessments or other taxes or charges that are attributable to CITY's Property or any portion thereof imposed by any Government Entity.

b. LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. CITY shall reasonably cooperate with LESSEE at LESSEE's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by LESSEE, there is a reduction, credit or repayment received by the CITY for any taxes previously paid by LESSEE, CITY agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment. In the event that LESSEE does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this paragraph, CITY will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

ARTICLE VI. UTILITIES

- 6.1 Utilities. LESSEE shall arrange for its own utility services and fiber, either by agreement between LESSEE and existing user or users, or, if permitted by the local utility company servicing the Property, by obtaining a separate meter for electricity or other utilities which shall be billed to an account placed in LESSEE's name. LESSEE shall be responsible for paying for such account.
- 6.2 Temporary Power. LESSEE shall be permitted during the Term of this Agreement, to install, and maintain (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by the CITY. Such approval shall not be unreasonably withheld, conditioned or delayed. LESSEE shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.
- 6.3 Obstruction of Access Route. In the event any public utility is unable to use the Access Route for the installation of any Support Services, the CITY hereby agrees to grant an additional access route(s) which can be used for the installation of Support Services, either to LESSEE or to the public utility at no cost to LESSEE. CITY shall not incur any costs or expenses in granting any such additional access route(s).

ARTICLE VII. GOVERNMENT APPROVALS

- 7.1 GOVERNMENT APPROVALS. LESSEE's Use is contingent upon LESSEE obtaining all of the certificates, permits and other approvals (collectively, "Government Approvals") that may be required by any Federal, State or Local authorities (collectively, "Government Entities"). CITY shall cooperate with LESSEE in its effort to obtain and maintain any Government Approvals.

ARTICLE VIII. CONSTRUCTION OF IMPROVEMENTS.

- 8.1 Access. CITY agrees to allow LESSEE access to the Premises during ordinary business hours (8:00 a.m. - 5:00 p.m. Monday through Friday) for regular maintenance and repairs. In the event LESSEE needs access after ordinary business hours, neither LESSEE nor anyone acting on behalf of LESSEE shall commence any non-emergency work in or about the Premises without three (3) business days advance written notice to CITY. CITY agrees to allow LESSEE twenty-four (24) hours a day, seven (7) days a week access to the Premises for emergency work or repairs which do not require heavy equipment to be deployed.
- 8.2 Installation Timing. LESSEE's installation of communications equipment on the Premises shall be performed on dates and at times approved by the CITY in writing and shall not interrupt or interfere with the CITY's operation of the Property unless the CITY agrees to such interruption or interference. The CITY's approval of the dates/times shall not be unreasonably withheld or conditioned, and the CITY shall respond to any such request for dates/times within five (5) business days of receipt.
- 8.3 City Representative. The CITY shall have the right to have a representative present during the LESSEE's installation of LESSEE's equipment on the Premises.
- 8.4 Repair and Emergency Work. In the event of an unexpected repair or emergency, LESSEE may commence such repair and emergency response work as required under the circumstances, provided that LESSEE shall notify the CITY as promptly as possible before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable.

ARTICLE IX. CONDITION OF PROPERTY

9.1 Condition of Property. LESSEE has inspected and is familiar with the physical condition of the Property. LESSEE acknowledges and agrees that, except as provided in this Agreement, CITY makes no representation or warranty, express or implied, written or oral, with respect to the present physical or other condition of the Property, including, but not limited to, any of the following:

- a. The physical condition of the Property, including the environmental condition of the Property, unless described in this Agreement; and
- b. The suitability of the Property for the uses intended by LESSEE including, without limitation, any proposed construction upon the Property.

9.2 City's Knowledge of Toxic Substances. The CITY represents that it has no actual knowledge of any substance, chemical or waste (collectively, "substance") on the Property that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation.

ARTICLE X. TERMINATION

10.1 LESSEE's Right to Terminate. LESSEE may, unless otherwise stated, immediately terminate this Agreement upon written notice to CITY: (a) if any applications for such Government Approvals should be finally rejected; (b) if any Government Approval issued to LESSEE is canceled, expires, lapses or is otherwise withdrawn or terminated by any Government Entity; (c) if LESSEE determines that such Government Approvals may not be obtained in a timely manner; (d) if LESSEE determines any structural analysis is unsatisfactory; or (e) at any time before the Commencement Date for any reason or no reason in LESSEE's sole discretion. In addition, LESSEE may terminate this Agreement upon three (3) months' prior notice and the payment of an early termination fee equal to three (3) months' Base Rent, if LESSEE determines the Use of the Premises is obsolete or unnecessary. LESSEE shall not be entitled to a refund of any rents paid and must comply with the terms of the Agreement for removal of communications equipment or other improvements.

10.2 CITY's Right to Terminate. CITY may, unless otherwise stated, terminate this Agreement upon at least one (1) year's prior written notice to LESSEE, if (a) in CITY's sole discretion, LESSEE's use unreasonably interferes with any CITY equipment that is used to provide safety services to the community and that was installed on CITY's Property as of the Effective Date and (b) LESSEE is unable to cure such interference within sixty (60) days of notice, provided, however, that LESSEE shall have the right to place a temporary communications facility on the Property (at a location to be reasonably approved by CITY) to permit continuation of service for a period of up to two (2) years after the termination of the Agreement.

10.3 Termination upon Default. Either Party may terminate upon the default of the other Party as provided in Article XX of this Agreement.

ARTICLE XI. INDEMNIFICATION

11.1 INDEMNIFICATION. Except to the extent that any such claims are caused by negligence or willful misconduct of CITY or its employees, agents, or contractors, LESSEE shall defend, indemnify and hold harmless the CITY, against and from any and all claims asserted Relating To any one or more of the following: (a) LESSEE's entry on CITY's Property and any work conducted on the Property and LESSEE's lease, possession, and use of the Premises; (b) LESSEE's use and any activity conducted by the LESSEE or its employees, agents, or contractors in or about the Premises; (c) LESSEE's failure to comply

with any Legal Requirements Relating To the Premises and any other law, rule, regulation or order of any governmental authority; (d) LESSEE's Default as defined in this Agreement; (e) any hazardous substances and biologicals which are released, discharged, present or placed on, in, under or affecting all or any portion of the Property during the term of this Agreement, by LESSEE or any of LESSEE's employees, agents, contractors, and invitees; and (f) a material breach of any representation by LESSEE set forth in this Agreement. All indemnification obligations shall survive the termination or expiration of this Agreement.

11.2 THIS INDEMNIFICATION COVENANT SHALL APPLY TO ALL CLAIMS AND LOSSES ATTRIBUTABLE IN WHOLE OR PART TO LESSEE'S NEGLIGENT ACTS OR OMISSIONS.

11.3 Third Party Claim Procedures.

a. Claim Notice. The Party that first obtains notice of a Third-Party Claim subject to the indemnification covenants set forth in this Agreement shall use commercially reasonable efforts to deliver a Claim Notice to the other Party within ten (10) Business Days after such Party first obtains notice of the Third-Party Claim.

b. Indemnifying Party Notice. The Indemnifying Party shall either deliver an "Assumption Notice" or a "Dispute Notice" within the Claim Notice Period to the Indemnified Party.

c. Dispute Notice. If a Party disputes the other Party's claim for indemnification Relating To the Third-Party Claim, the Disputing Party shall use commercially reasonable efforts to deliver to the other Party a Dispute Notice within the Claim Notice Period.

d. Defending Party. Notwithstanding anything to the contrary, the purported Indemnified Party shall have the sole and absolute right to: (1) conduct the defense of the Third Party Claim; (2) choose the attorneys providing the legal representation; and (3) diligently prosecute the Third Party Claim to a final resolution. Notwithstanding the foregoing, if the CITY has the purported duty to indemnify the LESSEE under this Agreement and repudiates such duty in a written notice to LESSEE or fails to assume the defense of such Third Party Claim, then in such event, the LESSEE may proceed with: 1. the conduct the defense of the Third Party Claim; and 2. choose the attorneys providing the legal representation; and 3. diligently prosecute the Third Party Claim to a Final Resolution. Nothing in this Agreement shall be construed to be waiver of sovereign immunity by the CITY. [REVIEW OUR LANGUAGE]

e. Conduct of Defense. The Defending Party shall have the right to settle or otherwise defend the Third Party Claim to Final Resolution. The Defending Party shall keep the other Party reasonably informed of significant proceedings in the defense of the Third Party Claim, to the extent possible without waiving any attorney client privilege. The other Party may participate in, but not control, any defense of any Third-Party Claim, at the other Party's sole cost and expense. The Indemnifying Party shall advance and pay when due all attorney fees, expert's fees, and other costs and expenses incurred in defense of the Third Party Claim. All Parties shall cooperate with Defending Party and its attorneys in contesting any Third Party Claim, and in asserting defenses, and, if appropriate, asserting any cross-claims, third party actions and counterclaim(s).

f. Settlement Rights. In the event that the Defending Party receives a Third Party Offer or if the Defending Party intends to communicate a Defending Party Offer, in either

event, the Defending Party shall provide timely and prompt prior reasonable notice of the Third Party Offer or the Defending Party Offer, as applicable, to the other Party. In the event that an Assumption Notice has been timely delivered by the Indemnifying Party to the Indemnified Party, then in such event, any settlement of the Third Party Claim shall require the prior written approval of both the Indemnifying Party and the Indemnified Party. Notwithstanding anything to the contrary; however, in the event that the Defending Party desires to accept a Third Party Offer or communicate the Defending Party Offer, and the other Party does not agree to either the Defending Party Offer or to accept such Third Party Offer, then, in such event(s), the other Party shall be required to deposit with the attorneys of record for the Defending Party, funds in the amount equal to the "Loss Estimate." In the event that the other Party fails or refuses to escrow the "Loss Estimate" then, in such event, the Defending Party shall have the unilateral and absolute right to settle the Third Party Claim and seek recovery of the full indemnification Claims and Losses due from the other Party as provided in the Lease. Notwithstanding anything to the contrary, in the event that the Defending Party is also the Indemnifying Party, then in such event, the Defending Party shall have no right to settle the Third Party Claim unless the settlement is conditioned upon and the Defending Party pays the full settlement amount and the Indemnifying Party performs all covenants of the settlement without any cost or obligation to the Indemnified Party and the settlement agreement shall include a full and complete release of the Indemnified Party from the Third Party Claim and any final judgment. Additionally, notwithstanding anything to the contrary, the Defending Party shall not have the right to enter into any settlement of any Third Party Claim that would lead to Claim or Loss or create any financial or other obligation on the part of the Indemnified Party or which provides for injunctive or other equitable or non-monetary relief applicable to the Indemnified Party, or which does not include an unconditional release of the Indemnified Party.

g. Coverage Dispute. In the event of a Coverage Dispute, the Parties shall have the following rights and obligations. Both the LESSEE and the CITY may file an action, lawsuit or other proceeding as allowed by Florida law seeking a Final Resolution of the Coverage Dispute including without limitation a pleading seeking declaratory judgment under Chapter 86 Fla. Stat., to resolve the Coverage Dispute. If the Disputing Party has timely delivered a Dispute Notice to other Party within the Claim Notice Period and if such Coverage Dispute is resolved in favor of the Disputing Party by Final Resolution, then, in such event, the Disputing Party shall be entitled to recover and other Party shall pay all attorney fees and costs incurred by the Disputing Party in the Coverage Dispute and any Claim and Loss "Relating To" the Third Party Claim. If other Party claiming entitlement to indemnification is the prevailing party in the Coverage Dispute, then, in such event, other Party shall be entitled to recover and the Disputing Party shall pay to the other Party all reasonable attorney fees and costs incurred by the other Party Relating To the Coverage Dispute and all Claims and Losses incurred by other Party Relating To the Third Party Claim.

ARTICLE XII. INSURANCE

12.1 Insurance Requirements. LESSEE shall, as a condition precedent to use of the Premises, procure and maintain insurance of the types and to the limits specified below, at its own expense and without cost to the CITY. Upon receipt of notice from its insurer(s), LESSEE shall provide the CITY with thirty (30) days' advance written notice of cancellation of any required coverage. The certificate of insurance shall be mailed to the City of Palm Bay, 120 Malabar Rd. SE, Palm Bay FL 32907 and should reference this Agreement.

a. Commercial General Liability: \$3,000,000 per occurrence for bodily injury and property damage, and \$5,000,000 general aggregate including premises/operations, personal & advertising injury, products, completed operations, and contractual liability, including the indemnification and hold harmless clause of the contract. This policy of insurance shall be considered primary to and not contributing with any insurance maintained by the City of Palm Bay and shall include the City of Palm Bay as an additional insured as their interest may appear under this Agreement with waiver of subrogation noted on the Certificate of Liability. The policy of insurance shall be written on an "occurrence" form.

b. Commercial Automobile: minimum limits of liability of \$5,000,000.00 combined single limit each accident for bodily injury and property damage. This shall include coverage for:

1. Owned Automobiles
2. Hired Automobiles
3. Non-Owned Automobiles

c. Workers' Compensation: LESSEE shall provide and maintain workers' compensation insurance in compliance with the statutory requirements of the State of Florida. The policy must include Employers' Liability insurance with limits of:

1. Each Accident \$100,000
2. Disease – Policy Limit \$500,000
3. Disease – Each Employee \$100,000

LESSEE shall further insure that any sub-contractors maintain appropriate levels of workers' compensation insurance.

12.2 Deductible Clause. LESSEE will declare self-insured retention or deductible amounts.

12.3 Insurance Rating. All insurance carriers shall be rated (A) or better by the most recently published A.M. Best Rating Guide.

12.4 Waiver of Subrogation. CITY and LESSEE shall not be liable by way of subrogation or otherwise to each other (or to any insurance company insuring the other party) for any loss or damage to any property of the CITY and LESSEE as the case may be, covered by insurance to the extent of such insurance, even though such loss or damages might have been occasioned by the negligence of the CITY and LESSEE or their respective agents, employees, invitees or guests. This release shall be in effect only so long as the applicable insurance policy shall contain a clause or endorsement to the effect that the aforementioned waiver shall not affect the right of the insured to recover under such policy and each Party shall use its best efforts, including payment of any additional premiums, to have its insurance policy contain the standard waiver of subrogation clause. In the event CITY's or LESSEE's insurance carrier declines to include in such carrier's policy a standard waiver of subrogation clause CITY or LESSEE, as the case may be, shall promptly notify the other Party, in which event the other shall not be required to have its insurance policy contain such waiver of subrogation clause and this Paragraph shall be of no force and effect.

12.5 Limitation of Liability. Except for indemnification as provided in this Agreement, or a violation of law, neither Party shall be liable to the other, or any of their respective agents, representatives, or

employees for any lost revenue, lost profits, diminution in value of business, loss of technology, rights or services, loss of data, or interruption or loss of use of service, incidental, punitive, indirect, special, trebled, enhanced or consequential damages, even if advised of the possibility of such damages, whether such damages are claimed for breach of contract, tort (including negligence), strict liability or otherwise, unless applicable law forbids a waiver of such damages.

ARTICLE XIII. PERMITTED FREQUENCY AND INTERFERENCE

13.1 Authorized Frequencies. The LESSEE is only authorized to use its equipment to transmit and receive on the frequencies for which it is authorized to operate by the FCC. The LESSEE warrants and represents that LESSEE is licensed to transmit and receive such frequencies that it will use by the FCC. LESSEE shall notify CITY immediately upon any change in the status of its FCC Licenses applicable to the Property. LESSEE shall be permitted to transmit and receive frequencies as it needs, without CITY's approval, provided said alterations do not violate this Agreement. The LESSEE agrees to provide the CITY written notification of LESSEE's frequencies if requested by the CITY in order to resolve interference issues or issues related to public safety.

13.2 Non-exclusive Use. The CITY has or may enter into leases/agreement with other tenants/lessees for the installation and operation of their communications equipment. LESSEE acknowledges that the CITY is also leasing other portions of the Property to other tenants for the purpose of transmitting and receiving telecommunication signals.

13.3 Noninterference. LESSEE agrees that the installation, maintenance and operation of its communication equipment will not interfere with any equipment of the CITY or other lessees within the Property that existed as of the Effective Date of this Agreement so long as such existing users operate or continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. In the event LESSEE's installations interfere with such equipment, LESSEE will, upon written notice by the CITY staff or its designee, correct and eliminate such interference, including but not limited to, at LESSEE's option, powering down the interfering equipment and later powering up such equipment for intermittent testing. If the interference relates to the CITY's emergency operations, LESSEE shall immediately cease operating the interfering equipment upon written notice by the CITY's staff or its designee. If the interference relates to the public safety radio system, LESSEE will cease operating the interfering equipment within one (1) calendar day. If the interference relates to other operations, LESSEE will halt the interference within a reasonable period of time not more than ten (10) calendar days from the date of notification. LESSEE will not operate the interfering equipment until the interference has been cured to the reasonable satisfaction of CITY (except for intermittent testing). CITY shall not be permitted to terminate this Agreement for interference so long as LESSEE is diligently working to cure such interference.

13.4 Remedies to Interference. The CITY will not use, nor will the CITY permit its employees, tenants, invitees, or agents to use, any portion of the Property which interferes with LESSEE's communication equipment, the operations of LESSEE, or the rights of LESSEE under this Agreement unless such interference relates to a matter of emergency operations or public safety. The CITY will cause such interference to cease within twenty-four (24) hours after receipt of the written notice of interference from LESSEE unless such interference is otherwise justified based on a matter of emergency operations or public safety. In the event any such interference does not cease within the aforementioned cure period, then the parties acknowledge that LESSEE will have the right, with respect to interference caused by third party tenants/lessees (in addition to any other rights that it may have at law or in equity), to elect to enjoin such interference, or with respect to interference caused by CITY or third party tenants, to terminate this Agreement upon notice to the CITY.

13.5 Interference With City-owned Facilities. The primary use of the Property shall be for municipal purposes. LESSEE's use of the Premises shall not interfere or impede the CITY's use of the Property for municipal purposes. LESSEE agrees to eliminate any interference its operations causes to CITY-owned facilities on the Property at the expense of LESSEE and without installation of extra filters on CITY-owned equipment. The CITY agrees to work with LESSEE to try to resolve interference as may be received from CITY-operated telecommunications; however, if the interference cannot be resolved without affecting or impeding the purpose of the CITY's operations, either Party will be entitled to terminate this Agreement.

ARTICLE XIV. REMOVAL AT END OF TERM

14.1 Requirement to Remove Communications Equipment. Upon the expiration of the Removal Period, LESSEE shall remove LESSEE's Communications Equipment and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. CITY agrees and acknowledges that the communications equipment shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws.

ARTICLE XV. TRANSFER OF PROPERTY

15.1 Transfer of Property. In the event of any sale or transfer of the Premises, such sale or transfer shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE's rights under the terms of this Agreement. Provided that the purchaser or transferee assumes in writing all of the duties of the CITY under this Agreement, CITY shall be deemed released of all obligations, duties, and liabilities under this Agreement arising out of any act, occurrence or omission occurring after consummation of such sale or transfer; and the transferee shall be deemed, without any further modification of this Lease, to be CITY's successor in interest as to the benefits of this Agreement and to have assumed all of the duties of CITY as the named "CITY" under this Agreement.

ARTICLE XVI. QUIET ENJOYMENT

16.1 Quiet Enjoyment. CITY covenants that LESSEE, on paying the Base Rent and performing the covenants herein, shall peaceably and quietly have, hold, and enjoy the Premises. CITY represents and warrants to LESSEE as of the Effective Date and covenants during the Term that CITY has full authority to enter into and execute this Agreement and that there are no liens, judgments, covenants, easements, restrictions or other impediments of title that will adversely affect LESSEE's Use.

ARTICLE XVII. ASSIGNMENT

17.1 Assignment. Except for permitted assignments, LESSEE may not assign this Agreement, or any interest herein, or otherwise sell, transfer or convey any right, title or interest LESSEE may have in the Property, without the prior written consent of CITY. Any such assignment without the CITY's prior written consent shall be void and of no effect. If LESSEE intends to assign or sublease the Property, LESSEE shall deliver prior written notice and a request for approval to CITY within a reasonable time prior to the proposed commencement date of such sublease or assignment (the "LESSEE's Notice"). LESSEE's Notice shall set forth: (a) the name of the proposed assignee, (b) a copy of the proposed assignment; and (c) any other relevant information about the proposed assignee required by CITY. LESSEE is permitted to assign this Agreement, without prior consent, to (1) LESSEE's principal or any of its affiliates or subsidiaries or (2) any entity which acquires all or substantially all of LESSEE's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition, or other business reorganization. LESSEE may sublet the Premises in LESSEE's sole discretion.

ARTICLE XVIII. NOTICE

18.1 Notice. Except for notices pursuant to paragraphs 6.2, 8.4, and 13.4 which are permitted via electronic mail, all notices must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice).

CITY: City of Palm Bay, Florida
120 Malabar Road SE
Palm Bay, Florida 32907

With a Copy to: City Attorney
120 Malabar Road SE, Suite 201
Palm Bay, Florida 32907

LESSEE: Cellco Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

ARTICLE XIX. DEFAULT

19.1 LESSEE'S Default. It shall be a default of this Agreement by LESSEE if LESSEE:

- a. fails to make any payment required by this Agreement within fifteen (15) calendar days of the date payment is due;
- b. fails to maintain the required insurance coverage as provided in this Agreement;
- c. assigns, sublets or otherwise voluntarily transfers any interest in this Agreement except as approved in writing by the CITY and as provided in this Agreement;
- d. fails to comply with any other term of this Agreement and does not remedy the failure within 30 days after written notice by the CITY or, if the failure cannot reasonably be remedied in such time, if the LESSEE does not commence a remedy within the allotted 30 days and diligently pursue the cure to completion within 90 days after the initial written notice. The cure periods set forth in this Article do not extend the period of time LESSEE has to cure interference as provided in this Agreement or provide a greater time than expressly provided in any other Article of this Agreement.

19.2 CITY's Default. CITY shall not be in default unless CITY fails to perform a material obligation of CITY expressly provided in this Agreement, within thirty (30) business days after delivery of written notice by LESSEE to CITY, specifying in such notice how CITY has failed to perform such obligation and how such alleged default may be cured by CITY. If the nature of CITY's default is such that more than thirty (30) business days are required to cure such default, then, in such event, CITY shall not be in default if CITY commences performance within ten (10) business days of the receipt of written notice and thereafter

diligently pursues the same to completion. The cure periods set forth in this Article do not extend the period of time CITY has to cure interference as provided in this Agreement.

19.3 Remedies. In the event of a Default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Agreement and/or pursue any remedy available to the non-defaulting Party as provided under Florida law. Further, upon a Default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation. The reasonable costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon receipt of an itemized invoice. Nothing contained in this Article shall be deemed to require CITY to postpone filing a lawsuit until the date when this Agreement would have expired if it had not been terminated. Failure of CITY to declare any default immediately upon its occurrence, or delay in taking any action in connection with the default, shall not be deemed as a waiver by CITY of its rights under this Agreement.

ARTICLE XX. ENVIRONMENTAL

20.1 Environment, Health and Safety Laws. LESSEE shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety ("EH&S Laws"). LESSEE shall indemnify and hold harmless the CITY from claims to the extent resulting from LESSEE's violation of any applicable EH&S Laws or to the extent that LESSEE causes a release of any regulated substance to the environment. CITY shall indemnify and hold harmless LESSEE from all claims resulting from the CITY's violation of any applicable EH&S Laws or the CITY's release of any regulated substance to the environment. The Parties recognize that LESSEE is only leasing a small portion of the Property and that LESSEE shall not be responsible for any environmental condition or issue unless related to LESSEE's specific activities and responsibilities. In the event that LESSEE encounters any hazardous substances that do not result from its activities, LESSEE may notify CITY and seek to relocate its facilities to avoid such hazardous substances to a mutually agreeable location or, if LESSEE desires to remove at its own cost all or some the hazardous substances or materials (such as soil) containing those hazardous substances, CITY agrees to sign any necessary waste manifest associated with the removal, transportation and/or disposal of such substances.

ARTICLE XXI. CASUALTY

21.1 Casualty Damages. If a fire or other casualty damages the Property or the Premises to such an extent as to render the Property or Premises unusable by LESSEE in whole or in a substantial part, Base Rent shall abate until LESSEE'S use is restored. CITY shall have the option and may terminate this Agreement, without any liability to LESSEE, by giving written notice to LESSEE within sixty (60) days of the date of such damage or destruction (the "Damage Option Period") if: (a) the Premises are not capable of being restored to the condition existing prior to the casualty (the "Leased Condition") within six (6) months of such damage or destruction (the "Repair Period"), as determined by CITY in its sole discretion; or (b) if CITY determines in its sole discretion that the damage to Premises cannot be economically repaired to the Leased Condition in the Repair Period. If the CITY exercises its option to terminate this Agreement, then the effective date of such Agreement termination shall be the date of the occurrence of such damage or destruction, and the Parties shall be released from their obligations under this Agreement accruing after the termination date, except for such obligations expressly provided in this Agreement to survive termination.

21.2 Option to Terminate due to Casualty. LESSEE shall only have the option and right to terminate this Agreement, without any liability to CITY, by giving written notice to CITY within the "Damage Option Period" if the Premises are not capable of being restored to its "Leased Condition" within the "Repair Period," as determined by LESSEE in its reasonable discretion, and expressly provided that CITY notifies

LESSEE that CITY does not intend to repair the Premises or in the event that CITY fails to repair the Premises for use by LESSEE during the Repair Period. If LESSEE exercises its option to terminate this Agreement, then the effective date of such Lease termination shall be the date of the occurrence of such damage or destruction, and the Parties shall be released from their obligations under this Agreement accruing after the termination date, except for such obligations expressly provided in this Agreement to survive termination. In the event that LESSEE intends to exercise this option, then LESSEE shall have the obligation to provide prior written notice of termination to CITY within five (5) Business Days after delivery of notice from CITY or the expiration of the Repair Period, as applicable, time being of essence.

21.3 Casualty Due to LESSEE's Negligence. Notwithstanding anything to the contrary, if the damage, casualty or loss to the Property is caused by the negligence, fault, or any act or omission of LESSEE, or its employees, agents, or contractors to any degree, then in such event, there shall be no abatement of Base Rent or of any other amounts due under this Agreement, and LESSEE shall not have the right or option to terminate this Agreement as provided in this Article.

ARTICLE XXII. CONDEMNATION

22.1 Condemnation. If a condemnation of any portion of the Property or Premises impairs LESSEE's use of the Premises, LESSEE may terminate this Agreement. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to LESSEE's communications equipment, relocation costs and, specifically excluding loss of LESSEE's leasehold interest, any other damages LESSEE may incur as a result of any such condemnation.

ARTICLE XXIII. APPLICABLE LAWS

23.1 Applicable Laws. During the Term, CITY shall maintain and comply with all applicable laws governing the Property. LESSEE shall comply with all laws related to LESSEE'S use of the Premises and at LESSEE's sole cost and expense, comply with (a) all laws Relating To LESSEE's use of the Premises for telecommunications and (b) all building codes requiring modifications to the Premises due to improvements being made by LESSEE.

ARTICLE XXIV. HOLD OVER

24.1 Hold Over Tenancy. Upon the expiration of the Removal Period, LESSEE shall deliver possession of the Premises to CITY, in the same condition they were on the Effective Date of the Lease, except for reasonable wear and tear and LESSEE shall: (a) peacefully surrender and deliver up the Premises into the possession of CITY, in the same condition as of the Effective Date, ordinary wear and tear excepted; (b) remove all debris, waste, and signs placed in or about the Premises; (c) complete any necessary repairs at LESSEE's sole expense; and (d) if a memorandum was filed in the public records, LESSEE shall file a release. The Parties acknowledge and agree that Base Rent will continue to accrue during the Removal Period. If LESSEE remains in possession of the Premises or any part thereof, by failing to fulfill conditions (a) through (d) as identified above, after the expiration of the Removal Period without the express written consent of CITY, such holding over shall be deemed a "tenancy at sufferance"; and LESSEE shall pay to CITY monthly Base Rent in an amount equal to one hundred twenty five hundred (125%) percent of the Base Rent due for the last month immediately preceding the expiration or termination of the Agreement plus all other fees due under this Agreement, paid and upon the same terms set forth in this Agreement.

ARTICLE XXV. MISCELLANEOUS

25.1 Entire Agreement. This Agreement contains all agreements, promises and understandings between the CITY and the LESSEE regarding this transaction, and no oral agreement, promises or understandings shall

be binding upon either the CITY or the LESSEE in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, and such Party shall have the right to enforce such rights at any time. Except as expressly set forth in this Agreement, nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks or trade names of the other for any purpose whatsoever. CITY agrees to execute a Memorandum of this Agreement, which LESSEE may record with the appropriate recording officer. This Agreement may be executed in counterparts, including written and electronic forms. All executed counterparts shall constitute one Agreement, and each counterpart shall be deemed an original. All exhibits shall be incorporated into this Agreement. If there is a conflict between the exhibits and the words in this Agreement, the words in the Agreement shall take precedence over the exhibits. The titles, headings or captions and paragraphs in this Agreement are for convenience only and do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions and therefore shall not be considered in the interpretation, construction or application of this Agreement.

25.2 Signs. All signs or symbols placed on the Property by the LESSEE shall be subject to the prior written approval of the CITY which approval shall not be unreasonably withheld, delayed or conditioned. The LESSEE will not place any signs or symbols upon the Property which are visible to the public which could be construed or viewed as advertising. In the event the LESSEE shall place signs or symbols on the Property where they are visible from the street and not acceptable to the CITY, the CITY may demand the immediate removal of such signs or symbols, and the refusal of the LESSEE to comply with such demand within a period of five (5) business days will constitute a breach of this Agreement, thereby entitling the CITY to exercise any available legal remedy and to remove the sign or symbol.

a. Any signs placed upon the Property by LESSEE shall be removed at the termination of this Agreement, and LESSEE shall repair any resulting damage or injury to the Property. If such signs are not removed by LESSEE upon termination, then the CITY may remove the signs and repair any damage at LESSEE's expense.

b. Notwithstanding other provisions in this Article, any sign mandated by state or federal law or regulation will be approved by the CITY given reasonable size and dimension.

25.3 Dangerous Conditions, Authority for CITY to Abate. Whenever construction, installation, or excavation of communications equipment authorized by this Agreement has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public, street utilities, or the Property, the CITY may direct the LESSEE in writing, at the LESSEE's own expense, to take action to protect the public, adjacent public places, the Property, streets, utilities, and public ways. Such action may include compliance within a reasonable prescribed time.

In the event that the LESSEE fails or refuses to promptly take the actions directed by the CITY, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the CITY may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public right of ways, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the LESSEE shall be liable to the CITY for the reasonable costs to cure the condition. The provisions of this Article shall survive the expiration or termination of this Agreement.

25.4 E-Verify. In accordance with Chapter 448.095, Florida Statutes, LESSEE shall register and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the LESSEE during the term of this Agreement; and

- a. LESSEE shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Contract; and
- b. LESSEE agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the CITY consistent with the terms of the LESSEE's enrollment in the program. This includes maintaining a copy of proof of the LESSEE's and subcontractors' enrollment in the E-Verify Program.

25.5 Public Entity Crimes. Pursuant to Section 287.133 of the Florida Statutes, a person or affiliate who has been placed on the convicted vendor list (as those terms are defined in Section 287.133) following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

25.6 Scrutinized Companies. LESSEE certifies that it and its subcontractors, if any, are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the LESSEE or its subcontractors are found to have submitted a false certification; or if the LESSEE or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

If this Agreement is for more than one million dollars, LESSEE certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the LESSEE, its affiliates, or its subcontractors are found to have submitted false certification; or if the LESSEE, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the terms of the Contract.

LESSEE agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement. As provided in Section 287.135(8), Florida Statutes, if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

25.7 Foreign Disclosure Form. In order for the CITY to comply with Section 286.101, Florida Statutes, all prospective contractors seeking to contract with the CITY, where said contract has a value of \$100,000 or more must disclose to the CITY any foreign influence as shown in Exhibit D.

25.8 Public Records/Exemptions. In performance of this Agreement, LESSEE shall keep books, records, and accounts of all activities related to the Agreement, (and that LESSEE would otherwise keep in the

normal course of its business), in compliance with generally accepted accounting procedures. All documents, papers, books, records, and accounts made or received by LESSEE in conjunction with the Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative and shall be retained by LESSEE for a period of three (3) years after termination of this Agreement, unless such records are exempt from Section 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes. All records or documents created by LESSEE or provided to LESSEE by the CITY in connection with the activities or services provided herein are public records unless exempt/confidential and LESSEE agrees to comply with any request for such public records made in accordance with Chapter 119, Florida Statutes.

25.9 Severability. If any section, sentence, clause or phrase of this Agreement should be held to be invalid or unconstitutional by a court of competent jurisdiction, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement.

25.10 Merger/Modification. This Agreement constitutes the entire understanding and agreement between the parties as to the subject matter contained within and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Agreement. This Agreement may only be amended or modified by a written instrument duly executed by both parties.

25.11 Governing Law. This Agreement shall be governed, interpreted and construed according to the laws of the State of Florida without reference to its choice of law rules, and the ordinances of the City of Palm Bay.

25.12 Venue. Any action brought to enforce the terms or litigate the terms of this Agreement shall be brought in the venue of Brevard County, Florida. Any Federal action may only be initiated in the Middle District Court, Orlando Division.

25.13 Nonjury Trial. **THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY LAWSUIT OR OTHER PRECEEDING “RELATING TO” THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT AND ANY CLAIMS OR DEFENSES ASSERTING THAT THIS AGREEMENT IS VOID OR VOIDABLE.**

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the Parties have set their hands and affixed their respective seals the day and year first above written.

CITY:

City of Palm Bay, a municipality incorporated
under the laws of Florida

By: _____

Name: _____

Its: _____

Date: _____

LESSEE:

Cellco Partnership d/b/a Verizon Wireless

By: _____

Name: _____

Its: _____

Date: _____

LESSEE Site ID: Palm Bay Regional Park / [MGD ID]

EXHIBIT "A"

PROPERTY DESCRIPTION

[INSERT PRIOR TO EXECUTION]

LESSEE Site ID: Palm Bay Regional Park / [MGD ID]

EXHIBIT "B"

SURVEY OF THE PREMISES

[INSERT PRIOR TO EXECUTION]

EXHIBIT "C"

SITE PLAN AND TOWER ELEVATION

[INSERT PRIOR TO EXECUTION]



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Lisa Frazier, AICP, Growth Management Director; Valentino Perez, Public Works Director

DATE: 1/4/2024

RE: Consideration of a Transportation Improvement Cost Allocation Agreement with Pulte Home Company, LLC, for development project 'Lipscomb Street PUD'.

On July 6, 2023, the City Council adopted Ordinance 2023-31 granting Final Development Plan approval for a Planned Unit Development (PUD) totaling 24.56 acres known as 'Lipscomb Street PUD', comprising of 202 townhomes. The estimated Transportation Impact Fee is \$579,463.26.

The project is located along Lipscomb Street, a roadway for which the Traffic Impact Study noted existing deficiencies. The developer has agreed to contribute their proportionate fair share towards transportation improvements on Lipscomb Street and Palm Bay Road, to include widening of Lipscomb Street from Palm Bay Road to Tarpon Way to four lanes divided and widening of Palm Bay Road from Robert J. Conlan Blvd. to U.S. 1 to four lanes divided. The estimated proportionate share for these improvements totals \$270,216.42 payable to the City prior to Final Plat. The Preliminary Subdivision Plat/Plan was approved by City Council on October 19, 2023. The Final Subdivision Plat is expected to be presented to Planning & Zoning Board at the January 3, 2024 regular meeting, followed by first reading at the January 18, 2024 regular Council meeting. The developer is eligible for Transportation Impact Fee credits in an amount not to exceed the proportionate fair share of \$270,216.42. The remaining balance of Transportation Impact Fees for the project will be paid in accordance with City ordinances.

REQUESTING DEPARTMENT:

City Manager's Office, Growth Management, Public Works

FISCAL IMPACT:

The fiscal impact will include the payment of the proportionate fair share contribution of \$270,216.42 prior to final plat. The amount of the contribution will be paid and recorded in the appropriate Transportation Impact Fee account(s).

RECOMMENDATION:

Motion to approve the Transportation Improvement Cost Allocation Agreement between Pulte Home Company, LLC for development project 'Lipscomb Street PUD'.

ATTACHMENTS:

Description

PFS Cost Allocation Agreement (Pulte Home Company LLC)

After Recording Return to:
City of Palm Bay
Attn: City Clerk
120 Malabar Road SE
Palm Bay, Florida 32907

PULTE HOME COMPANY, LLC TRANSPORTATION IMPROVEMENT COST ALLOCATION AGREEMENT

THIS AGREEMENT ("Agreement") is entered into by and between Pulte Home Company, LLC, a foreign limited liability company ("Owner"), the record title property owner whose mailing address is 4901 Vineland Road, Suite 460, Orlando, Florida 32811, and the CITY OF PALM BAY, a Florida municipal corporation ("City") whose mailing address is 120 Malabar Road SE, Palm Bay, Florida 32907.

WHEREAS, Owner is the fee simple owner of that certain real property being approximately 24.56+/- acres in size, located in the City of Palm Bay along the east side of Lipscomb Street north of its intersection with Palm Bay Road, legally described to wit in Exhibit A attached hereto and incorporated herein;

WHEREAS, the City adopted the Lassiter Transportation Group ("LTG") Traffic Impact Study, dated October 2022, which provides the total buildout development will consist of a maximum of Two Hundred Two (202) townhome units, along with other amenities ("Project");

WHEREAS, the LTG Traffic Impact Study provided total trips, utilized by the City to calculate a proportionate fair share ("PFS") traffic analysis, attached hereto and incorporated herein as Exhibit B, dated November 15, 2023, for the total buildout of the Project offsite traffic improvements based upon a maximum buildout of 202 townhome units at Two Hundred Seventy Thousand Two Hundred Sixteen and 42/100 (\$270,216.42) Dollars;

WHEREAS, Owner agrees to place on deposit with the City cash funds to be used by the City for the improvements on Lipscomb Street and Palm Bay Road ("Improvements").

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. *Recitals.* The recitals set forth above are true and correct, form a material part of this Agreement, and are incorporated herein by reference.
2. *City Improvements.* For the purposes of this Agreement, the amount of \$270,216.42 ("Developer Funding") shall be paid to the City prior to the City's approval of a Final Plat for any phase associated with the Project. The City shall program the Developer Funding for the purposes of constructing the Improvements described in Table 1 below:

**PULTE HOME COMPANY, LLC TRANSPORTATION IMPROVEMENT
COST ALLOCATION AGREEMENT**

TABLE 1 – ROAD IMPROVEMENTS

Item	Location	Improvement	Proportionate Share Cost
1	Lipscomb Street from Palm Bay Road to Tarpon Way	Widening to 4 lanes divided	\$222,810.03
2	Palm Bay Road from Robert J. Conlan Blvd. to US 1	Widening to 4 lanes divided	47,406.39
		Lipscomb Street PUD total proportionate fair share (PFS) cost	\$270,216.42

Project description for the two transportation improvements required to be complete by the buildout year for the project of 2024 as provided by the October 2022 Traffic Study by LTG:

1. *Item 1 is the segment improvement of Lipscomb Street from Palm Bay Road to Tarpon to widen from 2 to 4 travel lanes divided roadway within the existing right of way.*
2. *Item 2 is the segment improvement of Palm Bay Road from RJ Conlan to US 1 to widen from 2 lanes to 4 travel lanes divided roadway within the existing right of way.*

- 2.1 Owner shall be entitled to City traffic impact fee credits, as prescribed in Section 171.31, Palm Bay Code of Ordinances, against the payment made as required by Paragraph 2 above.
- 2.2 Pursuant to Section 163.31801(5)(a), Florida Statutes, Owner shall receive a credit on a dollar-for-dollar basis for impact fees and other transportation concurrency mitigation requirements paid or payable in the future for the Project.
- 2.3 No additional traffic related obligations will be required from Developer to the City except as provided in this Agreement.
3. **Owner Acknowledgement/Waiver.** Owner acknowledges that it has no right to direct or claim a right to direct the application of Developer Funding to making any specific public roadway infrastructure improvements.
4. **Timing.** The parties agree that construction of the thoroughfare road improvements shall be constructed as determined by the City. Once payment is made to the City, Owner waives the right to request a return of the Developer Funds.
5. **Assignment of Impact Fee Credits by the Owner.** Any impact fee credits granted to Owner shall be freely assignable by the Owner, its successors or assigns, without limitation on the number of such credits that may be assigned and transferred from one entity to the next or the number of times such credits may be transferred. Any such assignment of impact fee credits shall be evidenced in writing and signed by the Assignee or holder of the impact fee credits and a copy of such assignment shall be provided to the City. The Parties agree that no impact fee credit may be used or applied to development outside the Project and no credit shall be greater than the fee imposed for the land development.

**PULTE HOME COMPANY, LLC TRANSPORTATION IMPROVEMENT
COST ALLOCATION AGREEMENT**

6. *Effective Date.* The effective date of this Agreement shall be the last date upon which all parties hereto cause this Agreement to be executed as indicated below their respective signatures.
7. *Binding Nature of this Agreement.* This Agreement shall inure to the benefit of the parties hereto and the subject property, and shall be binding upon any person, firm, or corporation that may become a subsequent owner, successor in interest or assign, directly or indirectly, of the subject property or any portion thereof.
8. *Governing Law and Venue.* This Agreement shall be constructed and governed in accordance with the laws of the State of Florida and the ordinances of the City. In the event of any claim, action, litigation or proceeding under this Agreement, venue shall be in Brevard County, State of Florida.
9. *Recordation.* This Agreement will be recorded in the Public Records of Brevard County, Florida, at Owner's expense.
10. *Notice.* Any notice or demand that must or may be given or made in connection with this Agreement must be in writing and delivered by personal delivery or mailed by certified or registered mail, return receipt requested, and addressed to the Parties as follows:

AS TO CITY: Growth Management Director
 City of Palm Bay
 120 Malabar Road SE
 Palm Bay, Florida 32907

With a copy to: City Attorney
 City of Palm Bay
 120 Malabar Road SE
 Palm Bay, Florida 32907

AS TO OWNER: Pulte Home Company, LLC
 4901 Vineland Road, Suite 460
 Orlando, Florida 32811

11. *Indemnification.* The Owner shall indemnify and hold harmless the City and their respective officers, employees, and agents, from and against all claims, damages, injuries, liability, losses and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from the Owner's construction of improvements or performance of operations under this Agreement.
12. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The electronic (i.e., facsimile or email) transmittal of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered.

**PULTE HOME COMPANY, LLC TRANSPORTATION IMPROVEMENT
COST ALLOCATION AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on behalf of the respective entities, their successors and assigns.

ATTEST:

CITY OF PALM BAY, a Florida municipal corporation,

Terese Jones, City Clerk

J. Robert Medina, Mayor

Witnesses:

Pulte Home Company, LLC, a Florida limited liability company,

Signature

Signature

Print Name

Print Name

Signature

Title

Print Name

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence OR ☐ online notarization, this _____ day of _____, 2023, by _____, who is ☐ personally known to me OR ☐ who has produced _____ as identification.

Notary Public

**PULTE HOME COMPANY, LLC TRANSPORTATION IMPROVEMENT
COST ALLOCATION AGREEMENT**

EXHIBIT A

Legal Description

DESCRIPTION OF LIPSCOMB STREET PUD

TRACTS 3 AND 4 , PALM BAY COLONY SECTION TWO, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 24 , PAGE 38, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

AND

TRACTS 5 AND 6, PALM BAY COLONY SECTION THREE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 24 , PAGE 39, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

CONTAINING 24.56 ACRES, MORE OR LESS (TOTAL).

**PULTE HOME COMPANY, LLC TRANSPORTATION IMPROVEMENT
COST ALLOCATION AGREEMENT**

EXHIBIT B

*Technical Memorandum
Proportionate Fair Share Cost and Calculations*



PUBLIC WORKS DEPARTMENT

Proportionate Fair Share (PFS) Traffic Analysis for Lipscomb Townhomes (FD23-00002)

By Frank Watanabe, City Engineer

December 19, 2023

Based on the October 2022 traffic study by LTG for the Lipscomb Townhomes, the study identified two street segments of Lipscomb Street and Palm Bay Road to be deficient for the 2024 background condition. Below is Table 14 from the traffic study showing the 2024 build-out condition with the number of project trips on the two street segments to be widen from 2 to 4 travel lanes. The traffic study incorrectly identified Palm Bay Road to be widen from 2 to 6 lanes from RJ Conlan to US 1. The future widening of Palm Bay Rd would only be 4 lanes. This memorandum is to document the build out year proportionate fair share for the street widening of the following:

1. Lipscomb Street from Palm Bay Road to Tarpon Way
2. Palm Bay Road from RJ Conlan to US 1

Table 14
2024 Build-Out P.M. Peak-Hour Two-Way LOS - Roadway Segments
Lipscomb Street Townhomes

Appendix C - Performance																
Roadway	Segment	Station ID	Jurisdiction	Classification	No. of Lanes	Adopted LOS	Current MAV ¹	Peak-Hour Two-Way Capacity at Adopted LOS	Existing PM Peak-Hour Two-Way Volume	2024 Background Traffic	Project Distribution	Project Trips	2024 Build-Out Traffic	V/C Ratio	Build-Out PM Volume Exceed Adopted LOS?	
Clearmont St ²	Port Malabar Blvd	Palm Bay Rd	-	Palm Bay	Urban Minor Arterial	4	C	37900	3411	1120	1,233	4.59%	5	1,238	0.36	No
Lipscomb St ²	Palm Bay Rd	Tarpon Way	-	Palm Bay	Urban Minor Arterial	4	C	14,500	1,305	906	942	39.46%	47	989	0.76	No
	Tarpon Way	Pirate Ln	-	Melbourne	Urban Minor Arterial	2	D	14,800	1,332	906	942	58.16%	69	1,011	0.76	No
	Pirate Ln	Commerce Park Dr	-	Melbourne	Urban Minor Arterial	2	D	17,700	1,583	1,021	1,062	31.83%	38	1,100	0.69	No
	Commerce Park Dr	Florida Ave	-	Melbourne	Urban Minor Arterial	2	D	17,700	1,583	919	956	30.76%	37	993	0.62	No
	Florida Ave	University Blvd	-	Melbourne	Urban Minor Arterial	2	D	14,800	1,332	796	828	25.68%	31	859	0.64	No
Robert J Conlan Blvd	Palm Bay Rd	Commerce Park Dr	562	Palm Bay	Urban Principal Arterial-Other	4	C	39,800	3,582	1,100	1,259	1.07%	1	1,260	0.35	No
	Commerce Park Dr	US 1	563	Palm Bay	Urban Principal Arterial-Other	4	C	39,800	3,582	1,072	1,201	1.07%	1	1,202	0.34	No
Babcock St	Palm Bay Rd	Eber Blvd	444	FDOT	Urban Principal Arterial-Other	4	D	41,790	3,761	2,461	2,609	0.57%	1	2,610	0.69	No
	Eber Blvd	Florida Ave	367	FDOT	Urban Principal Arterial-Other	4	D	41,790	3,761	2,540	2,682	9.27%	11	2,703	0.72	No
	Florida Ave	University Blvd	445	FDOT	Urban Principal Arterial-Other	4	D	41,790	3,761	2,685	2,846	10.34%	12	2,858	0.76	No
Palm Bay Rd	Riviera Dr	Babcock St	470 ⁴	Brevard County	Urban Principal Arterial-Other	6	D	59,900	5,391	2,879	3,109	17.06%	20	3,129	0.58	No
	Babcock St	Knecht Rd	480	Brevard County	Urban Principal Arterial-Other	6	D	59,900	5,391	2,853	3,042	26.74%	32	3,074	0.57	No
	Knecht Rd	Lipscomb St	475	Brevard County	Urban Principal Arterial-Other	6	D	59,900	5,391	2,857	2,842	29.37%	35	2,877	0.53	No
	Lipscomb St	Troutman Blvd	476 ⁴	Brevard County	Urban Principal Arterial-Other	6	D	59,900	5,391	1,507	1,655	5.09%	6	1,661	0.31	No
	Troutman Blvd	Robert J Conlan Blvd	471	Brevard County	Urban Principal Arterial-Other	6	D	59,900	5,391	1,824	2,031	5.09%	6	2,037	0.38	No
	Robert J Conlan Blvd	US 1	-	Palm Bay	Urban Principal Arterial-Other	6	C	23,300	2,097	1,326	1,406	4.51%	5	1,411	0.67	No
	Pirate Ln ²	Babcock St	Lipscomb St	-	Melbourne	Urban Minor Arterial	2	D	14,800	1,332	601	625	26.17%	31	656	0.49
Florida Ave ²	Babcock St	Lipscomb St	-	Melbourne	Urban Minor Arterial	2	D	14,800	1,332	487	506	4.76%	6	512	0.38	No
University Blvd	Babcock St	US 1	569	Brevard County	Urban Major Collector	4	E	33800	3042	771	817	0.74%	1	818	0.27	No

Per FS Chapter 163.3180 on Proportionate Fair Share (PFS) which states projects to contribute its fair share to needed streets improvements that are greater than the deficiency based on the number of project trips added to the roadway. The calculation shown below for the Lipscomb Townhome PFS for the two street widenings. Using the latest FDOT cost per mile for widen 2 lanes the cost is **\$4,122,294.78 + 15% contingency future + 15% design + 15% CEI = \$6,162,830.68**. The second table shown is the calculation and the cost for PFS for each roadway.

Based on the above calculations, the Lipscomb Townhome proportionate fair share contribution should not exceed the total impact fees owed by the development, this would be a cost-neutral to the developer while enabling the city to program a more-substantial widening project, in conjunction with other impact fee revenue sources and/or public funding, to better benefit mobility within this region of the city.



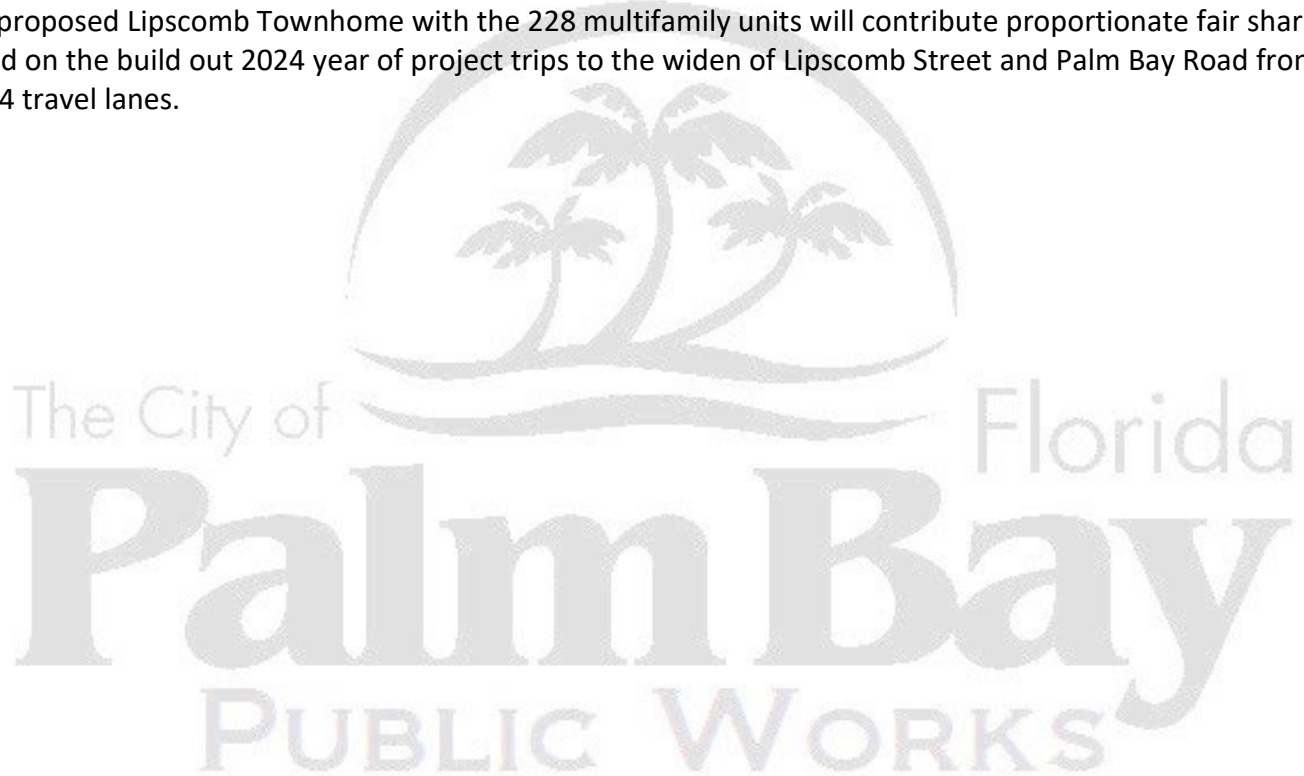
Table 1

Street	Segment Start	Segment End	FDOT cost per mile 2lanes, with 15% Design, 15% CEI and 15% Contingency	Length (Miles)	Project Trips	% PFS = project trips divided by buildout capacity – existing 2 lanes	PFS cost
Lipscomb	Palm Bay	Tarpon	\$6,162,830.68	0.5	47	47/1310-660 =7.23%	\$222,810.03
Palm Bay	RJ Conlan	US 1	\$6,162,830.68	1.0	5	5/1310-660 =0.77%	\$47,406.39
						Total PFS	\$270,216.42

Local Traffic Impact Fee = 202 Multifamily x \$2,868.63/unit =\$579,463.26 > \$270,216.42

Finding:

The proposed Lipscomb Townhome with the 228 multifamily units will contribute proportionate fair share based on the build out 2024 year of project trips to the widen of Lipscomb Street and Palm Bay Road from 2 to 4 travel lanes.





LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Valentino Perez, Public Works Director

DATE: 1/4/2024

RE: Consideration of three (3) new full-time equivalent (FTE) positions for a Grants Manager, Records Specialist, and NPDES Coordinator within the Public Works Department (\$172,485 for the remainder of Fiscal Year 2024).

This memorandum is written to request an increase in the Public Works Department staff by adding (1) full-time Grants Manager, (1) full-time Records Specialist and (1) full-time NPDES Coordinator.

The Grants Manager will be responsible for administrative work to identify State and Federal grant opportunities applicable to the Public Works Departments and assists with the application and management of such grant programs. This position will be primarily responsible for researching grant opportunities, assisting with the preparation of grant applications and providing technical assistance relating to the monitoring and reporting of such grants. The salary range for this position is \$66,677 - \$110,016 and will cost a total of \$68,980 for the remainder of FY 24.

The Records Specialist will be responsible for duties relating to records management; other duties include routine clerical duties and administrative support. This position will use computerized data entry equipment to process a variety of data and reports and for meeting all conditions of record retention as set forth by the City Clerk's Office. The salary range for this position is \$40,934 - \$67,540 and will cost a total of \$48,191 for the remainder of FY 24.

The NPDES Coordinator will be responsible for coordinating and performing the activities of the City's NPDES Program, education, and public relations work in planning, developing, and implementing the Public Works Department's environmental outreach programs, marketing and providing public relations as they relate to the NPDES permit. This position will promote citizen, business and employee awareness and participation through various educational programs and presentations. The salary range for this position is \$49,755 - \$82,096 and will cost a total of \$55,314 for the remainder of FY 24.

With increased development in the city and the City's investment in the Road Bond program, Road Maintenance and Stormwater Infrastructure, Public Works Projects have grown substantially over the years and will continue to grow. The Public Works Department need a very diverse and structural team to keep up with the pace of the expanding complexity, scope, and size of the operations. With the operations getting larger and more complex; the Public Works Department need a team to take on the additional duties that come with the growth of the city

and its infrastructure. This will give the employees a good work life balance by adding the three positions. The grant manager will help the City secure grant funds and increase the City's revenue to be able to tackle our growing transportation and stormwater infrastructure needs. The records specialist will be responsible for meeting all conditions of record retention as set forth by the City Clerk's Office and perform quality control on all documents scanned for accuracy and completeness prior to readying them for retention and disposal for the Public Works Department. The NPDES coordinator was a position the City previously had, which then merged with Staff engineers and later Operations. But because of the volume of projects, the NPDES coordinator is critical to our Municipal Separation Storm Sewer System (MS4) permit compliance mandated by the Florida Department of Environmental Protection (FDEP).

REQUESTING DEPARTMENT:

Public Works

FISCAL IMPACT:

The total amount of \$117,171 is being requested from General Fund Balance 001-0000-392-1001 and into accounts 001-7011-541-1210 (\$74,500), 001-7011-541-2110 (\$5,699), 001-7011-541-2210 (\$6,705), 001-7011-541-2320 (\$15,986), 001-7011-541-2330 (\$852), 001-7011-541-2410 (\$2,306), 001-7011-541-5204 (\$70), 001-7011-541-2330 (\$6,352) 001-2310-519-5103 (\$1,378), 001-2310-519-5403 (\$1,108), 001-2310-519-5108 (\$2,216); and

\$55,314 from Stormwater Fund Balance 461-0000-392-1001 and into accounts 461-7082-541-1210 (\$34,446), 461-7082-541-2110 (\$2,635), 461-7082-541-2210 (\$3,100), 461-7082-541-2320 (\$7,993), 461-7082-541-2330 (\$426), 461-7082-541-2410 (\$1,153), 461-7082-541-5204 (\$35), 461-7082-541-2330 (\$3,176) 001-2310-519-5103 (\$689), 001-2310-519-5403 (\$554), 001-2310-519-5108 (\$1,108).

RECOMMENDATION:

Motion to approve the addition of one (1) new full-time Grant Manager, one (1) full-time Records Specialist and one (1) full-time NPDES Coordinator.

ATTACHMENTS:

Description



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Greg Minor, Parks and Facilities Department Director

DATE: 1/4/2024

RE: Consideration of reclassifying the Secretary position within the Parks and Facilities Department from part-time to full-time.

In accordance with G.25.2, 12.3 of the Administrative Code, RECLASSIFICATION OF POSITIONS, the Parks & Facilities Department requests for the part-time Secretary to be reclassified to full-time. Currently, the departments' part-time secretary works 30 hours per week. In that timeframe, the function is to help with City-wide work orders, answer questions, and route calls. With the increase in construction projects, it would benefit the department to make this position full-time so that the extra 10 hours a week can be spent on updating and keeping projects organized.

As the Parks and Facilities Department continues to manage many new projects, the upgrade of this position is essential to having better accountability of Projects Management. Additional funding will come from undesignated fund balance.

REQUESTING DEPARTMENT:

Parks and Facilities

FISCAL IMPACT:

Funding of \$34,333 (which represents the salary and benefit cost for 9 months) is available within account #001-0000-392-1001 undesignated fund to be transferred to the appropriate line items within the Parks and Facilities budget to fund the position.

RECOMMENDATION:

Motion to approve and transfer funding from undesignated fund balance to Parks and Facilities/Facilities Division personnel accounts and increase to the department's FTE count.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Valentino Perez, Public Works Director

DATE: 1/4/2024

RE: Consideration of utilizing Stormwater Utility Funds to budget for culvert pipe replacement at Yukon Street NE and Melbourne Tillman Water Control District C-50 canal (\$100,000 (Project 24SU09)).

The Public Works Department has identified the need to replace the culvert pipe under Yukon Street NE at the C-50 canal. The project will consist of the removal, disposal, re-installation, and restoration of street crossing drainage pipes located under Yukon Street NE and outfall connection to Melbourne Tillman Water Control District canal known as C-50. This project will also include replacement of the failed sidewalk. A permit has been obtained and the design of the project has been completed.

REQUESTING DEPARTMENT:

Public Works

FISCAL IMPACT:

Funding is available in Stormwater Utility Undesignated Fund Balance. Upon Council approval, funds in the amount of \$100,000 will be transferred from Stormwater Utility Undesignated Fund Balance 461-0000-392-3006 to Capital Project Number 461-7084-541-6309/24SU09 with BA #2. This will provide a budget to include construction costs, advertisement, and other incidentals necessary to complete the project.

RECOMMENDATION:

Request for consideration of using Stormwater Utility Funds to budget for and open project 24SU09 Yukon at C-50 Pipe Replacement.

ATTACHMENTS:

Description

Engineering Estimate

START MM/YY
END MM/YY

PROJECT No

NEW PROJECT BUDGET FORM

NAME _____

FUNDING SOURCE _____

BUDGET REQUESTED _____

PROJECT MANAGER _____

SCOPE _____

FUNDING SOURCE CONFIRMED _____

ESTIMATED BUDGET

ADVERTISEMENT _____

GEOTECHNICAL _____

SURVEY _____

ENGINEERING DESIGN _____

CONSTRUCTION _____

OPERATIONS _____

SURVEY _____ OPERATIONS _____

LABOR _____

MATERIALS _____

EQUIPMENT _____

LABOR _____

MATERIALS _____

EQUIPMENT _____

PLEASE LIST ANY OTHER EXPECTED COSTS

DESCRIPTION ESTIMATE

_____	_____
_____	_____
_____	_____
_____	_____

REQUESTED BY:

APPROVED BY:



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Larry Wojciechowski, Finance Director

DATE: 1/4/2024

RE: Acknowledgement of the City's monthly financial report for September 2023 (Unaudited).

Attached for your information is the monthly financial report which provides an overview of the City's financial activities for September 2023. September is the twelfth month of the fiscal year and represents 100% of the annual budget year. There is a delay in reporting September financials due to September representing the end of the fiscal year and the accruing of revenues and expenditures after September 30th. The final numbers for the period ending September 30, 2023, still must be audited by the City's independent auditors.

Citywide cash and investments increased by \$83.3 million or 27.9% in comparison to the prior year. This was primarily due to the receipt of \$51.3 million for the 2023 G.O. bond proceeds, plus increased balances in Impact Fee funds, Utilities funds and the General Fund. This also contributed to the increase in Citywide revenues.

The General Fund is the City's primary operating fund. General Fund revenues received through September were \$104.7 million and are 97.4% of the annual budget. General Fund expenditures through the end of September were \$91.8 million and are 85.5% of the annual budget. General Fund total cash & investments on September 30, 2023 was \$46.5 million, which is \$13.1 million or 39.3% higher than one year ago.

General Fund revenues collected through September 30, 2023, overall were 15.7% higher than the revenues collected during the same period last year. The overall increase was mainly attributable to an increase in revenue collections from Ad Valorem Taxes and State shared revenues compared to the same period last year.

General Fund expenditures through September 30, 2023, overall were 9.1% higher than expenditures incurred during the same period last year. Pages 15 through 17 provide a summary of all funds' budget, revenues and expenditures posted for September 30, 2023.

REQUESTING DEPARTMENT:

Finance

FISCAL IMPACT:

None

RECOMMENDATION:

Motion to acknowledge receipt of the September 2023 Financial Report.

ATTACHMENTS:

Description

Monthly Financial Report Sept 2023



MONTHLY FINANCIAL REPORT (UNAUDITED)

SEPTEMBER 2023

City of Palm Bay, Florida

Report Summary



Financial Report Summary	Page 1
General Fund	
➤ Year-to-Date Revenue	Page 2
➤ Year-to-Date Expenditures	Page 3
➤ Cash & Investments	Page 4
➤ Operating Statement & Change in Fund Balance	Page 5
➤ Fund Balance History	Page 6
Impact Fee Funds	
➤ Cash & Investments	Page 7
➤ Fund Equity	Page 8
Utilities Fund	
➤ Cash & Investments	Page 9
Stormwater Fund	
➤ Cash & Fund Equity	Page 10
Building Fund	
➤ Cash & Fund Equity	Page 11
General Obligation Road Program Funds	
➤ Cash & Fund Equity	Page 12
Financial Activity by Fund	
➤ General Fund, Special Revenue Funds, and Impact Fee Funds	Page 15
➤ Debt Service Funds and Capital Projects Funds	Page 16
➤ Enterprise Funds and Internal Service Funds	Page 17

MONTHLY FINANCIAL REPORT (UNAUDITED)
SEPTEMBER 2023
CITY OF PALM BAY, FLORIDA



The City of Palm Bay, Florida's (the "City") monthly financial report presents an overview and analysis of the City's financial activities during the month of September 2023. September is the twelfth month of the fiscal year and represents 100% of the annual budget.

Financial Report Summary

- Citywide revenues^{1*} of \$315.3 million are at 63.9% of the annual budget. Citywide expenditures^{1*} of \$240.8 million are at 48.8% of the annual budget. Traditionally revenue collections are two months in arrears. For this reason, certain revenues for grants and other governmental resources are accrued at year end to reflect the period in which it represents.
- Citywide cash and investments increased by \$83.3 million, or 27.9%, in comparison to the prior year. This was primarily due to the receipt of \$51.3 million for the 2023 G.O. Bond proceeds, plus increased balances in Impact Fee funds (\$19.4m), Utilities funds (\$13.9m), and the General Fund (13.1m).
- Citywide revenues^{1*} increased by \$83.5 million, or 36.0% in comparison to the prior year.

Citywide - Cash & Investments ¹		Citywide - Revenues ^{1*}		Citywide - Expenditures ^{1*}	
9/30/2023	\$ 382,033,925.77	9/30/2023	\$ 315,263,903.82	9/30/2023	\$ 240,836,268.61
9/30/2022	298,761,058.03	9/30/2022	231,785,875.07	9/30/2022	190,276,098.33
Increase	27.9% \$ 83,272,867.74	Increase	36.0% \$ 83,478,028.75	Increase	26.6% \$ 50,560,170.28

¹ Not including Cash, Revenues, or Expenditures from PB Municipal Foundation.

* Not including interfund transfers

- General Fund revenues of \$104.7 million are at 97.4% of the annual budget. This is an increase of \$14.2 million, or 15.7%, in comparison to the prior year.
- General Fund expenditures of \$91.8 million are at 85.5% of the annual budget. This is an increase of \$7.7 million, or 9.1%, in comparison to the prior year.
- General Fund cash and investments increased by \$13.1 million, or 39.3%, in comparison to the prior year. Of this increased General Fund cash, \$235,578 is reserved.

General Fund - Cash & Investments		General Fund - Revenues		General Fund - Expenditures	
9/30/2023	\$ 46,465,907.76	9/30/2023	\$ 104,665,316.26	9/30/2023	\$ 91,801,469.87
9/30/2022	33,357,686.98	9/30/2022	90,464,330.65	9/30/2022	84,109,409.00
Increase	39.3% \$ 13,108,220.78	Increase	15.7% \$ 14,200,985.61	Increase	9.1% \$ 7,692,060.87

The General Fund is the City's primary operating fund and is used to account for all resources except those that are required to be accounted for in another fund.

This report contains unaudited information. If you have any questions or comments on the financial reports, please contact Larry Wojciechowski, Finance Director, or Ruth Chapman, Assistant Finance Director.

City Website: <http://www.palmbayflorida.org/>
Finance Website: www.palmbayflorida.org/finance

MONTHLY FINANCIAL REPORT (UNAUDITED)
SEPTEMBER 2023
CITY OF PALM BAY, FLORIDA



General Fund (GF) Revenues - Summary

➤ **FY 2023 YTD Revenue Variance**
As Compared to Prior Year

	Prior YTD	Current YTD	% Variance	Annual Budget
Ad Valorem Taxes (1)	\$ 38,345,724	\$ 46,714,200	21.8%	\$ 46,501,681
Local Option Fuel Tax	4,165,133	4,464,352	7.2%	4,159,113
Utility Service Taxes (2)	10,429,241	12,225,888	17.2%	9,699,000
Communication Service Tax	2,686,205	2,830,974	5.4%	2,784,721
Franchise Fees (3)	7,203,233	8,104,511	12.5%	6,248,250
State Shared Revenues	6,927,757	7,325,279	5.7%	5,950,921
Half Cent Sales Tax	8,577,966	9,148,718	6.7%	7,868,633
Licenses and Permits (4)	1,081,701	1,254,351	16.0%	746,300
Grants and Other Entitlements (5)	451,401	781,450	73.1%	831,638
Charges for Services	6,703,801	6,720,282	0.2%	5,981,418
Fines and Forfeitures (6)	571,846	443,560	-22.4%	493,500
Interest, Rents & Other Revenues (7)	217,235	2,832,232	1203.8%	986,900
Interfund Transfers & Other Sources (8)	3,103,086	1,819,519	-41.4%	1,887,516
Fund Balance	-	-	0.0%	13,279,455
	\$ 90,464,331	\$ 104,665,316	15.7%	\$ 107,419,046

- (1) Increase primarily due to higher year-to-date collections of Ad Valorem Taxes in FY23.
(2) Increase primarily due to higher year-to-date electric Utility Service Taxes in FY23.
(3) Increase primarily due to higher year-to-date collections of Franchise Fees in FY23.
(4) Increase primarily due to higher year-to-date collections of Driveway Permits in FY23.
(5) Increase primarily due to higher year-to-date collections of Dept. of Justice grants in FY23.
(6) Decrease primarily due to lower year-to-date collections of Code Compliance fines in FY23.
(7) Increase primarily due to increased year-to-date interest income in FY23.
(8) Decrease primarily due to lower year-to-date transfers to General Fund and lower year-to-date sales proceeds received in FY23.

MONTHLY FINANCIAL REPORT (UNAUDITED)
SEPTEMBER 2023
CITY OF PALM BAY, FLORIDA



General Fund (GF) Expenditures - Summary

➤ **FY 2023 YTD Expenditure Variance**
As Compared to Prior Year

	Prior YTD	Current YTD	% Variance	Annual Budget
Legislative	\$ 985,893	\$ 890,118	-9.7%	\$ 915,387
City Manager (1)	1,108,720	1,463,280	32.0%	2,060,585
City Attorney	384,076	412,095	7.3%	532,264
Procurement	640,214	614,584	-4.0%	758,949
Finance (2)	1,387,186	1,607,096	15.9%	1,639,871
Information Technology (3)	3,579,478	4,915,909	37.3%	7,215,252
Human Resources (4)	530,344	630,312	18.8%	862,802
Growth Management (5)	1,757,937	2,213,900	25.9%	2,439,657
Comm & Economic Dev. (6)	807,571	1,003,886	24.3%	1,115,642
Recreation (7)	1,809,611	2,254,377	24.6%	2,560,938
Parks and Facilities	6,739,151	6,537,426	-3.0%	8,173,348
Police (8)	23,714,084	27,871,031	17.5%	32,033,968
Fire (9)	17,395,543	19,523,484	12.2%	22,898,100
Public Works (10)	6,211,463	7,650,970	23.2%	9,493,594
Non-Departmental	5,729,753	6,094,998	6.4%	6,479,022
Transfers (11)	11,328,385	8,118,003	-28.3%	8,239,667
	\$ 84,109,409	\$ 91,801,470	9.1%	\$ 107,419,046

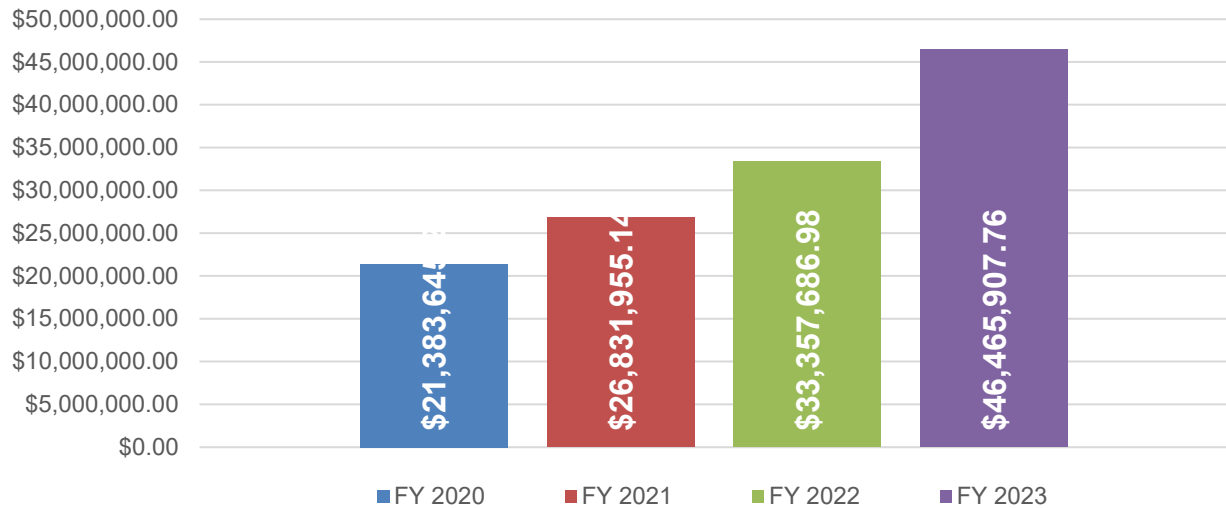
- (1) Increase primarily due to implementation of wage study recommendations and hiring second Deputy City Manager in FY23.
(2) Increase primarily due to implementation of wage study recommendations in FY23.
(3) Increase primarily due to more personnel, implementation of wage study recommendations, and higher operating costs in FY23.
(4) Increase primarily due to implementation of wage study recommendations in FY23.
(5) Increase primarily due to implementation of wage study and more personnel in Land Development Division in FY23.
(6) Increase primarily due to more personnel, including Asst. Director position, and implementation of wage study in FY23.
(7) Increase primarily due to implementation of wage study and increased operating costs in FY23.
(8) Increase primarily due to higher year-to-date costs for personnel and capital expenditures in FY23.
(9) Increase primarily due to purchase of fire apparatus and higher year-to-date personnel costs in FY23.
(10) Increase primarily due to higher year-to-date costs for personnel and operating expenditures in FY23.
(11) Decrease primarily due to lower budgeted transfers to Fleet Fund in FY23.

	YTD Actual	YTD Budget	Annual Budget	% Spent
Debt Service	\$ 6,668,134.92	\$ 6,789,799	\$ 6,789,799	98.2%
Personnel	63,251,260.08	65,372,578	65,372,578	96.8%
Operating	17,456,851.81	21,258,218	21,258,218	82.1%
Capital	2,975,355.36	12,548,583	12,548,583	23.7%
Contributions	-	-	-	0.0%
Transfers	1,449,867.70	1,449,868	1,449,868	100.0%
Reserves	-	-	-	0.0%
	\$ 91,801,469.87	\$ 107,419,046	\$ 107,419,046	85.5%

The total budgeted expenditures for FY23 are \$107,419,046 (including encumbrances from prior year and budget amendments). Of this amount, \$65,372,578, or 60.9%, is related to personnel costs.

General Fund (GF) Cash & Investments - Summary

➤ Year-to-Date (YTD) Cash & Investments Comparisons



General Fund Cash & Investments		General Fund Cash & Investments	
Prior Month Ending Balance	\$ 49,795,253.29	September 2023 Ending Balance	\$ 46,465,907.76
Cash Increase (Decrease)	(3,329,345.53)	Cash Advanced to Other Funds:	
		NSP, CDBG Funds #123 and #126	(119,108.53)
Ending Balance 9/30/2023	\$ 46,465,907.76	Total Available Cash & Investments	\$ 46,346,799.23

MONTHLY FINANCIAL REPORT (UNAUDITED)
SEPTEMBER 2023
CITY OF PALM BAY, FLORIDA



General Fund (GF) Balance - Summary

CITY OF PALM BAY, FLORIDA
OPERATING STATEMENT AND CHANGES IN FUND BALANCES
GENERAL FUND
For the Month Ended September 30, 2023

	Prior YTD	Current YTD
<u>REVENUES</u>		
Ad Valorem Taxes	\$ 38,345,724	\$ 46,714,200
Local Option Fuel Tax	4,165,133	4,464,352
Utility Service Taxes	10,429,241	12,225,888
Communication Service Tax	2,686,205	2,830,974
Franchise Fees	7,203,233	8,104,511
State Shared Revenues	6,927,757	7,325,279
Half Cent Sales Tax	8,577,966	9,148,718
Licenses and Permits	1,081,701	1,254,351
Grants and Other Entitlements	451,401	781,450
Charges for Services	6,703,801	6,720,282
Fines and Forfeitures	571,846	443,560
Interest, Rents and Other Revenues	217,235	2,832,232
Interfund Transfers and Other Sources	3,103,086	1,819,519
Total Revenues	90,464,331	104,665,316
<u>EXPENDITURES</u>		
Legislative	985,893	890,118
City Manager	1,108,720	1,463,280
City Attorney	384,076	412,095
Procurement	640,214	614,584
Finance	1,387,186	1,607,096
Information Technology	3,579,478	4,915,909
Human Resources	530,344	630,312
Growth Management	1,757,937	2,213,900
Economic Development	807,571	1,003,886
Parks and Recreation	1,809,611	2,254,377
Facilities	6,739,151	6,537,426
Police	23,714,084	27,871,031
Fire	17,395,543	19,523,484
Public Works	6,211,463	7,650,970
Non-Departmental	5,729,753	6,094,998
Transfers	11,328,385	8,118,003
Total Expenditures	84,109,409	91,801,470
Excess (Deficiency) of Revenues Over Expenditures	6,354,922	12,863,846
Fund Balance - Beginning	30,613,782	36,968,707.61
Fund Balance - Ending	\$ 36,968,704	49,832,554.00

General Fund (GF) Balance - Summary

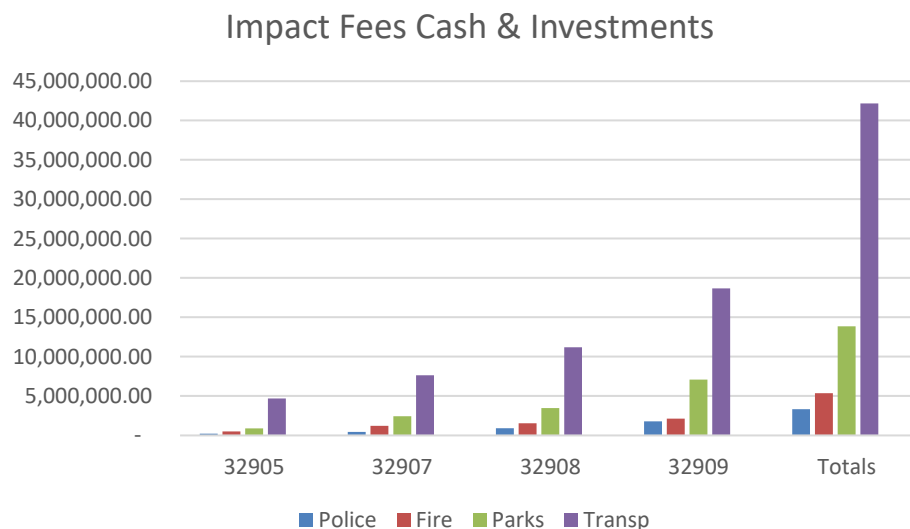
The minimum General Fund unrestricted fund balance, as established by Resolution 2021-03 (effective with the preparation of the City's September 30, 2022, Annual Comprehensive Financial Report and adoption of the City's Fiscal Year 2022 Budget), is two months of regular budgetary General Fund operating expenditures. The following is a history of the City's General Fund unrestricted fund balance.

General Fund Balance - History			
	Minimum Required	Unrestricted Fund Balance	Unrestricted Fund Balance %
FY 2023	\$ 15,434,236	\$ 41,973,374	45.3%
FY 2022	13,838,672	\$ 36,044,563	43.4%
FY 2021	7,553,655	\$ 29,713,480	39.3%
FY 2020	6,758,163	\$ 23,658,524	35.0%
FY 2019	6,784,007	\$ 18,205,817	26.8%

Impact Fees by Nexus Zone - Cash & Investments – Summary*

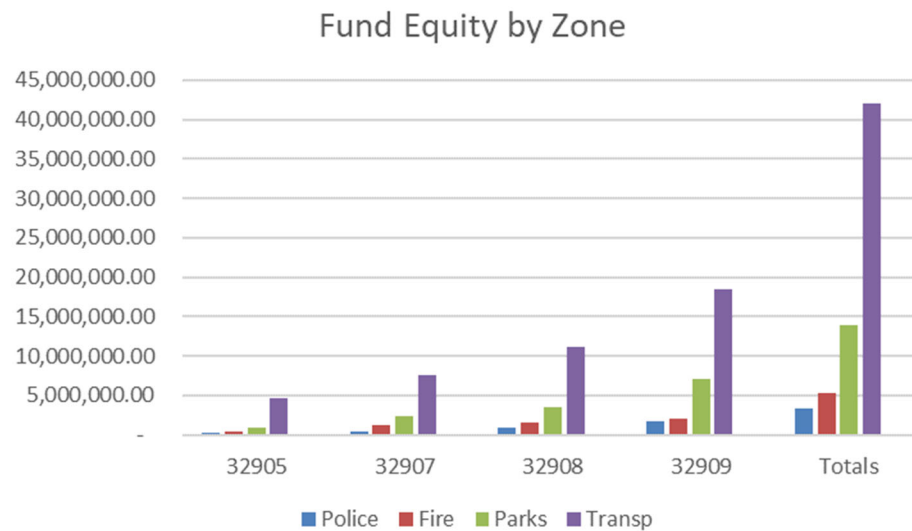
9/30/2023	Zone 1	Zone 2	Zone 3	Zone 4	
	32905	32907	32908	32909	Totals
Police	216,882.78	425,098.01	900,463.79	1,781,692.59	3,324,137.17
Fire	495,139.28	1,202,102.38	1,534,476.53	2,129,971.67	5,361,689.86
Parks	878,490.99	2,431,188.14	3,466,207.67	7,075,100.43	13,850,987.23
Transp	4,680,194.70	7,633,237.88	11,188,402.37	18,663,990.72	42,165,825.67
Totals	6,270,707.75	11,691,626.41	17,089,550.36	29,650,755.41	64,702,639.93

*Not including Transportation Impact Fees Zone 32909 segregated amount of \$73,882 resulting from an I.L.A. with Brevard County.



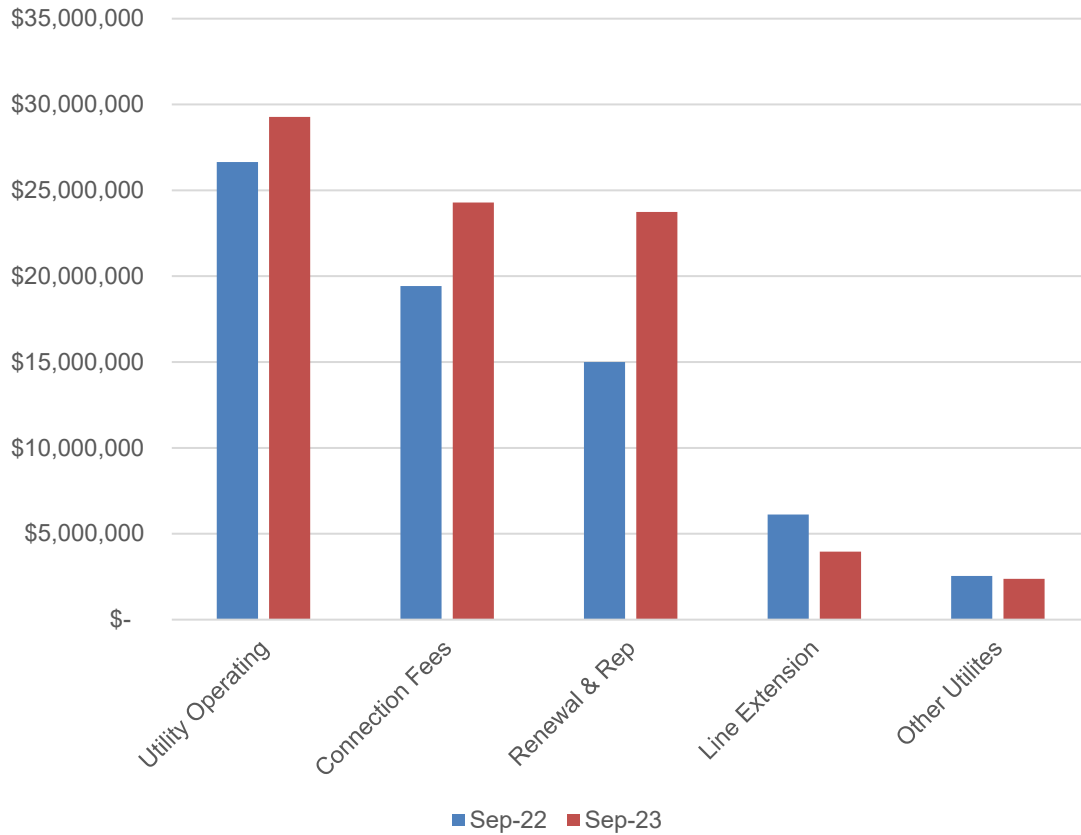
Impact Fees by Nexus Zone – Fund Balance - Summary

9/30/2023	32905	32907	32908	32909	Totals
Police	216,882.78	425,098.01	900,463.79	1,781,692.59	3,324,137.17
Fire	493,956.28	1,187,730.38	1,534,476.53	2,100,563.52	5,316,726.71
Parks	878,490.90	2,440,219.21	3,469,163.94	7,081,680.95	13,869,555.00
Transp	4,684,696.67	7,633,670.42	11,200,306.24	18,506,416.24	42,025,089.57
Totals	6,274,026.63	11,686,718.02	17,104,410.50	29,470,353.30	64,535,508.45



Utilities Fund Cash & Investments - Summary

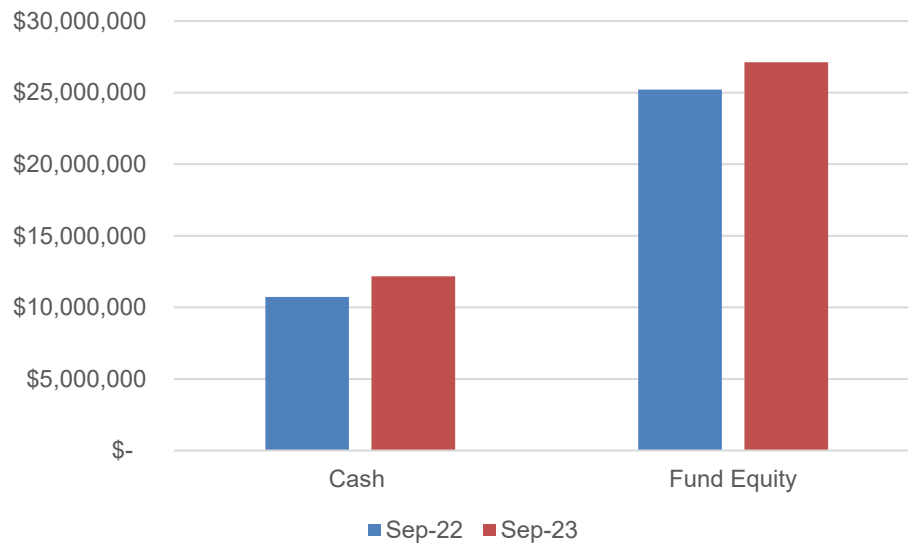
Year-to-Date (YTD) Comparison: Water & Sewer



Overall, the Water & Sewer Funds cash and investments increased by \$13.9 million, or 19.9%, year over year.

Stormwater Fund Cash & Equity - Summary

➤ Year-to-Date (YTD) Cash & Fund Equity

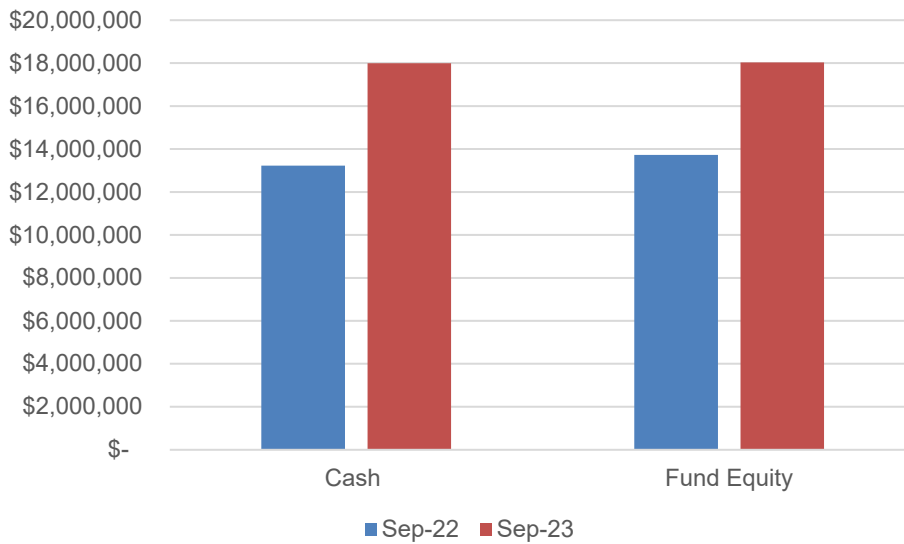


Overall, the Stormwater cash and investment balance increased by \$1,441,769, or 13.4%, year over year.

Overall, the Stormwater fund equity increased by \$1,913,551, or 7.6%, year over year.

Building Fund Cash & Equity - Summary

➤ Year-to-Date (YTD) Cash & Fund Equity

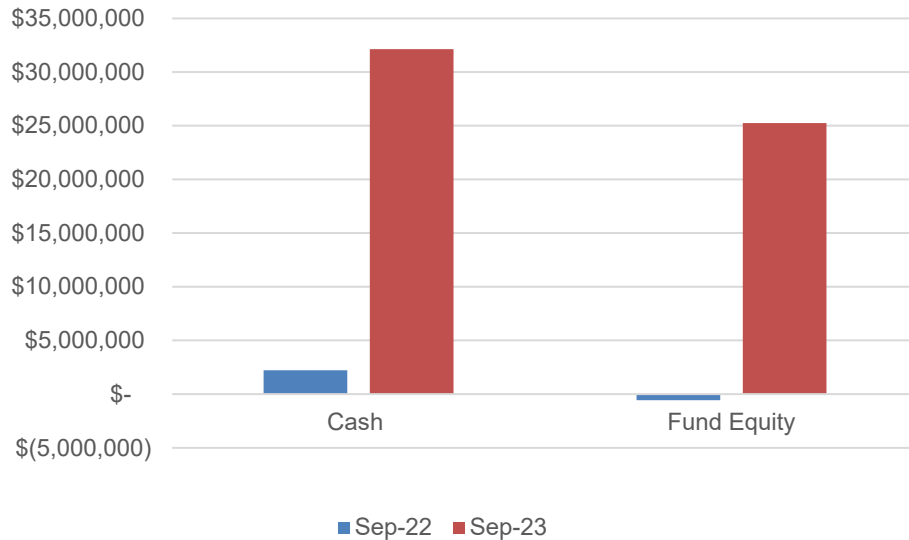


Overall, the Building cash and investment balance increased by \$4,765,027, or 36.0%, year over year.

Overall, the Building fund equity increased by \$4,305,802, or 31.4%, year over year.

General Obligation Road Program Fund Cash & Equity - Summary

➤ Year-to-Date (YTD) Cash & Fund Equity

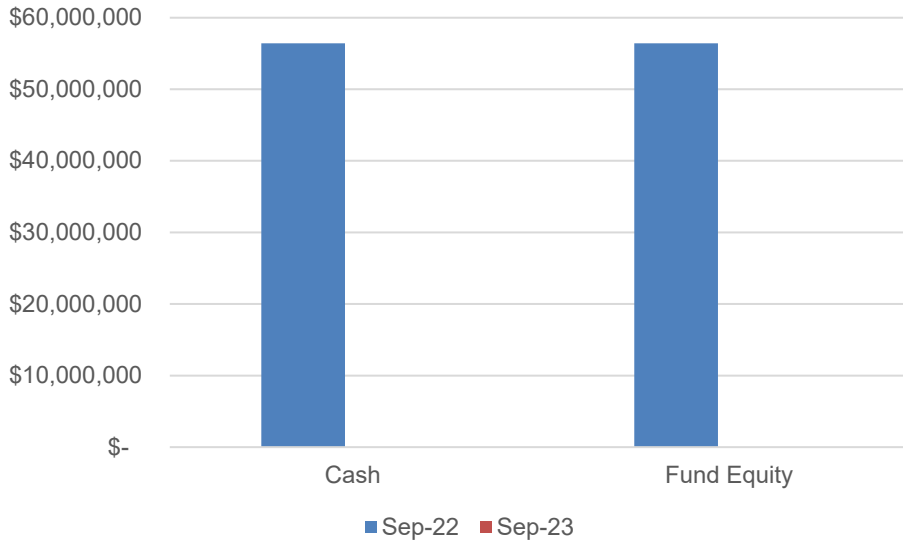


The 2019 General Obligation Road Program Fund cash and investment balance increased by \$29,905,831, or 1,348.6%, year over year.

The 2019 G.O. Road Program Fund equity increased by \$25,796,295, or 4,600.4%, year over year.

General Obligation Road Program Fund Cash & Equity - Summary

➤ Year-to-Date (YTD) Cash & Fund Equity

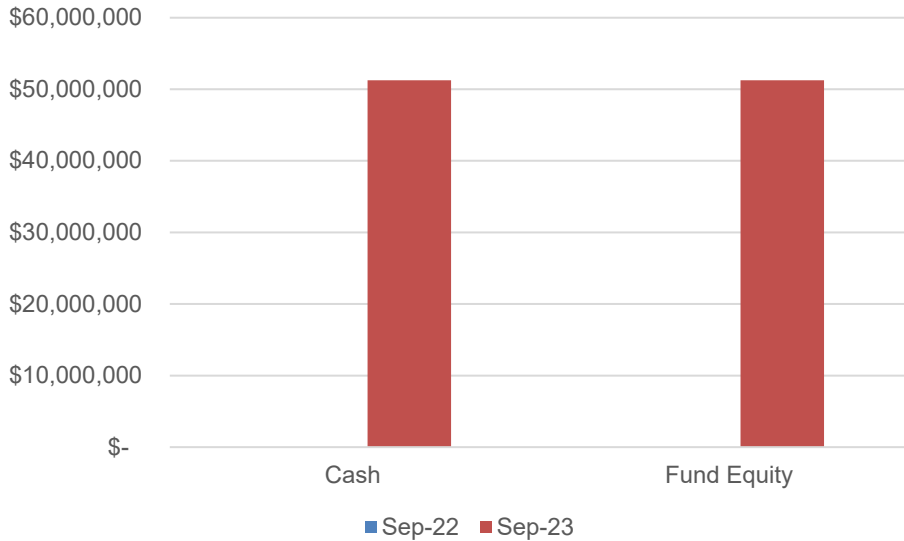


The 2021 General Obligation Road Program Fund cash and investment balance decreased by \$56,412,644, or 100.0%, year over year.

The 2021 G.O. Road Program Fund equity decreased by \$56,412,644, or 100.0%, year over year.

General Obligation Road Program Fund Cash & Equity - Summary

➤ Year-to-Date (YTD) Cash & Fund Equity



The 2023 General Obligation Road Program Fund cash and investment balance increased by \$51,246,551 year over year.

The 2023 G.O. Road Program Fund equity increased by \$51,246,551 year over year.

MONTHLY FINANCIAL REPORT (UNAUDITED)
SEPTEMBER 2023
CITY OF PALM BAY, FLORIDA



Unaudited Financial Activity - All Funds
City of Palm Bay, Florida
As of September 30, 2023 (unaudited)
100% of fiscal year completed

		Budget		Revenues		Expenditures	
Fund #	Description	Original Budget	Revised Budget	Current Year to Date	Percent of Revised	Current Year to Date	Percent of Revised
General Fund							
001	General Fund	\$93,375,216	\$107,419,046	\$104,665,316	97.4%	\$91,801,470	85.5%
Special Revenue Funds							
101	Law Enforcement Trust Fund	0	129,158	31,384	24.3%	67,081	51.9%
103	Palm Bay Municipal Foundation	30,000	54,000	89,623	166.0%	44,398	82.2%
105	Code Nuisance Fund	400,000	400,000	162,898	40.7%	110,876	27.7%
111	State Housing Grant Fund	863,744	1,898,840	1,781,875	93.8%	1,131,918	59.6%
112	Comm Devel Block Grant Fund	1,013,936	4,075,494	2,858,781	70.1%	2,207,793	54.2%
114	Home Invest Grant Fund	853,835	2,419,690	203,882	8.4%	452,685	18.7%
123	NSP Program Fund	0	814,426	167,441	20.6%	811,662	99.7%
124	Coronavirus Relief Tr. Fund	0	0	0	0.0%	-	0.0%
126	CDBG Coronavirus Fund	142,375	446,279	48,287	10.8%	152,000	34.1%
128	ARPA Fund	0	16,752,163	687,327	4.1%	2,439,594	14.6%
129	Opioid Settlement Fund	0	0	88,239	0.0%	-	0.0%
131	Donations Fund	0	21,000	28,519	0.0%	19,025	0.0%
161	Environmental Fee Fund	366,828	366,828	444,002	121.0%	24,600	6.7%
181	Bayfront Comm Redev Fund	2,277,904	2,536,799	2,672,523	105.4%	1,481,444	58.4%
Impact Fee Funds							
180	Police Impact Fees - 32905	63,400	215,400	60,820	28.2%	4	0.0%
183	Police Impact Fees - 32907	159,250	253,308	236,843	93.5%	229,939	90.8%
184	Police Impact Fees - 32908	200,400	200,400	341,130	170.2%	19	0.0%
186	Police Impact Fees - 32909	350,600	350,600	675,957	192.8%	29	0.0%
187	Fire Impact Fees - 32905	95,400	111,650	100,625	90.1%	7,774	7.0%
188	Fire Impact Fees - 32907	264,600	345,400	382,826	110.8%	48,624	14.1%
189	Fire Impact Fees - 32908	350,800	530,800	543,188	102.3%	61,985	11.7%
190	Fire Impact Fees - 32909	551,000	776,529	1,035,411	133.3%	291,919	37.6%
191	Parks Impact Fees - 32905	191,100	355,680	125,754	35.4%	10	0.0%
192	Parks Impact Fees - 32907	476,000	1,202,701	719,618	59.8%	55,172	4.6%
193	Parks Impact Fees - 32908	751,500	1,214,137	1,151,141	94.8%	48	0.0%
194	Parks Impact Fees - 32909	1,003,000	1,003,000	2,251,459	224.5%	28	0.0%
196	Trans Impact Fees - 32905	852,000	852,000	2,236,013	262.4%	39	0.0%
197	Trans Impact Fees - 32907	1,603,200	4,789,945	2,632,914	55.0%	513,940	10.7%
198	Trans Impact Fees - 32908	2,504,500	7,053,425	3,869,241	54.9%	15,355	0.2%
199	Trans Impact Fees - 32909	4,015,500	9,900,326	8,262,474	83.5%	4,175,513	42.2%

MONTHLY FINANCIAL REPORT (UNAUDITED)
SEPTEMBER 2023
CITY OF PALM BAY, FLORIDA



Unaudited Financial Activity - All Funds
City of Palm Bay, Florida
As of September 30, 2023 (unaudited)
100% of fiscal year completed

		Budget		Revenues		Expenditures	
Fund #	Description	Original Budget	Revised Budget	Current Year to Date	Percent of Revised	Current Year to Date	Percent of Revised
Debt Service Funds							
201	Debt Service Fund	536,673	536,673	536,672	100.0%	536,672	100.0%
214	2004 Pension Bond Debt Svc Fd	210,100	210,110	210,544	100.2%	190,001	90.4%
221	2013 Pension Bonds DS Fund	1,445,911	1,446,256	1,438,794	99.5%	1,438,824	99.5%
223	2015 Franchise Fee Note DS Fd	531,338	531,373	532,341	100.2%	526,232	99.0%
224	2015 Sales Tax Bonds DS Fd	824,664	825,041	825,654	100.1%	814,409	98.7%
225	2015 Sales Tax Bonds DS Fd - TIF	227,318	227,318	235,338	103.5%	224,274	98.7%
226	2016 Franchise Fee Note DS Fd	347,807	348,543	348,218	99.9%	333,427	95.7%
227	2018 LOGT Note DS Fd	769,088	769,108	798,318	103.8%	759,940	98.8%
228	2019 GO Bonds DS Fd	6,980,575	6,983,875	7,125,601	102.0%	6,912,802	99.0%
229	2019 Pension Bonds DS Fund	2,209,924	2,210,274	2,212,370	100.1%	2,200,623	99.6%
230	2020 Special Oblig Ref Note	328,782	329,211	329,337	100.0%	326,429	99.2%
231	2021 Pension Bonds DS Fund	3,450,450	3,450,750	3,451,397	100.0%	3,450,450	100.0%
Capital Projects Funds							
301	Community Investment Fund	2,500	5,017,143	762,640	15.2%	1,084,143	21.6%
306	2015 FF Nt Procds I-95 Intchg Fd	50	385,397	297	0.1%	204,999	53.2%
307	Road Maintenance CIP Fd	1,000,000	2,402,000	2,305,102	96.0%	1,887,287	78.6%
308	'18 LOGT Nt Procds-Rd I-95 Fd	50	309,658	8,025	2.6%	0	0.0%
309	'19 GO Bond Proceeds-Road Fd	11,194,184	77,056,099	58,786,625	76.3%	32,990,330	42.8%
310	'21 GO Bond Proceeds-Road Fd	0	57,043,799	570,136	1.0%	56,982,780	99.9%
312	'23 GO Bond Proceeds-Road Fd	0	51,286,470	51,469,860	100.4%	223,309	0.4%

MONTHLY FINANCIAL REPORT (UNAUDITED)
SEPTEMBER 2023
CITY OF PALM BAY, FLORIDA



Unaudited Financial Activity - All Funds
City of Palm Bay, Florida
As of September 30, 2023 (unaudited)
100% of fiscal year completed

		Budget		Revenues		Expenditures	
Fund #	Description	Original Budget	Revised Budget	Current Year to Date	Percent of Revised	Current Year to Date	Percent of Revised
Proprietary Funds							
Utility Funds							
421	Utilities Operating Fund	41,847,507	50,161,546	42,441,160	84.6%	38,885,740	77.5%
423	Utility Connection Fee Fund	8,261,085	8,863,578	6,523,186	73.6%	1,735,277	19.6%
424	Utility Renewal / Replace Fd	11,981,574	30,081,614	14,458,214	48.1%	5,821,858	19.4%
425	Main Line Extension Fee Fund	5,178,464	6,105,894	1,510,141	24.7%	3,749,427	61.4%
426	2016 Utility Bond Fund	5,313,170	5,314,170	5,332,762	100.3%	5,314,170	100.0%
427	2001 Bond Fund	1,930,600	1,930,600	1,988,994	103.0%	1,920,000	99.5%
431	USA1 Assessment Fund	0	2,000	3,571	0.0%	2,001	0.0%
432	Unit 31 Assessment Fund	297,731	2,300	3,273	142.3%	4	0.2%
433	Utility SRF Loan Fund	3,777	20,878,814	0	0.0%	4,736,604	22.7%
434	2020 Utility Note Fund	221,755	1,386,079	276,315	19.9%	920,524	66.4%
Other Enterprise Funds							
451	Building Fund	5,516,984	12,589,357	9,278,708	73.7%	4,972,906	39.5%
461	Stormwater Fund	15,189,293	25,056,974	10,152,448	40.5%	8,238,897	32.9%
471	Solid Waste Fund	13,482,670	13,866,202	13,795,545	99.5%	13,850,092	99.9%
Internal Service Funds							
511	Employee Health Insurance Fd	16,786,307	16,232,916	17,542,640	108.1%	13,724,831	84.5%
512	Risk Management Fund	5,105,867	5,219,118	5,665,535	108.6%	3,736,362	71.6%
513	Other Employee Benefits Fd	4,280,960	4,280,960	4,482,414	104.7%	3,513,695	82.1%
521	Fleet Services Fund	4,590,687	7,829,542	5,017,221	64.1%	6,147,781	78.5%



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Lisa Frazier, Growth Management Director

DATE: 1/4/2024

RE: Ordinance 2023-106, rezoning property located south of and adjacent to Alcantarra Street, in the vicinity between Calcutta and Chamberlin Avenues, from RS-2 (Single-Family Residential District) and SRE (Suburban Residential Estate Category) to RR (Rural Residential District) (10.58 acres) (Case Z23-00013, Michael and Rebecca Crews), 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.

Michael and Rebecca Crews (Joseph Crews, Rep.) has submitted for a rezoning from RS-2, Single-Family Residential and SRE, Suburban Residential Estate to RR, Rural Residential.

The subject property is south of and adjacent to Alcantarra Street NW, specifically at 242 Alcantarra Street NW. The 0.58-acre parcel which the applicant recently purchased, as well as the surrounding RS-2, Single-Family Residential Development was platted in 1962 as part of Port Malabar, Unit 13. The 10-acre parcel, where the applicants have operated a commercial landscape nursery since 1995, is unplatted. The nursery is a pre-existing, non-conforming use which cannot currently be extended to the 0.58-acre parcel.

The rezoning to RR, Rural Residential, will allow the existing business to expand operations, combine the two parcels, and bring the entire site into conformance.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case Z23-00013.

Planning and Zoning Board Recommendation:

Planning and Zoning Board minutes are not fully transcribed at this time; the following is an excerpt:

Motion to submit Case Z23-00013 to City Council for approval.

Motion by Mr. Weinberg, seconded by Mr. Olszewski. Motion carried with members voting as follows:

Aye: Jordan, Weinberg, Boerema, Good, Olszewski, Warner.

ATTACHMENTS:

Description

Z23-00013-Staff Report

Z23-00013-Site Survey

Z23-00013-Citizen Participation Plan Report

Z23-00013-Project Details

Z23-00013-Letter of Authorization

Z23-00013-Legal Ad

Ordinance 2023-106



STAFF REPORT

LAND DEVELOPMENT DIVISION

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

landdevelopmentweb@palmbayflorida.org

Prepared by

Kimberly Haigler, GIS Planner

CASE NUMBER

Z23-00013

PLANNING & ZONING BOARD HEARING DATE

December 6, 2023

PROPERTY OWNER & APPLICANT

Crews, Michael B Sr & Rebecca B
Crews (Joseph Crews, Rep.)

PROPERTY LOCATION/ADDRESS

Parcel 2 and Tract C, Section 36, Township 28,
Range 36, Brevard County, Florida, containing
approximately 10.58 acres. Located south of and
adjacent to Alcantarra Street NW, specifically at 242
Alcantarra Street NW; Tax Accounts 2816687,
2815423

SUMMARY OF REQUEST

The applicant is requesting a rezoning from RS-2, Single-Family Residential and SRE, Suburban Residential Estate to RR, Rural Residential

Existing Zoning

RS-2, Single-Family Residential and SRE, Suburban Residential Estate

Existing Land Use

LDR, Low Density Residential

Site Improvements

Pre-Existing Commercial Nursery

Site Acreage

Approximately 10.58 acres

SURROUNDING ZONING & USE OF LAND

North

RS-2, Single-Family Residential; Single-Family Residences

East

RS-2, Single-Family Residential; Single-Family Residences

South

RR, Rural Residential; Single-Family Residences

West

RS-2, Single-Family Residential; Single-Family Residences

BACKGROUND:

The subject property is south of and adjacent to Alcantarra Street NW, specifically at 242 Alcantarra Street NW. The .58-acre parcel which the applicant recently purchased, as well as the surrounding RS-2, Single-Family Residential Development was platted in 1962 as part of Port Malabar, Unit 13. The 10-acre parcel, where the applicants have operated a commercial landscape nursery since 1995, is unplatted. The nursery is a pre-existing, non-conforming use which cannot currently be extended to the .58-acre parcel. The rezoning to RR, Rural Residential, will allow the existing business to expand operations, combine the two parcels, and bring the entire site into conformance.

There is no existing site plan on file for this site, however, a site plan is not required for a rezoning application. Following rezoning approval, the applicants will be required to combine the two parcels and proceed with the site plan approval process. An approved site plan is required before the business tax receipt may be issued.

ANALYSIS:

The following analysis is per Chapter 185: Zoning Code, Section 185.201(C), which states that all proposed amendments shall be submitted to the Planning and Zoning Board, which shall analyze the factors of analysis applicable to the proposed amendment prior to making a recommendation to City Council. A rezoning request shall be in accordance with items (a) through (f) of Section 185.201(C)(2).

Item (a) - *The need and justification for the change.*

The applicant has purchased an additional .58 acres adjacent to their land and wishes to combine it with their other 10 acres and bring all their land under a zoning that will allow for their pre-existing use of commercial landscape nursery.

Item (b) - *When pertaining to the rezoning of land, the effect of the change, if any, on the particular property and on surrounding properties.*

The Rural Residential zoning district is intended for areas uniquely suited for the development and maintenance of rural single-family residential living combined with limited agricultural activities. The applicant states that since their business has been in operation at this site for many years, there will be no effects on the surrounding community.

Item (c) - *When pertaining to the rezoning of land, the amount of undeveloped land in the general area and in the city having the same classification as that requested.*

The 12-acre tract of land adjacent to the applicants' property to the south is zoned RR, Rural Residential has been partially developed. Across this region of the City, there are scattered

tracts of Rural Residential Zoned properties, which average 10-20 acres in size and are undeveloped.

Item (d) - *The relationship of the proposed amendment to the purpose of the city plan for development, with appropriate consideration as to whether the proposed change will further the purposes of this chapter and the Comprehensive Plan (Plan).*

Both parcels have a Future Land Use of LDR, Low-Density Residential. The proposed rezoning to Rural Residential complies with the Comprehensive Plan.

Item (e) – *Whether the requested district is substantially different from that of the surrounding area.*

The 12-acre tract of land adjacent to the south of the applicants' property is zoned RR, Rural Residential

Item (f) – *Whether the request provides for a transition between areas of different character, density or intensity.*

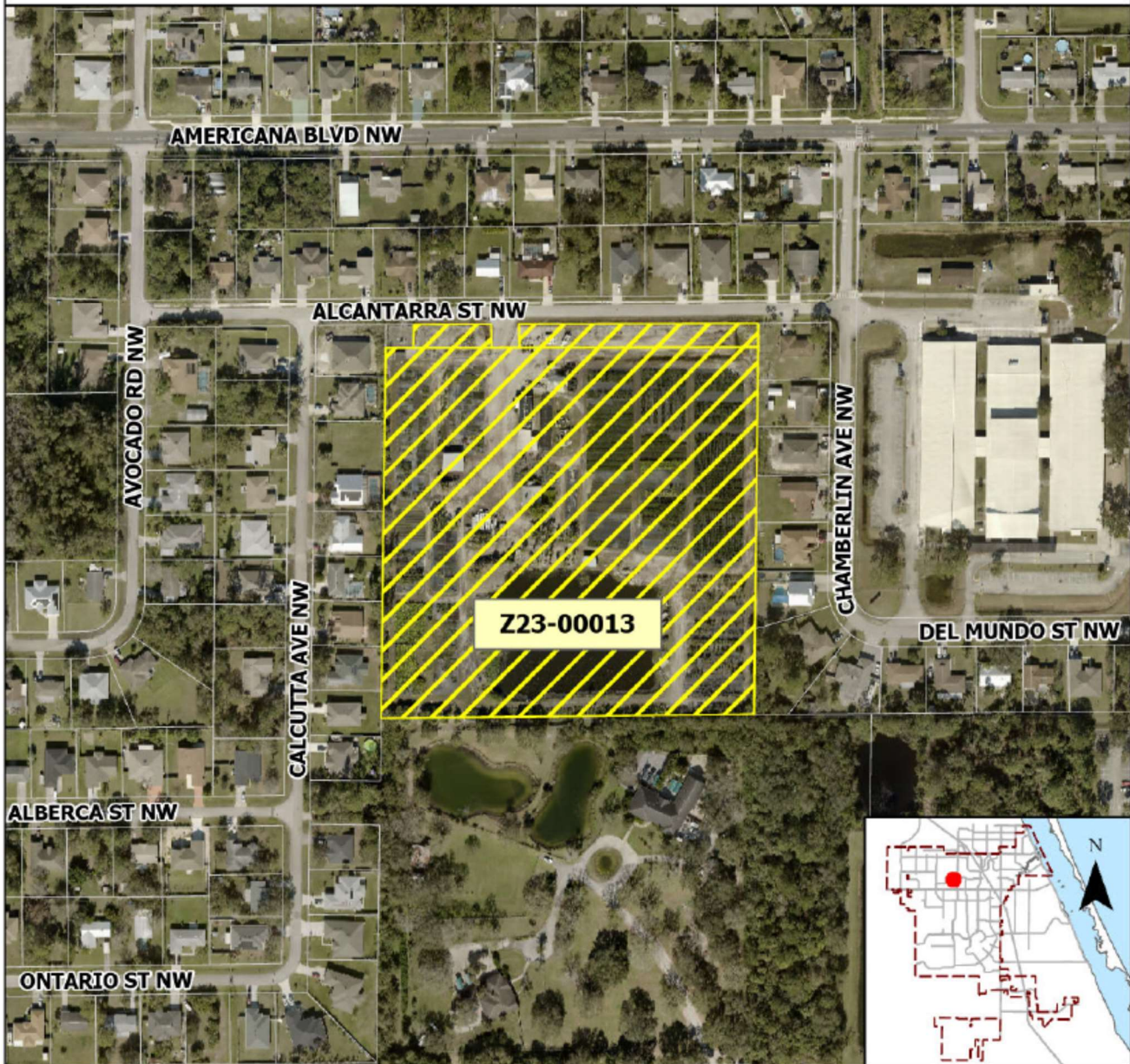
Through the site plan review process, an opaque buffer between the commercial nursery operations and adjacent single-family residences will be established.

STAFF RECOMMENDATION:

Staff recommends Case Z23-00013 for approval.



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



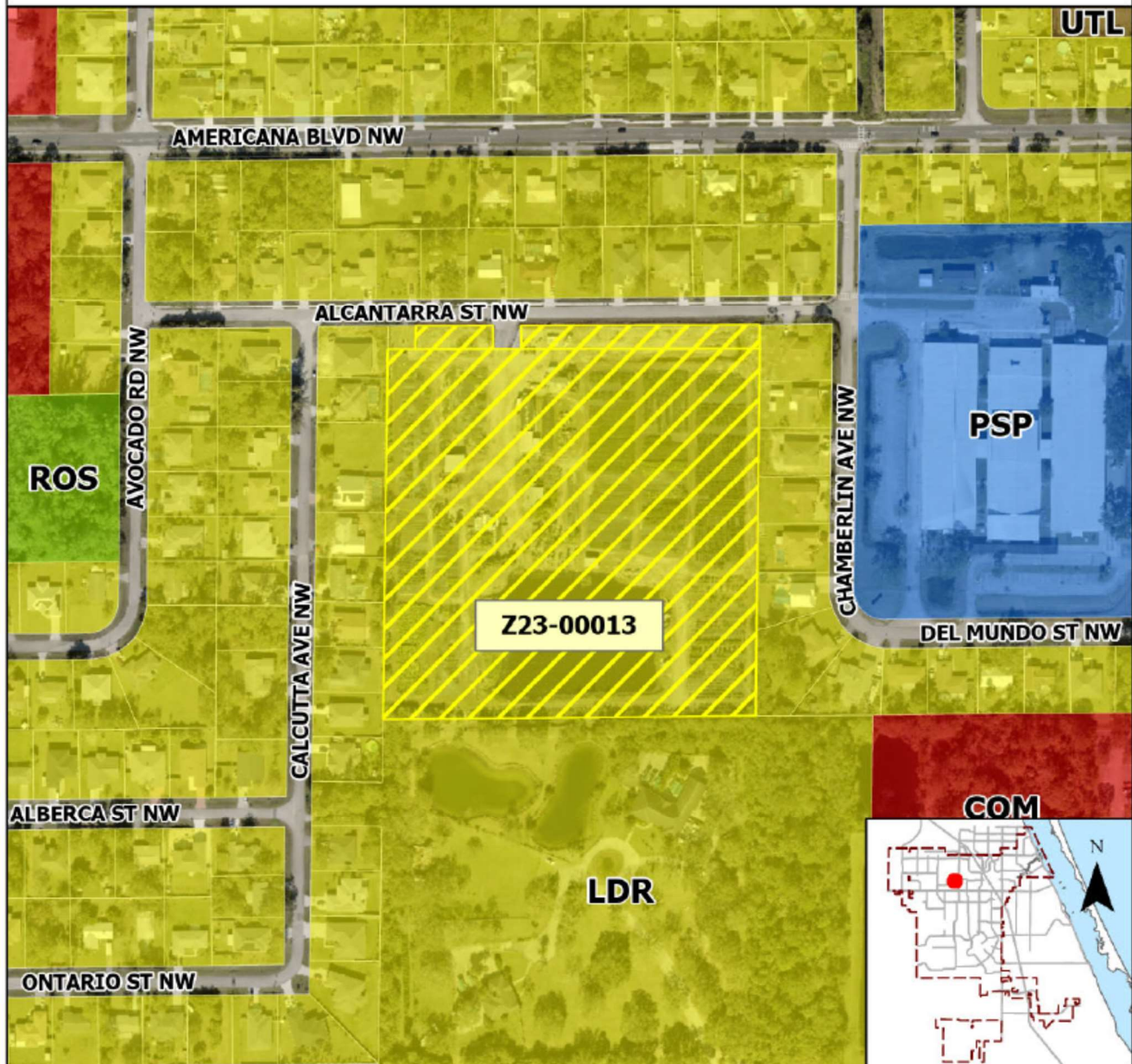
AERIAL LOCATION MAP CASE: Z23-00013

Subject Property

South of and adjacent to Alcantarra Street NW, specifically at 242 Alcantarra Street NW



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



FUTURE LAND USE MAP CASE: Z23-00013

Subject Property

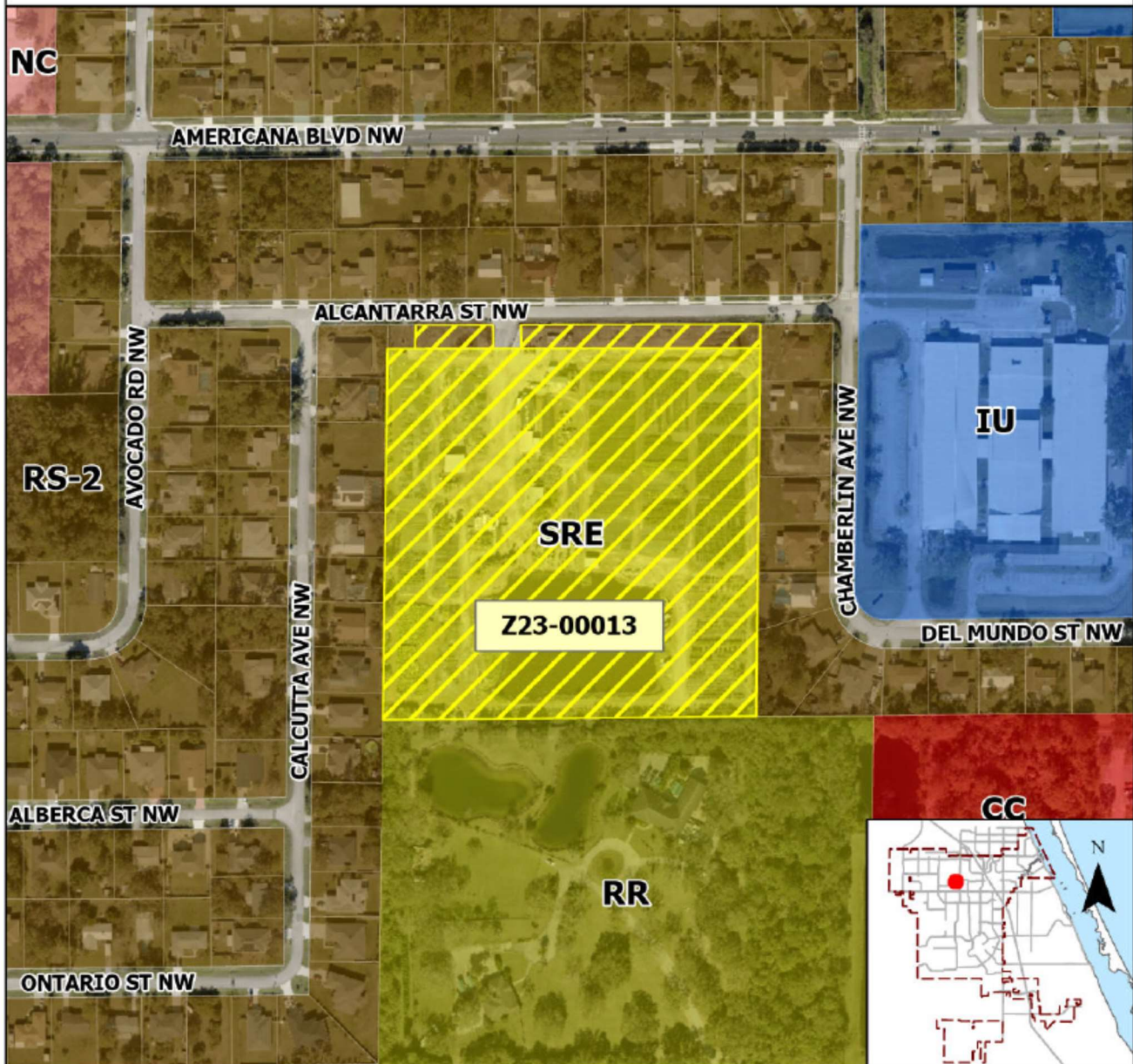
South of and adjacent to Alcantarra Street NW, specifically at 242 Alcantarra Street

Future Land Use Classification

LDR - Low Density Residential



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



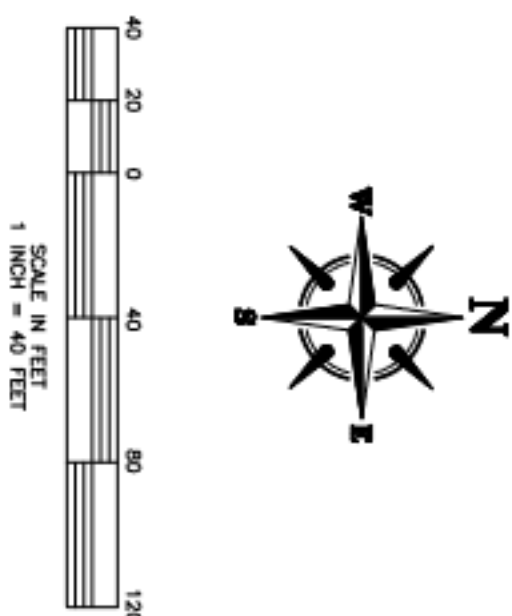
ZONING MAP CASE: Z23-00013

Subject Property

South of and adjacent to Alcantarra Street NW, specifically at 242 Alcantarra Street

Current Zoning Classification

SRE - Suburban Residential Estate



PROPERTY ADDRESS: 242 ALCANTARRA STREET N.W.
PALM BAY, FLORIDA 32907



- FLOOD ZONE "X" FLOOD INSURANCE RATE MAP NUMBER 12000002595 G



CITIZEN PARTICIPATION REPORT

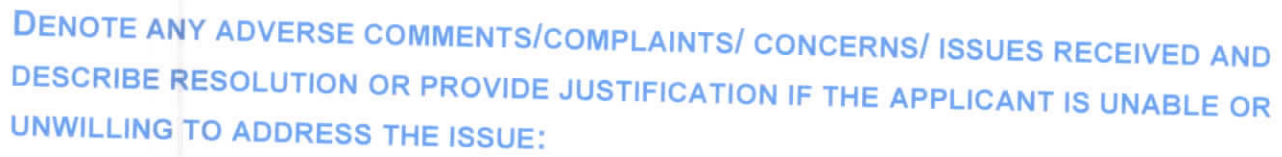
Applicant should follow established Citizen Participation Plan as specified in § 169.005 CITIZEN PARTICIPATION PLANS.

CASE DETAILS

Applicant Name	Michael & Rebecca Crews/ Four C's Nursery
Project Name	Rezoning of Properties
Case Type	Rezoning to RR
Case Description	Rezoning 2 properties at 242 Alcantarra Street NW
Intended Month of Submission	September 2023

INFORMATION ON THE CITIZEN PARTICIPATION MEETING

Notice to the Public (Date)	9/2/2023
Date of CPP	9/20/2023
Location of the Meeting	Four C's Nursery 242 Alcantarra Street NW Palm Bay, Florida 32907
Number of Attendees	

[illegible]



LIST OF ATTENDEES

Number	Name of attendee	Number	Name of attendee
1.	Barbara Winnie	2.	Antonio Flores
3.	Greg Davis	4.	Brenda Colon-Santos
5.	Tom Hostetler	6.	Gretchen Youhas
7.	Wayne Williams	8.	
9.		10.	
11.		12.	
13.		14.	
15.		16.	
17.		18.	
19.		20.	
21.		22.	
23.		24.	
25.		26.	
27.		28.	
29.		30.	
31.		32.	
33.		34.	
35.		36.	



ADDITIONAL DOCUMENTS REQUIRED WITH CITIZEN PARTICIPATION PLAN REPORT SUBMISSION

1. Copy of notice sent (separate attachment)
2. Material distributed or presented at the meeting (separate attachment)
 - All the property owners within a 500-foot radius of the subject parcel shall be informed about the meeting date, time and location.

I hereby certify that information provided as part of this report is correct.

X

joseph crews

Signature, _____

Joseph
Crews

Typed Name and Title:

09/20/2023

Date :

DESCRIPTION OF REQUEST:

A request by Michael Crews of Four C's Nursery for a rezoning request to rural residential for parcels of land.

Location: The subject property is located at 242 Alcantarra Street NW Palm Bay, Florida 32907

Notice of this Citizen Participation Informational Meeting is sent to the applicant owners of property within 500 feet of the property involved in request

For further information about this rezoning, please contact

Jake Crews

321-729-0351

fourcsjake@cfl.rr.com

CITIZEN PARTICIPATION INFORMATIONAL MEETING

MICHAEL & BECKY CREWS/FOUR C'S NURSERY

REZONING OF PROPERTIES

Location Aerial of Property



Please be advised that Michael & Becky Crews/Four C's Nursery will conduct a Citizen Participation Informational Meeting on:

September 20, 2023 at 2pm

Four C's Nursery

242 Alcantarra Street NW Palm Bay, FL 32907

To discuss the proposed rezoning of the parcels of land

Project Details: Z23-00013

Project Type: Rezoning Zoning Change

Project Location: 242 ALCANTARRA ST NW Palm Bay, FL 32907
Milestone: Submitted
Created: 8/22/2023
Description: rezone
Assigned Planner: Kimberly Haigler

Contacts

Contact	Information
Owner/Applicant	CREWS, MICHAEL B SR & Rebecca B Crews 3700 HIELD RD MELBOURNE, FL 32904 (321) 288-3049 fourcsmike@cfl.rr.com
Legal Representative	Joseph Crews 242 Alcantarra Street NW Palm Bay, FL 32907 (321) 403-7183 fourcsjake@cfl.rr.com
Submitter	Michael Crews 242 Alcantarra Street NW Palm Bay, FL 32907 fourcsjake@cfl.rr.com
Assigned Planner	Kimberly Haigler 120 Malabar Rd SE Palm Bay, FL 32907 kimberly.haigler@palmbayflorida.org

Fields

Field Label	Value
Block	2
Lot	
Township Range Section	28-36-36
Subdivision	00
Year Built	2005
Use Code	6910
Use Code Desc	NURSERY - WITH RESIDENCE

Project Details: Z23-00013

LotSize	
Building SqFt	
Homestead Exemption	
Taxable Value Exemption	
Assessed Value	
Market Value	
Land Value	
Tax ID	2816687
Flu Description	Single Family Residential
Flu Code	SFR
Zoning Description	Suburban Residential Estate
Zoning Code	SRE
Size of Area (acres)	
Present Use of Property	nursery
Zoning Classification Desired	RR
Structures On Property?	True
Intended Use of Property	nursery
Justification for Change	conform to existing use
Is Submitter the Representative?	True
Tax Account Numbers	2816687 / 2815423
Parcel Number	28-36-36-00-2 / 28-36-36-EX-C
Ordinance Number	

SEPT 23, 2023

Re: Letter of Authorization

As the property owner of the site legally described as:

THE NORTH 1/2 OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SEC. 36, TOWNSHIP
28 SOUTH, Range 36 EAST, BREVARD COUNTY, FLORIDA TOGETHER WITH TRACT C
AND TRACT L

I, Owner Name: Michael B. Crews Sr - Rebecca B. Crews
Address: 3700 Hield Road - Melb-32904
Telephone: 321-726-0530-
Email: fourcsmike@cfl.rr.com

hereby authorize:

Representative: JOSEPH CREWS
Address: 251 McClain DRIVE W. Melb, FL 32904
Telephone: 321-403-7183
Email: fourcsjake@cfl.rr.com

to represent the request(s) for:

PROPERTY REZONE



Rebecca B Crews
(Property Owner Signature)
Michael B Crews

STATE OF Florida

COUNTY OF Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical
presence or ☐ online notarization, this 22 day of SEPT, 2023 by
Rebecca Crews & Michael B Crews, property owner.

Diane McDavid, Notary Public

☐ Personally Known or ☒ Produced the Following Type of Identification:

FL Driv Lic

PROOF OF PUBLICATION

CITY OF PALM BAY
attn: Accounts Payable
City Of Palm Bay
120 Malabar Rd Se
Palm Bay FL 32907-3009

STATE OF WISCONSIN, COUNTY OF BROWN

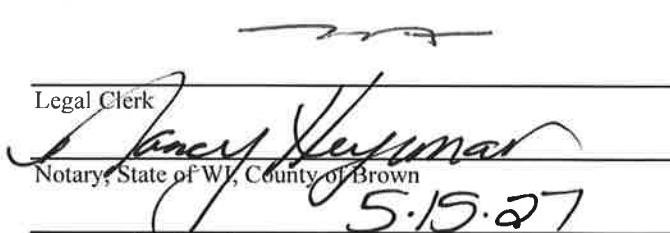
Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Advertising Representative of the Florida Today, a daily newspaper published in Brevard County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of Main Legal CLEGL, was published on the publicly accessible website of Brevard County, Florida, or in a newspaper by print in the issues of, on:

11/16/2023

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 11/16/2023

Legal Clerk


Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$498.80

Order No: 9525236

Customer No: 1127256

PO #:

of Copies:
1

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

NANCY HEYRMAN
Notary Public
State of Wisconsin

ORDINANCE 2023-106

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM RS-2 (SINGLE-FAMILY RESIDENTIAL DISTRICT) AND SRE (SUBURBAN RESIDENTIAL ESTATE CATEGORY) TO RR (RURAL RESIDENTIAL DISTRICT); WHICH PROPERTY IS LOCATED SOUTH OF AND ADJACENT TO ALCANTARRA STREET, IN THE VICINITY BETWEEN CALCUTTA AND CHAMBERLIN AVENUES, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A CHANGE OF THE ZONING MAP; 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 Zoning Ordinance of the City of Palm Bay, Brevard County, Florida, is hereby amended to provide for the rezoning of property from RS-2 (Single-Family Residential District) and SRE (Suburban Residential Estate Category) to RR (Rural Residential District) being legally described as follows:

Tax Parcel 2 along with Tract C, of the Public Records of Brevard County, Florida; Section 36, Township 28S, Range 36E; containing 10.58 acres, more or less.

SECTION 2. The Zoning Map of the City of Palm Bay is hereby revised to reflect this amendment.

SECTION 3. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2023- , held on , 2023; and
read in title only and duly enacted at Meeting 2023- , held on , 2023.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

City of Palm Bay, Florida
Ordinance 2023-106

Reviewed by CAO: _____

Applicant: Michael and Rebecca Crews
Case: Z23-00013

cc: Applicant
Case File



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Lisa Frazier, Growth Management Director

DATE: 1/4/2024

RE: Ordinance 2023-107, rezoning property located west of and adjacent to Glenham Drive, in the vicinity south of Palm Bay Road, from RS-1 (Single-Family Residential District) to RS-2 (Single-Family Residential District) (15.53 acres) (Case Z23-00014, SKA Properties, 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.

The applicant requests a rezoning from RS-1, Single-Family Residential to RS-2, Single-Family Residential. The subject property is located west of and adjacent to Glenham Drive NE, in the vicinity west of Palmdale Circle NE and contains approximately 15.53 acres.

The proposed rezoning will allow for a subdivision with 75' wide lots instead of the currently required 80' wide lots. Rezoning to RS-2, Single-Family Residential is consistent with the existing future land use of Low Density Residential. The requested district is not substantially different from that of the surrounding area.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case Z23-00014.

Planning and Zoning Board Recommendation:

Planning and Zoning Board minutes are not fully transcribed at this time; the following is an excerpt:

Motion to submit Case Z23-00014 to City Council for approval.

Motion by Mr. Weinberg, seconded by Mr. Boerema. Motion carried with members voting as follows:

Aye: Jordan, Weinberg, Boerema, Good, Olszewski, Warner.

ATTACHMENTS:**Description**

Z23-00014 Staff Report

Z23-00014 Survey

Z23-00014 Factors of Analysis

Z23-00014 School Board Report

Z23-00014 Citizen Participation Plan Report

Z23-00014 Application

Z23-00014 Letters of Authorization

Z23-00014 Legal Acknowledgement

Z23-00014 Legal Ad

Z23-00014 Correspondence

Z23-00014 Correspondence 2

Ordinance 2023-107



STAFF REPORT

LAND DEVELOPMENT DIVISION

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

landdevelopmentweb@palmbayflorida.org

Prepared by

Tania Ramos, Senior Planner

CASE NUMBER

Z23-00014

PLANNING & ZONING BOARD HEARING DATE

December 6, 2023

PROPERTY OWNER & APPLICANT

SKA Properties, LLC. (Richard Price, Price Family Homes, Inc., & Richard Kern, P.E., RK Engineering, Reps.)

PROPERTY LOCATION/ADDRESS

Block 761, Section 23, Township 28, Range 37, Brevard County, Florida, containing approximately 15.53 acres. Located west of and adjacent to Glenham Drive NE, in the vicinity west of Palmdale Circle NE; Tax Account 2832293

SUMMARY OF REQUEST

The applicant is requesting a rezoning from RS-1, Single-Family Residential to RS-2, Single-Family Residential.

Existing Zoning

RS-1, Single-Family Residential

Existing Land Use

LDR, Low Density Residential

Site Improvements

Vacant Land

Site Acreage

Approximately 15.53 acres

SURROUNDING ZONING & USE OF LAND

North

RS-1, Single-Family Residential, Vacant Land; IU, Institutional Use, Knecht Park

East

RS-1, Single-Family Residential, Single-Family Residences

South

RS-1, Single-Family Residential, Church

West

LI, Light Industrial and Warehousing, Vacant Land

COMPREHENSIVE PLAN COMPATIBILITY

Yes, the Future Land Use is Low Density Residential.

BACKGROUND:

The subject property is generally located west of and adjacent to Glenham Drive NE, in the vicinity west of Palmdale Circle NE and contains approximately 15.53 acres.

The applicant is requesting a rezoning from RS-1, Single-Family Residential to RS-2, Single Family Residential.

The proposed rezoning will allow for a subdivision with 75' wide lots instead of the currently required 80' wide lots. The applicant states the change is necessary to make the project feasible. The School Board of Brevard County determined the schools impacted by this proposal will have enough capacity for the total projected and potential students from this project.

ANALYSIS:

All proposed amendments shall be submitted to the Planning and Zoning Board which shall analyze the factors of analysis applicable to the proposed amendment prior to making a recommendation to City Council.

- (A) The applicant's need and justification for the change and whether it aligns with the community's current or future needs.

The applicant states, "The applicant's need for the zoning change is that the developer needs 75' wide lots to make the project feasible. The zoning change to RS-2 makes this feasible. The existing zoning of RS-1 requires 80' wide lots."

Staff finds that there is not a significant amount of land left in the area for new single-family development. The proposed change aligns with the community's current and future needs by providing additional residential development near major employers along Palm Bay Road NE and nearby Robert J. Conlan Blvd. NE.

- (B) The effect of the change, if any, on a particular property and surrounding properties.

The applicant states, "The change in zoning from RS-1 to RS-2 has no impact on the surrounding properties. These are both residential single family detached zonings."

In the vicinity along Glenham Drive NE, northeast of the subject site there is existing RS-3 zoning, which also allows 75' wide lots. To the east and south of there is RS-1 zoning. To the west is a City owned parcel with LI, Light Industrial zoning. The requested change from RS-1 to RS-2 could allow additional residences to fit in the project, but it will not have an effect on the surrounding properties.

- (C) The amount of existing undeveloped land in the general area of the city having the

same classification as that requested.

The applicant states, "There does not appear to be any undeveloped land left in the general area having the same classification as that requested."

This 15.53 acres appears to be the largest parcel for single-family development remaining in the area.

(D) Whether the proposed amendment furthers the purpose of the City's Comprehensive Plan or strategic plans applicable to the proposed development and the provisions in the Land Development Code.

The applicant states, "The proposed amendment is in line with the city's Comprehensive plan."

The proposed amendment will further the purpose of the City's Comprehensive Plan. Objective FLU-1.8 states that future development shall be compatible with established neighborhoods and strive to enhance the character of the community. The area is characterized by existing single-family development and the proposed rezoning is compatible with the community.

(E) Whether the requested district is substantially different from that of the surrounding area.

The applicant states, "The requested RS-2 is not substantially different from that of the surrounding area."

The requested district is not substantially different from that of the surrounding area. To the north, on the east side of Glenham Drive NE is existing development zoned RS-3, Single-Family Residential District. The intent of this zoning district is to apply to an area of medium density single-family residential development, the same intent as the requested RS-2, Single-Family Residential District.

(F) Whether the request provides for a transition between areas of different character, density, or intensity.

The applicant states, "The RS-2 provides a transition between the L1 zoning to the west and the RS-1 to the east."

The subject property is adjacent to a City owned parcels to the north and west which contain a stormwater pond and Knecht Park. From Palm Bay Road NE, moving south down Glenham Drive NE, the zoning changes from Highway Commercial and Light Industrial and Warehousing into Institutional Use and then single-family districts. RS-2 provides a transition between the more intense areas near Palm Bay Road NE as you move south into the lower

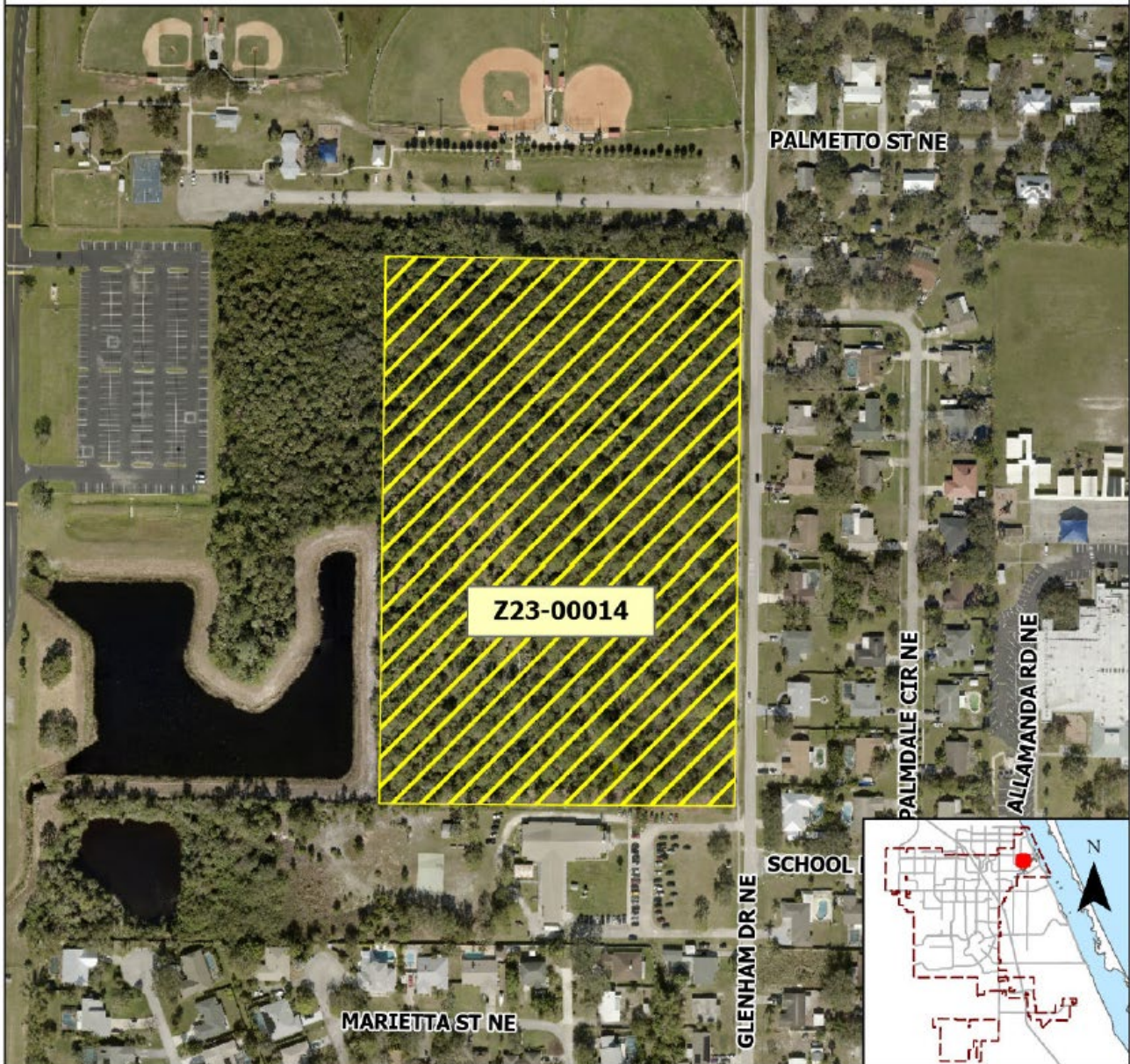
density RS-1 Single-Family Residential district.

STAFF RECOMMENDATION:

Case Z23-00014 is recommended for approval.



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



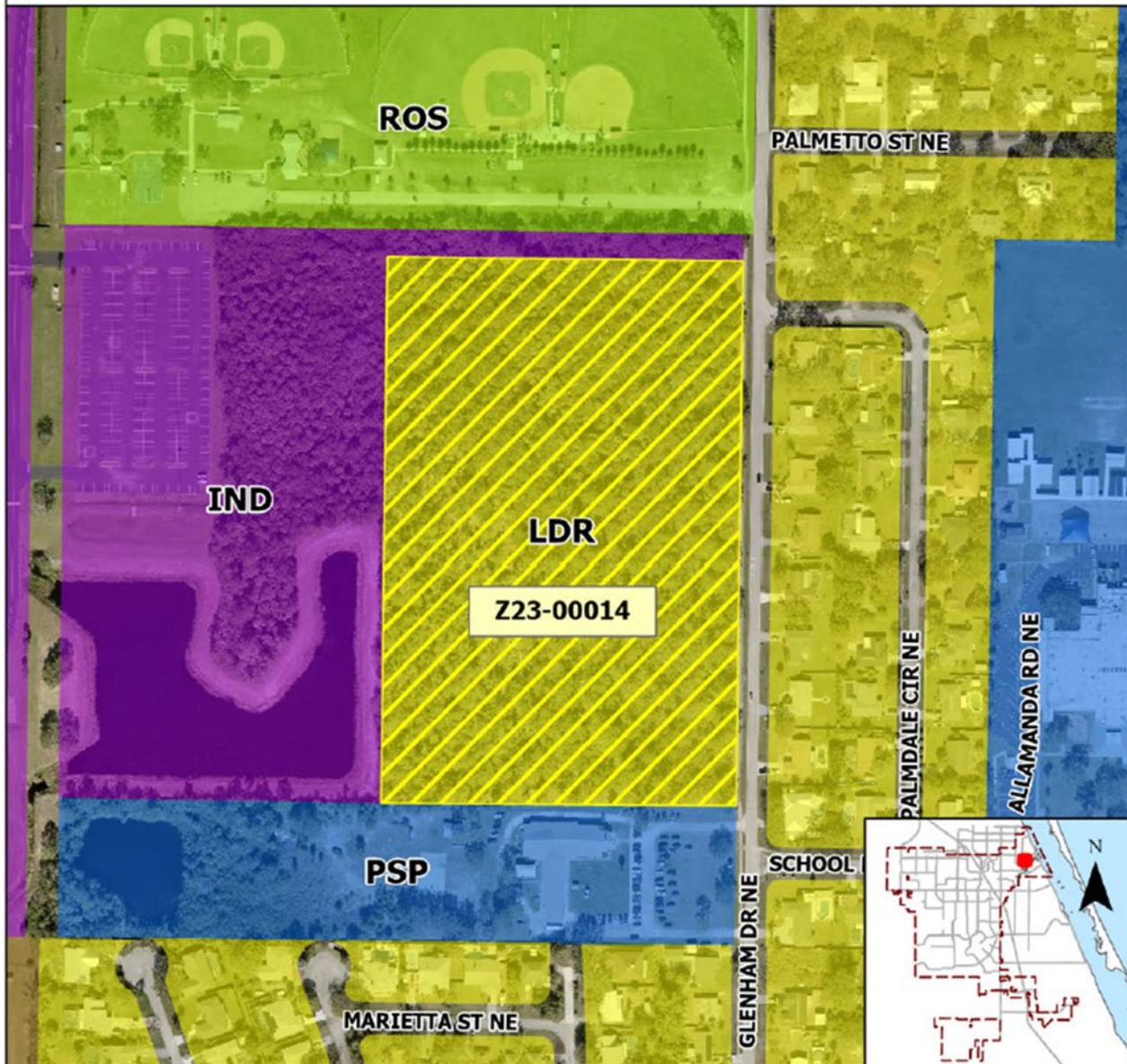
AERIAL LOCATION MAP CASE: Z23-00014

Subject Property

West of and adjacent to Glenham Drive NE, in the vicinity west of Palmdale Circle NE



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



FUTURE LAND USE MAP CASE: Z23-00014

Subject Property

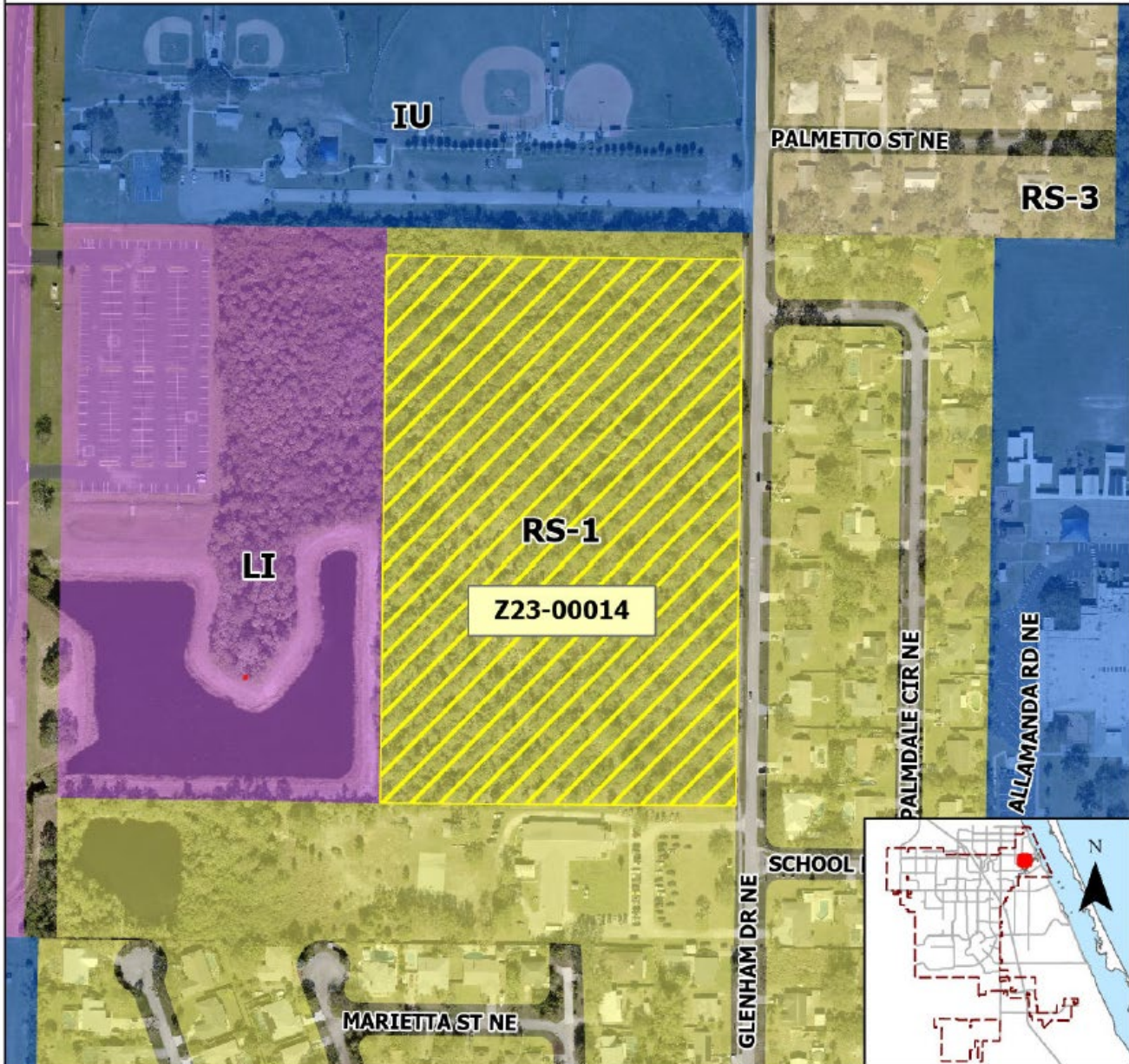
West of and adjacent to Glenham Drive NE, in the vicinity west of Palmdale Circle NE

Future Land Use Classification

LDR - Low Density Residential



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



ZONING MAP CASE: Z23-00014

Subject Property

West of and adjacent to Glenham Drive NE, in the vicinity west of Palmdale Circle NE

Current Zoning Classification

RS-1 – Single-Family Residential

SKETCH AND LEGAL DESCRIPTION

SECTION 23, TOWNSHIP 28 RANGE 37

THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE
SOUTHEAST QUARTER OF SECTION 23 TOWNSHIP 28 RANGE 37

POINT OF
BEGINING OF
HARRIS PARCEL
ORB 2430 PAGE 1962

S89°57'09"E

1296.63'

N89°57'09"W

664.38'

S00°04'04"W
50.00'

WEST RW OF
GLENHAM
DRIVE NE

LESS AND EXCEPT

HARRIS
CORPORATION
ORB 2430 PAGE 1962

15.53 ACRES
PARCEL TO BE
REZONED

GLENHAM DRIVE NE R/W
LESS AND EXCEPT

N00°00'00"E
1068.84'

THE WEST LINE OF THE SOUTHWEST QUARTER OF THE
SOUTHEAST QUARTER OF SECTION 23 TOWNSHIP 28 RANGE 37

S00°02'03"W
1018.14'

N00°00'00"E
1017.59'

S89°59'01"W

631.58'

S90°00'00"E

664.99'

NORTH LINE OF THE NORTH 260.00 FEET OF THE SOUTHWEST QUARTER OF THE
SOUTHEAST QUARTER OF SECTION 23 TOWNSHIP 28 RANGE 37

SCALE 1" = 200'

LEGAL DESCRIPTION PER DEED

The Southwest Quarter (SW 1/4) of the Southeast Quarter (SE 1/4) of Section 23, Township 28 South, Range 37 East, Brevard County, Florida, EXCEPTING the South 260 feet thereof; ALSO LESS the rights of way of Glenham Drive and Valencia Drive; ALSO LESS that portion of the property sold to Harris Corporation under Warranty Deed dated May 19, 1983 and recorded in O.R. Book 2430, Page 1962, Public Records of Brevard County, Florida, described as: A portion of the Southwest one-quarter of Southeast one-quarter of Section 23, Township 28 South, Range 37 East, Brevard County, Florida, and being more particularly described as follows: From the North line of the Southwest one-quarter of the Southeast one-quarter of said Section 23, and the Westerly right of way line of Glenham Road, run Glenham Road, run S 0°04'04" W a distance of 50.0 feet; thence run N 89°57'09" W a distance of 664.38 feet; thence run S 0°02'03" W a distance of 1018.14 feet to the North line of the South 260.0 feet of the Southwest one-quarter of the Southeast one-quarter of said Section 23; thence run S 89°59'01" W along the said North line a distance of 631.58 feet to the West line of the Southwest one quarter of the Southeast one-quarter of said Section 23; thence run North along said West line a distance of 1068.84 feet to the North line of the Southwest one-quarter of the Southeast one quarter of said Section 23; thence run S 89°57'09" E along the said North line a distance of 1296.63 feet to the Point of Beginning.





LAND DEVELOPMENT DIVISION

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

<https://ims.palmbayflorida.org>

PLANNING AND ZONING BOARD FACTORS OF ANALYSIS

(1) Future Land Use Map Amendment Factors of Analysis

- (a) Whether the proposed amendment will have a favorable or unfavorable effect on the city's budget, or the economy of the city;

Applicant Response:

The proposed amendment will increase the tax revenue for the city and therefore should have a favorable effect on the city budget.

- (b) Whether the proposed amendment will adversely affect the level of service of public facilities;

Applicant Response:

The proposed amendment will not be allowed to adversely impact the level of service of public facilities.

- (c) Whether the proposed amendment will adversely affect the environment or the natural or historical resources of the city or the region as a result of the proposed amendment;

Applicant Response:

The proposed amendment will not adversely impact the environment or the natural or historical resources of the city or region.

(d) Whether the amendment will have a favorable or adverse effect on the ability of people to find adequate housing reasonably accessible to their places of employment;

Applicant Response:

The proposed amendment will increase the housing available and reasonably accessible to their places of employment. The project is close to Palm Bay Rd. an arterial road.

(e) Whether the proposed amendment will promote or adversely impact the public health, safety, welfare, or aesthetics of the region or the city;

Applicant Response:

The proposed amendment will not adversely impact the public health, safety, welfare or aesthetics of the region or city.

(f) Whether the requested amendment is consistent with all elements of the Comprehensive Plan and established Levels of Service.

Applicant Response:

The proposed amendment is consistent with all elements of the Comprehensive Plan and established levels of service.

(g) Whether the request maximizes compatibility (consistent with the definition found in [Florida Statutes 163.31649](#)) between uses;

Applicant Response:

The proposed amendment is to change the zoning from RS-1 to RS-2. These both have the same allowable residential uses and therefore the proposed zoning change will not have any adverse impact on compatibility between uses.

- (h) Whether the request provides for a transition between areas of different character, density or intensity;

Applicant Response:

The proposed RS-2 zoning provides for a transition between the L1 zoning to the west and the RS-1 zoning to the east.

- (i) Whether the request relocates higher density and intensity uses in areas which already feature adequate vehicular access and access to public facilities; and

Applicant Response:

The rezoning request is in an area that already has adequate vehicular access and access to public facilities.

- (j) Whether the request has potential for creating land use inequities per Policy FLU – 1.12A of the Comprehensive Plan.

Applicant Response:

The proposed request is compatible with existing land uses. It matches the land use on the east side of Glenham DR.

(2) Zoning Map Amendment Factors of Analysis

- (a) The applicant's need and justification for the change and whether it aligns with the community's current or future needs;

Applicant Response:

The applicant's need for the zoning change is that the developer needs 75' wide lots to make the project feasible. The zoning change to RS-2 makes this feasible. The existing zoning of RS-1 requires 80' wide lots.

- (b) The effect of the change, if any, on a particular property and surrounding properties;

Applicant Response:

The change in zoning from RS-1 to RS-2 has no impact on the surrounding properties. These are both residential single family detached zonings.

- (c) The amount of existing undeveloped land in the general area of the city having the same classification as that requested;

Applicant Response:

There does not appear to be any undeveloped land left in the general area having the same classification as that requested.

- (d) Whether the proposed amendment furthers the purpose of the city's Comprehensive Plan, or other strategic plans applicable to the proposed development and the provisions in the Land Development Code;

Applicant Response:

The proposed amendment is in line with the city's Comprehensive plan.

- (e) Whether the requested district is substantially different from that of the surrounding area; and

Applicant Response:

The requested RS-2 is not substantially different from that of the surrounding area.

(f) Whether the request provides for a transition between areas of different character, density or intensity.

Applicant Response:

The RS-2 provides a transition between the L1 zoning to the west and the RS-1 to the east.

Please note: You may add supplemental information or documents to this form for consideration.

School Board of Brevard County

2700 Judge Fran Jamieson Way • Viera, FL 32940-6699
Dr. Mark J. Rendell, Ed.D., Superintendent



October 20, 2023

Ms. Tania Ramos
Senior Planner
City of Palm Bay
Growth Management Department
120 Malabar Road SE
Palm Bay, Florida 32907

**RE: Proposed Glenham Road Development
School Impact Analysis – Capacity Determination CD-2023-27**

Dear Ms. Tania Ramos,

We received a completed *School Facility Planning & Concurrency Application* for the referenced development. The subject property is Tax Account number 2832293 (Parcel ID number: 28-37-23-00-761 containing a total of approximately 15.52 acres in the City of Palm Bay, Florida. The proposed development includes 53 single-family homes. The School Impact Analysis of this proposed development has been undertaken and the following information is provided for your use.

The calculations used to analyze the prospective student impact are consistent with the methodology outlined in Section 13.2 and Amended Appendix “A”-School District Student Generation Multiplier (approved April 11, 2022) of the *Interlocal Agreement for Public School Facility Planning & School Concurrency (ILA-2014)*. The following capacity analysis is performed using capacities/projected students as shown in years 2023-24 to 2027-28 of the *Brevard County Public Schools Financially Feasible Plan for School Years 2022-23 to 2027-28* which is attached for reference.

Single-Family Homes		53	
Students Generated	Student Generation Rates	Calculated Students Generated	Rounded Number of Students Generated
Elementary	0.24	12.72	13
Middle	0.07	3.71	4
High	0.12	6.36	6
Total	0.43		23

Planning & Project Management
Facilities Services
Phone: (321) 633-1000 x11418 • FAX: (321) 633-4646



An Equal Opportunity Employer

**FISH Capacity (including relocatable classrooms) from the
Financially Feasible Plan (FFP) Data and Analysis for School Years 2023-24 to 2027-28**

School		2023-24	2024-25	2025-26	2026-27	2027-28
Palm Bay Elem		983	983	983	983	983
Stone		1,076	1,076	1,076	1,076	1,076
Palm Bay		2,657	2,657	2,657	2,657	2,657

Projected Student Membership

School		2023-24	2024-25	2025-26	2026-27	2027-28
Palm Bay Elem		613	610	627	630	636
Stone		708	799	823	890	977
Palm Bay		1,495	1,581	1,683	1,704	1,700

Students Generated by Newly Issued SCADL Reservations Since FFP

School		2023-24	2024-25	2025-26	2026-27	2027-28
Palm Bay Elem		63	104	123	143	145
Stone		13	26	38	43	44
Palm Bay		29	51	74	84	85

**Cumulative Students Generated by
Proposed Development**

School		2023-24	2024-25	2025-26	2026-27	2027-28
Palm Bay Elem		-	-	5	13	13
Stone		-	-	1	4	4
Palm Bay		-	-	2	6	6

**Total Projected Student Membership (includes
Cumulative Impact of Proposed Development)**

School		2023-24	2024-25	2025-26	2026-27	2027-28
Palm Bay Elem		676	714	755	786	794
Stone		721	825	862	937	1,025
Palm Bay		1,524	1,632	1,759	1,794	1,791

**Projected Available Capacity =
FISH Capacity - Total Projected Student Membership**

School		2023-24	2024-25	2025-26	2026-27	2027-28
Palm Bay Elem		307	269	228	197	189
Stone		355	251	214	139	51
Palm Bay		1,133	1,025	898	863	866

At this time, Palm Bay Elementary School, Stone Magnet Middle School, and Palm Bay Magnet Senior High School are projected to have enough capacity for the total of projected and potential students from the Glenham Road development.

This is a **non-binding** review; a *Concurrency Determination* must be performed by the School District prior to a Final Development Order and the issuance of a Concurrency Evaluation Finding of Nondeficiency by the Local Government.

We appreciate the opportunity to review this proposed project. Please let us know if you require additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Black', with a stylized flourish at the end.

Karen M. Black, AICP
Manager – Facilities Planning & Intergovernmental Coordination
Planning & Project Management, Facilities Services

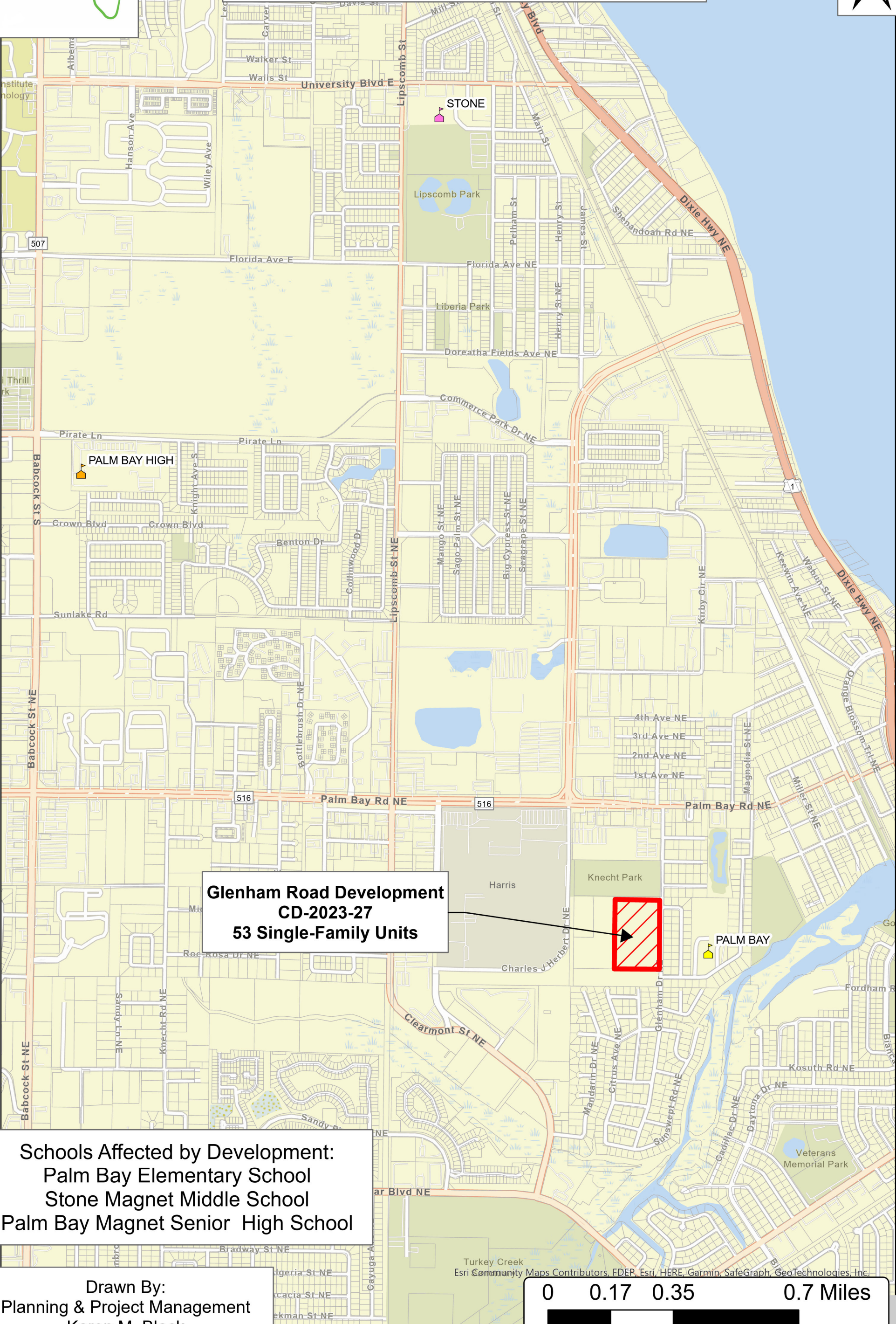
Enclosure: *Brevard County Public Schools Financially Feasible Plan for School Years
2022-23 to 2027-28*

Copy: Susan Hann, AICP, Assistant Superintendent of Facility Services
File CD-2023-27

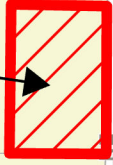
David G. Lindemann, AICP, Director of Planning & Project Management,
Facilities Services
File CD-2023-27



Glenham Road Development Location Map

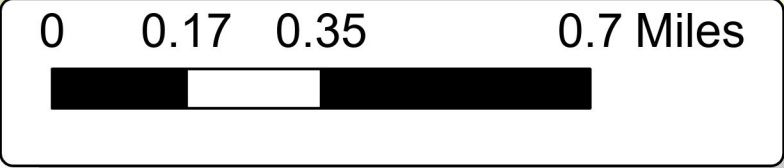


**Glenham Road Development
CD-2023-27
53 Single-Family Units**



Schools Affected by Development:
Palm Bay Elementary School
Stone Magnet Middle School
Palm Bay Magnet Senior High School

Drawn By:
Planning & Project Management
Karen M. Black
October 20, 2023



Brevard County Public Schools

Financially Feasible Plan To Maintain Utilization Rates Lower than the **100%** Level of Service

Data and Analysis for School Years 2022-23 to 2027-28



Summary				2022-23			2023-24			2024-25			2025-26			2026-27			2027-28		
Highest Utilization Elementary Schools:						93%			99%			100%			99%			99%			100%
Highest Utilization Middle Schools:						88%			88%			94%			92%			91%			100%
Highest Utilization Jr / Sr High Schools:						83%			83%			81%			78%			77%			76%
Highest Utilization High Schools:						107%			99%			97%			98%			100%			100%

School	Type	Grades	Utilization Factor	School Year 2022-23			School Year 2023-24			School Year 2024-25			School Year 2025-26			School Year 2026-27			School Year 2027-28		
				FISH Capacity	10/14/22 Membership	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization

Elementary School Concurrency Service Areas																					
Allen	Elementary	PK-6	100%	751	598	80%	751	598	80%	751	635	85%	751	704	94%	751	720	96%	773	766	99%
Andersen	Elementary	K-6	100%	884	568	64%	884	568	64%	884	549	62%	884	537	61%	884	530	60%	884	501	57%
Apollo	Elementary	K-6	100%	902	731	81%	902	731	81%	902	749	83%	902	753	83%	902	736	82%	902	718	80%
Atlantis	Elementary	PK-6	100%	739	620	84%	739	620	84%	739	608	82%	739	596	81%	739	585	79%	739	572	77%
Audubon	Elementary	PK-6	100%	761	450	59%	761	450	59%	761	435	57%	761	422	55%	761	419	55%	761	426	56%
Cambridge	Elementary	PK-6	100%	787	495	63%	787	495	63%	787	511	65%	787	505	64%	787	510	65%	787	524	67%
Cape View	Elementary	PK-6	100%	570	305	54%	570	288	51%	570	309	54%	570	314	55%	570	315	55%	570	329	58%
Carroll	Elementary	K-6	100%	751	626	83%	751	633	84%	751	643	86%	751	623	83%	751	619	82%	751	628	84%
Challenger 7	Elementary	PK-6	100%	573	503	88%	573	503	88%	573	474	83%	573	462	81%	573	433	76%	573	413	72%
Columbia	Elementary	PK-6	100%	751	506	67%	751	512	68%	751	531	71%	751	522	70%	751	538	72%	751	538	72%
Coquina	Elementary	K-6	100%	711	560	79%	711	560	79%	711	565	79%	711	602	85%	711	590	83%	711	585	82%
Creel	Elementary	PK-6	100%	1,114	626	56%	1,114	660	59%	1,114	668	60%	1,114	668	60%	1,114	667	60%	1,114	658	59%
Croton	Elementary	PK-6	100%	795	488	61%	795	488	61%	795	514	65%	795	528	66%	795	542	68%	795	542	68%
Discovery	Elementary	PK-6	100%	980	643	66%	980	664	68%	980	675	69%	980	671	68%	980	720	73%	980	761	78%
Endeavour	Elementary	PK-6	100%	968	719	74%	968	750	77%	968	717	74%	968	707	73%	968	674	70%	968	671	69%
Enterprise	Elementary	K-6	100%	729	597	82%	729	597	82%	729	578	79%	729	552	76%	729	538	74%	729	529	73%
Fairglenn	Elementary	PK-6	100%	789	617	78%	789	617	78%	789	617	78%	789	632	80%	789	635	80%	789	625	79%
Gemini	Elementary	K-6	100%	711	468	66%	711	477	67%	711	465	65%	711	468	66%	711	455	64%	711	457	64%
Golfview	Elementary	PK-6	100%	777	441	57%	777	441	57%	777	460	59%	777	481	62%	777	489	63%	777	503	65%
Harbor City	Elementary	PK-6	100%	629	403	64%	629	405	64%	629	457	73%	629	474	75%	629	494	79%	629	509	81%
Holland	Elementary	PK-6	100%	605	432	71%	605	450	74%	605	451	75%	605	444	73%	605	442	73%	605	431	71%
Imperial Estates	Elementary	K-6	100%	729	659	90%	729	684	94%	729	712	98%	729	724	99%	751	742	99%	795	779	98%
Indianlantic	Elementary	K-6	100%	798	686	86%	798	686	86%	798	685	86%	798	671	84%	798	676	85%	798	651	82%
Jupiter	Elementary	PK-6	100%	930	729	78%	930	735	79%	930	801	86%	930	882	95%	974	940	97%	1,040	1,030	99%
Lockmar	Elementary	PK-6	100%	892	585	66%	892	585	66%	892	569	64%	892	552	62%	892	558	63%	892	559	63%
Longleaf	Elementary	PK-6	100%	790	631	80%	790	637	81%	790	613	78%	790	590	75%	790	563	71%	790	528	67%
Manatee	Elementary	K-6	100%	998	898	90%	998	910	91%	998	889	89%	998	845	85%	998	888	89%	998	881	88%
McAuliffe	Elementary	PK-6	100%	838	621	74%	838	621	74%	838	580	69%	838	568	68%	838	553	66%	838	528	63%
Meadowlane Intermediate	Elementary	3-6	100%	1,114	825	74%	1,114	825	74%	1,114	779	70%	1,114	773	69%	1,114	805	72%	1,114	843	76%
Meadowlane Primary	Elementary	K-6	100%	824	651	79%	824	666	81%	824	660	80%	824	630	76%	824	618	75%	824	613	74%
Mila	Elementary	PK-6	100%	707	435	62%	707	435	62%	707	439	62%	707	396	56%	707	383	54%	707	362	51%
Mims	Elementary	PK-6	100%	725	464	64%	725	464	64%	725	481	66%	725	512	71%	725	525	72%	725	513	71%
Oak Park	Elementary	PK-6	100%	968	505	52%	968	505	52%	968	471	49%	968	478	49%	968	475	49%	968	447	46%
Ocean Breeze	Elementary	PK-6	100%	654	554	85%	654	550	84%	654	542	83%	654	533	81%	654	534	82%	654	531	81%
Palm Bay Elem	Elementary	PK-6	100%	983	586	60%	983	613	62%	983	610	62%	983	627	64%	983	630	64%	983	636	65%
Pinewood	Elementary	PK-6	100%	569	521	92%	591	521	88%	591	541	92%	613	572	93%	613	598	98%	613	600	98%
Port Malabar	Elementary	PK-6	100%	852	640	75%	852	640	75%	852	683	80%	852	746	88%	852	760	89%	852	795	93%
Quest	Elementary	PK-6	100%	932	693	74%	932	693	74%	932	684	73%	932	681	73%	932	685	73%	932	697	75%
Riviera	Elementary	PK-6	100%	777	699	90%	777	714	92%	777	718	92%	799	780	98%	843	827	98%	887	866	98%
Roosevelt	Elementary	K-6	100%	599	288	48%	599	298	50%	599	269	45%	599	256	43%	599	239	40%	599	220	37%
Sabal	Elementary	PK-6	100%	785	500	64%	785	500	64%	785	503	64%	785	516	66%	785	534	68%	785	535	68%
Saturn	Elementary	PK-6	100%	998	649	65%	998	649	65%	998	677	68%	998	821	82%	998	794	80%	998	786	79%
Sea Park	Elementary	PK-6	100%	461	337	73%	461	337	73%	461	327	71%	461	321	70%	461	326	71%	461	329	71%
Sherwood	Elementary	PK-6	100%	609	459	75%	609	459	75%	609	458	75%	609	457	75%	609	450	74%	609	441	72%
Sunrise	Elementary	PK-6	100%	913	759	83%	913	767	84%	913	836	92%	935	908	97%	1,023	1,004	98%	1,067	1,067	100%
Suntree	Elementary	K-6	100%	755	600	79%	755	602	80%	755	561	74%	755	541	72%	755	516	68%	755	480	64%
Surfside	Elementary	K-6	100%	541	442	82%	541	442	82%	541	425	79%	541	418	77%	541	417	77%	541	407	75%
Tropical	Elementary	K-6	100%	910	669	74%	910	669	74%	910	614	67%	910	600	66%	910	572	63%	910	545	60%
Turner	Elementary	PK-6	100%	874	555	64%	874	564	65%	874	589	67%	874	647	74%	874	675	77%	874	691	79%
University Park	Elementary	PK-6	100%	811	487	60%	811	487	60%	811	545	67%	811	592	73%	811	642	79%	811	658	81%
Viera Elem	Elementary	K-6	100%	1,030	695	67%	1,030	717	70%	1,030	759	74%	1,030	857	83%	1,030	926	90%	1,074	1,061	99%
Westside	Elementary	K-6	100%	857	799	93%	857	846	99%	923	922	100%	989	974	98%	1,033	988	96%	1,099	1,100	100%
Williams	Elementary	PK-6	100%	715	451	63%	715	450	63%	715	443	62%	715	414	58%	715	411	57%	715	415	58%
Elementary Totals				42,215	30,468		42,237	30,778		42,303	30,996		42,435	31,549		42,677	31,905		43,007	32,280	

				School Year 2022-23			School Year 2023-24			School Year 2024-25			School Year 2025-26			School Year 2026-27			School Year 2027-28		
School	Type	Grades	Utilization Factor	FISH Capacity	10/14/22 Membership	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization
Middle School Concurrency Service Areas																					
Central	Middle	7-8	90%	1,514	1,129	75%	1,514	1,129	75%	1,514	1,158	76%	1,514	1,228	81%	1,514	1,289	85%	1,514	1,377	91%
DeLaura	Middle	7-8	90%	960	842	88%	960	844	88%	960	902	94%	960	820	85%	960	789	82%	960	826	86%
Hoover	Middle	7-8	90%	680	505	74%	680	505	74%	680	534	79%	680	574	84%	680	577	85%	680	588	86%
Jackson	Middle	7-8	90%	660	550	83%	660	550	83%	660	545	83%	660	538	82%	660	555	84%	660	588	89%
Jefferson	Middle	7-8	90%	873	608	70%	873	608	70%	873	600	69%	873	609	70%	873	563	64%	873	548	63%
Johnson	Middle	7-8	90%	1,064	610	57%	1,064	610	57%	1,064	650	61%	1,064	698	66%	1,064	753	71%	1,064	825	78%
Kennedy	Middle	7-8	90%	869	671	77%	869	671	77%	869	687	79%	869	670	77%	869	669	77%	869	677	78%
Madison	Middle	7-8	90%	781	446	57%	781	453	58%	781	484	62%	781	452	58%	781	476	61%	781	593	76%
McNair	Middle	7-8	90%	616	365	59%	616	369	60%	616	346	56%	616	354	57%	616	337	55%	616	347	56%
Southwest	Middle	7-8	90%	1,230	920	75%	1,230	920	75%	1,230	1,024	83%	1,230	1,127	92%	1,289	1,174	91%	1,289	1,285	100%
Stone	Middle	7-8	90%	1,076	668	62%	1,076	708	66%	1,076	799	74%	1,076	823	76%	1,076	890	83%	1,076	977	91%
Middle Totals				10,323	7,314		10,323	7,367		10,323	7,729		10,323	7,893		10,382	8,072		10,382	8,631	
Junior / Senior High School Concurrency Service Areas																					
Cocoa	Jr / Sr High	PK, 7-12	90%	2,097	1,545	74%	2,097	1,536	73%	2,097	1,555	74%	2,097	1,525	73%	2,097	1,518	72%	2,097	1,470	70%
Cocoa Beach	Jr / Sr High	7-12	90%	1,445	983	68%	1,445	1,000	69%	1,445	1,000	69%	1,445	941	65%	1,445	928	64%	1,445	867	60%
Space Coast	Jr / Sr High	7-12	90%	1,852	1,534	83%	1,852	1,534	83%	1,852	1,505	81%	1,852	1,450	78%	1,852	1,428	77%	1,852	1,402	76%
Jr / Sr High Totals				5,394	4,062		5,394	4,070		5,394	4,060		5,394	3,916		5,394	3,874		5,394	3,739	
Senior High School Concurrency Service Areas																					
Astronaut	High	9-12	95%	1,451	1,109	76%	1,451	1,109	76%	1,451	1,123	77%	1,451	1,129	78%	1,451	1,164	80%	1,451	1,158	80%
Bayside	High	9-12	95%	2,263	1,851	82%	2,263	1,885	83%	2,263	2,023	89%	2,263	2,099	93%	2,263	2,175	96%	2,382	2,371	100%
Eau Gallie	High	PK, 9-12	95%	2,221	1,582	71%	2,221	1,582	71%	2,221	1,597	72%	2,221	1,625	73%	2,221	1,631	73%	2,221	1,693	76%
Heritage	High	9-12	95%	2,314	2,033	88%	2,314	2,055	89%	2,314	2,065	89%	2,314	2,057	89%	2,314	2,099	91%	2,314	2,171	94%
Melbourne	High	9-12	95%	2,370	2,245	95%	2,370	2,245	95%	2,370	2,245	95%	2,370	2,248	95%	2,370	2,284	96%	2,370	2,345	99%
Merritt Island	High	PK, 9-12	95%	1,962	1,546	79%	1,962	1,546	79%	1,962	1,512	77%	1,962	1,457	74%	1,962	1,437	73%	1,962	1,454	74%
Palm Bay	High	PK, 9-12	95%	2,657	1,483	56%	2,657	1,495	56%	2,657	1,581	60%	2,657	1,683	63%	2,657	1,704	64%	2,657	1,700	64%
Rockledge	High	9-12	95%	1,836	1,559	85%	1,836	1,559	85%	1,836	1,640	89%	1,836	1,699	93%	1,836	1,693	92%	1,836	1,620	88%
Satellite	High	PK, 9-12	95%	1,527	1,518	99%	1,551	1,536	99%	1,551	1,433	92%	1,551	1,413	91%	1,551	1,359	88%	1,551	1,299	84%
Titusville	High	9-12	95%	1,813	1,313	72%	1,813	1,333	74%	1,813	1,335	74%	1,813	1,351	75%	1,813	1,316	73%	1,813	1,322	73%
Viera	High	PK, 9-12	95%	2,141	2,289	107%	2,474	2,319	94%	2,474	2,391	97%	2,474	2,417	98%	2,569	2,579	100%	2,664	2,660	100%
High Totals				22,555	18,528		22,912	18,664		22,912	18,945		22,912	19,178		23,007	19,441		23,221	19,793	
Schools of Choice (Not Concurrency Service Areas)																					
Freedom 7	Elementary	K-6	100%	475	403	85%	475	414	87%	475	414	87%	475	414	87%	475	414	87%	475	414	87%
Stevenson	Elementary	K-6	100%	569	506	89%	569	508	89%	569	508	89%	569	508	89%	569	508	89%	569	508	89%
South Lake	Elementary	K-6	100%	481	434	90%	657	453	69%	657	471	72%	657	489	74%	657	507	77%	657	529	81%
West Melbourne	Elementary	K-6	100%	618	549	89%	618	552	89%	794	570	72%	794	588	74%	794	606	76%	794	624	79%
Edgewood	Jr / Sr High	7-12	90%	1,077	938	87%	1,077	950	88%	1,077	950	88%	1,077	950	88%	1,077	950	88%	1,077	950	88%
West Shore	Jr / Sr High	7-12	90%	1,264	930	74%	1,264	950	75%	1,264	950	75%	1,264	950	75%	1,264	950	75%	1,264	950	75%
Schools of Choice				4,484	3,760		4,660	3,827		4,836	3,863		4,836	3,899		4,836	3,935		4,836	3,975	
Brevard Totals				84,971	64,132		85,526	64,706		85,768	65,593		85,900	66,435		86,296	67,227		86,840	68,418	

Notes

1. FISH Capacity is the sum of the factored permanent capacity and the factored relocatable capacity. Permanent and relocatable capacities for 2022-23 are reported from the FISH database as of October 14, 2022.
2. Student Membership is reported from the Fall Final Membership Count (10/14/2022).
3. Davis Demographics SchoolSite Enrollment Forecasting Extension for ArcGIS estimates future student populations by analyzing the following data:
 - Development Projections from Brevard County Local Government Jurisdictions
 - Brevard County School Concurrency Student Generation Multipliers (SGM)
 - Fall Membership student addresses and corresponding concurrency service areas
 - Student Mobility Rates / Cohort Survival Rates
 - Brevard County Birth rates by zip code
4. Davis Demographics estimates are then adjusted using the following factors:
 - PK (Pre-Kindergarten) and AH (daycare for students with infants) enrollment number are assumed to be constant
 - Current From/To attendance patterns are assumed to remain constant.
 - Nongecoded student addresses are assumed to continue in their attendance schools.
 - Charter School Growth.
5. In order to maintain utilization rates lower than the 100% Level of Service, Permanent Capacity and Relocatable Classrooms are assumed to add future student stations as necessary.
6. If student projections are accurate, the school board could add additional classroom capacity, implement attendance boundary changes, or add relocatable classrooms. A south area elementary school is planned for the future growth, but the exact timing hasn't been established.
 - If only relocatable classrooms are used for the next 5 years, the following changes would be needed to accommodate projected growth. These schools are being analyzed for the best options to accommodate additional students.
 - Primary relocatable classrooms (Grades K-3) = 18 student stations, Intermediate (Grades 4-8) relocatable classrooms = 22 student stations, and High School (Grades 9-12) relocatable classrooms = 25 student stations
 - For school year 2023-24, no additional capacity is needed.
 - For school year 2024-25, a total of 3 intermediate classrooms are projected for Westside Elementary School
 - For school year 2025-26, a total of 6 intermediate classrooms are projected for Pinewood (1), Riveria (1), Sunrise (1) and Westside (3) Elementary Schools.
 - For school year 2026-27, a total of 14 intermediate classrooms are projected for Imperial Estates (1), Jupiter (2), Riveria (2), Sunrise (4), Westside (2) Elementary Schools, and Southwest Middle School (3). 4 High School relocatable classrooms are proposed for Viera High School.
 - For school year 2027-28, a total of 15 intermediate classrooms are projected for Roy Allen (1), Imperial Estates (2), Jupiter (3), Riveria (2), Viera El (2), Sunrise (2), and Westside (3) Elementary Schools. 9 High School relocatable classrooms are proposed for Bayside (5) and Viera (4) High.
7. A classroom addition is planned for construction at Viera High School for 2023-24. The factored capacity is adjusted for the proposed 350 student stations.
8. A classroom addition is planned for construction at South Lake Elementary School for 2023-24. The factored capacity is adjusted for the proposed 176 student stations.
9. A classroom addition is planned for construction at West Melbourne School of Science for 2024-25. The factored capacity is adjusted for the proposed 176 student stations.
10. Capacity adjusted for Board approved addition of one relocatable each at Pinewood Elementary and Satellite High Schools for school year 2024-25 forward.



CITIZEN PARTICIPATION PLAN REPORT

Applicant should follow established Citizen Participation Plan as specified in §169.005 CITIZEN PARTICIPATION PLANS.

CASE DETAILS

Applicant Name:	Price Family Homes
Project Name:	Glenham Dr
Case Type:	Rezoning
Case Description:	RS1 to RS-2
Intended Month of Submission:	October for December meeting

INFORMATION ON THE CITIZEN PARTICIPATION PLAN MEETING

Notice to the Public (Date):	September 22, 2023
Date CPP was Held:	October 10, 2023
Location of the Meeting:	Rooney's
Number of Attendees:	10



LIST OF ATTENDEES

Number	Name of attendee	Number	Name of attendee
1.	Bill + Gina Summer 3	2.	Bob + Mary Tanis
3.	Billy Carter	4.	Bob + Barbara Wanagill
5.	Bruce + Sharon Aycarb	6.	Mark McClean
7.		8.	
9.		10.	
11.		12.	
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39.		40.	
41.		42.	
43.		44.	
45.		46.	
47.		48.	
49.		50.	



DENOTE ANY ADVERSE COMMENTS/COMPLAINTS/ CONCERNS/ ISSUES RECEIVED AND DESCRIBE RESOLUTION OR PROVIDE JUSTIFICATION IF THE APPLICANT IS UNABLE OR UNWILLING TO ADDRESS THE ISSUE:

[illegible]



**ADDITIONAL DOCUMENTS REQUIRED WITH CITIZEN PARTICIPATION PLAN REPORT
SUBMISSION**

1. Copy of notice sent (separate attachment)
 - All the property owners within a 500-foot radius of the subject parcel shall be informed about the meeting date, time, location, and project.
2. Material distributed or presented at the meeting (separate attachment)

I hereby certify that information provided as part of this report is correct.

A handwritten signature in dark ink, appearing to read "Richard Price", written over a horizontal line.

Signature

Richard Price ; CEO Price Family Homes 10-13-23

Typed Name and Title

Date

Recap of Citizen Participation Meeting

HELD on October 10, 2023 6:00 – 7:00 PM

Regarding a 15.52 Acre Parcel on Glenham (Tax Account # 2832293)

The meeting was attended by 10 residents. Most signed in on the sheet that is attached. When the residents signed in, they were given a copy of an alternate 53 lot proposed subdivision layout, see attached.

Richard Price was present representing Price Family Homes. Richard Kerns from RK Engineering & Associates was also present as the Project Engineer.

Richard Price started the meeting with introductions and explained that he was going to be requesting a rezoning from RS-1 to RS-2. He explained that the change in the zoning would change the required lot sizes and allow for additional homes to be in the subdivision. It was explained that the original layout would not work and that it was reworked with suggestions made by the President of the Turkey Creek Homeowners Association, Henry Morin. It was further explained that the alternate proposed subdivision was not final.

The residents had very similar concerns. Below are the concerns and Richard's responses to those concerns.

Concern: Turtles and if they would be relocated.

Response: We are in the early stages of having the environmental study done. The inspector did not see any turtles but is not done with the study. If there are turtles, they would be relocated.

Concern: Additional traffic and cutting through Turkey Creek

Response: We would not have any control over what route people took to get to the subdivision, however a high percentage of the traffic would be going and coming from Palm Bay Rd. to the north and therefore not be trying to cut through Turkey Creek neighborhood to the south.

Concern: Controlling drainage

Response: Explained that the drainage would be controlled and reviewed by the city and state and would not be pushed out onto Glenham.

Concern: Would we bring part of the road to the ball field up to current city public road standards and plat it as public right of way.

Response: It was explained that if the alternate was approved, we would be required to bring the road up to city code for public roads and dedicate the portion we are using as public right of way.

Concern: Due to additional traffic, what is the chance of a stop light or 3-way stop at or near the ballpark entrance.


Response: We let them know that we would be responsible for doing a traffic study but that any decision about a traffic signal would not be within the scope of this project since it does not generate enough traffic to warrant a signal. Any traffic controls would come out of the traffic study and the city review.

There were also general questions asked about the type of homes we would be building and including square footage, approximate selling prices and other features of the subdivision. Mr. Price indicated that these would be in the \$400,000 range. The residents were very pleased with these types of homes in lieu of condominiums or multifamily units.

It was also asked if we would be clearing the entire 15.52 acres. It was answered that it is the current plan to clear the entire acreage. A follow up was asked about a tree border around the property, it was answered that it was our intention to put up a vinyl fence around the perimeter of the subdivision.

The meeting was adjourned after all questions and concerns had been heard and addressed. Almost all the residents preferred the new subdivision layout versus the one that was mailed with the letter originally.

Regards,



Richard Price, CEO
Price Family Homes



September 22, 2023

Dear Property Owner,

Price Family Homes will be submitting a rezoning application requesting approval to change a 15.52 acre parcel on Glenham Drive from RS-1 to RS-2 to the City of Palm Bay. We will answer any questions you may have and record any feedback you may have to offer which we will then present to City Staff, the Planning and Zoning Board, and City Commission as we move through the review and public hearing process for this request.

Enclosed is our preliminary conceptual site plan for your review so you can see what we are proposing to do. We would like to create a private 46 lot subdivision with a minimum lot size of 76x110.

We would like to invite you to an information meeting we are holding for property owners to discuss the project and see if there are any questions or concerns that we can address:

DATE: **October 10, 2023**
TIME: 6:00pm
PLACE: Rooney's
2641 Palm Bay Rd., Palm Bay, FL 32905

If you have any questions you wish to submit in advance of the meeting, we would appreciate the opportunity to review them in advance to be sure we bring appropriate information to answer any of your questions or address your concerns at the meeting.

Please don't hesitate to contact us via email at info@pricefamilyhomes.com should you have any questions prior to the meeting.

Best Regards,

Richard Price, CEO

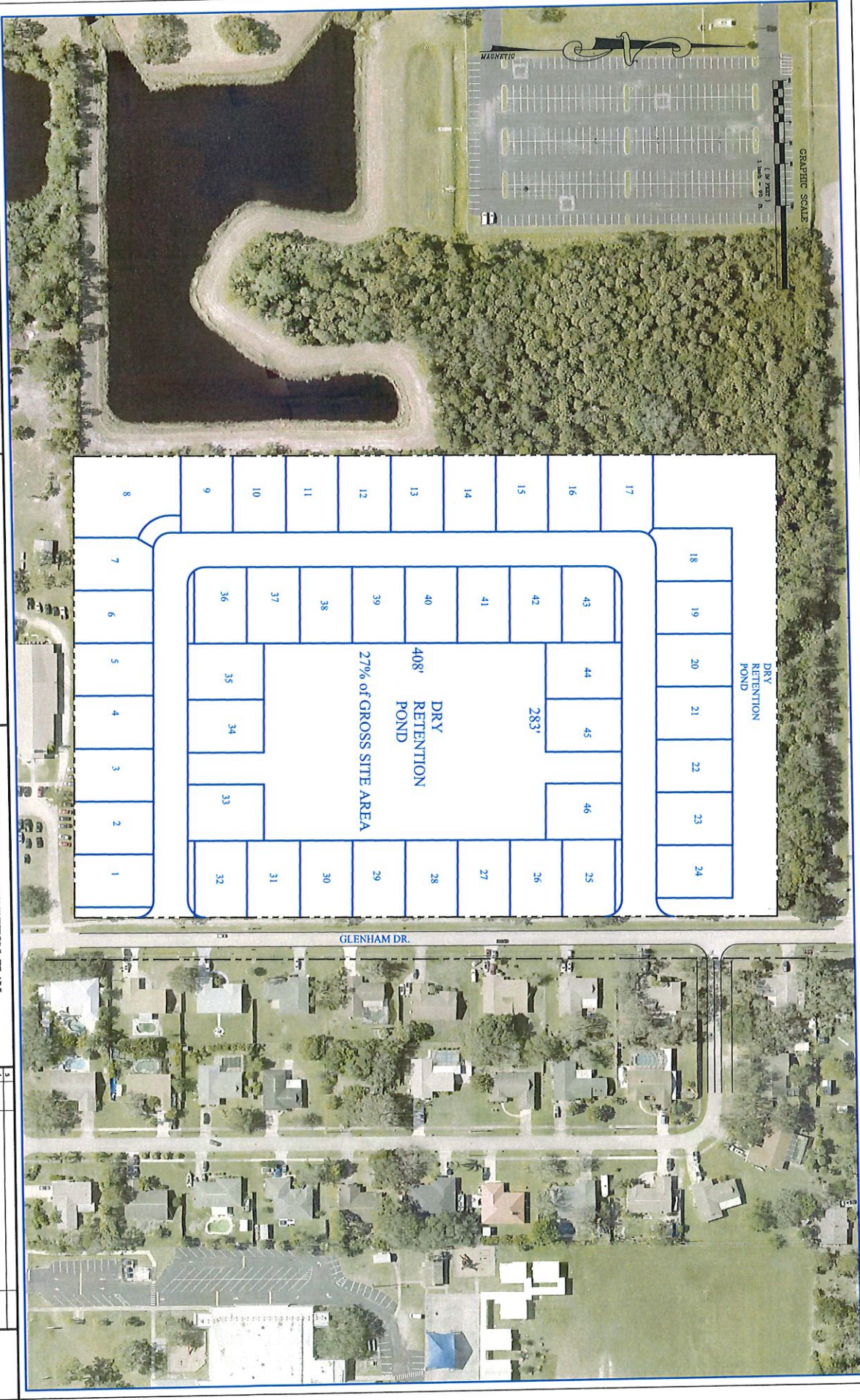
William Price, CFO

R.K. ENGINEERING AND ASSOCIATES OF BEVARD, INC.
 CONSULTING ENGINEERING AND LAND PLANNING
 3202 S. UNIVERSITY BLVD., SUITE 200
 TAMPA, FL 33629
 TEL: (813) 944-7488 FAX: (813) 944-7489
 CA #2334 PHONE (813) 944-7488 EMAIL: rk@rk-engineers.com

CONCEPTUAL SUBDIVISION PLAN

1	2	3	4	5
6	7	8	9	10
11	12	13	14	15
16	17	18	19	20
21	22	23	24	25
26	27	28	29	30
31	32	33	34	35
36	37	38	39	40
41	42	43	44	45
46	47	48	49	50

SHEET 1 OF 1
 DATE: 1/1/2010



Original proposed subdivision

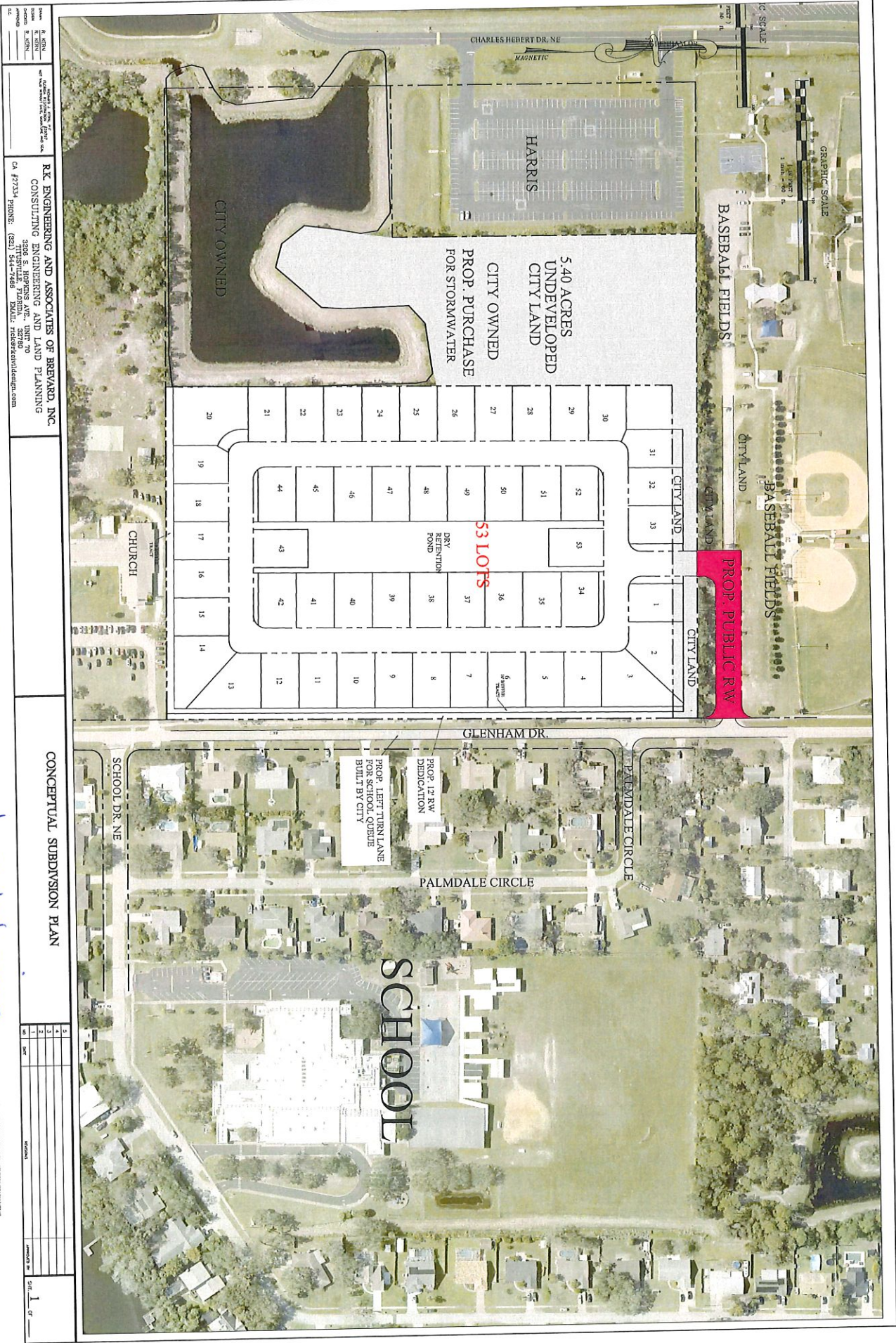
CITIZEN PARTICIPATION MEETING OCT. 10, 2023

FOR REZONING TAX ACCT PARCEL 2832293 FROM RS-1 TO RS-2

LOCATION : ROONEY'S RESTAURANT, 2641 PALM BAY RD, PALM BAY, FL 32905

TIME: 5:00 PM

ATTENDING	NAME	ADDRESS	PHONE	EMAIL
1	BILLY GINA SUMMERS	1209 GLENHAM DR NE	832 394-3390	6302. wresiphone4acct@gmail.com
2	Billy Carter	1321 Glenham Dr NE	832 3905-2576	carterbtsb@aol.com
3	Bruce + Sharon Aycock	1265 Belvedere Circle NE	832 3290-3415	is.aycock@vahealth.com
4	Billy Mary Parks	1194 Glenham Dr	832 3905-8178	WOMANITY4ACCT@aol.com
5	Bobb + Barbara Wanciele	2678 FALCETTO ST. NE		WANCIELE@FAIRLINK.NET
6	MARK McLean	2641 Palm Bay St NE		WMCLEAN9@aol.com
7				
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16				



R.K. ENGINEERING AND ASSOCIATES OF BREVARD, INC. CONSULTING ENGINEERING AND LAND PLANNING 3808 S. HOPKINS AVE., UNIT 70 TITUSVILLE, FL 32780 PHONE: (321) 247-7868 FAX: (321) 247-7869 WWW.RKENGINEERING.COM		CONCEPTUAL SUBDIVISION PLAN	
DATE: 11/11/2011 DRAWN BY: J. JEN CHECKED BY: J. JEN	SHEET NO. 1 OF 1	SCALE: 1" = 100'	PROJECT NO. 11-001

Alternate proposed subdivision

Project Details: Z23-00014

Project Type: Rezoning Zoning Change

Project Location: UNKNOWN # 2700 ANNELEIGH CIR Palm Bay, FL
Milestone: Submitted
Created: 9/29/2023
Description: Glenham Subdivision
Assigned Planner: Tania Ramos

Contacts

Contact	Information
Owner/Applicant	SKA PROPERTIES LLC 2101 NE 207 ST N MIAMI BCH, FL 33179 (305) 915-0771 tvdirector@bellsouth.net
Legal Representative	Richard J. Kern, P.E. 3206 S. Hopkins Ave. Titusville, FL 32780 (321) 544-7466 rick@rkcivildesign.com
Assigned Planner	Tania Ramos FL tania.ramos@palmbayflorida.org
Submitter	Price Family Homes, Inc 2165 Franklin Drive Ne Unit 2 Palm Bay, FL 32905 (321) 223-4315 permitting@pricefamilyhomes.com

Fields

Field Label	Value
Block	761
Lot	
Township Range Section	28-37-23
Subdivision	00
Year Built	
Use Code	9909
Use Code Desc	VACANT RESIDENTIAL LAND (SINGLE-FAMILY, UNPLATTED)

Project Details: Z23-00014

LotSize	
Building SqFt	
Homestead Exemption	
Taxable Value Exemption	
Assessed Value	
Market Value	
Land Value	
Tax ID	2832293
Flu Description	Single Family Residential
Flu Code	SFR
Zoning Description	Single-Family Residential
Zoning Code	RS-1
Size of Area (acres)	
Present Use of Property	9909 - VACANT RESIDENTIAL LAND (SINGLE-FAMILY, UNPLATTED)
Zoning Classification Desired	RS-2
Structures On Property?	False
Intended Use of Property	SINGLE FAMILY SUBDIVISION
Justification for Change	CHANGE LOT SIZE
Is Submitter the Representative?	False
Tax Account Numbers	2832293
Parcel Number	28-37-23-00-761
Ordinance Number	

11/6, 2023

Re: Letter of Authorization

As the property owner of the site legally described as:

TAX ACCOUNT # 2832293, PARCEL ID # 28-37-23-00-761

I, Owner Name: SKA PROPERTIES, LLC

Address: 2101 NE 207TH ST, N MIAMI BEACH, FL 33179

Telephone: 305-915-0771

Email: TVDIRECTOR@BELLSOUTH.NET

hereby authorize:

Representative: RICHARD KERN

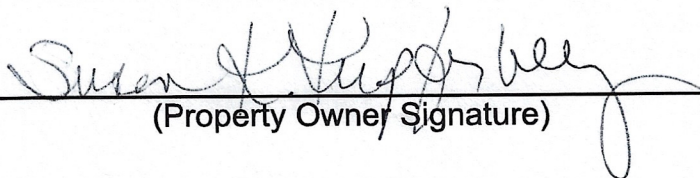
Address: 3206 S. HOPKINS AVE, UNIT 70, TITUSVILLE, FL 32780

Telephone: 321-544-7466

Email: RICK@RKCIVILDESIGN.COM

to represent the request(s) for:

REZONING FROM RS-1 TO RS-2

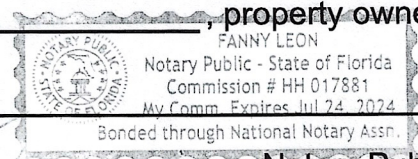

(Property Owner Signature)


STATE OF Florida

COUNTY OF Dade

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 6 day of November, 2023 by

Susan K. Kupferberg, property owner.



, Notary Public

☐ Personally Known or ☒ Produced the Following Type of Identification:

Fl. Driver's License

9/11, 2023

Re: Letter of Authorization

As the property owner of the site legally described as:

tax account 2832293, PARCEL ID 28-37-23-00-761

I, Owner Name: SKA Properties, LLC

Address: 2101 NE 207 ST, N MIAMI BEACH, FL 33179

Telephone: 305-915-0771

Email: tvdirector@bellsouth.net

hereby authorize:

Representative: Richard Price

Address: 2165 Franklin DR NE, Unit 2, Palm Bay, FL 32905

Telephone: 321-302-9399

Email: richard@pricefamilyhomes.com

to represent the request(s) for:

rezoning from RS-1 TO RS-2

Brian L. Kupferberg
(Property Owner Signature)

STATE OF Florida

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 11 day of September, 20 23 by Susan K Kupferberg, property owner.

Kevin Mendez, Notary Public

☐ Personally Known or ☒ Produced the Following Type of Identification:

Florida Driver License / K161-791-56-636-0



KEVIN MENDEZ
Commission # HH 389660
Expires April 23, 2027

Acknowledgement Log

Header:

Legal Acknowledgement

Text:

I, the submitter, understand that this application must be complete and accurate before consideration by the City of Palm Bay and certify that all the answers to the questions in said application, and all data and matter attached to and made 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 application and that the facts stated in it are true.

Accepted By:

Bill Price

On:

10/12/2023 8:29:56 AM

☒ Z23-00014

Select Language | ▼

PROOF OF PUBLICATION

CITY OF PALM BAY
attn: Accounts Payable
City Of Palm Bay
120 Malabar Rd Se
Palm Bay FL 32907-3009

STATE OF WISCONSIN, COUNTY OF BROWN

Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Advertising Representative of the Florida Today, a daily newspaper published in Brevard County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of Main Legal CLEGL, was published on the publicly accessible website of Brevard County, Florida, or in a newspaper by print in the issues of, on:

11/16/2023

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 11/16/2023

Legal Clerk



Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$498.80

Order No: 9525213

of Copies:

Customer No: 1127256

1

PO #:

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

NANCY HEYRMAN
Notary Public
State of Wisconsin

CITY OF PALM BAY, FLORIDA

NOTICE OF PUBLIC HEARING FOR A ZONING CHANGE

Notice is hereby given that a public hearing will be held by the Planning and Zoning Board/Local Planning Agency on December 6, 2023, and by the City Council on December 21, 2023, both to be held at 6:00 p.m., in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, for the purpose of considering the following case(s):



1. **Z23-00014 - SKA Properties, LLC (Richard Price, Price Family Homes, Inc. / Richard J. Kern, P.E., RK Engineering & Associates Inc., Reps.)

A Zoning Change from an RS-1, Single-Family Residential District to an RS-2, Single-Family Residential District

Tax Parcel 761, Section 23, Township 28, Range 37, Brevard County, Florida, containing approximately 15.53 acres. Located west of and adjacent to Glenham Drive NE, in the vicinity west of Palmdale Circle NE

****Indicates quasi-judicial request(s).**

If an individual decides to appeal any decision made by the Planning and Zoning Board/Local Planning Agency or 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.

Please contact the Palm Bay Land Development Division at (321) 733-3041 should you have any questions regarding the referenced case(s).

Chandra Powell
Planning Specialist

November 20, 2023

Planning and Zoning Board
City Council
c/o Land Development Division
City of Palm Bay
120 Malabar Road SE
Palm Bay, FL 32907

RE: Case Z23-00014

Dear Members of the Planning and Zoning Board/ Local Planning Agency,

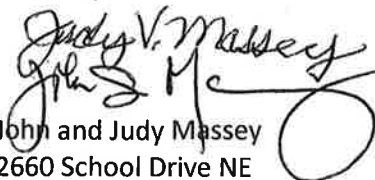
My wife and I are writing you as taxpayers and property owners at 2660 School Dr NE, Palm Bay, FL 32905 to voice our disapproval of the proposed Zoning Change for Tax Parcel 761, Section 23, Township 28, Range 37, Brevard County, Florida and against SKA Properties, LLC (Richard Price, Price Family Homes, Inc.) for the following reasons:

1. The parcel described west of and adjacent to Glenham Dr NE in the vicinity west of Palmdale Circle NE is one of the only green spaces left in the area, and as such, supports a habitat for a wide variety of birds, reptiles, and other wildlife which is enjoyed by the community at large; some of these are endangered species.
2. Building a large residential housing complex on this parcel, in an already established neighborhood, would provide an enormous increase in the use of a very limited, 2 lane road (Glenham Road) and bring traffic congestion and associated traffic issues to an otherwise quiet neighborhood.
3. This area is already overly congested with traffic to and from Palm Bay Elementary School located only a few blocks from this proposed location. To add more students to an already overcrowded school would be untenable.

In short, my wife and I as property owners and taxpayers feel aggrieved and adversely affected by the potential building of this unneeded housing development which could easily be constructed in any number of large parcels of land in Palm Bay that have potential for larger roads to be built to accommodate the houses and will not obstruct or interfere with existing homeowners' lives.

We are asking for the planning and zoning board of Palm Bay, FL to reject this request of Case Z23--00014.

Sincerely,


John and Judy Massey
2660 School Drive NE
Palm Bay, FL 32905

From: maharblo@aol.com
To: [Chandra Powell](#)
Subject: Case # Z23-0014
Date: Tuesday, December 5, 2023 7:48:44 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

As residents of Turkey Creek in the NE section of Palm Bay, we are strongly opposed to the re-zoning of the acreage on the west side of Glenham Drive between Knecht Park and the church. We have a prior commitment for tomorrow evening but wanted to share our thoughts.

This was zoned RS-1 originally by the city planners for a reason. The city keeps changing zoning to accommodate developers/builders. The residents of the city deserve a say. **THIS NEEDS TO STOP!** The city already changed the zoning up on RJ Conlan to accommodate more housing units/apartments thus creating traffic and congestion in the area. Palm Bay Road is only 2 lanes off of Glenham Drive. The homes in our neighborhood generally run over 2000 sq ft. This would allow homes to be built at only 1200 sq feet thus devaluing our property and adding more vehicles/residents to an already busy area. Have you been on Glenham in the mornings/afternoons around school start/stop times? Why can you not keep the zoning as is? The city Planners/Founders had a vision. We need to honor that vision. The city keeps adding housing units without regard to safety of our children in the school zone, traffic and roads. Palm Bay Road traffic is always very congested.

So the prospective builder can build more homes, add more people and cars to this already congested area?

Please also let us know what will happen to the Gopher Tortoises that live in the woods there. They are a Threatened Species and have been there for decades.

We vehemently oppose the zoning change - please stop caving to the developers. We relocated here back in the 1980's to escape the overdevelopment in South Florida because the Developers ruined paradise. You're letting them do the same here now!

Thank you!

Larry and Mary Loschiavo

From: [Chris Harber](#)
To: [Chandra Powell](#)
Subject: rezoning of Glenham Dr parcel from rs 1 AGAINST
Date: Wednesday, December 6, 2023 10:52:43 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Chandra

This email is regarding a proposed rezoning of property along Glenham Dr. Please forward our opposition to this rezoning request case Z23-0014. the area is already congested with current development. The school drop off and pick up is a crowded cluster already. The zoning should stay AS IS we do not need to make developers happy. This is our town and we paved roads at the taxpayer expense per the referendum from a few years ago. We do not need more congestion in this part of town they will be gone and who will get stuck with the infrastructure improvements then. NOT the developer for certain. Let them develop the area as per zoning on the books for years.

Sincerely

Chris & Ann Harber
Highland Shores

November 20, 2023

Planning and Zoning Board
City Council
c/o Land Development Division
City of Palm Bay
120 Malabar Road SE
Palm Bay, FL 32907

RE: Case Z23-00014

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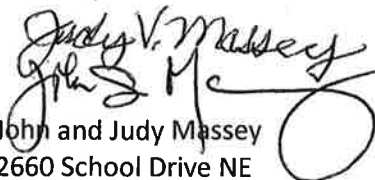
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Sincerely

Chris & Ann Harber
Highland Shores

From: **Stan Wieszicki** wies@prodigy.net
Subject: **# 223-00014**
Date: **Dec 7, 2023 at 11:33:40 AM**
To: **TaniaRamos@palmbayfl.org**

I presently own property in Highland Shores. In regards the rezoning of the property on Glenham Dr., Palm Bay, FL from R1 to R2 single family residential, I don't agree and request that it remain as R1 Single family residential with the 85 foot frontage. This will be in line with the property in the area and minimize traffic.

Thank you,
Stanley Wieszicki
321-452-3628
Sent from my iPad

ORDINANCE 2023-107

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM RS-1 (SINGLE-FAMILY RESIDENTIAL DISTRICT) TO RS-2 (SINGLE-FAMILY RESIDENTIAL DISTRICT); WHICH PROPERTY IS LOCATED WEST OF AND ADJACENT TO GLENHAM DRIVE, IN THE VICINITY SOUTH OF PALM BAY ROAD, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A CHANGE OF THE ZONING MAP; 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 Zoning Ordinance of the City of Palm Bay, Brevard County, Florida, is hereby amended to provide for the rezoning of property from RS-1 (Single-Family Residential District) to RS-2 (Single-Family Residential District), being legally described as follows:

Tax Parcel 761, of the Public Records of Brevard County, Florida; Section 23, Township 28S, Range 37E; containing 15.53 acres, more or less.

SECTION 2. The Zoning Map of the City of Palm Bay is hereby revised to reflect this amendment.

SECTION 3. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2023- , held on , 2023; and
read in title only and duly enacted at Meeting 2023- , held on , 2023.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

City of Palm Bay, Florida
Ordinance 2023-107

Reviewed by CAO: _____

Applicant: SKA Properties, LLC
Case: Z23-00014

cc: Applicant
Case File



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Lisa Frazier, Growth Management Director

DATE: 1/4/2024

RE: Ordinance 2023-109, rezoning property located south of and adjacent to Malabar Road, in the vicinity west of Melbourne Tillman Drainage District Canal 7, from AU (Agricultural Residential) (Brevard County) to CC (Community Commercial District) (6.00 acres) (Case CPZ23-00009, Diaz Treasures, 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.

The Applicant requests a Rezoning from AU, Agricultural Residential (Brevard County) to CC, Community Commercial. The undeveloped land is approximately six (6) acres located south of and adjacent to Malabar Road NW, in the vicinity west of St. Johns Heritage Pkwy NW with tax account 2960440.

Palm Bay City Council approved an annexation of this parcel by Ordinance 2023-94. The applicant is requesting a City of Palm Bay zoning classification of CC, Community Commercial. The zoning is accompanied by a small-scale future land use map amendment for a Commercial designation. The rezoning to Community Commercial is consistent with the Commercial future land use as well as the Parkway Mixed Use and Community Commercial zoning on the north side of Malabar Road.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case CPZ23-00009.

Planning and Zoning Board Recommendation:

Planning and Zoning Board minutes are not fully transcribed at this time; the following is an excerpt:

Motion to submit Case CPZ23-00009 to City Council for approval.

Motion by Mr. Weinberg, seconded by Mr. Good. Motion carried with members voting as follows:

Aye: Jordan, Weinberg, Boerema, Good, Warner.

Nay: Olszewski.

ATTACHMENTS:

Description

CPZ23-00009 Staff Report

CPZ23-00009 Site Sketch

CPZ23-00009 Factors of Analysis

CPZ23-00009 Citizen Participation Meeting Report

CPZ23-00009 Application

CPZ23-00009 Letter of Authorization

CPZ23-00009 Legal Acknowledgement

CPZ23-00009 Legal Ad

Ordinance 2023-109



STAFF REPORT

LAND DEVELOPMENT DIVISION

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

landdevelopmentweb@palmbayflorida.org

Prepared by

Alix Bernard, Principal Planner

CASE NUMBER

CPZ23-00009

PLANNING & ZONING BOARD HEARING DATE

December 6, 2023

PROPERTY OWNER & APPLICANT

Ubaldo Diaz, Diaz Treasures LLC (Tony Masone and Jake Wise, Reps.)

PROPERTY LOCATION/ADDRESS

Block 2, Section 5, Township 29, Range 36, Brevard County, Florida; containing approximately 6 acres. Located south of and adjacent to Malabar Rd, in the vicinity south of St. Johns Heritage Pkwy NW; Tax Account 2960440

SUMMARY OF REQUEST

The applicant is requesting a rezoning from AU Agricultural Residential (Brevard County) to CC Community Commercial.

Existing Zoning

AU Agricultural Residential (Brevard County)

Existing Land Use

RES 1 -- Residential 1 unit per acre (Brevard County)

Site Improvements

vacant land

Site Acreage

6 acres

SURROUNDING ZONING & USE OF LAND

North

PMU, Parkway Mixed Use; Vacant

East

RM-10 Single, Two, Multi-family Residential; Vacant

South

AU(County); Vacant

West

AU Agricultural Residential (Brevard County); Vacant

BACKGROUND:

The subject property is located south of and adjacent to Malabar Rd in the vicinity west of St. Johns Heritage Parkway NW. There is one parcel totaling 6 acres include in this request, which is comprised of vacant land.

The owner of the property has requested a City of Palm Bay zoning designation of Community Commercial in conjunction with a voluntary annexation request into the City of Palm Bay from unincorporated Brevard County. The applicant will later seek to enter into a land swap agreement with the City for approximately 2.77 acres of the abutting City parcel to the west (tax account 2961562) in exchange for equal acreage in rights-of-way from this subject parcel for the future widening of Malabar Road and extension of St. Johns Heritage Parkway south of Malabar Rd.

ANALYSIS:

All proposed amendments shall be submitted to the Planning and Zoning Board which shall analyze the factors of analysis applicable to the proposed amendment prior to making a recommendation to City Council.

- (A) The applicant's need and justification for the change and whether it aligns with the community's current or future needs.

The applicant is requesting a Community Commercial zoning classification. This is in conjunction with the Commercial Future Land Use request. This newly annexed property does not currently have a City of Palm Bay zoning classification. The request for a Community Commercial classification is in alignment with the city's vision of expanding commercial development opportunities to meet the needs of the community both now and in the future.

- (B) The effect of the change, if any, on a particular property and surrounding properties.

The purpose of the community commercial district is to locate and establish areas within the city which are uniquely suited for the development and maintenance of community commercial facilities. These areas are to be primarily located in or near the intersection of arterial roadways. The subject property is near the intersection of St. John's Heritage Parkway and Malabar Road. The effect of this change on the specific property will replace the Brevard County zoning of AU, Agricultural Residential, with the City of Palm Bay classification of CC, Community Commercial. The property is near the intersection of arterial roadways in an area uniquely suited to support commuters and residents with commercial development.

- (C) The amount of existing undeveloped land in the general area of the city having the same classification as that requested.

In general, there is a 9.76-acre parcel of undeveloped Community Commercial land on the north side of Malabar Road. The adjacent area includes a mix of classifications including an undeveloped Community Commercial parcel approximately 0.54 miles east on the south side of Malabar Road. Therefore, this classification is compatible with the area.

- (D) Whether the proposed amendment furthers the purpose of the City's Comprehensive Plan or strategic plans applicable to the proposed development and the provisions in the Land Development Code.

The proposed amendment will further the purposes of Chapter 185 and the Comprehensive Plan by enhancing the standard of living within the city by placing Community Commercial zoning near the intersection of arterial roadways in a developing part of the city where it can support the incoming residences.

- (E) Whether the requested district is substantially different from that of the surrounding area.

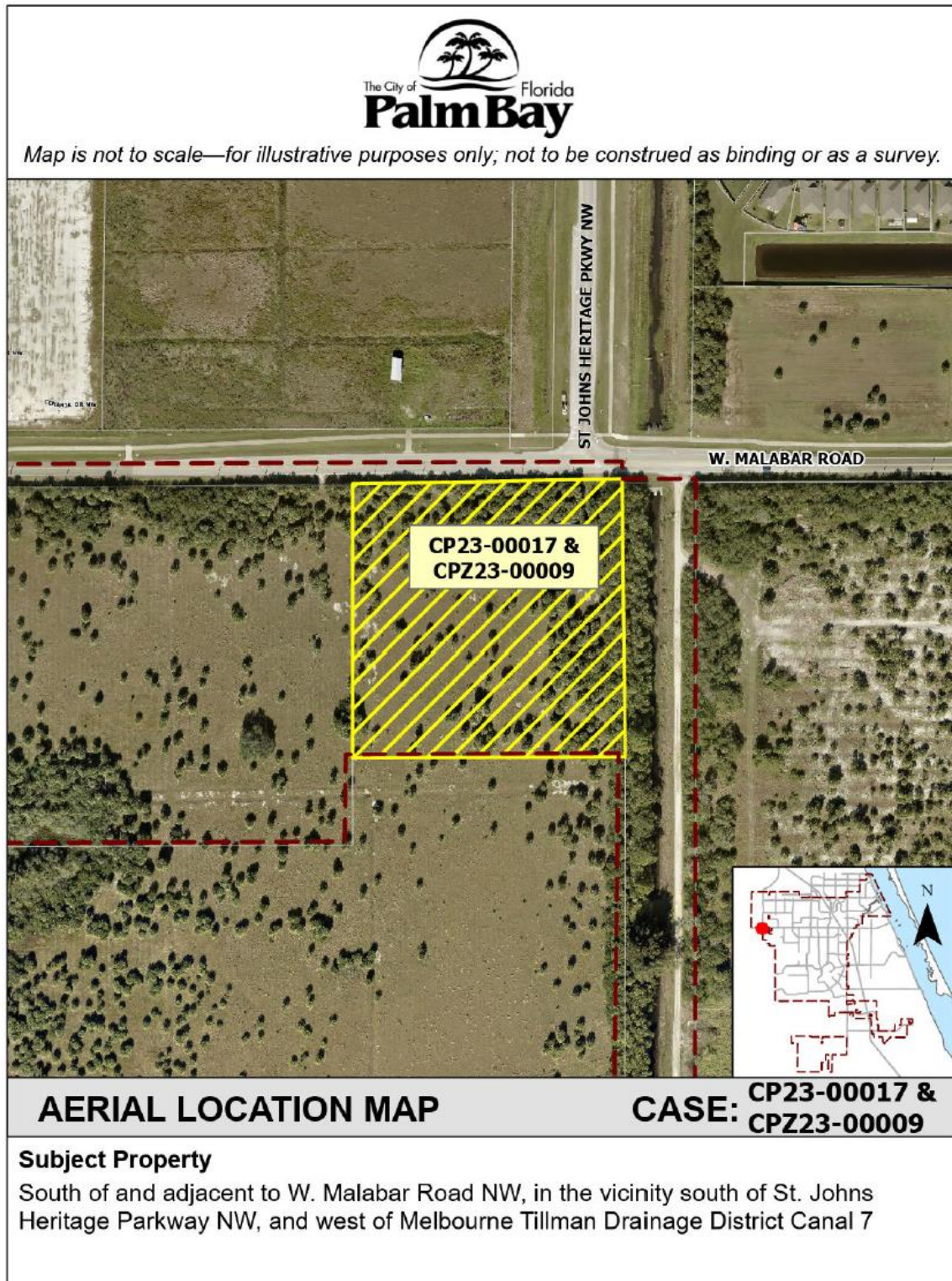
The requested district is not substantially different from that of the surrounding area. The purpose of the community commercial district is to locate and establish areas within the city which are uniquely suited for the development and maintenance of community commercial facilities. These areas are to be primarily located in or near the intersection of arterial roadways. The subject property is near the intersection of St. John's Heritage Parkway and Malabar Road. There are two other Community Commercial parcels within a mile. Across the street is also a commercial parcel for a Parkway Mixed Use development.

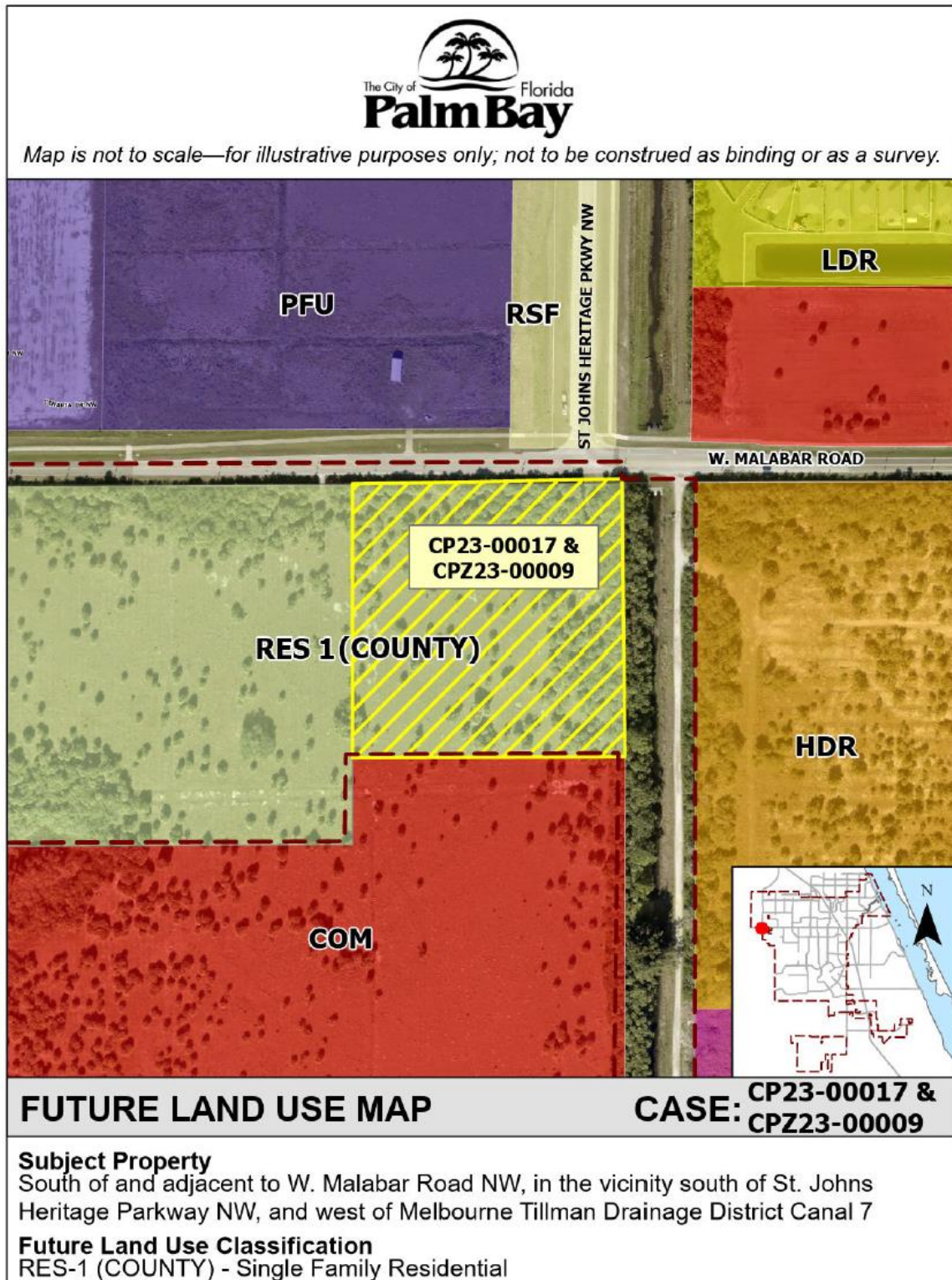
- (F) Whether the request provides for a transition between areas of different character, density, or intensity.

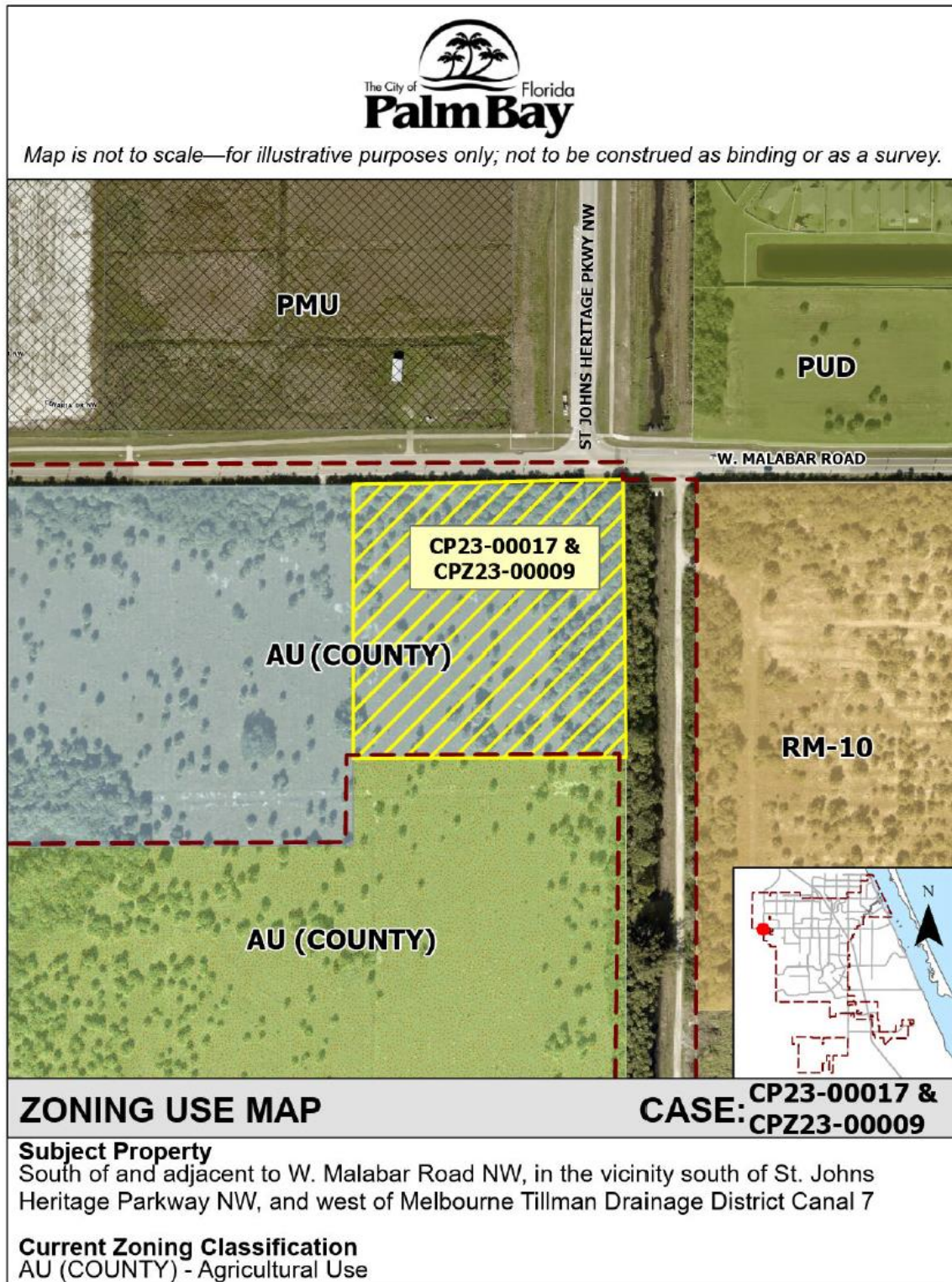
While this request is relocating higher density and intensity uses, the area features adequate vehicular access and access to public facilities. The site is located near the intersection of St. John's Heritage Parkway and Malabar Road, making it a logical location for higher intensity development. In addition, the site is intended to provide services to the residents expanding into this area and will enable a needed fire station in the area.

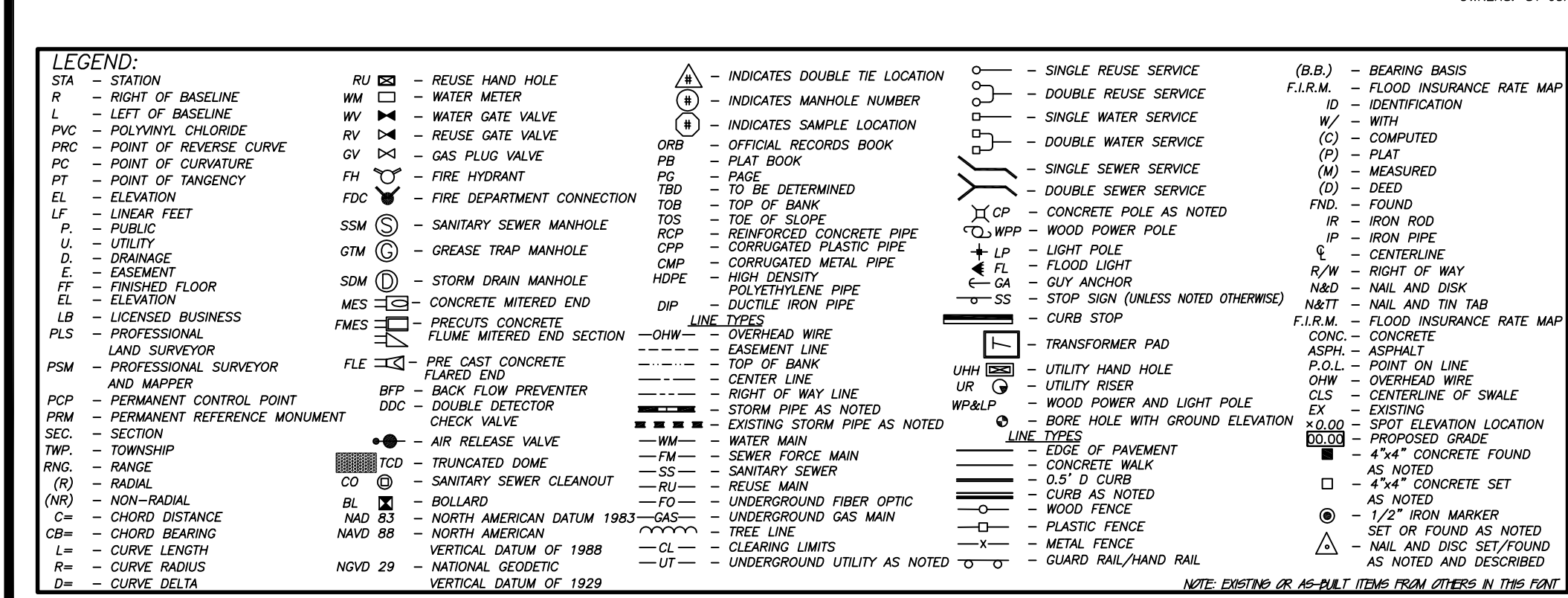
STAFF RECOMMENDATION:

Case CPZ23-00009 is recommended for approval.









PARCEL 1: A PORTION OF LAND LYING IN THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 29 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 5, TOWNSHIP 29 SOUTH, RANGE 36 EAST, BEING THE POINT OF BEGINNING; THENCE S89°43'55" W. 33.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF MALABAR ROAD; THENCE S89°43'55" W. ALONG SAID SOUTH RIGHT-OF-WAY LINE OF MALABAR ROAD 60.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID SOUTH RIGHT-OF-WAY LINE OF MALABAR ROAD, S89°43'55" W. 511.24 FEET, BEING 00°00'00" S. 511.24 FEET TO THE EAST LINE OF SAID SECTION 5, 511.24 FEET, BEING 00°00'00" S. 511.24 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF CANAL NO. 7; THENCE N00°00'00" W. 511.24 FEET ALONG SAID WEST RIGHT-OF-WAY LINE OF CANAL NO. 7 BACK TO THE POINT OF BEGINNING.
SAID PARCEL CONTAINS 6.00 ACRES MORE OR LESS

Printed copies of this document are not considered signed and sealed and the signature must be verified on any electronic copies.

[illegible]



LAND DEVELOPMENT DIVISION

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

<https://ims.palmbayflorida.org>

PLANNING AND ZONING BOARD FACTORS OF ANALYSIS

(1) Future Land Use Map Amendment Factors of Analysis

- (a) Whether the proposed amendment will have a favorable or unfavorable effect on the city's budget, or the economy of the city;

Applicant Response:

- (b) Whether the proposed amendment will adversely affect the level of service of public facilities;

Applicant Response:

- (c) Whether the proposed amendment will adversely affect the environment or the natural or historical resources of the city or the region as a result of the proposed amendment;

Applicant Response:

(d) Whether the amendment will have a favorable or adverse effect on the ability of people to find adequate housing reasonably accessible to their places of employment;

Applicant Response:

(e) Whether the proposed amendment will promote or adversely impact the public health, safety, welfare, or aesthetics of the region or the city;

Applicant Response:

(f) Whether the requested amendment is consistent with all elements of the Comprehensive Plan and established Levels of Service.

Applicant Response:

(g) Whether the request maximizes compatibility (consistent with the definition found in [Florida Statutes 163.31649](#)) between uses;

Applicant Response:

(h) Whether the request provides for a transition between areas of different character, density or intensity;

Applicant Response:

(i) Whether the request relocates higher density and intensity uses in areas which already feature adequate vehicular access and access to public facilities; and

Applicant Response:

(j) Whether the request has potential for creating land use inequities per Policy FLU – 1.12A of the Comprehensive Plan.

Applicant Response:

(2) Zoning Map Amendment Factors of Analysis

(a) The applicant's need and justification for the change and whether it aligns with the community's current or future needs;

Applicant Response:

(b) The effect of the change, if any, on a particular property and surrounding properties;

Applicant Response:

(c) The amount of existing undeveloped land in the general area of the city having the same classification as that requested;

Applicant Response:

(d) Whether the proposed amendment furthers the purpose of the city's Comprehensive Plan, or other strategic plans applicable to the proposed development and the provisions in the Land Development Code;

Applicant Response:

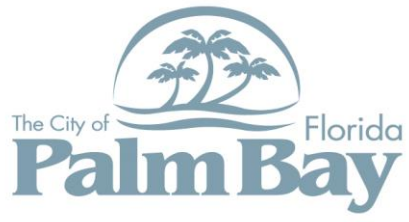
(e) Whether the requested district is substantially different from that of the surrounding area; and

Applicant Response:

(f) Whether the request provides for a transition between areas of different character, density or intensity.

Applicant Response:

Please note: You may add supplemental information or documents to this form for consideration.



CITIZEN PARTICIATION REPORT

Applicant should follow established Citizen Participation Plan as specified in § 169.005 CITIZEN PARTICIPATION PLANS.

CASE DETAILS

Applicant Name	Kelly Hyvonen, AICP
Case Number	
Project Name	Diaz Property
Date of Submission	8/9/2023

INFORMATION ON THE PUBLIC HEARING

Notice to the Public (Date)	7/28/2023
Date of CPP	8/4/2023
Location of the Meeting	Fred Poppe Park, 370 Champion Circle NW, Palm Bay
Method of CPP	In person
Number of Attendees	2, plus the applicant, for a total of 3

DENOTE ANY ADVERSE COMMENTS/COMPLAINTS/ CONCERNS/ ISSUES RECEIVED AND DESCRIBE RESOLUTION OR PROVIDE JUSTIFICATION IF THE APPLICANT IS UNABLE OR UNWILLING TO ADDRESS THE ISSUE :




Immediately following this page, attach the documents below in the order listed:

- Copy of notice sent
- Sign-In Sheets
- Material distributed or presented at the meeting
- Minutes of the meeting
- Copy of correspondence from property owners within a 500-foot radius (if any).

*All the property owners within a 500-foot radius of the subject parcel shall be informed about the meeting date, time and location

I hereby certify that information provided as part of this report is correct.


Signature

Kelly Hyvonen, AICP, Principal Planner

Typed Name and Title:

Date : 8/9/2023



July 28, 2023

RE: Community Informational Meeting on **Friday, August 4, 2023 at 3pm**

Dear Neighbor:

The property owner of the 6.00 acre vacant/unimproved property located at the southwest corner of Malabar Road and St. Johns Heritage Parkway in Palm Bay, FL (tax account 2960440) desires to annex into the city of Palm Bay and eventually seek approvals for commercial uses, including a gas station. See a conceptual site plan on page 2.

We intend to make application for Annexation, a Comprehensive Plan map amendment from Brevard County RES-1 to City of Palm Bay Commercial (COM), a Rezoning from Brevard County AU to City of Palm Bay Community Commercial (CC), and a Conditional Use for a gas station.

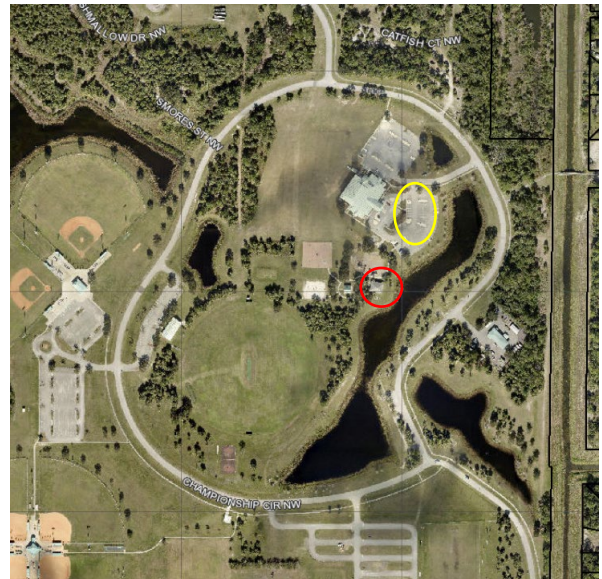
Before submitting applications, we will hold an informational meeting to discuss the request and conceptual plans in more detail, answer questions or concerns, and have a useful dialogue on how the proposed use may better meet the community's needs. We will then continue through the review and public hearing process for these requests.

COMMUNITY INFORMATIONAL MEETING

DATE: Friday, August 4, 2023

TIME: 3:00pm

PLACE: Community Center Pavilion
at Fred Poppe Park
370 Championship Circle NW
Palm Bay, FL 32907



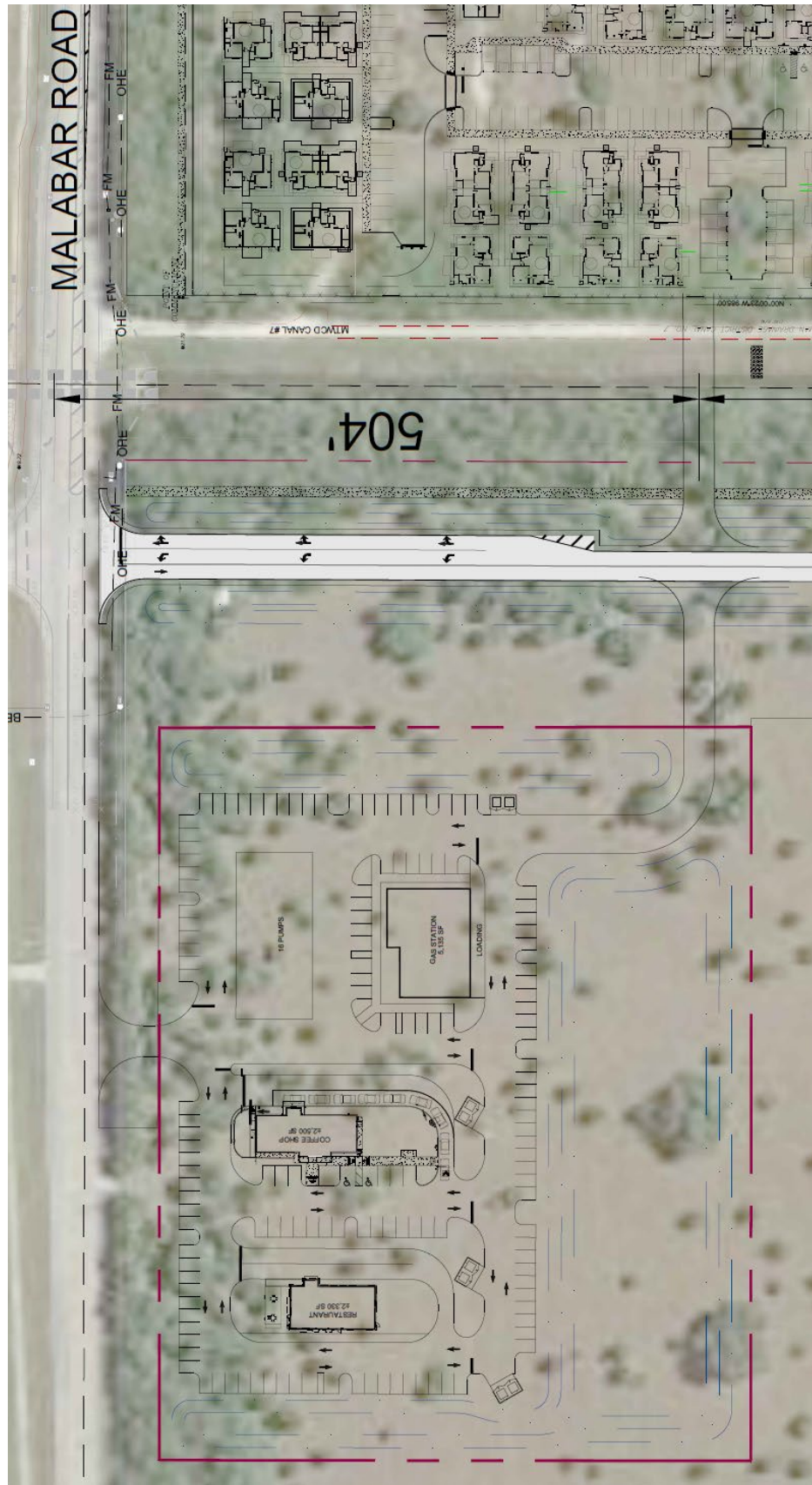
Parking is available at the Ted Whitlock Community Center (circled in yellow) and the pavilion is located next to the playground, south of the parking lot (circled in red).

Contact me for more information at 612-710-9296 or via email at kelly.hyvonen@gmail.com.

Best Regards,

Kelly Hyvonen, AICP
Principal Planner

Conceptual Site Plan



Community Meeting Sign In Sheet

Diaz Property

Date: 4-Aug-23 Time: 3pm Location: Fred Poppe Regional Park

Name (Please Print)

Address

Phone #

Email

Martha Diaz

366 GODFREY RD SE

321-543-5621

martha-diaz@bellsouth.net

Lazara Rodriguez

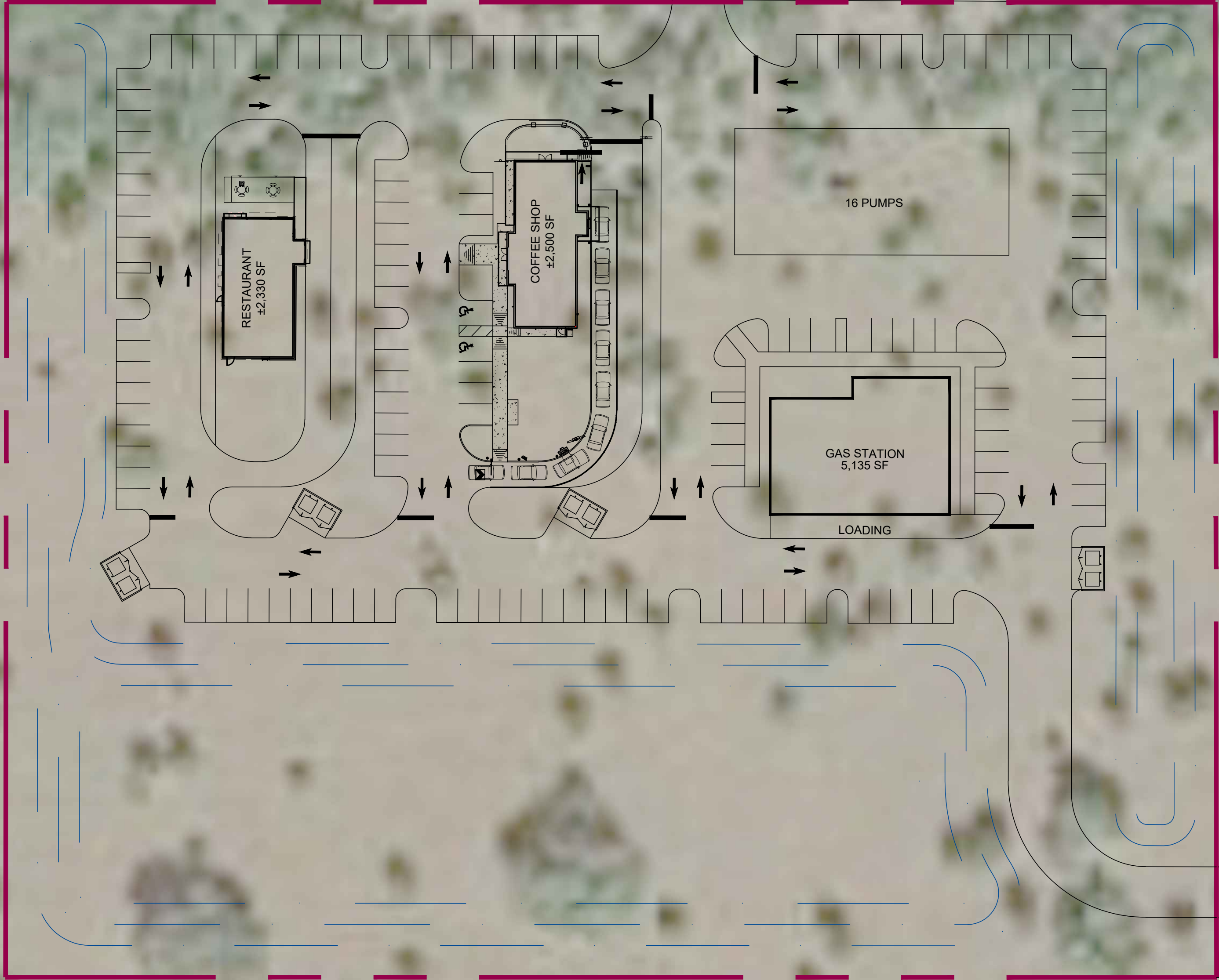
308 Hartford Rd SW

321-423-2758

palmbay308@yahoo.com

MALABAR ROAD

504'



POINT OF COMMENCEMENT

MTWCD CANAL #7

MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO. 7

N00000234-98500

(20' R/W)

Citizen Participation Report – Meeting Minutes

Diaz Property

Fred Poppe Regional Park

August 4, 2023 - 3pm

Present at the meeting were Kelly Hyvonen, AICP, Land Development Strategies (the applicant), and two representatives for the property owner. There were no adjacent property owners or residents in attendance.

As of the date of this report, I have not received any communication from members of the public. No additional correspondence from property owners within a 500-foot radius exists.

Project Details: CPZ23-00009

Project Type: Rezoning Comprehensive Plan Zoning Amendment

Project Location: **Palm Bay, FL**
Milestone: **Submitted**
Created: **8/9/2023**
Description: **Diaz Property**
Assigned Planner: **Alexandra Bernard**

Contacts

Contact	Information
Owner/Applicant	Ubaldo Diaz, Manager 366 Godfrey Road SE Palm Bay, FL 32909 (321) 298-7824 diaztreasures@gmail.com
Legal Representative	Tony Masone 4275 Alyssa Lane West Melbourne, FL 32904 (321) 693-8669 tmasone@gmail.com
Legal Representative (2)	Jake Wise, P.E. 2651 W. Eau Gallie Boulevard Melbourne, FL 32935 (321) 253-1221 jwise@cegengineering.com
Submitter	Kelly Hyvonen 355 Spoonbill Lane Melbourne Beach, FL 32951 kelly.hyvonen@gmail.com
Assigned Planner	Alexandra Bernard 120 Malabar Rd Palm Bay, FL 32907 alexandra.bernard@palmbayflorida.org

Fields

Field Label	Value
Size of Area (acres)	
Present Use of Property	Vacant
Zoning Classification Desired	CC
Structures On Property?	True

Project Details: CPZ23-00009

Intended Use of Property	Future commercial uses, including a gas station
Justification for Change	Annexation of a property requires that a zoning designation be assigned. This property is located at an intersection of two major roadways.
Is Submitter the Representative?	False
Tax Account Numbers	2960440
Parcel Number	29-36-05-00-2
Ordinance Number	
Block	
Lot	2
Township Range Section	05-29-36
Subdivision	00
Year Built	
Use Code	
Use Code Desc	
LotSize	
Building SqFt	
Homestead Exemption	
Taxable Value Exemption	
Assessed Value	
Market Value	
Land Value	
Tax ID	
Flu Description	
Flu Code	
Zoning Description	
Zoning Code	

April 13, 2023, 20 23

Re: Letter of Authorization

As the property owner of the site legally described as:

parcel ID 29-36-05-00-2

I, Owner Name: Ubaldo Diaz, as Manager of Diaz Treasures, LLC

Address: 366 Godfrey Road SE, Palm Bay, FL 32909

Telephone: (321) 298-7824

Email: diaztreasures@gmail.com

hereby authorize:

Representative: Tony Masone and Jake Wise, P.E.

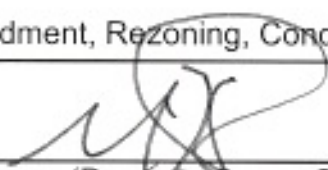
Address: Tony: 4275 Alyssa Lane, W. Melbourne, 32904
Jake: 2651 W Eau Gallie Blvd, Melbourne FL 32935

Telephone: Tony: 321-693-8669 Jake: 321-253-1221

Email: Tony: tmasone@gmail.com Jake: jwise@cegengineering.com

to represent the request(s) for:

Annexation, Comprehensive Plan Map Amendment, Rezoning, Conditional Use

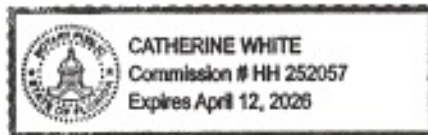

(Property Owner Signature)

STATE OF

Florida

COUNTY OF

Brevard



The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 13 day of April, 20 23 by

Ubaldo Diaz, property owner.

Catherine White

Notary Public

☐ Personally Known or ☒ Produced the Following Type of Identification:

FLDL

Acknowledgement Log

 CPZ23-00009 | Rezoning | Comprehensive Plan Zoning Amendment

Header: Legal Acknowledgement

Text: I, the submitter, understand that this application must be complete and accurate before consideration by the City of Palm Bay and certify that all the answers to the questions in said application, and all data and matter attached to and made 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 application and that the facts stated in it are true.

Accepted By: Kelly Hyvonen

On: 8/9/2023 5:20:12 PM

PROOF OF PUBLICATION

CITY OF PALM BAY
attn: Accounts Payable
City Of Palm Bay
120 Malabar Rd Se
Palm Bay FL 32907-3009

STATE OF WISCONSIN, COUNTY OF BROWN

Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Advertising Representative of the Florida Today, a daily newspaper published in Brevard County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of Govt Public Notices, was published on the publicly accessible website of Brevard County, Florida, or in a newspaper by print in the issues of, on:

11/16/2023

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 11/16/2023

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$360.11

Order No: 9523939

Customer No: 1127256

PO #: 230085

of Copies:

1

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

NANCY HEYRMAN
Notary Public
State of Wisconsin

Ad#9523939 11/16/2023

CITY OF PALM BAY, FLORIDA
NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held by the Planning and Zoning Board/Local Planning Agency on December 6, 2023, and by the City Council on December 21, 2023, both to be held at 6:00 p.m., in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, for the purpose of considering the following case(s):

1. **CP23-00017 - Diaz Treasures, LLC, Ubaldo Diaz, Manager (Tony Masone / Jake Wise, P.E., Construction Engineering Group, Reps.)**

A Small-Scale Comprehensive Plan Future Land Use Map Amendment from Residential 1 Unit Per Acre (Brevard County) to Commercial Tax Parcel 2, Section 5, Township 29, Range 36, Brevard County, Florida, containing approximately 6.00 acres. Located south of and adjacent to W. Malabar Road, in the vicinity south of St. Johns Heritage Parkway NW, and west of Melbourne Tillman Drainage District Canal 7

2. ****CP23-00009 - Diaz Treasures, LLC, Ubaldo Diaz, Manager (Tony Masone / Jake Wise, P.E., Construction Engineering Group, Reps.)**

A Zoning Amendment from AU, Agricultural Residential (Brevard County) to a CC, Community Commercial District Tax Parcel 2, Section 5, Township 29, Range 36, Brevard County, Florida, containing approximately 6.00 acres. Located south of and adjacent to W. Malabar Road, in the vicinity south of St. Johns Heritage Parkway NW, and west of Melbourne Tillman Drainage District Canal 7

3. ****FS23-00010 - DRP FL 6, LLC, Brian Clauson, DW General Partner, LLC (B.S.E. Consultants, Inc., Rep.)**

A Final Plat to allow for a proposed 124 single-family residential lot development to be called Riverwood at Everlands Phase 1

A Part of Tax Parcel 1, Sections 20 and 21, Township 28, Range 36, Brevard County, Florida, containing approximately 52.77 acres. Located east of and adjacent to St. Johns Heritage Parkway NW, in the vicinity north of Emerson Drive NW

4. ****PS23-00012 - KB Home Orlando, LLC, Steve McConn (Jake Wise, P.E., CEG Engineering Group, LLC., Rep.)**

A Subdivision Plan to allow for a proposed 199 single-family residential unit development to be called Gardens at Waterstone Phase 3

Block 1 of San Sebastian Farms, Section 5, Township 30, Range 37, Brevard County, Florida, containing approximately 47.92 acres. Located west of Gardens at Waterstone Phase 2 in the vicinity west of Mara Loma Boulevard SE

5. ****FS23-00012 - KB Home Orlando, LLC, Steve McConn (Jake Wise, P.E., CEG Engineering Group, LLC., Rep.)**

A Final Subdivision Plat to allow for a proposed 84 single-family residential unit development to be called Gardens at Waterstone Phase 3A

Block 1 of San Sebastian Farms, Section 5, Township 30, Range 37, Brevard County, Florida, containing approximately 47.92 acres. Located west of Gardens at Waterstone Phase 2 in the vicinity west of Mara Loma Boulevard SE

6. **CP23-00018 - Treeland Apartments, LLC, Robert Cambo (B.S.E. Consultants, Inc. / Stuart Buchanan, Alliance Commercial Real Estate, Reps.)**

A Small-Scale Comprehensive Plan Future Land Use Map Amendment from Public/Semi-Public Use and Recreation & Open Space Use to High-Density Residential Use

Tax Parcel 252 along with Tract G4-6 of Port Malabar Unit 56, Section 9, Township 29, Range 37, Brevard County, Florida, containing approximately 7.02 acres. Located at the southeast corner of San Filippo Drive SE and Treeland Boulevard SE

7. ****CP23-00010 - Treeland Apartments, LLC, Robert Cambo (B.S.E. Consultants, Inc. / Stuart Buchanan, Alliance Commercial Real Estate, Reps.)**

A Zoning Amendment from an RM-10, Single-, Two-, Multiple-Family Residential District to an RM-20, Multiple-Family Residential District Tax Parcel 252 along with Tract G4-6 of Port Malabar Unit 56, Section 9, Township 29, Range 37, Brevard County, Florida, containing approximately 7.02 acres. Located at the southeast corner of San Filippo Drive SE and Treeland Boulevard SE

8. **T23-00028 - City of Palm Bay (Growth Management Department)**

A Textual Amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185:

Zoning Code, Section 185.066(A)(3) to modify the timelines related to preliminary development plan submittals

9. T23-00029 - City of Palm Bay (Growth Management Department)

A Textual Amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 184: Subdivisions, Sections 184.07 and 184.08(D) to modify the timelines for review and scheduling of preliminary plat and final plat applications for final action by City Council

**Indicates quasi-judicial request(s).

If an individual decides to appeal any decision made by the Planning and Zoning Board/Local Planning Agency or 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.

Please contact the Palm Bay Land Development Division at (321) 733-3041 should you have any questions regarding the referenced cases.

Chandra Powell
Planning Specialist

ORDINANCE 2023-109

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM AU (AGRICULTURAL RESIDENTIAL) (BREVARD COUNTY) TO CC (COMMUNITY COMMERCIAL DISTRICT); WHICH PROPERTY IS LOCATED SOUTH OF AND ADJACENT TO MALABAR ROAD, IN THE VICINITY WEST OF MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL 7, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A CHANGE OF THE ZONING MAP; 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 Zoning Ordinance of the City of Palm Bay, Brevard County, Florida, is hereby amended to provide for the rezoning of property from AU (Agricultural Residential) (Brevard County) to CC (Community Commercial District), being legally described as follows:

Commencing at the Northeast Comer of said Section 5, Township 29 South, Range 36 East; thence S00°00'50"E along the East line of said Section 5, 33.00 feet to a point on the South right-of-way line of Malabar Road; thence S89°43'55"W along said South right-of-way line of Malabar Road 60.00 feet to the Point of Beginning; thence continue along said South right-of-way line of Malabar Road, S89°43'55"W, 511.24 feet; thence S00°00'50"E parallel to the East line of said Section 5, 511.24 feet; thence N89°43'55"E, 511.24 feet to a point on the West right-of-way line of Canal No.7; thence N00°00'50"W, 511.24 feet along said West right-of-way line of Canal No. 7 back to the Point of Beginning. Said parcel contains 6.00 acres more or less.

SECTION 2. The Zoning Map of the City of Palm Bay is hereby revised to reflect this amendment.

SECTION 3. The provisions within this ordinance shall take effect immediately upon the enactment of Ordinance 2023-108.

Read in title only at Meeting 2023- , held on , 2023; and
read in title only and duly enacted at Meeting 2023- , held on , 2023.

ATTEST:

Rob Medina, MAYOR

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Applicant: Diaz Treasures, LLC
Case: CPZ23-00009

cc: Applicant
Case File



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Lisa Frazier, AICP, Growth Management Director

DATE: 1/4/2024

RE: Resolution 2024-01, granting a conditional use to allow retail automotive gas/fuel sales in CC (Community Commercial District) zoning on property located south of and adjacent to Malabar Road, in the vicinities west of Melbourne Tillman Drainage District Canal 7 and south of St. Johns Heritage Parkway. (6.00 acres) (Case CU23-00012, Diaz Treasures, LLC). (Quasi-Judicial Proceeding)

The subject property is located south of and adjacent to Malabar Road in the vicinity west of St. Johns Heritage Parkway NW. There is one parcel totaling six (6) acres included in this request, which is comprised of vacant land. The applicant has provided a conceptual plan with a proposed 5,135 square foot gas station, along with 2,330 square foot restaurant and 2,500 square foot coffee shop. The applicant intends on keeping the property undivided. The conditional use request is specifically to allow retail automotive gas/fuel sales to be developed on vacant land.

Section 185.042(D)(1) of the Code of Ordinances establishes retail automotive gas/fuel sales as a conditional use in the Community Commercial zoning district and provides specific requirements to be met before permitting this use. Retail automotive gas/fuel sales establishments shall be located on arterial roadways, at a signalized intersection of a major collector road, or on corner lots at the intersection of collector streets or a higher functional classification as identified in the adopted Palm Bay Comprehensive Plan. No more than two (2) corner lots at any intersection shall be used for retail gasoline or automotive fuel sales. The proposed project is located on Malabar Road, west of St. Johns Heritage Pkwy proposed extension. This section of Malabar Road is classified as a Minor Arterial, urban roadway in the City of Palm Bay 2045 Comprehensive Plan as is the St. Johns Heritage Pkwy. The proposed project will be the first retail automotive gas/fuel sales establishment development at this intersection. No other retail automotive gas/fuel sales establishments are located in the vicinity.

City Council has the authority to request additional and reasonable conditions and safeguards associated with this conditional use.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case CU23-00012.

Planning and Zoning Board Recommendation:

Approval of the request by a vote of 5 to 1.

ATTACHMENTS:**Description**

CU23-00012 Staff Report

CU23-00012 Conceptual Plan

CU23-00012 Citizen Participation Meeting Report

CU23-00012 Application

CU23-00012 Letter of Authorization

CU23-00012 Legal Acknowledgement

CU23-00012 Legal Ad

Resolution 2024-01



STAFF REPORT

LAND DEVELOPMENT DIVISION

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

landdevelopmentweb@palmabayflorida.org

Prepared by

Alix Bernard, Principal Planner

CASE NUMBER

CU23-00012

PLANNING & ZONING BOARD HEARING DATE

November 1, 2023

PROPERTY OWNER & APPLICANT

Ubaldo Diaz, Diaz Treasures LLC (Tony Masone and Jake Wise, Reps.)

PROPERTY LOCATION/ADDRESS

Block 2, Section 5, Township 29, Range 36, Brevard County, Florida; containing approximately 6 acres. Located south of and adjacent to Malabar Rd, in the vicinity south of St. Johns Heritage Pkwy NW; Tax Account 2960440

SUMMARY OF REQUEST

A Conditional Use to allow retail automotive gas/fuel sales in the Community Commercial District, in accordance with Section 185.043(D)(3) of the Palm Bay Code of Ordinances.

Current Zoning

CC, Community Commercial District

Current Land Use

COM, Commercial

Site Improvements

Vacant Land

Site Acreage

Approximately 6 acres

SURROUNDING ZONING & USE OF LAND

North

PMU, Parkway Mixed Use; Vacant

East

RM-10 Single, Two, Multi-family Residential; Vacant

South

AU(County); Vacant

West

AU Agricultural Residential(Brevard County); Vacant

COMPREHENSIVE PLAN

COMPATIBILITY

Yes, Commercial Use

BACKGROUND:

The subject property is located south of and adjacent to Malabar Rd in the vicinity west of St. Johns Heritage Parkway NW. There is one parcel totaling 6 acres include in this request, which is comprised of vacant land.

The applicant has provided a conceptual plan with a proposed 5,135 square foot gas station, along with 2,330 square foot restaurant and 2,500 square foot coffee shop.

The applicant intends on keeping the property undivided. The conditional use request is specifically to allow retail automotive gas/fuel sales to be developed on vacant land.

ANALYSIS:

Section 185.043(D)(3) of the Code of Ordinances establishes retail automotive gas/fuel sales as a conditional use in the Community Commercial District and provides specific requirements to be met before permitting this use. An administrative site plan review will be required to ensure compliance with all applicable codes.

Retail automotive gas/fuel sales establishments shall be located on arterial roadways, at a signalized intersection of a major collector road, or on corner lots at the intersection of collector streets or a higher functional classification as identified in the adopted Palm Bay Comprehensive Plan. No more than two (2) corner lots at any intersection shall be used for retail gasoline or automotive fuel sales. The proposed project is located on Malabar Rd, west of St. Johns Heritage Pkwy proposed extension. This section of Malabar Road is classified as a Minor Arterial, urban roadway in the City of Palm Bay 2045 Comprehensive Plan as is the St. Johns Heritage Pkwy. The proposed project will be the first retail automotive gas/fuel sales establishment development at this intersection. No other retail automotive gas/fuel sales establishments are in the vicinity.

A minimum street frontage of one hundred and fifty (150) feet on each abutting street is required. In addition, no driveway or access shall be permitted within one hundred (100) feet from an intersection of collector streets or higher functional classification. The conceptual plan shows roughly three hundred and sixty (360) feet of frontage along Malabar Road, and five hundred and four (504) feet of frontage along the proposed St. Johns Heritage Pkwy extension. It appears the site is large enough to meet the frontage and driveway spacing requirements. The dimensions to confirm that these requirements have been met will be required during the administrative site plan review process.

Gasoline, fuel pumps, storage tanks and other service island equipment are required to 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 zoned land. No gasoline fuel pump, storage tank or other equipment shall be located closer than one thousand (1,000) feet from any municipal or public supply well.

Underground storage is required for all receptacles for combustible materials in excess of two hundred (200) gallons. Development and operation of the fuel pumps and attendant storage tanks shall be in compliance with §§ [176.01](#) et seq. of the code of ordinances. Underground tanks have not been noted on the conceptual plan, but this will also be reviewed in detail during the administrative site plan review.

CODE REQUIREMENTS:

To be granted conditional use approval, requests are evaluated upon items (A) through (H) of the General Requirements and Conditions of Section 185.087 of the Code of Ordinances. A review of these items is as follows:

Item (A): Adequate ingress and egress may be obtained to and from the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergencies.

Ingress and egress are proposed on both Malabar Road NW and St. Johns Heritage Parkway. However, no driveway or access shall be permitted within one hundred (100) feet from an intersection of collector streets or higher functional classification. The conceptual plan provided shows the proposed development appears able to meet these requirements, however dimensions will be needed to confirm the requirements are met during the administrative site plan review. Additional information will be necessary during the administrative review to show that larger vehicles can navigate the site in case of fire or other emergencies. For pedestrian safety, Public Works has indicated that on-site to off-site sidewalks connections are required for all buildings.

Item (B): Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor, or other detrimental effects upon adjoining properties.

Section 185.140(G)(10) of the Code of Ordinances establishes parking requirements for food stores at one (1) space for each two hundred (200) square feet of gross floor area. The proposed retail automotive gas/fuel sales establishment is 5,135 square feet, which will require twenty-six (26) parking spaces. The conceptual plan shows that there is adequate space to meet the parking requirements for a variety of uses on the site. A specific breakdown of uses and parking requirements will be reviewed during the administrative site plan review.

Section 185.141(D)(1) requires buildings or structures containing retail, food store, or similar retail or service uses which have an aggregate gross floor area of over five thousand (5,000) square feet, but not over twenty-five thousand (25,000) square feet to provide one (1) off-street loading space of at least fourteen (14) feet wide, forty-five (45) feet long, and having fourteen (14) feet of vertical clearance. These spaces have not been shown on the conceptual plan, but the site will be required to meet all requirements during the administrative site plan review.

Item (C): Adequate and properly located utilities are available or may be reasonably provided to serve the proposed development.

The Utilities Department stated they have no objections to the proposed project. Any necessary upgrades will be required to be designed, permitted, installed, and inspected at the developer's cost.

Item (D): Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.

The conceptual plan shows stormwater retention ponds along the portion of East, South and West portions of the property of the proposed retail automotive gas/fuel sales, which will create additional distance between this use and any proposed uses in the future. The project will be required to meet all landscaping requirements during the administrative site plan review.

Item (E): Signs, if any, and proposed exterior lighting will be so designed and arranged to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.

Proposed sign locations are not shown on the conceptual plan. Signage, lighting, and photometric plans will be required for administrative site plan review. It shall be noted that City codes require any lighting to be shielded and/or directed downward to avoid creating a nuisance to adjacent properties.

Item (F): Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.

The conceptual plan does not indicate the site data for setbacks, however all setback and landscape requirements will be required to be met during the administrative review process.

Item (G): The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation, or type of physical activity. The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties.

The proposed project is located at an intersection of a minor arterial roadway and will be the first site used for the purpose of retail automotive gas/fuel sales at this intersection. It is bordered by vacant commercial land to the north and west, as well as vacant multi-family to the east and vacant agricultural to the south.

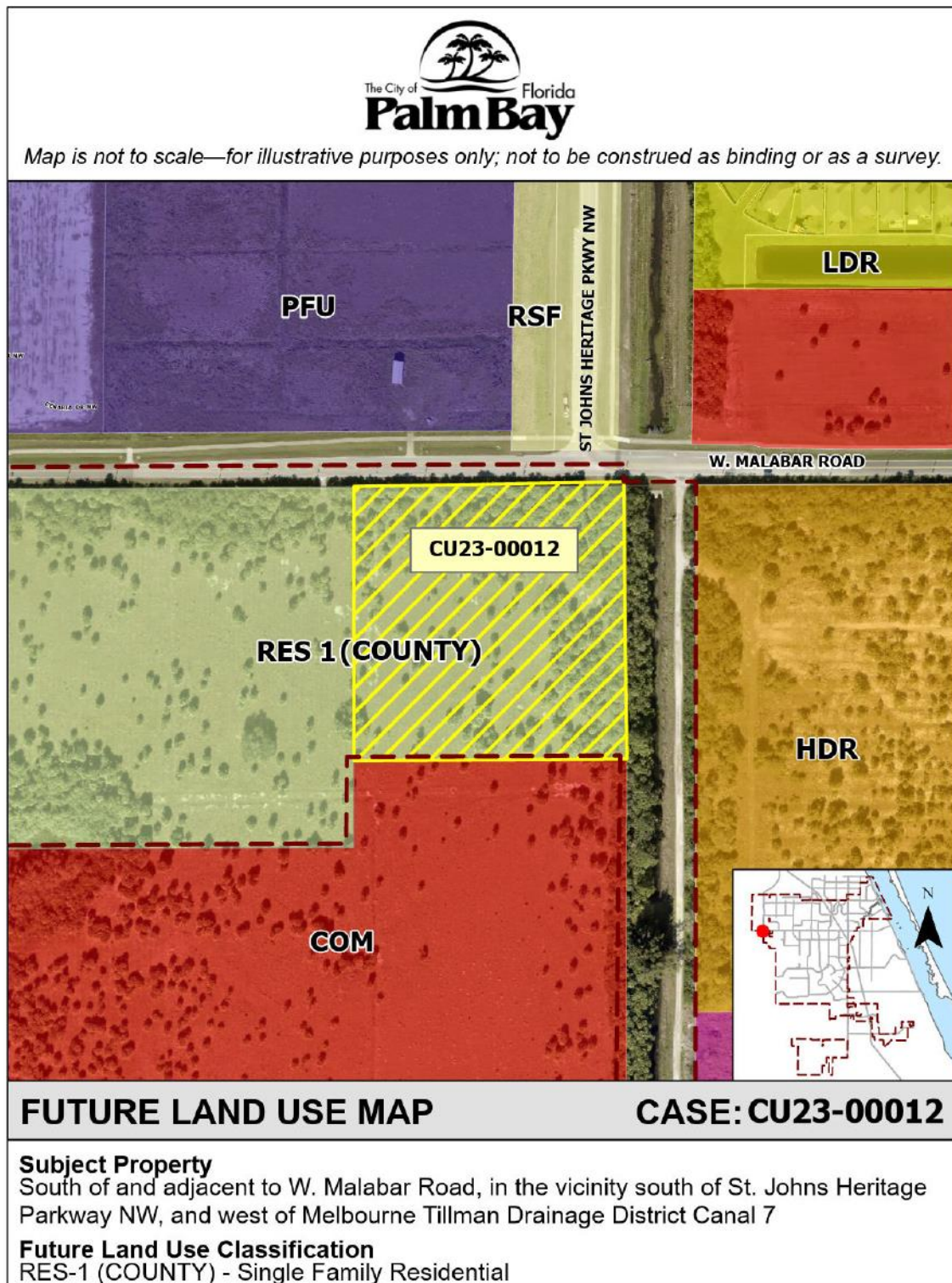
Item (H): Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, a reasonable time limit within which the action for which special approval is requested shall be begun or completed, or both.

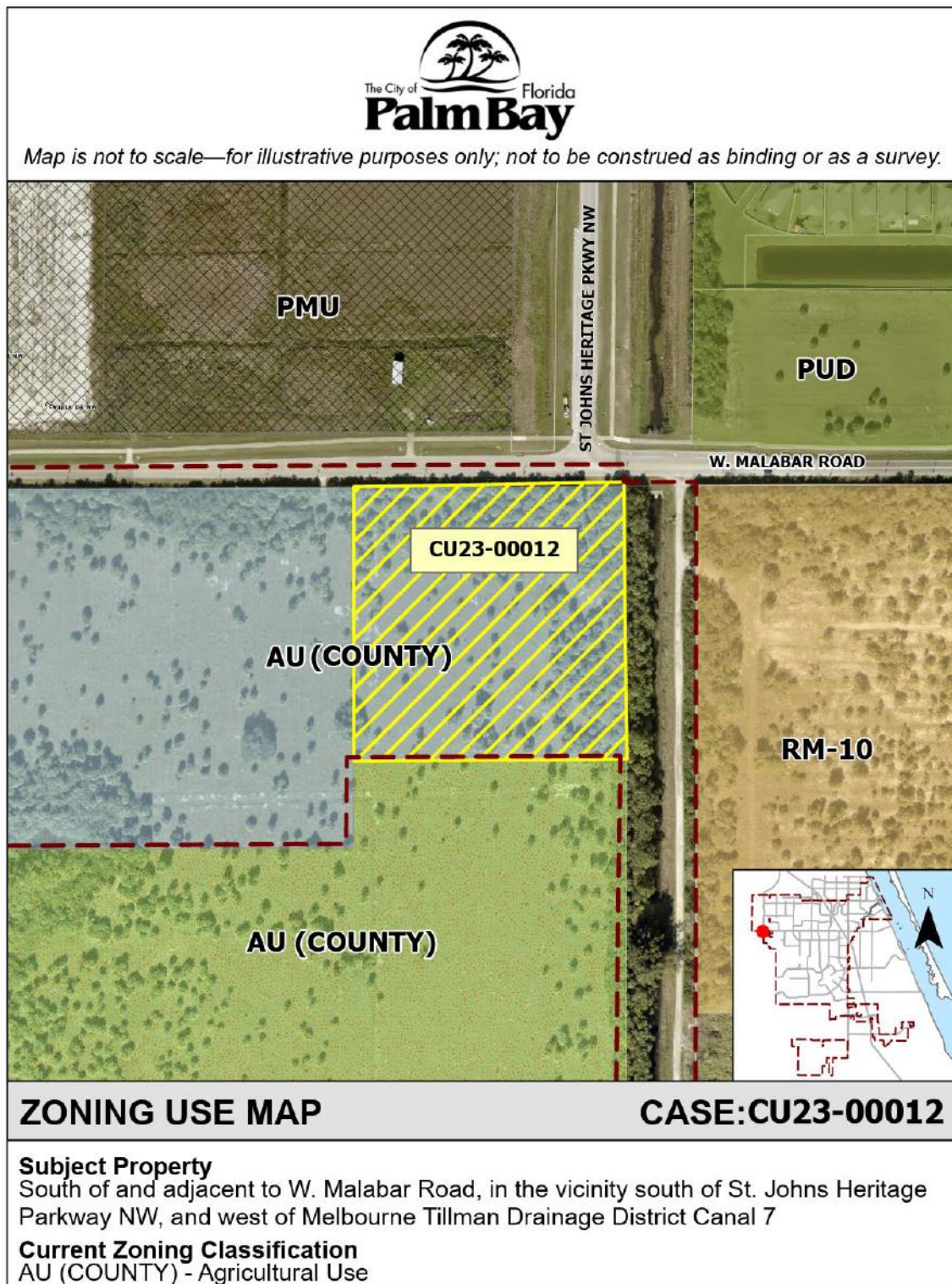
The Board and Council have the authority and right to impose any additional and justifiable safeguards, and/or conditions, to ensure that the facility operates safely and harmoniously with its surroundings.

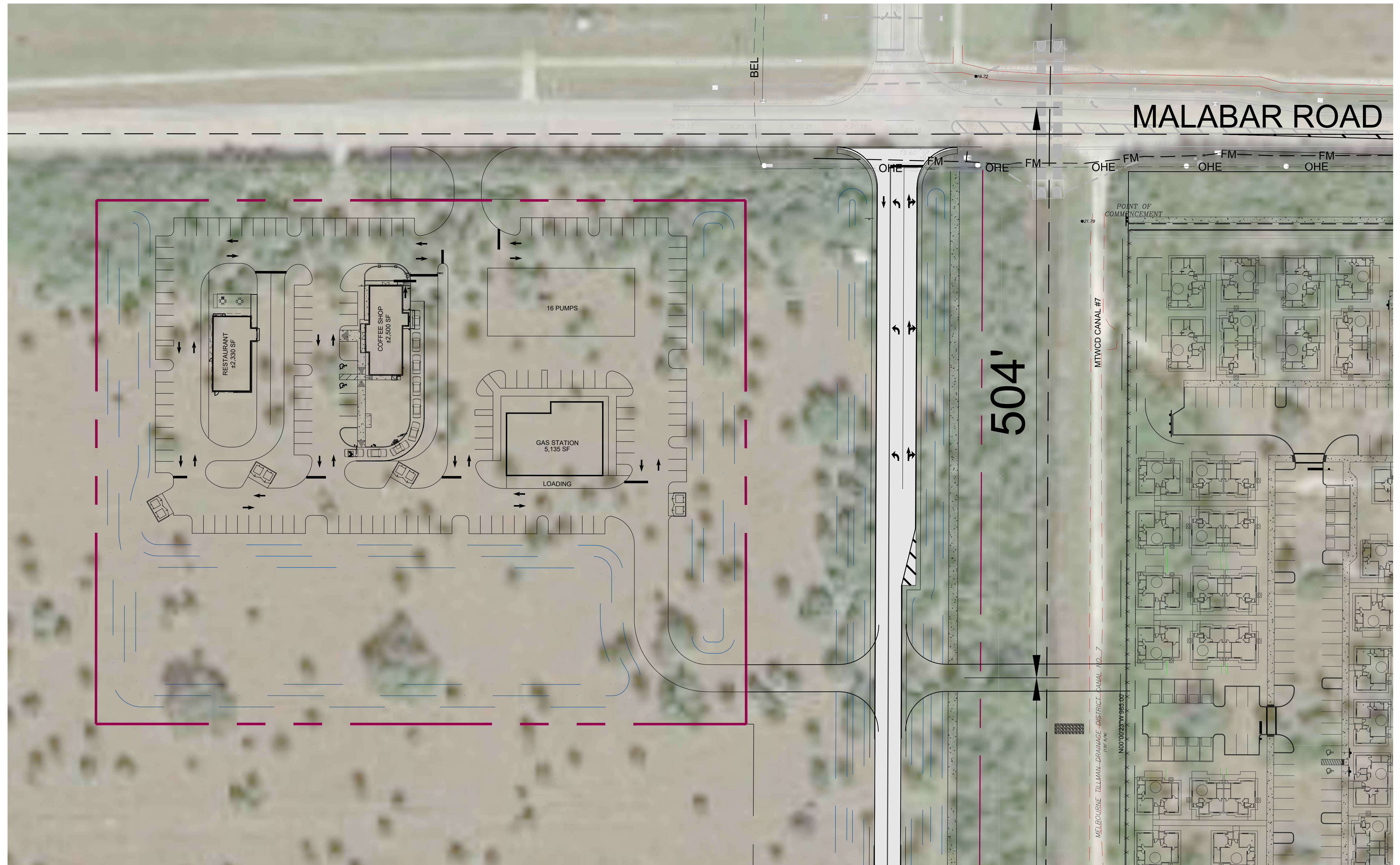
STAFF FINDINGS:

Case CU23-00012 meets the minimum requirements for approval of a conditional use.











CITIZEN PARTICIATION REPORT

Applicant should follow established Citizen Participation Plan as specified in § 169.005 CITIZEN PARTICIPATION PLANS.

CASE DETAILS

Applicant Name	Kelly Hyvonen, AICP
Case Number	
Project Name	Diaz Property
Date of Submission	8/9/2023

INFORMATION ON THE PUBLIC HEARING

Notice to the Public (Date)	7/28/2023
Date of CPP	8/4/2023
Location of the Meeting	Fred Poppe Park, 370 Champion Circle NW, Palm Bay
Method of CPP	In person
Number of Attendees	2, plus the applicant, for a total of 3

DENOTE ANY ADVERSE COMMENTS/COMPLAINTS/ CONCERNS/ ISSUES RECEIVED AND DESCRIBE RESOLUTION OR PROVIDE JUSTIFICATION IF THE APPLICANT IS UNABLE OR UNWILLING TO ADDRESS THE ISSUE :




Immediately following this page, attach the documents below in the order listed:

- Copy of notice sent
- Sign-In Sheets
- Material distributed or presented at the meeting
- Minutes of the meeting
- Copy of correspondence from property owners within a 500-foot radius (if any).

*All the property owners within a 500-foot radius of the subject parcel shall be informed about the meeting date, time and location

I hereby certify that information provided as part of this report is correct.


Signature

Kelly Hyvonen, AICP, Principal Planner

Typed Name and Title:

Date : 8/9/2023



July 28, 2023

RE: Community Informational Meeting on **Friday, August 4, 2023 at 3pm**

Dear Neighbor:

The property owner of the 6.00 acre vacant/unimproved property located at the southwest corner of Malabar Road and St. Johns Heritage Parkway in Palm Bay, FL (tax account 2960440) desires to annex into the city of Palm Bay and eventually seek approvals for commercial uses, including a gas station. See a conceptual site plan on page 2.

We intend to make application for Annexation, a Comprehensive Plan map amendment from Brevard County RES-1 to City of Palm Bay Commercial (COM), a Rezoning from Brevard County AU to City of Palm Bay Community Commercial (CC), and a Conditional Use for a gas station.

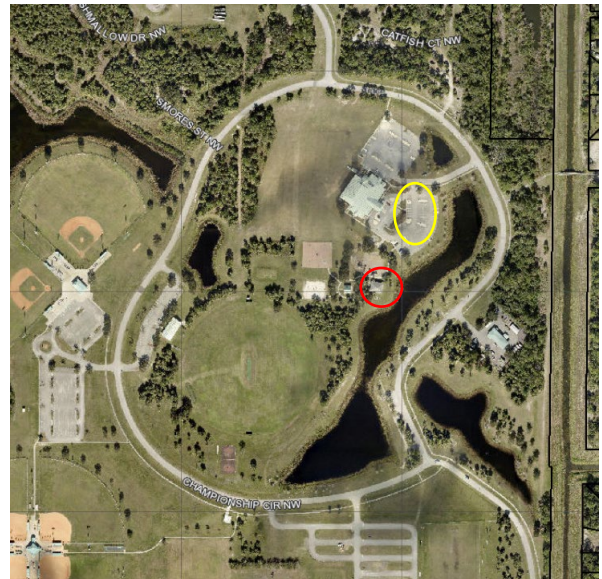
Before submitting applications, we will hold an informational meeting to discuss the request and conceptual plans in more detail, answer questions or concerns, and have a useful dialogue on how the proposed use may better meet the community's needs. We will then continue through the review and public hearing process for these requests.

COMMUNITY INFORMATIONAL MEETING

DATE: Friday, August 4, 2023

TIME: 3:00pm

PLACE: Community Center Pavilion
at Fred Poppe Park
370 Championship Circle NW
Palm Bay, FL 32907



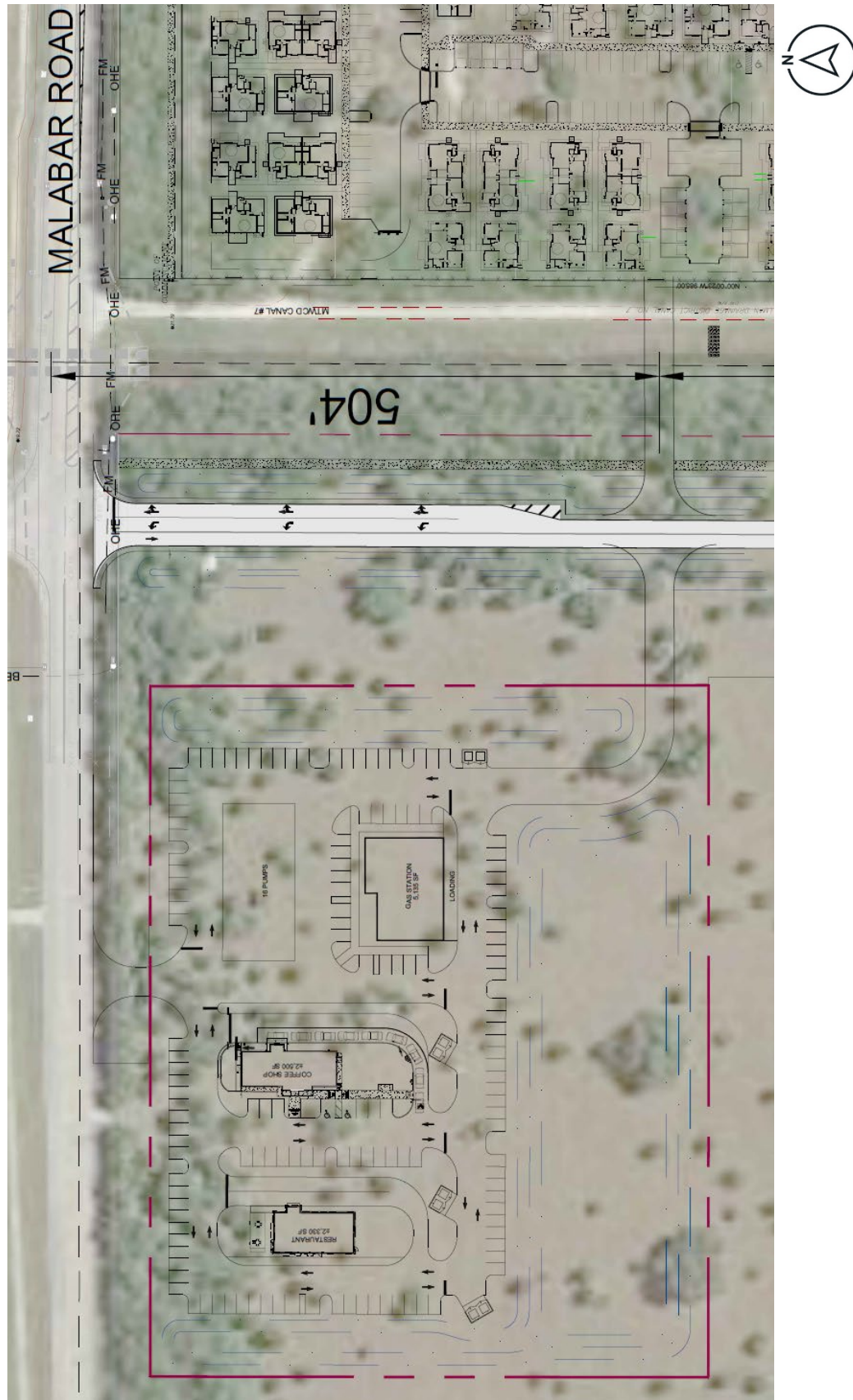
Parking is available at the Ted Whitlock Community Center (circled in yellow) and the pavilion is located next to the playground, south of the parking lot (circled in red).

Contact me for more information at 612-710-9296 or via email at kelly.hyvonen@gmail.com.

Best Regards,

Kelly Hyvonen, AICP
Principal Planner

Conceptual Site Plan



Community Meeting Sign In Sheet

Diaz Property

Date: 4-Aug-23 Time: 3pm Location: Fred Poppe Regional Park

Name (Please Print)

Address

Phone #

Email

Martha Diaz

366 Godfrey Rd SE

321-543-5621

martha-diaz@bellsouth.net

Lazara Rodriguez

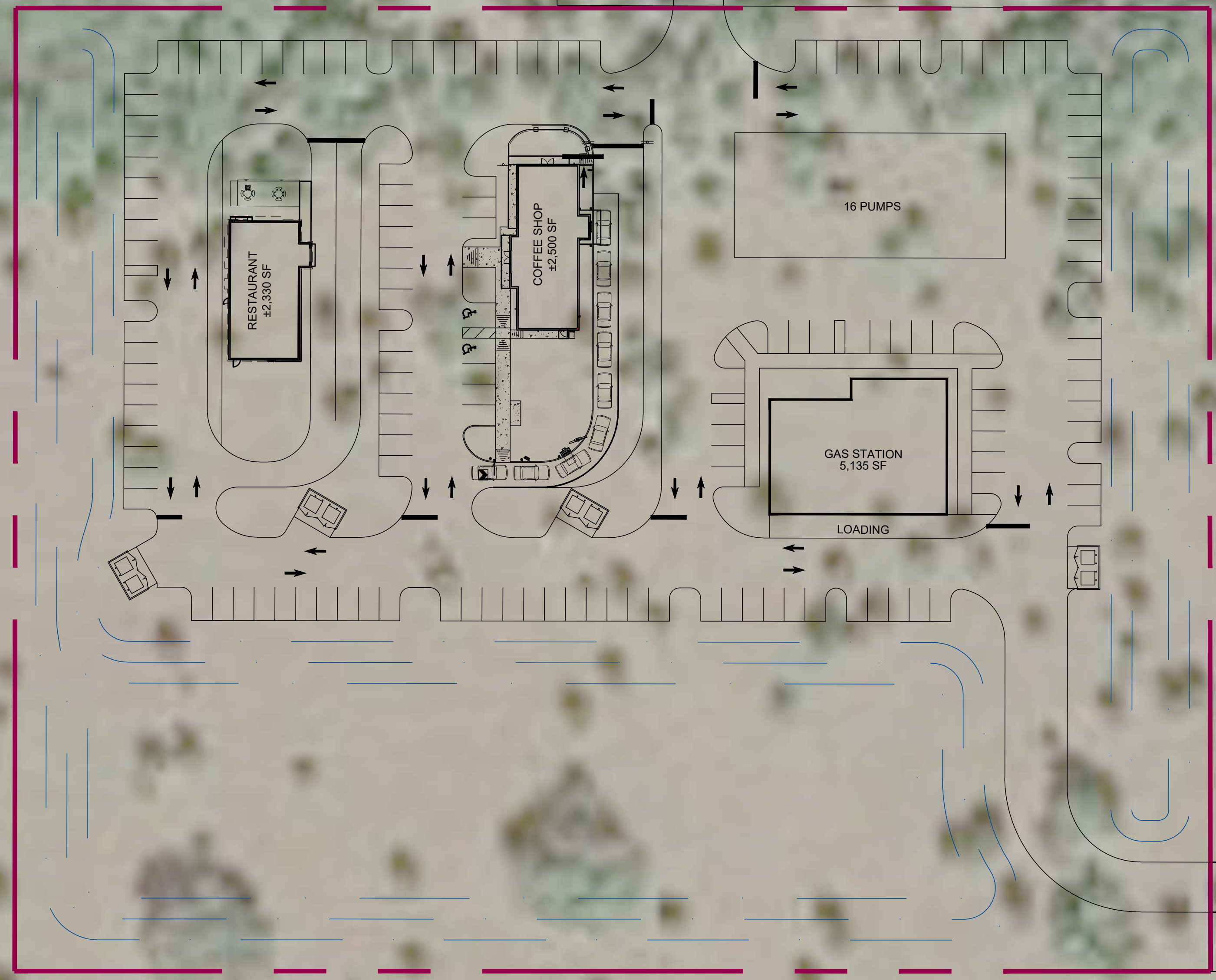
308 Hartford Rd SW

321-423-2758

palmbay308@yahoo.com

MALABAR ROAD

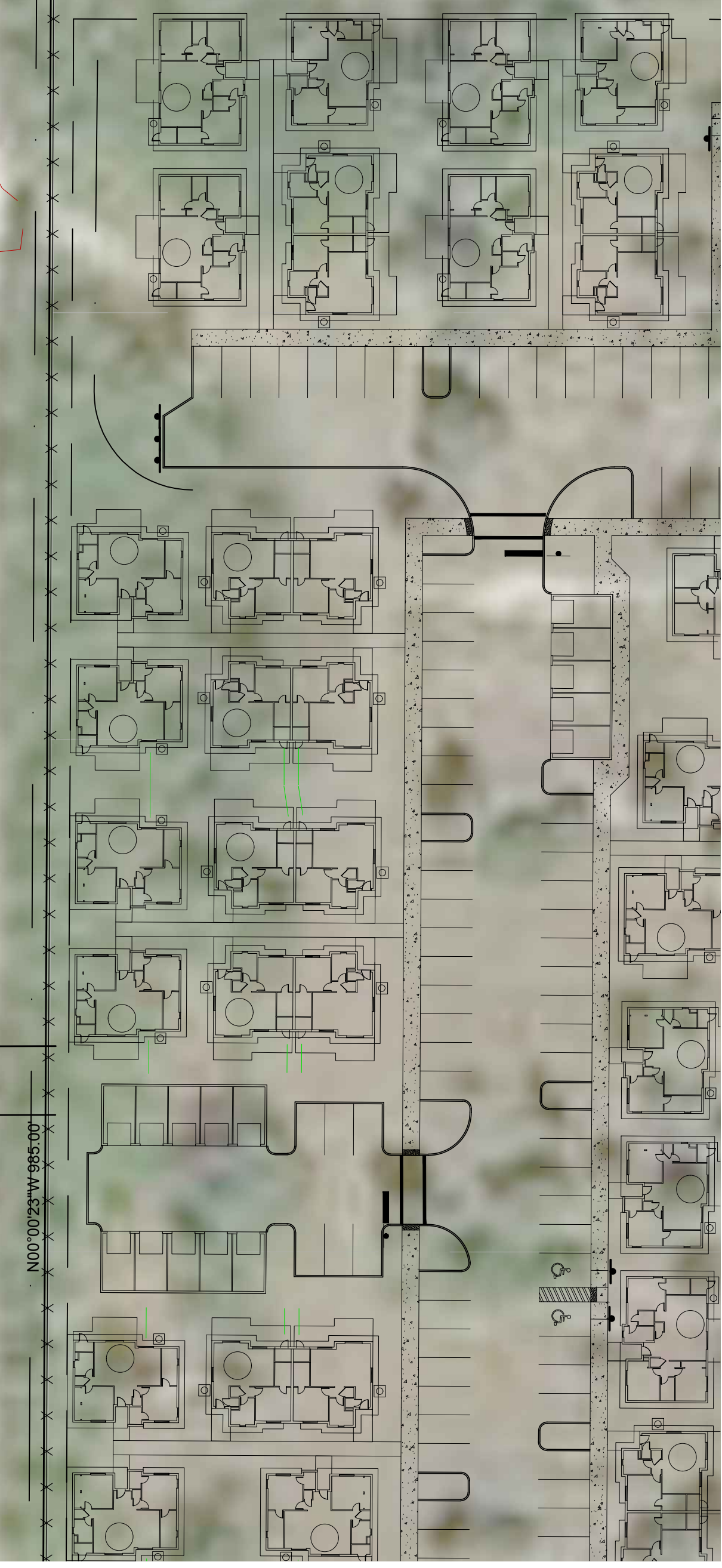
504'



MTWCD CANAL #7

MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO. 7
N00000234-98500
(20' R/W)

POINT OF COMMENCEMENT



Citizen Participation Report – Meeting Minutes

Diaz Property

Fred Poppe Regional Park

August 4, 2023 - 3pm

Present at the meeting were Kelly Hyvonen, AICP, Land Development Strategies (the applicant), and two representatives for the property owner. There were no adjacent property owners or residents in attendance.

As of the date of this report, I have not received any communication from members of the public. No additional correspondence from property owners within a 500-foot radius exists.

Project Details: CU23-00012

Project Type: Conditional Use

Project Location: **Palm Bay, FL**
Milestone: **Submitted**
Created: **8/9/2023**
Description: **Diaz Property Gas Station**
Assigned Planner: **Alexandra Bernard**

Contacts

Contact	Information
Owner/Applicant	Ubaldo Diaz, Manager 366 Godfrey Road SE Palm Bay, FL 32909 (321) 298-7824 diaztreasures@gmail.com
Legal Representative	Tony Masone 4275 Alyssa Lane West Melbourne, FL 32904 (321) 693-8669 tmasone@gmail.com
Legal Representative (2)	Jake Wise, P.E. 2651 W. Eau Gallie Boulevard Melboure, FL 32935 (321) 253-1221 jwise@cegengineering.com
Submitter	Kelly Hyvonen 355 Spoonbill Lane Melbourne Beach, FL 32951 kelly.hyvonen@gmail.com
Assigned Planner	Alexandra Bernard 120 Malabar Rd Palm Bay, FL 32907 alexandra.bernard@palmbayflorida.org

Fields

Field Label	Value
Size of Area (acres)	
Conditional Use Sought	Gas station
or Special Requirements Use	Not Applicable
Is Submitter the Representative?	False

Project Details: CU23-00012

Tax Account Numbers	2960440
Parcel Number	29-36-05-00-2
Resolution Number	
Block	
Lot	2
Township Range Section	05-29-36
Subdivision	00
Year Built	
Use Code	
Use Code Desc	
LotSize	
Building SqFt	
Homestead Exemption	
Taxable Value Exemption	
Assessed Value	
Market Value	
Land Value	
Tax ID	
Flu Description	
Flu Code	
Zoning Description	
Zoning Code	

April 13, 2023, 20 23

Re: Letter of Authorization

As the property owner of the site legally described as:

parcel ID 29-36-05-00-2

I, Owner Name: Ubaldo Diaz, as Manager of Diaz Treasures, LLC

Address: 366 Godfrey Road SE, Palm Bay, FL 32909

Telephone: (321) 298-7824

Email: diaztreasures@gmail.com

hereby authorize:

Representative: Tony Masone and Jake Wise, P.E.

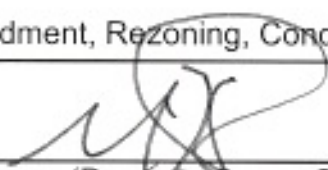
Address: Tony: 4275 Alyssa Lane, W. Melbourne, 32904
Jake: 2651 W Eau Gallie Blvd, Melbourne FL 32935

Telephone: Tony: 321-693-8669 Jake: 321-253-1221

Email: Tony: tmasone@gmail.com Jake: jwise@cegengineering.com

to represent the request(s) for:

Annexation, Comprehensive Plan Map Amendment, Rezoning, Conditional Use

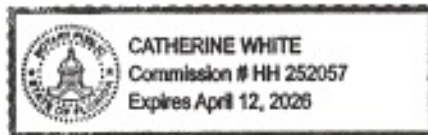

(Property Owner Signature)

STATE OF

Florida

COUNTY OF

Brevard



The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 13 day of April, 20 23 by

Ubaldo Diaz, property owner.

Catherine White

Notary Public

☐ Personally Known or ☒ Produced the Following Type of Identification:

FLDL

Acknowledgement Log

 CU23-00012 | *Conditional Use*

Header: Legal Acknowledgement

Text: I, the submitter, understand that this application must be complete and accurate before consideration by the City of Palm Bay and certify that all the answers to the questions in said application, and all data and matter attached to and made 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 application and that the facts stated in it are true.

Accepted By: Kelly Hyvonen

On: 8/9/2023 5:24:15 PM



Florida

PO Box 631244 Cincinnati, OH 45263-1244

GANNETT

PROOF OF PUBLICATION

CITY OF PALM BAY
attn: Accounts Payable
City Of Palm Bay
120 Malabar Rd Se
Palm Bay FL 32907-3009

STATE OF WISCONSIN, COUNTY OF BROWN

Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Advertising Representative of the Florida Today, a daily newspaper published in Brevard County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of Govt Public Notices, was published on the publicly accessible website of Brevard County, Florida, or in a newspaper by print in the issues of, on:

11/16/2023

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 11/16/2023

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$117.92

Order No: 9523985

Customer No: 1127256

PO #: 230085

of Copies:

1

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

Ad#9523985

11/16/2023

CITY OF PALM BAY, FLORIDA
NOTICE OF PUBLIC HEARING
Notice is hereby given that a public hearing will be held by the Planning and Zoning Board/Local Planning Agency on December 6, 2023, and by the City Council on January 4, 2024, both to be held at 6:00 p.m., in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, for the purpose of considering the following case(s):

1. **CU23-00012 - Diaz Treasures, LLC, Ubaldo Diaz, Manager (Tony Masone / Jake Wise, P.E., Construction Engineering Group, Reps.)

A Conditional Use to allow retail automotive gas/fuel sales in a CC, Community Commercial District, in accordance with Section 185.043(D) (3) of the Palm Bay Code of Ordinances

Tax Parcel 2, Section 5, Township 29, Range 36, Brevard County, Florida, containing approximately 6.00 acres. Located south of and adjacent to W. Malabar Road, in the vicinity south of St. Johns Heritage Parkway NW, and west of Melbourne Tillman Drainage District Canal 7

**Indicates quasi-judicial request(s).

If an individual decides to appeal any decision made by the Planning and Zoning Board/Local Planning Agency or 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.

Please contact the Palm Bay Land Development Division at (321) 733-3041 should you have any questions regarding the referenced cases.

Chandra Powell
Planning Specialist

NANCY HEYRMAN
Notary Public
State of Wisconsin



RESOLUTION 2024-01

A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, GRANTING A CONDITIONAL USE FOR RETAIL AUTOMOTIVE GAS/FUEL SALES IN CC (COMMUNITY COMMERCIAL DISTRICT) ZONING; WHICH PROPERTY IS GENERALLY LOCATED SOUTH OF AND ADJACENT TO MALABAR ROAD, IN THE VICINITIES WEST OF MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL 7 AND SOUTH OF ST. JOHNS HERITAGE PARKWAY, AND LEGALLY DESCRIBED HEREIN; GRANTING THE USE AS A CONDITIONAL USE; PROVIDING FOR A COMMENCEMENT PERIOD; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, application for a conditional use in CC (Community Commercial District) zoning to allow for retail automotive gas/fuel sales on property legally described herein, has been made by Diaz Treasures, LLC, and

WHEREAS, the request was duly considered by the Planning and Zoning Board of the City of Palm Bay on December 6, 2023, which voted to recommend to the City Council approval, and

WHEREAS, all provisions applicable to the conditional use under Chapter 185, Zoning, Conditional Uses, Sections 185.085 and 185.086, and District Regulations, Section 185.043 and 185.088, of the Palm Bay Code of Ordinances, have been addressed by the applicant, and

WHEREAS, the City Council of the City of Palm Bay has determined that such conditional use will neither be injurious to the neighborhood nor otherwise detrimental to the public welfare.

NOW, THEREFORE, BE IT RESOLVED 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 a conditional use to allow for retail automotive gas/fuel sales on property zoned CC (Community Commercial District), which property is legally described as follows:

Commencing at the Northeast Comer of said Section 5, Township 29 South, Range 36 East; thence S00°00'50"E along the East line of said Section 5, 33.00 feet to a point on the South right-of-way line of Malabar Road; thence S89°43'55"W along said South right-of-way line of Malabar Road 60.00 feet to the Point of Beginning; thence continue along said South right-of-way line of Malabar Road, S89°43'55"W, 511.24 feet; thence S00°00'50"E parallel to the East line of said Section 5, 511.24 feet; thence N89°43'55"E, 511.24 feet to a point on the West right-of-way line of Canal No.7; thence N00°00'50"W, 511.24 feet along said West right-of-way line of Canal No. 7 back to the Point of Beginning. Said parcel contains 6.00 acres more or less.

SECTION 2. The conditional use is granted subject to the applicant complying with the following:

- A. Constructing the structures relevant to retail automotive gas/fuel sales in accordance with the site plan which is, by reference, incorporated herein as Exhibit "A".
- B. The Land Development Division Staff Report which is, by reference, incorporated herein as Exhibit 'B'.
- B. 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. The conditional use must be commenced within two (2) years from the effective date of this resolution. Commencement shall mean the issuance of the appropriate permit(s), which must remain active. Failure to commence within two (2) years of issuance of the first permit shall void the conditional use. The Applicant may seek an administrative extension of one (1) year by submitting a written request within sixty (60) days prior to the date of expiration.

SECTION 4. This resolution shall take effect immediately upon the enactment date.

This resolution was duly enacted at Meeting 2023- , of the City Council of the City of Palm Bay, Brevard County, Florida, held on , 2023.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Applicant: Diaz Treasures, LLC
Case: CU23-00012

cc: Brevard County Recording
Applicant
Case File



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Lisa Frazier, Growth Management Director

DATE: 1/4/2024

RE: Ordinance 2023-111, rezoning property located south of and adjacent to Malabar Road, in the vicinity southwest of St. Johns Heritage Parkway and west of Melbourne Tillman Drainage District Canal 7, from AU (Agricultural Residential) (Brevard County) to CC (Community Commercial District) (13.05 acres) (Case CPZ23-00011, City of Palm Bay), 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.

The City of Palm Bay requests a Rezoning from AU, Agricultural Residential (Brevard County) to CC, Community Commercial. The undeveloped land is approximately 13.05 acres located south of and adjacent to Malabar Road NW, in the vicinity west of St. Johns Heritage Pkwy NW with tax account 2961562.

Palm Bay City Council approved the annexation of this parcel by Ordinance 2023-95. The applicant is requesting a City of Palm Bay zoning classification of CC, Community Commercial. The zoning is accompanied by a small-scale future land use map amendment for a Commercial designation. The rezoning to Community Commercial is consistent with the Commercial future land use as well as the Parkway Mixed Use and Community Commercial zoning on the north side of Malabar Road.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case CPZ23-00011.

Planning and Zoning Board Recommendation:

Planning and Zoning Board minutes are not fully transcribed at this time; the following is an excerpt:

Motion to submit Case CPZ23-00011 to City Council for approval.

Motion by Mr. Weinberg, seconded by Mr. Good. Motion carried with members voting as follows:

Aye: Jordan, Weinberg, Boerema, Good, Olszewski, Warner.

ATTACHMENTS:

Description

CPZ23-00011 Staff Report

CPZ23-00011 Survey

CPZ23-00011 Traffic Levels of Service Analysis

CPZ23-00011 Factors of Analysis

CPZ23-00011 Citizen Participation Plan Report

CPZ23-00011 Application

CPZ23-00011 Letter of Authorization

CPZ23-00011 Legal Acknowledgement

CPZ23-00011 Legal Ad

Ordinance 2023-111



STAFF REPORT

LAND DEVELOPMENT DIVISION

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

landdevelopmentweb@palmbayflorida.org

Prepared by

Tania Ramos, Senior Planner

CASE NUMBER

CPZ23-00011

PLANNING & ZONING BOARD HEARING DATE

December 6, 2023

PROPERTY OWNER & APPLICANT

City of Palm Bay

PROPERTY LOCATION/ADDRESS

Block 3, Section 05, Township 29, Range 36, Brevard County, Florida, containing approximately 13.05 acres. Located south of and adjacent to Malabar Road NW, in the vicinity west of St. Johns Heritage Pkwy NW. Tax Account 2961562

SUMMARY OF REQUEST

The applicant is requesting a rezoning from AU, Agricultural Residential (Brevard County) to CC, Community Commercial.

Existing Zoning

AU, Agricultural Residential (Brevard County)

Existing Land Use

RES-1, Residential 1 (Brevard County)

Site Improvements

Vacant Land

Site Acreage

Approximately 13.05 acres

SURROUNDING ZONING & USE OF LAND

North

PMU, Parkway Mixed Use; Vacant Land

East

AU, Agricultural Residential (County); Vacant Land

South

AU, Agricultural Residential (County); Vacant Land

West

AU, Agricultural Residential (County); Vacant Land

COMPREHENSIVE PLAN

COMPATIBILITY

Yes, subject to approval of Case CP23-00019

BACKGROUND:

The City of Palm Bay has submitted a request for Rezoning from AU, Agricultural Residential (Brevard County) to CC, Community Commercial. The undeveloped land is approximately 13.05 acres located south of and adjacent to Malabar Road NW, in the vicinity west of St. Johns Heritage Pkwy NW with tax account 2961562.

The rezoning request to Community Commercial is consistent with the Parkway Mixed Use and Community Commercial zoning on the north side of Malabar Road. The City will later seek to enter into a land swap agreement with the abutting property owner to the east (tax account 2960440, Diaz Treasures, LLC) for approx. 2.77 acres in rights-of-way for the future widening of Malabar Road and extension of St. Johns Heritage Parkway south of Malabar Road.

ANALYSIS:

All proposed amendments shall be submitted to the Planning and Zoning Board which shall analyze the factors of analysis applicable to the proposed amendment prior to making a recommendation to City Council.

- (A) The applicant's need and justification for the change and whether it aligns with the community's current or future needs.

The property is being annexed and a City zoning classification is necessary for future development. The request for CC, Community Commercial zoning, is to serve the community's current and future needs by increasing the commercial land in the City to better serve the citizens and create job opportunities. A portion of the property will be utilized for a land swap and commercial development. A fire station is proposed for the remainder to serve the community's current and future needs.

- (B) The effect of the change, if any, on a particular property and surrounding properties.

The purpose of the community commercial district is to locate and establish areas within the city which are uniquely suited for the development and maintenance of community commercial facilities. These areas are to be primarily located in or near the intersection of arterial roadways. The subject property is near the intersection of St. John's Heritage Parkway and Malabar Road. The land swap will enable the continuation of St. John's Heritage Parkway to the south. The effect of this change on the specific property will replace the Brevard County zoning of AU, Agricultural Residential, with the City of Palm Bay classification of CC, Community Commercial.

- (C) The amount of existing undeveloped land in the general area of the city having the same classification as that requested.

In general, there is a 9.76-acre parcel of undeveloped Community Commercial land on the north side of Malabar Road. The adjacent area includes a mix of classifications including an undeveloped Community Commercial parcel approximately .62 miles east on the south side of Malabar Road. Therefore, this classification is compatible with the area.

(D) Whether the proposed amendment furthers the purpose of the City's Comprehensive Plan or strategic plans applicable to the proposed development and the provisions in the Land Development Code.

The proposed amendment will further the purposes of Chapter 185 and the Comprehensive Plan by enhancing the standard of living within the city by placing Community Commercial zoning near the intersection of arterial roadways in a developing part of the city where it can support the incoming residences.

(E) Whether the requested district is substantially different from that of the surrounding area.

The requested district is not substantially different from that of the surrounding area. The purpose of the community commercial district is to locate and establish areas within the city which are uniquely suited for the development and maintenance of community commercial facilities. These areas are to be primarily located in or near the intersection of arterial roadways. The subject property is near the intersection of St. John's Heritage Parkway and Malabar Road. There are two other Community Commercial parcels within a mile. Across the street is also a commercial parcel for a Parkway Mixed Use development.

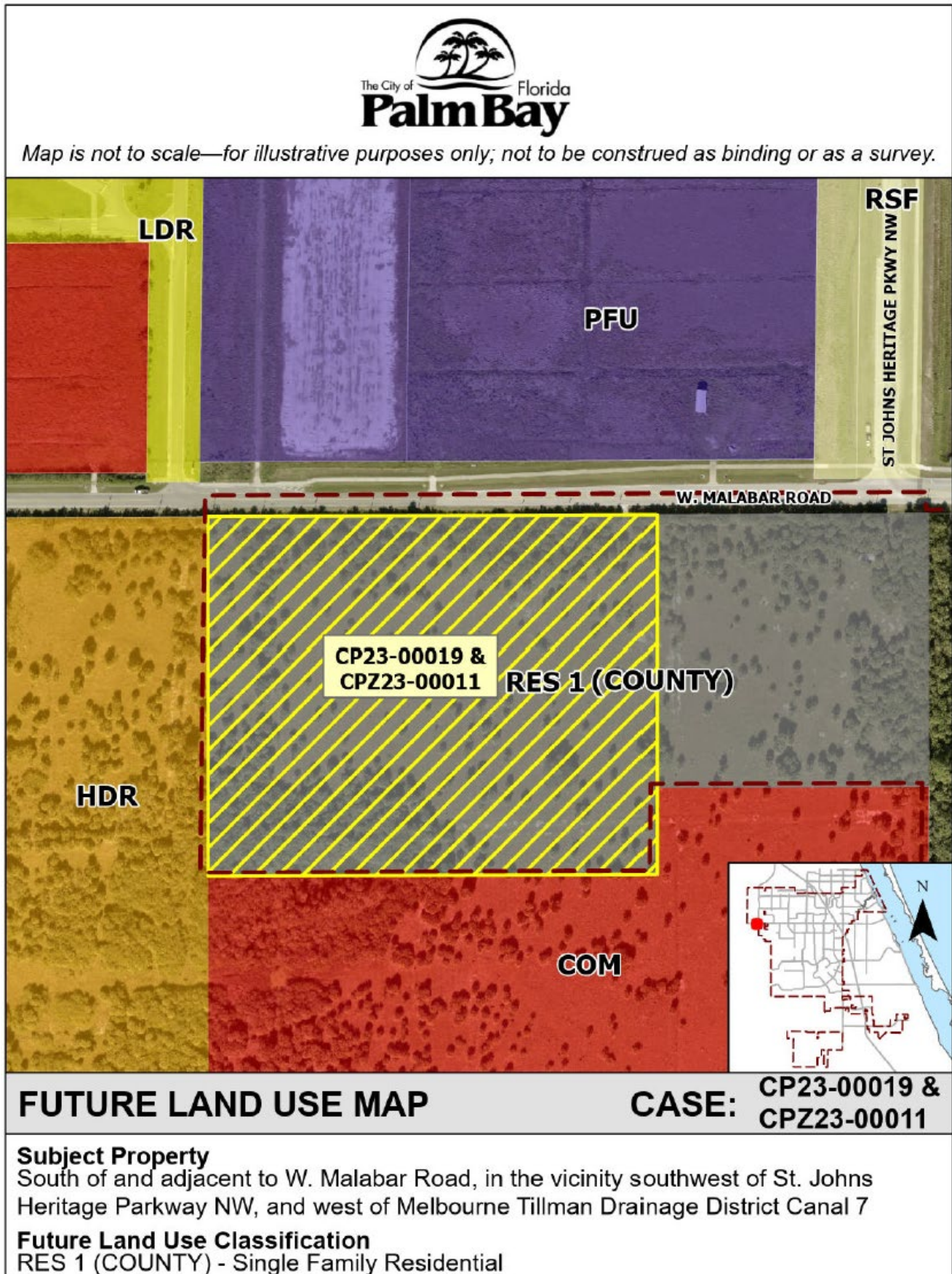
(F) Whether the request provides for a transition between areas of different character, density, or intensity.

While this request is relocating higher density and intensity uses, the area features adequate vehicular access and access to public facilities. The site is located near the intersection of St. John's Heritage Parkway and Malabar Road, making it a logical location for higher intensity development. In addition, the site is intended to provide services to the residents expanding into this area and will enable a needed fire station in the area.

STAFF FINDINGS:

Case CPZ23-00011 is recommended for approval.







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



ZONING MAP

CASE: CP23-00019 &
CPZ23-00011

Subject Property

South of and adjacent to Malabar Road NW, in the vicinity west of the intersection of St. Johns Heritage Parkway NW and Malabar Road NW

Current Zoning Classification

AU (COUNTY) - Agricultural Use



PUBLIC WORKS DEPARTMENT

Traffic Level of Service Analysis (LOS) for Malabar Road at St Johns Heritage Parkway (SJHP)

By Frank Watanabe, City Engineer/Traffic Engineer

October 20, 2023

The project property is 13.5 acres of vacant land located on the western segment of Malabar Road adjacent to the intersection of SJHP and classified as a major collector within the City of Palm Bay. The segment of Malabar Road west of the C-10 canal to the western terminus is maintained by Brevard County. The proposed land is owned by the City of Palm Bay which was recently annexed and rezoned for commercial. The project site can accommodate two commercial retail buildings each of 5,500 SF for a total of 11,000 SF.

Malabar Road is considered a major collector per the City's Comprehensive Plan. The western segment of Malabar Road from the C-10 canal to the terminus is maintained by Brevard County. Traffic counts from the regional Transportation Planning Organization (TPO) collected in FY 2022 has this segment from SJHP to Jupiter with an Annual Average Daily Traffic (AADT) of 10,200 vehicles. The roadway is a two-travel lane undivided with a posted speed is 40 mph in the city and 35 mph in the County.

The maximum allowable volume (MAV) is per the FDOT January 2020 Generalized Annual Average Daily for Urbanized Areas. Malabar Road within the County segment has a posted speed of 35 mph for Class I with two lane divided roadway with MAV of 14,800 AADT for Level of Service (LOS) D

Existing ADT	No. of Lanes	LOS	Max Allowable Volume (MAV)	Available Capacity
10,200	2	D (County)	14,800	4,600

1. Using Peak Hour Trip Rates (ITE 11th Edition Trip Generation)
 - Commercial retail code 822 with 5,500 SF =300 vehicles
 - 2nd commercial retail code 822 with 5,500 SF =300 vehicles
 - Total of the two commercial site = 600 vehicles
2. Level of Service (LOS)

The LOS standard for Malabar Road from C-10 canal to Jupiter Blvd is LOS D per Brevard County with the MAV of 14,800.
3. Analysis of traffic impact
 - Proposed Total Trips of 600 < available capacity of 4,600, therefore sufficient capacity.

Finding:

The maximum of two commercial retail of 5,500 SF or a total of 11,000 SF will not impact the roadway capacity of Malabar Road to be deficient in level of service (LOS).



LAND DEVELOPMENT DIVISION

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

<https://ims.palmbayflorida.org>

PLANNING AND ZONING BOARD FACTORS OF ANALYSIS

(1) Future Land Use Map Amendment Factors of Analysis

- (a) Whether the proposed amendment will have a favorable or unfavorable effect on the city's budget, or the economy of the city;

Applicant Response:

- (b) Whether the proposed amendment will adversely affect the level of service of public facilities;

Applicant Response:

- (c) Whether the proposed amendment will adversely affect the environment or the natural or historical resources of the city or the region as a result of the proposed amendment;

Applicant Response:

(d) Whether the amendment will have a favorable or adverse effect on the ability of people to find adequate housing reasonably accessible to their places of employment;

Applicant Response:

(e) Whether the proposed amendment will promote or adversely impact the public health, safety, welfare, or aesthetics of the region or the city;

Applicant Response:

(f) Whether the requested amendment is consistent with all elements of the Comprehensive Plan and established Levels of Service.

Applicant Response:

(g) Whether the request maximizes compatibility (consistent with the definition found in [Florida Statutes 163.31649](#)) between uses;

Applicant Response:

(h) Whether the request provides for a transition between areas of different character, density or intensity;

Applicant Response:

(i) Whether the request relocates higher density and intensity uses in areas which already feature adequate vehicular access and access to public facilities; and

Applicant Response:

(j) Whether the request has potential for creating land use inequities per Policy FLU – 1.12A of the Comprehensive Plan.

Applicant Response:

(2) Zoning Map Amendment Factors of Analysis

(a) The applicant's need and justification for the change and whether it aligns with the community's current or future needs;

Applicant Response:

(b) The effect of the change, if any, on a particular property and surrounding properties;

Applicant Response:

(c) The amount of existing undeveloped land in the general area of the city having the same classification as that requested;

Applicant Response:

(d) Whether the proposed amendment furthers the purpose of the city's Comprehensive Plan, or other strategic plans applicable to the proposed development and the provisions in the Land Development Code;

Applicant Response:

(e) Whether the requested district is substantially different from that of the surrounding area; and

Applicant Response:

(f) Whether the request provides for a transition between areas of different character, density or intensity.

Applicant Response:

Please note: You may add supplemental information or documents to this form for consideration.



CITIZEN PARTICIPATION REPORT

Applicant should follow established Citizen Participation Plan as specified in § 169.005 CITIZEN PARTICIPATION PLANS.

CASE DETAILS

Applicant Name	City of Palm Bay
Project Name	Diaz Land Swap - City Owned Parcel
Case Type	Annexation, Comprehensive Plan Amendment, and Rezoning
Case Description	Annexation and assignment of City of Palm Bay FLU and Zoning
Intended Month of Submission	September 2023

INFORMATION ON THE CITIZEN PARTICIPATION MEETING

Notice to the Public (Date)	September 8, 2023
Date of CPP	September 25, 2023
Location of the Meeting	Dawn Reid Conference Room, Palm Bay City Hall
Number of Attendees	<i>3 members of staff were present. No other attendees.</i>



DENOTE ANY ADVERSE COMMENTS/COMPLAINTS/ CONCERNS/ ISSUES RECEIVED AND DESCRIBE RESOLUTION OR PROVIDE JUSTIFICATION IF THE APPLICANT IS UNABLE OR UNWILLING TO ADDRESS THE ISSUE:

[illegible]



LIST OF ATTENDEES

Number	Name of attendee	Number	Name of attendee
1.	Janice Ramos	2.	LISA Frazier
3.	Joan Dunkala-Brown	4.	
5.		6.	
7.		8.	
9.		10.	
11.		12.	
13.		14.	
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23.		24.	
25.		26.	
27.		28.	
29.		30.	
31.		32.	
33.		34.	
35.		36.	



ADDITIONAL DOCUMENTS REQUIRED WITH CITIZEN PARTICIPATION PLAN REPORT SUBMISSION

1. Copy of notice sent (separate attachment)
2. Material distributed or presented at the meeting (separate attachment)
 - All the property owners within a 500-foot radius of the subject parcel shall be informed about the meeting date, time and location.

I hereby certify that information provided as part of this report is correct.

Tania Ramos
Signature,

Tania Ramos, Senior Planner
Typed Name and Title:

9/26/2023
Date :



September 8, 2023

RE: Citizen Participation Meeting on **Monday, September 25, 2023, at 6:00 pm**

Dear Neighbor:

The City owns 13.05 acres of vacant/unimproved property located on the south side of Malabar Road SW, approximately 0.8 miles west of St. John's Heritage Parkway NW (Tax Account 2961562) and desires to annex the property into the City of Palm Bay. We intend to make application for Annexation, a Comprehensive Plan map amendment from Brevard County Residential 1 (RES-1) to City of Palm Bay Commercial (COM), and a Rezoning from Brevard County Agricultural Residential (AU) to City of Palm Bay Community Commercial (CC).

Before submitting applications, we will hold an informational meeting to discuss the request and potential impacts to any surrounding properties and respond to any questions or concerns. We will then continue through the review and public hearing process for these requests.

CITIZEN PARTICIPATION MEETING

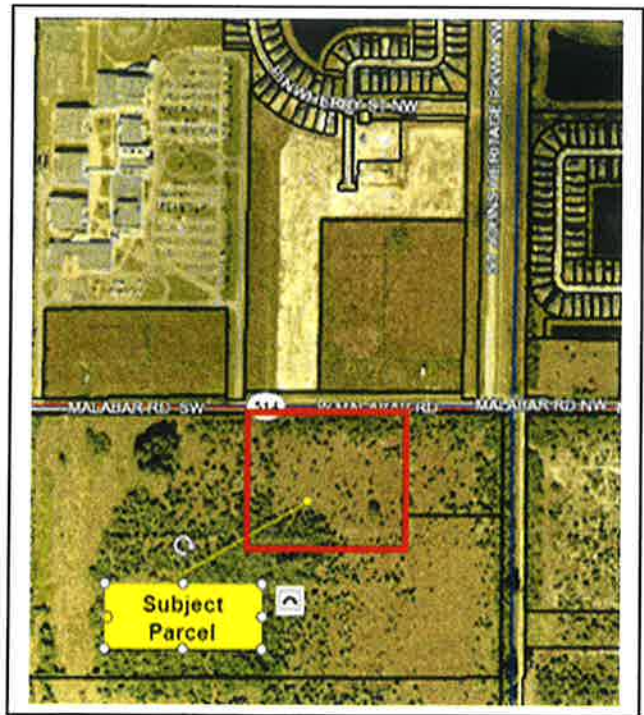
DATE: Monday, September 25, 2023

TIME: 6:00 pm

LOCATION: Dawn Reid Conference Room
Palm Bay City Hall, Building A
120 Malabar Road SE
Palm Bay, FL 32907

Sincerely,

Tania Ramos
Senior Planner



T: 321.952.3400



120 Malabar Road SE
Palm Bay, FL 32907

Project Details: CPZ23-00011

Project Type: Rezoning Comprehensive Plan Zoning Amendment

Project Location: 120 MALABAR RD SE # CITYHL Palm Bay, FL 32907
Milestone: Submitted
Created: 9/7/2023
Description: City Owned Parcel (Diaz Land Swap)
Assigned Planner: Tania Ramos

Contacts

Contact	Information
Owner/Applicant	Suzanne Sherman, City Manager, CITY OF PALM BAY 120 MALABAR RD SE PALM BAY, FL 32909 (321) 952-3400 suzanne.sherman@palmbayflorida.org
Legal Representative	Tania Ramos, Senior Planner 120 Malabar Road SE Palm Bay, FL 32907 (321) 733-3042 tania.ramos@palmbayflorida.org
Submitter	Tania Ramos, Senior Planner 120 Malabar Road SE Palm Bay, FL 32907 (321) 733-3042 tania.ramos@palmbayflorida.org
Assigned Planner	Tania Ramos FL tania.ramos@palmbayflorida.org

Fields

Field Label	Value
Block	A
Lot	
Township Range Section	29-37-06
Subdivision	GK
Year Built	Multiple
Use Code	8910
Use Code Desc	MUNICIPALLY OWNED LAND - IMPROVED

Project Details: CPZ23-00011

LotSize	
Building SqFt	
Homestead Exemption	
Taxable Value Exemption	
Assessed Value	
Market Value	
Land Value	
Tax ID	2925038
Flu Description	Public Semi-Public
Flu Code	PSP
Zoning Description	Institutional Use
Zoning Code	IU
Size of Area (acres)	
Present Use of Property	Vacant/unimproved
Zoning Classification Desired	CC, Community Commercial
Structures On Property?	False
Intended Use of Property	
Justification for Change	Assignment of zoning for annexation
Is Submitter the Representative?	True
Tax Account Numbers	2961562
Parcel Number	29-36-05-00-3
Ordinance Number	

September 15, 2023

Re: Letter of Authorization

As the property owner of the site legally described as:

Tract 3, Section 05, Township 29, Range 36, Brevard County, Florida containing 13.05 acres

I, Owner Name: City of Palm Bay, Suzanne Sherman

Address: 120 Malabar Road SE, Palm Bay, FL 32907

Telephone: 321-952-3413

Email: citymanager@palmbayflorida.org

hereby authorize:

Representative: Tania Ramos, Senior Planner, Growth Management

Address: 120 Malabar Road SE, Palm Bay, FL 32907

Telephone: 321-952-3400 x 3220

Email: tania.ramos@palmbayflorida.org

to represent the request(s) for:

A23-00005 for annexation, CP23-00019 for future land use, and CPZ23-00011 for rezoning

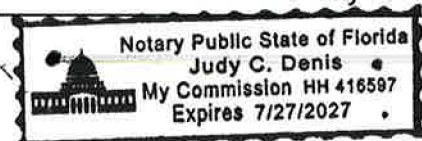
(Property Owner Signature)

STATE OF Florida

COUNTY OF Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 15th day of September, 2023 by

Suzanne Sherman for City of Palm Bay, property owner.



Judy C. Denis
7/27/27

, Notary Public

☒ Personally Known or ☐ Produced the Following Type of Identification:

Acknowledgement Log

Header:

Legal Acknowledgement

Text:

I, the submitter, understand that this application must be complete and accurate before consideration by the City of Palm Bay and certify that all the answers to the questions in said application, and all data and matter attached to and made 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 application and that the facts stated in it are true.

Accepted By:

Tania Ramos

On:

9/7/2023 1:34:54 PM

☒ CPZ23-00011

Select Language ▼

PROOF OF PUBLICATION

CITY OF PALM BAY
attn: Accounts Payable
City Of Palm Bay
120 Malabar Rd Se
Palm Bay FL 32907-3009

STATE OF WISCONSIN, COUNTY OF BROWN

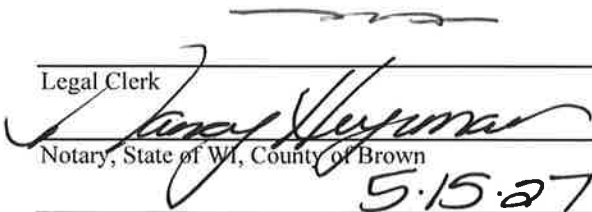
Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Advertising Representative of the Florida Today, a daily newspaper published in Brevard County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of Main Legal CLEGL, was published on the publicly accessible website of Brevard County, Florida, or in a newspaper by print in the issues of, on:

11/16/2023

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 11/16/2023

Legal Clerk


Notary, State of WI, County of Brown

5.15.27

My commission expires

Publication Cost: \$498.80

Order No: 9525150

of Copies:

Customer No: 1127256

1

PO #:

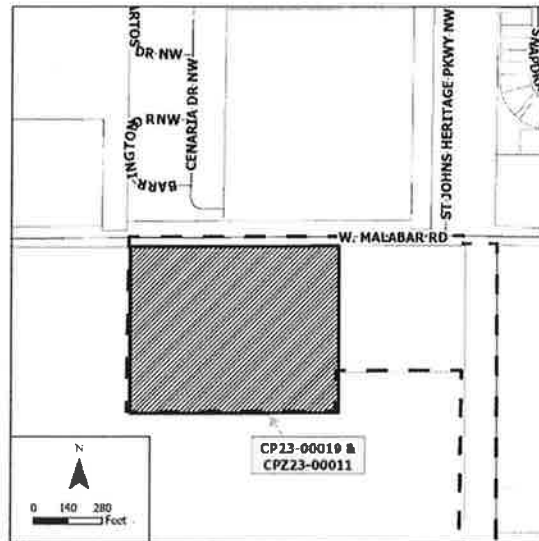
THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

NANCY HEYRMAN
Notary Public
State of Wisconsin

CITY OF PALM BAY, FLORIDA NOTICE OF PUBLIC HEARING FOR A COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT AND A ZONING AMENDMENT

Notice is hereby given that a public hearing will be held by the Planning and Zoning Board/Local Planning Agency on December 6, 2023, and by the City Council on December 21, 2023, both to be held at 6:00 p.m., in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, for the purpose of considering the following case(s):



**1. CP23-00019 - City of Palm Bay, Suzanne Sherman, City Manager
(Tania Ramos, Senior Planner, Rep.)**

A Small-Scale Comprehensive Plan Future Land Use Map Amendment from Residential 1 Unit Per Acre (Brevard County) to Commercial

Tax Parcel 3, Section 5, Township 29, Range 36, Brevard County, Florida, containing approximately 13.05 acres. Located south of and adjacent to W. Malabar Road, in the vicinity southwest of St. Johns Heritage Parkway NW, and west of Melbourne Tillman Drainage District Canal 7

**2. **CP23-00011 - City of Palm Bay, Suzanne Sherman, City Manager
(Tania Ramos, Senior Planner, Rep.)**

A Zoning Amendment from AU, Agricultural Residential (Brevard County) to a CC, Community Commercial District

Tax Parcel 3, Section 5, Township 29, Range 36, Brevard County, Florida, containing approximately 13.05 acres. Located south of and adjacent to W. Malabar Road, in the vicinity southwest of St. Johns Heritage Parkway NW, and west of Melbourne Tillman Drainage District Canal 7

****Indicates quasi-judicial request(s).**

If an individual decides to appeal any decision made by the Planning and Zoning Board/Local Planning Agency or 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.

Please contact the Palm Bay Land Development Division at (321) 733-3041 should you have any questions regarding the referenced case(s).

Chandra Powell
Planning Specialist

ORDINANCE 2023-111

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM AU (AGRICULTURAL RESIDENTIAL) (BREVARD COUNTY) TO CC (COMMUNITY COMMERCIAL DISTRICT); WHICH PROPERTY IS LOCATED SOUTH OF AND ADJACENT TO MALABAR ROAD, IN THE VICINITY SOUTHWEST OF ST. JOHNS HERITAGE PARKWAY AND WEST OF MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL 7, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A CHANGE OF THE ZONING MAP; 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 Zoning Ordinance of the City of Palm Bay, Brevard County, Florida, is hereby amended to provide for the rezoning of property from AU (Agricultural Residential) (Brevard County) to CC (Community Commercial District), being legally described as follows:

Commence at the Northeast corner of said Section 5, Township 29 South, Range 36 East and run S 89°43'55" W along the North line of said Section 5, Township 29 South, Range 36 East a distance of 571.24 feet; thence run S 00°00'50" E, a distance of 33.00 feet to the Point of Beginning of the herein described parcel, said point also being on the South right of way line of Malabar Road (a 66 ft. wide right of way); thence continue S 00°00'50" E, a distance of 674.13 feet; thence S 89°43'55" W a distance of 843.25 feet; thence run N 00°00'50" W a distance of 674.13 feet to the said South right of way line of Malabar Road; thence run N 89°43'55" E along said South right of way line a distance of 843.25 feet to the Point of Beginning; containing 13.05 acres, more or less.

SECTION 2. The Zoning Map of the City of Palm Bay is hereby revised to reflect this amendment.

SECTION 3. The provisions within this ordinance shall take effect immediately upon the enactment of Ordinance 2023-110.

Read in title only at Meeting 2023- , held on , 2023; and
read in title only and duly enacted at Meeting 2023- , held on , 2023.

ATTEST:

Rob Medina, MAYOR

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Applicant: City of Palm Bay
Case: CPZ23-00011

cc: Applicant
Case File



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Mariano Augello, Chief of Police

DATE: 1/4/2024

RE: Ordinance 2023-114, amending the Code of Ordinances, by creating a new Chapter 71, to be titled 'School Zone Speed Infractions', final reading; authorize the establishment of a speed detection system on roadways maintained as school zones within the City.

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.

During the 2023 Florida Legislature Session, CS/CS/HB 657 "Enforcement of School Zone Speed Limit" was passed granting municipalities the authority to use a speed detection system "for the detection of speed and capturing of photographs or videos for violations in excess of 10 miles per hour over the speed limit in force at the time of the violations." The act was signed into law by Governor DeSantis on May 31, 2023, with an effective date of July 1, 2023. In continuation of the Palm Bay Police Department's focus on pedestrian safety, especially in school zone areas where 112 unlaw speeding citations have been issued since 2022, the agency began the process of creating a School Zone Speed Infraction program. The pilot program for the City of Palm Bay was designed around the parameters of the new law to include requirements established under Chapter 316 of the Florida State Statutes as well as drafting this Ordinance creating Chapter 71 for inclusion in the City of Palm Bay Code of Ordinance.

The School Zone Speed Infraction program authorizes the use of an automated speed detection system, reviewed by a certified traffic enforcement officer, to capture a photograph or video of the rear of a motor vehicle that exceeds the speed limit in force at the time of the violation and issue a uniformed traffic violation. The ordinance allows for local hearings for individuals who wish to contest violation notices and sets forth other administrative requirements such as annual reporting to City Council and Department of Highway Safety and Motor Vehicles. Before beginning a school zone speed detection program, the City must make a public announcement and conduct a public awareness campaign of the proposed use of speed detection systems at least 30 days before commencing enforcement under the speed detection system program and must notify the public of the specifics.

REQUESTING DEPARTMENT:
Police Department

FISCAL IMPACT:

There is no fiscal impact at this time. Projected revenue and expenditures associated with the School Zone Speed Infraction program will be provided to Council when the contractual services are presented for approval.

RECOMMENDATION:

Motion to approve the Ordinance, which enacts the City of Palm Bay's Code of Ordinances, Title VII, Traffic and Vehicles, Chapter 71: School Zone Speed Infractions and authorizes the establishment of a speed detection system on roadways maintained as school zones within the City of Palm Bay.

ATTACHMENTS:**Description**

Ordinance 2023-114

ORDINANCE 2023-114

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE VII, TRAFFIC AND VEHICLES, BY CREATING A NEW CHAPTER 71, TO BE TITLED ‘SCHOOL ZONE SPEED INFRACTIONS’; 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.

WHEREAS, the Florida Legislature passed CS/CS/HB 657 during the 2023 Legislative Session, granting municipalities the authority to use a speed detection system “for the detection of speed and capturing of photographs or videos for violations in excess of 10 miles per hour over the speed limit in force at the time of the violations,” and

WHEREAS, Governor DeSantis signed CS/CS/HB 657 into law May 31, 2023 and the act became effective July 1, 2023, and

WHEREAS, a speed detection system is defined as a “portable or fixed automated system to detect a motor vehicle’s speed using radar or LiDAR and to capture a photograph or video of the rear of a motor vehicle that exceeds the speed limit in force at the time of the violation,” and

WHEREAS, in compliance with Section 316.008(9)(c), Florida Statutes, the City Council has considered traffic data or other evidence supporting the installation and operation of each proposed school zone speed detection system as part of a public hearing and the City Council has determined that the school zone where a speed detection system is to be placed or installed constitutes a heightened safety risk that warrants additional enforcement measures, and

WHEREAS, Section 316.0776(3)(a), Florida Statutes, requires the City to notify the public that a speed detection system may be in use by posting signage indicating photographic or video enforcement of the school zone speed limits. The signage must meet the placement and installation specifications established by the Department of Transportation, and

WHEREAS, before beginning a school zone speed detection program, the City must make a public announcement and conduct a public awareness campaign of the proposed use of speed detection systems at least thirty (30) days before commencing enforcement under the speed detection system program and must notify the public of the specific, and

WHEREAS, speeding in school zones presents a threat to the health and safety of the public and the children of this City; and since January 2022 there have been 112 unlawful speeding citations issued within Palm Bay school zones, and

WHEREAS, nationwide, an average of 25,000 children are injured and 100 killed annually walking to or from school as a result of speeding.

NOW, THEREFORE, BE IT ENACTED 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 are hereby incorporated by reference.

SECTION 2. The City of Palm Bay Code of Ordinances, Title VII, Traffic and Vehicles, is hereby amended by creating a new Chapter 71, to be titled 'School Zone Safety Infractions', which shall henceforth read as follows:

“CHAPTER 71: SCHOOL ZONE SAFETY INFRACTIONS

Section 71.01 INTENT.

The purpose of this ordinance is to authorize the placement or installation of a speed detection systems on roadways maintained as school zones within the City of Palm Bay, consistent with the placement and installation standards required by the Florida Department of Transportation and as authorized by Chapter 316, Florida Statutes.

Section 71.02 USE OF AUTOMATED SPEED DETECTION SYSTEMS (SDS).

The City of Palm Bay shall utilize Automated Speed Detection Systems (SDS) consistent with and pursuant to all applicable provisions of State law to detect, process and penalize speeding in school zones under the Florida Uniform Traffic Control Law.

The use of SDS shall be deemed a supplemental means of enforcing the Florida Uniform Traffic Control Law and nothing herein shall be construed or operate to preclude the enforcement of the Florida Uniform Traffic Control Law by any other means provided by law.

Section 71.03. AWARD OR RENEWAL OF CONTRACT TO INSTALL SPEED DETECTION SYSTEM.

(A) Before the City contracts or renews a contract to place or install a speed detection system in a school zone pursuant to s. 316.008(9), the City must approve the contract or contract renewal at a regular or special meeting of the City Council.

(B) Members of the public must be allowed an opportunity to comment regarding the contract, or contract renewal under City's public comment policies or formats, and contract, or contract renewal may not be considered as part of the consent agenda.

Sec 71.04. DETERMINATION OF SAFETY NEED.

Automated Speed Detection Systems are authorized for use at the following locations within the City of Palm Bay, based upon the City Council's finding that the school zone where a speed detection system is to be placed or installed, constitutes a heightened safety risk that warrants additional enforcement measures:

Palm Bay Elementary: 1200 Allamanda Road NE.

Riviera Elementary: 351 Riviera Drive NE.

Palm Bay Academy: 2112 Palm Bay Road NE.

Lockmar Elementary: 525 Pepper Street NE.

Pineapple Cove Academy: 720 Emerson Drive NE.

Christa McAuliffe Elementary: 155 Del Mundo Street NW.

Discovery Elementary 1275 Glendale Avenue NW.

Royal Palm Charter: 7145 Babcock Street SE.

Turner Elementary: 3175 Jupiter Boulevard SE.

Southwest Middle School: 451 Eldron Boulevard SE.

Columbia Elementary: 1225 Waco Boulevard SE.

Odyssey Charter 1350 Wyoming Drive SE.

Palm Bay Academy: 635 Community College Parkway SE.

Westside Elementary: 2175 Degroodt Road SW.

Jupiter Elementary: 950 Tupelo Road SW.

Odyssey Charter 1755 Eldron Boulevard SE.

Section 71.05. AUTHORIZATION TO ISSUE TRAFFIC CITATIONS.

A traffic enforcement officer under Section 316.640, Florida Statutes, is authorized to issue uniform traffic citations for violations of Sections 316.1895 and 316.183, Florida Statutes, as authorized by Section 316.008(9), Florida Statutes,.

Section 71.06. DESIGNATION OF LOCAL HEARING OFFICER.

The City Council shall appoint a local hearing officer to preside over hearing requested by a person issued a notice of violation pursuant to Chapter 316, Florida Statutes. The local hearing officer shall be a member of the Florida Bar in good standing and licensed to practice law in the State of Florida for no less than five (5) years. No attorney who has been disciplined by the Florida Bar or a bar of any other jurisdiction shall be appointed as a local hearing officer.

Section 71.07. ANNUAL REPORT

(A) The City must submit an annual report to the Department of Highway Safety and Motor Vehicles. The City Council must consider the annual report of the results of all systems within the City's jurisdiction. The report required under s. 316.1896(16)(a) must be listed as a single reporting item on the agenda of a regular or special City Council meeting.

(B) The annual report must include a written summary, which must be read aloud at the regular or special meeting, and the summary must contain, for

the same time period pertaining to the annual report to the department under Section 316.1896(16)(a), Florida Statutes:

- (1) the number of notices of violation issued,
- (2) the number that were contested,
- (3) the number that were upheld,
- (4) the number that were dismissed,
- (5) the number that were issued as uniform traffic citations, and
- (6) the number that were paid and how collected funds were distributed and in what amounts.

(A) Members of the public must be allowed an opportunity to comment regarding the report under the City's public comment policies and the report may not be considered as part of the consent agenda.

SECTION 3. 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 4. 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 5. 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 6. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2023-XX, held on _____, 2023; and read in title only and duly enacted at Meeting 2023-XX, held on _____, 2023.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Lisa Frazier, Growth Management Director

DATE: 1/4/2024

RE: Ordinance 2023-115, amending the Code of Ordinances, Chapter 185, Zoning Code, Subchapter 'Planned Unit Development (PUD)', by modifying the timelines related to preliminary development plan submittals (Case T23-00028, City of Palm Bay), 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.

The City of Palm Bay (Growth Management Department) has submitted for a textual Amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, Section 185.066(3) to modify the timelines related to preliminary development plan submittals.

The Growth Management Department is requesting to align timelines referenced in the Land Development Code (LDC) related to preliminary development plan submittals with the timelines required by Section 166.033, Florida Statutes. The current timelines referenced in the LDC are not adequate for determining completeness and providing for City interdepartmental coordination and staff review prior to final action through a public hearing by City Council.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case T23-00028.

Planning and Zoning Board Recommendation:

Planning and Zoning Board minutes are not fully transcribed at this time; the following is an excerpt:

Motion to submit Case T23-00028 to City Council for approval.

Motion by Mr. Olszewski, seconded by Mr. Boerema. Motion carried with members voting as follows:

Aye: Jordan, Boerema, Good, Olszewski, Warner.

Nay: Weinberg.

ATTACHMENTS:

Description

T23-00028 Staff Report

T23-00028 Project Details

T23-00028 Legal Acknowledgement

T23-00028 Legal Ad

Ordinance 2023-115



STAFF REPORT

LAND DEVELOPMENT DIVISION

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

landdevelopmentweb@palmbayflorida.org

Prepared by

Lisa Frazier, AICP, Growth Management Director

CASE NUMBER

T23-00028

PLANNING & ZONING BOARD HEARING DATE

December 6, 2023

APPLICANT

City of Palm Bay

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, Section 185.066(3) to modify the timelines related to preliminary development plan submittals.

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 185.066(3) to modify the timelines related to preliminary development plan submittals.

The Growth Management Department is requesting to align timelines referenced in the Land Development Code (LDC) related to preliminary development plan submittals with the timelines required by Section 166.033, Florida Statutes. The current timelines referenced in the LDC are not adequate for determining completeness and providing for City interdepartmental coordination and staff review prior to final action through a public hearing by City Council.

Proposed language for this amendment is attached in legislative style with additions between >>arrow<< symbols and deletions in ~~strikethrough~~ format.

PURPOSE

Provide for realistic timelines for determining completeness and staff review of preliminary development plan submittals by aligning Section 185.066(3) of the Zoning Code with Section 166.033, Florida Statutes.

ANALYSIS:

With the continued influx of development permit applications received by the City, the Growth Management Department is seeking to modify the timelines related to preliminary development plans to align with Section 166.033, Florida Statutes, which provides municipalities more appropriate and realistic timeframes to ensure applications submitted are complete and adequately reviewed by all necessary City departments. The current timeline for routing, reviewing, providing all staff comments, preparing a staff report, and scheduling preliminary development plan applications for Planning and Zoning Board is approximately 45 days.

The current timeline is exceptionally challenging given the application submittal requirements and the level of detail required for a preliminary development plan seeking a Planned Unit Development (PUD) tentative zoning. Additionally, the complexity of these plans and all supplemental submittal documents requires more comprehensive review time than any other development permit application. The development review departments are challenged with meeting timelines set forth by the Zoning Code for PUD applications, especially given the quantity of development permit applications received by the department, and current staff capacity.

STAFF RECOMMENDATION:

Staff recommends case T23-00028 for approval.

TITLE XVII: LAND DEVELOPMENT CODE

Chapter 185: Zoning Code

§ 185.066 PROCEDURE FOR APPROVAL OF A PRELIMINARY DEVELOPMENT PLAN AND TENTATIVE ZONING.

(3) Submittal.

(a) The PUD zoning application and preliminary development plan ~~>>PDP<<~~ shall be submitted to the Land Development Division. Plans will not be distributed for city staff review until all items are submitted and sufficient for review. ~~>>The PDP application must be complete and accompanied by two (2) copies of the preliminary development plan, as described in these regulations, an approved electronic copy, a filing fee, and a list of all owners of adjacent property and/or property directly opposite of the proposed subdivision. Such property owner information shall be obtained from the most recent County Tax Appraiser's rolls.<<~~

1. City staff will determine sufficiency of ~~>>review the PDP<<~~ the preliminary development plan application package ~~>>for completeness and notify the applicant in writing whether the application submitted is sufficient or otherwise specify any deficiencies in the application. The City shall provide this notification in accordance with the timelines set forth in Section 166.033, Florida Statutes.<<~~ ~~within five business days of submittal. The development coordinator will email notice of any missing items within five business days. The application has 30 days to address the deficiencies by submitting the required additional information.~~

2. Once the preliminary development plan application package is determined sufficient, the development coordinator will distribute the package to city staff ~~within two business days.~~

3. ~~City staff has ten business days to submit comments back to the development coordinator.~~

~~4. This process is repeated for subsequent submittals with the development coordinator having two business days to distribute and city staff having a maximum of ten business days to submit comments back to the development coordinator. Pursuant to F.S. § 166.033(2), when an application for a development permit or development order is certified by a professional listed in F.S. § 403.0877 before a third request for additional information is issued the city will offer a meeting to attempt to resolve outstanding issues. The >>the<< city will not request additional information from the applicant more than three times, >>without requesting a meeting with the applicant to discuss outstanding issues<< unless the applicant waives this limitation in writing. If not waived, the city will proceed to process the application for approval or denial.~~

~~5. The PDP application must be complete and accompanied by two (2) copies of the preliminary development plan, as described in these regulations, an approved electronic copy of the plat, a filing fee, and a list of all owners of adjacent property and/or property directly opposite of the proposed subdivision. Such property owner information shall be obtained from the most recent County Tax Appraiser's rolls.~~

~~6. The applicant will be notified when all city staff and outside agency comments have been sufficiently addressed. Preliminary development plans must be approved by the city council. Once the plans are ready for the city council, the applicant will need to submit adequate paper copies for the council agenda packets.~~

(b) ~~>>Once the application is deemed complete, the<<~~ The Land Development Division shall process and coordinate the review of the preliminary development plan by the appropriate city departments. The appropriate city departments, to include police and fire departments, shall review and comment on the submitted information. Written comments from the city departments shall be returned to the Land Development Division to be incorporated into a staff report ~~>>and prepared for a regularly scheduled meeting of the Planning and Zoning Board in accordance with the timelines set forth in Section 166.033, Florida Statutes<<~~ ~~generated by the Land Development Division. The staff report is submitted to the Planning and Zoning Board at the time of the next regular meeting of the Board.~~

(c) ~~The preliminary development plan application shall be heard by the Planning and Zoning Board at a public meeting in the month following the submittal deadline date. Insufficient or incomplete applications will be postponed to the next available meeting following receipt of a sufficient and complete application.~~ Courtesy notice letters of the meeting shall be sent to the owners of abutting and opposite properties of the proposed subdivision. Failure by owners to receive such courtesy notice shall not affect any action or proceedings taken however. Notice of such a meeting shall also be posted on the property for which subdivision is sought.

(d) >>Preliminary development plans must be approved by the city council. Once the plans are ready for the city council, the applicant shall be notified.<<

Project Details: T23-00028

Project Type: Code Textual Amendment

Project Location: ,
Milestone: Under Review
Created: 11/13/2023
Description: PUD Timeline
Assigned Planner: Lisa Frazier

Contacts	
Contact	Information
Submitter	Lisa Frazier, Growth Management Director 120 Malabar Road SE Palm Bay, FL 32907 lisa.frazier@palmbayflorida.org
Supplemental Contact	
Assigned Planner	Lisa Frazier 120 Malabar Road SE Palm Bay, FL 32907 lisa.frazier@palmbayflorida.org

Fields	
Field Label	Value
Section Proposed to be Changed	Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, Section 185.066(3)
Proposed Language	See attached
Justification for Proposed Change	See attached
Ordinance Number	

Header:

Legal Acknowledgement

Text:

I, the submitter, understand that this application must be complete and accurate before consideration by the City of Palm Bay and certify that all the answers to the questions in said application, and all data and matter attached to and made 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 application and that the facts stated in it are true.

Accepted By:

Lisa Frazier

On:

11/13/2023 2:46:20 PM

 T23-00028

PROOF OF PUBLICATION

CITY OF PALM BAY
attn: Accounts Payable
City Of Palm Bay
120 Malabar Rd Se
Palm Bay FL 32907-3009

STATE OF WISCONSIN, COUNTY OF BROWN

Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Advertising Representative of the Florida Today, a daily newspaper published in Brevard County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of Govt Public Notices, was published on the publicly accessible website of Brevard County, Florida, or in a newspaper by print in the issues of, on:

11/16/2023

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 11/16/2023

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$360.11

Order No: 9523939

Customer No: 1127256

PO #: 230085

of Copies:

1

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

NANCY HEYRMAN
Notary Public
State of Wisconsin

Ad#9523939 11/16/2023

CITY OF PALM BAY, FLORIDA
NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held by the Planning and Zoning Board/Local Planning Agency on December 6, 2023, and by the City Council on December 21, 2023, both to be held at 6:00 p.m., in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, for the purpose of considering the following case(s):

1. **CP23-00017 - Diaz Treasures, LLC, Ubaldo Diaz, Manager (Tony Masone / Jake Wise, P.E., Construction Engineering Group, Reps.)**

A Small-Scale Comprehensive Plan Future Land Use Map Amendment from Residential 1 Unit Per Acre (Brevard County) to Commercial Tax Parcel 2, Section 5, Township 29, Range 36, Brevard County, Florida, containing approximately 6.00 acres. Located south of and adjacent to W. Malabar Road, in the vicinity south of St. Johns Heritage Parkway NW, and west of Melbourne Tillman Drainage District Canal 7

2. ****CP23-00009 - Diaz Treasures, LLC, Ubaldo Diaz, Manager (Tony Masone / Jake Wise, P.E., Construction Engineering Group, Reps.)**

A Zoning Amendment from AU, Agricultural Residential (Brevard County) to a CC, Community Commercial District Tax Parcel 2, Section 5, Township 29, Range 36, Brevard County, Florida, containing approximately 6.00 acres. Located south of and adjacent to W. Malabar Road, in the vicinity south of St. Johns Heritage Parkway NW, and west of Melbourne Tillman Drainage District Canal 7

3. ****FS23-00010 - DRP FL 6, LLC, Brian Clauson, DW General Partner, LLC (B.S.E. Consultants, Inc., Rep.)**

A Final Plat to allow for a proposed 124 single-family residential lot development to be called Riverwood at Everlands Phase 1

A Part of Tax Parcel 1, Sections 20 and 21, Township 28, Range 36, Brevard County, Florida, containing approximately 52.77 acres. Located east of and adjacent to St. Johns Heritage Parkway NW, in the vicinity north of Emerson Drive NW

4. ****PS23-00012 - KB Home Orlando, LLC, Steve McConn (Jake Wise, P.E., CEG Engineering Group, LLC., Rep.)**

A Subdivision Plan to allow for a proposed 199 single-family residential unit development to be called Gardens at Waterstone Phase 3

Block 1 of San Sebastian Farms, Section 5, Township 30, Range 37, Brevard County, Florida, containing approximately 47.92 acres. Located west of Gardens at Waterstone Phase 2 in the vicinity west of Mara Loma Boulevard SE

5. ****FS23-00012 - KB Home Orlando, LLC, Steve McConn (Jake Wise, P.E., CEG Engineering Group, LLC., Rep.)**

A Final Subdivision Plat to allow for a proposed 84 single-family residential unit development to be called Gardens at Waterstone Phase 3A

Block 1 of San Sebastian Farms, Section 5, Township 30, Range 37, Brevard County, Florida, containing approximately 47.92 acres. Located west of Gardens at Waterstone Phase 2 in the vicinity west of Mara Loma Boulevard SE

6. **CP23-00018 - Treeland Apartments, LLC, Robert Cambo (B.S.E. Consultants, Inc. / Stuart Buchanan, Alliance Commercial Real Estate, Reps.)**

A Small-Scale Comprehensive Plan Future Land Use Map Amendment from Public/Semi-Public Use and Recreation & Open Space Use to High-Density Residential Use

Tax Parcel 252 along with Tract G4-6 of Port Malabar Unit 56, Section 9, Township 29, Range 37, Brevard County, Florida, containing approximately 7.02 acres. Located at the southeast corner of San Filippo Drive SE and Treeland Boulevard SE

7. ****CP23-00010 - Treeland Apartments, LLC, Robert Cambo (B.S.E. Consultants, Inc. / Stuart Buchanan, Alliance Commercial Real Estate, Reps.)**

A Zoning Amendment from an RM-10, Single-, Two-, Multiple-Family Residential District to an RM-20, Multiple-Family Residential District Tax Parcel 252 along with Tract G4-6 of Port Malabar Unit 56, Section 9, Township 29, Range 37, Brevard County, Florida, containing approximately 7.02 acres. Located at the southeast corner of San Filippo Drive SE and Treeland Boulevard SE

8. **T23-00028 - City of Palm Bay (Growth Management Department)**

A Textual Amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185:

Zoning Code, Section 185.066(A)(3) to modify the timelines related to preliminary development plan submittals

9. T23-00029 - City of Palm Bay (Growth Management Department)

A Textual Amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 184: Subdivisions, Sections 184.07 and 184.08(D) to modify the timelines for review and scheduling of preliminary plat and final plat applications for final action by City Council

**Indicates quasi-judicial request(s).

If an individual decides to appeal any decision made by the Planning and Zoning Board/Local Planning Agency or 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.

Please contact the Palm Bay Land Development Division at (321) 733-3041 should you have any questions regarding the referenced cases.

Chandra Powell
Planning Specialist

ORDINANCE 2023-115

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 'PLANNED UNIT DEVELOPMENT (PUD)', BY MODIFYING THE TIMELINES RELATED TO PRELIMINARY DEVELOPMENT PLAN SUBMITTALS; 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 'Planned Unit Development (PUD)', Section 185.066, Procedure for Approval of a Preliminary Development Plan and Tentative Zoning, is hereby amended and shall henceforth read as follows:

"Section 185.066 PROCEDURE FOR APPROVAL OF A PRELIMINARY DEVELOPMENT PLAN AND TENTATIVE ZONING.

The following procedures, applications, and exhibits shall be required when applying for tentative zoning approval of a preliminary plan:

- (A) *Preliminary development plan application.*

* * *

- (3) Submittal.

(a) The PUD zoning application and preliminary development plan >>(PDP)<< shall be submitted to the Land Development Division. Plans will not be distributed for city staff review until all items are submitted and sufficient for review. >>The PDP application must be complete and accompanied by two (2) copies of the preliminary development plan, as described in these regulations, an approved electronic copy, a filing fee, and a list of all owners of adjacent property and/or property directly opposite of the proposed subdivision. Such property owner information shall be obtained from the most recent County Tax Appraiser's rolls.<<

1. City staff will ~~determine sufficiency of the preliminary development plan~~ >>review the PDP<< application package >>for completeness and notify the applicant in writing whether the application submitted is sufficient or otherwise specify any deficiencies in the application. The City shall provide this notification in accordance with the timelines set forth in Section 166.033, Florida Statutes<< within five business days of submittal. The development coordinator will email notice of any missing items within five business days. The application has 30 days to address the deficiencies by submitting the required additional information.

2. Once the preliminary development plan application package is determined sufficient, the development coordinator will distribute the package to city staff within two business days. >>Pursuant to Section 166.033(2), Florida Statutes, the city will not request additional information from the applicant more than three (3) times, without requesting a meeting with the applicant to discuss outstanding issues, unless the applicant waives this limitation in writing. If not waived, the city will proceed to process the application for approval or denial.<<

3. ~~City staff has ten business days to submit comments back to the development coordinator.~~

4. ~~This process is repeated for subsequent submittals with the development coordinator having two business days to distribute and city staff having a maximum of ten business days to submit comments back to the development coordinator. Pursuant to F.S. § 166.033(2) when an application for a development permit or development order is certified by a professional listed in F.S. § 403.0877 before a third request for additional information is issued the city will offer a meeting to attempt to resolve outstanding issues. The city will not request additional information from the applicant more than three times, unless the applicant waives this limitation in writing. If not waived, the city will proceed to process the application for approval or denial.~~

5. ~~The PDP application must be complete and accompanied by two (2) copies of the preliminary development plan, as described in these regulations, an approved electronic copy of the plat, a filing fee, and a list of all owners of adjacent property and/or property directly opposite of the proposed subdivision. Such property owner information shall be obtained from the most recent County Tax Appraiser's rolls.~~

6. ~~The applicant will be notified when all city staff and outside agency comments have been sufficiently addressed. Preliminary development plans must be approved by the city council. Once the plans are ready~~

~~for the city council, the applicant will need to submit adequate paper copies for the council agenda packets.~~

(b) >>Once the application is deemed complete, the<<
~~The~~ Land Development Division shall process and coordinate the review of the preliminary development plan by the appropriate city departments. The appropriate city departments, to include police and fire departments, shall review and comment on the submitted information. Written comments from the city departments shall be returned to the Land Development Division to be incorporated into a staff report generated by the Land Development Division. ~~The staff report is submitted to the Planning and Zoning Board at the time of the next regular meeting of the Board~~ >>and prepared for a regularly scheduled meeting of the Planning and Zoning Board in accordance with the timelines set forth in Section 166.033, Florida Statutes<<.

(c) ~~The preliminary development plan application shall be heard by the Planning and Zoning Board at a public meeting in the month following the submittal deadline date. Insufficient or incomplete applications will be postponed to the next available meeting following receipt of a sufficient and complete application. Courtesy notice letters of the meeting shall be sent to the owners of abutting and opposite properties of the proposed subdivision. Failure by owners to receive such courtesy notice shall not affect any action or proceedings taken however. Notice of such a meeting shall also be posted on the property for which subdivision is sought.~~

>>(d) Preliminary development plans must be approved by city council. Once plans are ready for the city council, the applicant shall be notified.<<

* * *

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 2023-XX, held on _____, 2023; and read in title only and duly enacted at Meeting 2023-XX, held on _____, 2023.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Applicant: City of Palm Bay

Case: T23-00028

cc: Case File

Strikethrough words shall be deleted; highlighted words that will 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: Suzanne Sherman, City Manager

DATE: 1/4/2024

RE: Ordinance 2023-116, amending the Code of Ordinances, Chapter 184, Subdivisions, by modifying the process for submission of preliminary and final plat applications (Case T23-00029, City of Palm Bay), 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.

The City of Palm Bay (Growth Management Department) has submitted for a textual Amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 184: Subdivisions, Sections 184.07 and 184.08(D) to modify the timelines for review and scheduling of preliminary plat and final plat applications for final action by City Council.

The Growth Management Department is requesting to align timelines referenced in the Land Development Code (LDC) related to preliminary plat and final plat applications with the timelines required by Section 166.033, Florida Statutes. The current timelines referenced in the LDC are not adequate for determining completeness and providing for City interdepartmental coordination and staff review prior to final action through a public hearing by City Council.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case T23-00029.

Planning and Zoning Board Recommendation:

Planning and Zoning Board minutes are not fully transcribed at this time; the following is an excerpt:

Motion to submit Case T23-00029 to City Council for approval.

Motion by Mr. Olszewski, seconded by Mr. Warner. Motion carried with members voting as follows:

Aye: Jordan, Weinberg, Boerema, Good, Olszewski, Warner.

ATTACHMENTS:**Description**

T23-00029 Staff Report

T23-00029 Application

T23-00029 Legal Acknowledgement

T23-00029 Legal Ad

Ordinance 2023-116



STAFF REPORT

LAND DEVELOPMENT DIVISION

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

landdevelopmentweb@palmbayflorida.org

Prepared by

Lisa Frazier, AICP, Growth Management Director

CASE NUMBER

T23-00029

PLANNING & ZONING BOARD HEARING DATE

December 6, 2023

APPLICANT

City of Palm Bay

PROPERTY LOCATION/ADDRESS

Not Applicable

SUMMARY OF REQUEST

A Textual Amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 184: Subdivisions, Sections 184.07 and 184.08(D) to modify the timelines for review and scheduling of preliminary plat and final plat applications for final action by City Council.

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 184: Subdivisions, Sections 184.07 and 184.08(D) to modify the timelines for review and scheduling of preliminary plat and final plat applications for final action by City Council.

The Growth Management Department is requesting to align timelines referenced in the Land Development Code (LDC) related to preliminary plat and final plat applications with the timelines required by Section 166.033, Florida Statutes. The current timelines referenced in the LDC are not adequate for determining completeness and providing for City interdepartmental coordination and staff review prior to final action through a public hearing by City Council.

Proposed language for this amendment is attached in legislative style with additions between >>arrow<< symbols and deletions in ~~strikethrough~~ format.

PURPOSE

Provide for realistic timelines for determining completeness and staff review of preliminary plat and final plat applications by aligning Sections 184.07 and 184.08(D) of the Subdivision Code with Section 166.033, Florida Statutes.

ANALYSIS:

With the continued influx of development permit applications received by the City, the Growth Management Department is seeking to modify the timelines for preliminary plat and final plat applications to align with Section 166.033, Florida Statutes, which provides municipalities more appropriate and realistic timeframes to ensure applications submitted are complete and adequately reviewed by all necessary City departments. The current timeline for routing, reviewing, providing all staff comments, preparing a staff report, and scheduling preliminary plat and final plat applications for Planning and Zoning Board is approximately 45 days.

The current timeline is exceptionally challenging given the quantity of development permit applications received by the department, department staff capacity, and the current market conditions.

STAFF RECOMMENDATION:

Staff recommends case T23-00029 for approval.

TITLE XVII: LAND DEVELOPMENT CODE

Chapter 184: Subdivisions

§ 184.07 PRELIMINARY PLAT.

(A) *Application procedure.* After a preapplication conference has been held, an applicant can submit an application for preliminary plat approval. Such an application must be made on forms available from the City's Land Development office. The application must be complete and accompanied by two (2) copies of the preliminary plat as city described in these regulations, a CD or other approved electronic copy of the plat, a filing fee, and a list of all owners of adjacent property and/or property directly opposite of the proposed subdivision. Such property owner information shall be obtained from the most recent County Tax Appraiser's rolls.

(B) *Application processing.* The Land Development Division shall process and coordinate the review of the preliminary plat application by the appropriate city departments >>in accordance with 166.033, Florida Statutes<<. The appropriate city departments are to review and comment on the submitted information. Written comments from the city departments are to be returned to the Land Development Division to be incorporated into a staff report generated by the Land Development Division. ~~The staff report is submitted to the Planning and Zoning Board at the time of the next regular meeting of the Board.~~

(C) *Public meetings.* ~~The~~ >>Once the application is determined to be sufficiently complete and meets all the regulations required by the City, a<< preliminary plat application shall be heard by the Planning and Zoning Board >>at the next available regular meeting<< ~~at its regular meeting in the month following the submittal deadline date.~~ Courtesy notice letters of the meeting are to be sent to the owners of abutting and opposite properties of the proposed subdivision. Failure to mail or receive such courtesy notice shall not affect any action or proceedings taken however. Notice of such a meeting shall also be posted on the property for which subdivision is sought.

(D) *Preliminary approval.*

(1) After the Planning and Zoning Board has reviewed the preliminary plat, the city staff report with its recommendations, and testimony and exhibits submitted at the public meeting, the Planning and Zoning Board shall recommend approval, approval with conditions, or disapproval of the preliminary plat to the City Council >>in accordance with the timelines set forth in 166.033, Florida Statutes<<.

(2) The City Council shall then approve, approve with conditions, or disapprove the preliminary plat based on the Planning and Zoning Board recommendations, the City staff report, and the testimony and exhibits submitted at public hearings.

(E) *Effective period of preliminary approval.* The approval of a preliminary plat shall be effective for a period of one year at the end of which time final approval on the subdivision must have been obtained from the City Council, although the plat need not yet be signed and filed with the County Clerk of Records. Any plat not receiving final approval within the period of time set forth herein shall be null and void, and the developer shall be required to resubmit a new plat for preliminary approval subject to all new zoning and subdivision regulations.

(F) *Zoning regulations.* Every plat shall conform to existing zoning regulations and subdivision regulations applicable at the time of proposed final approval, except that any plat which has received preliminary approval shall be exempt from any subsequent amendments to the zoning ordinance

rendering the plat nonconforming as to bulk or use, provided that the final approval is obtained within the one-year period.

(G) *Effect of approval of preliminary plat.* Approval of the preliminary plat shall not constitute approval of the final plat. It shall only be deemed an expression of approval of the layout submitted on the preliminary plat as a guide for the preparation of the final plat.

184.08 FINAL SUBDIVISION PLAT.

(A) *Application procedure.* Following the approval of the preliminary plat, the applicant if he/she wishes to proceed with the subdivision, shall submit an application for final plat approval to the Land Development office. Such an application must be made on forms available from the City's Community Planning and Economic Development office. The application must be complete and accompanied by two (2) copies of the final plat and construction plans as described in these regulations, a CD or other approved electronic copy of the plat, a filing fee, and a list of all owners of adjacent property and/or property directly opposite of the proposed subdivision. Such property owner information shall be obtained from the most recent County Tax Appraiser's rolls.

(B) *Final plat to conform to preliminary plat.* The final plat shall conform substantially to the preliminary plat as approved, and if desired by the subdivider, it may constitute only that portion of the approved preliminary plat which he/she proposes to record and develop at the time, if such portion conforms to the requirements of this chapter.

(C) *Application processing.* The processing of the final plat application will be substantially the same as the processing of the preliminary plat application described previously in § [184.07](#).

(D) *Public meetings.* The final plat application shall be heard by the Planning and Zoning Board at its ~~its~~ **>>the next available<<** regular meeting ~~in the month following the submittal date~~. Courtesy notice letters of the meeting are to be sent to the owners of abutting and opposite properties of the proposed subdivision. Failure to mail or receive such courtesy notice shall not affect any action or proceedings taken however. Notice of such a meeting shall also be posted on the property for which subdivision is sought.

(E) *Final approval.* After the Planning and Zoning Board has reviewed the final plat and construction plans, the city staff report with its recommendations, and testimony and exhibits submitted at the public meeting, the Planning and Zoning Board shall forward its recommendations for final action to the City Council. Upon receiving the recommendation of the Planning and Zoning Board including the city's staff report, the City Council shall hold a public meeting and shall act to either approve, approve with conditions, or disapprove such application.

Project Details: T23-00029

Project Type: **Code Textual Amendment**

Project Location: ,
Milestone: **Under Review**
Created: **11/13/2023**
Description: **Plat Timeline**
Assigned Planner: **Lisa Frazier**

Contacts

Contact	Information
Submitter	Lisa Frazier, Growth Management Director 120 Malabar Road SE Palm Bay, 32907 lisa.frazier@palmbayflorida.org
Supplemental Contact	
Assigned Planner	Lisa Frazier 120 Malabar Road SE Palm Bay, FL 32907 lisa.frazier@palmbayflorida.org

Fields

Field Label	Value
Section Proposed to be Changed	Development Review & Public Hearing Timelines - A Textual Amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 184: Subdivisions, Sections 184.07 and 184.08(D) to modify the timelines for review and scheduling of preliminary plat and final plat applications for final action by City Council.
Proposed Language	See attached
Justification for Proposed Change	See attached
Ordinance Number	

Acknowledgement Log

Header:

Legal Acknowledgement

Text:

I, the submitter, understand that this application must be complete and accurate before consideration by the City of Palm Bay and certify that all the answers to the questions in said application, and all data and matter attached to and made 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 application and that the facts stated in it are true.

Accepted By:

Lisa Frazier

On:

11/13/2023 2:49:33 PM

☒ T23-00029

Select Language | ▼

PROOF OF PUBLICATION

CITY OF PALM BAY
attn: Accounts Payable
City Of Palm Bay
120 Malabar Rd Se
Palm Bay FL 32907-3009

STATE OF WISCONSIN, COUNTY OF BROWN

Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Advertising Representative of the Florida Today, a daily newspaper published in Brevard County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of Govt Public Notices, was published on the publicly accessible website of Brevard County, Florida, or in a newspaper by print in the issues of, on:

11/16/2023

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 11/16/2023

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$360.11

Order No: 9523939

Customer No: 1127256

PO #: 230085

of Copies:

1

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

NANCY HEYRMAN
Notary Public
State of Wisconsin

Ad#9523939 11/16/2023

CITY OF PALM BAY, FLORIDA
NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held by the Planning and Zoning Board/Local Planning Agency on December 6, 2023, and by the City Council on December 21, 2023, both to be held at 6:00 p.m., in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, for the purpose of considering the following case(s):

1. **CP23-00017 - Diaz Treasures, LLC, Ubaldo Diaz, Manager (Tony Masone / Jake Wise, P.E., Construction Engineering Group, Reps.)**

A Small-Scale Comprehensive Plan Future Land Use Map Amendment from Residential 1 Unit Per Acre (Brevard County) to Commercial Tax Parcel 2, Section 5, Township 29, Range 36, Brevard County, Florida, containing approximately 6.00 acres. Located south of and adjacent to W. Malabar Road, in the vicinity south of St. Johns Heritage Parkway NW, and west of Melbourne Tillman Drainage District Canal 7

2. ****CP23-00009 - Diaz Treasures, LLC, Ubaldo Diaz, Manager (Tony Masone / Jake Wise, P.E., Construction Engineering Group, Reps.)**

A Zoning Amendment from AU, Agricultural Residential (Brevard County) to a CC, Community Commercial District Tax Parcel 2, Section 5, Township 29, Range 36, Brevard County, Florida, containing approximately 6.00 acres. Located south of and adjacent to W. Malabar Road, in the vicinity south of St. Johns Heritage Parkway NW, and west of Melbourne Tillman Drainage District Canal 7

3. ****FS23-00010 - DRP FL 6, LLC, Brian Clauson, DW General Partner, LLC (B.S.E. Consultants, Inc., Rep.)**

A Final Plat to allow for a proposed 124 single-family residential lot development to be called Riverwood at Everlands Phase 1

A Part of Tax Parcel 1, Sections 20 and 21, Township 28, Range 36, Brevard County, Florida, containing approximately 52.77 acres. Located east of and adjacent to St. Johns Heritage Parkway NW, in the vicinity north of Emerson Drive NW

4. ****PS23-00012 - KB Home Orlando, LLC, Steve McConn (Jake Wise, P.E., CEG Engineering Group, LLC., Rep.)**

A Subdivision Plan to allow for a proposed 199 single-family residential unit development to be called Gardens at Waterstone Phase 3

Block 1 of San Sebastian Farms, Section 5, Township 30, Range 37, Brevard County, Florida, containing approximately 47.92 acres. Located west of Gardens at Waterstone Phase 2 in the vicinity west of Mara Loma Boulevard SE

5. ****FS23-00012 - KB Home Orlando, LLC, Steve McConn (Jake Wise, P.E., CEG Engineering Group, LLC., Rep.)**

A Final Subdivision Plat to allow for a proposed 84 single-family residential unit development to be called Gardens at Waterstone Phase 3A

Block 1 of San Sebastian Farms, Section 5, Township 30, Range 37, Brevard County, Florida, containing approximately 47.92 acres. Located west of Gardens at Waterstone Phase 2 in the vicinity west of Mara Loma Boulevard SE

6. **CP23-00018 - Treeland Apartments, LLC, Robert Cambo (B.S.E. Consultants, Inc. / Stuart Buchanan, Alliance Commercial Real Estate, Reps.)**

A Small-Scale Comprehensive Plan Future Land Use Map Amendment from Public/Semi-Public Use and Recreation & Open Space Use to High-Density Residential Use Tax Parcel 252 along with Tract G4-6 of Port Malabar Unit 56, Section 9, Township 29, Range 37, Brevard County, Florida, containing approximately 7.02 acres. Located at the southeast corner of San Filippo Drive SE and Treeland Boulevard SE

7. ****CP23-00010 - Treeland Apartments, LLC, Robert Cambo (B.S.E. Consultants, Inc. / Stuart Buchanan, Alliance Commercial Real Estate, Reps.)**

A Zoning Amendment from an RM-10, Single-, Two-, Multiple-Family Residential District to an RM-20, Multiple-Family Residential District Tax Parcel 252 along with Tract G4-6 of Port Malabar Unit 56, Section 9, Township 29, Range 37, Brevard County, Florida, containing approximately 7.02 acres. Located at the southeast corner of San Filippo Drive SE and Treeland Boulevard SE

8. **T23-00028 - City of Palm Bay (Growth Management Department)**

A Textual Amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185:

Zoning Code, Section 185.066(A)(3) to modify the timelines related to preliminary development plan submittals

9. T23-00029 - City of Palm Bay (Growth Management Department)

A Textual Amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 184: Subdivisions, Sections 184.07 and 184.08(D) to modify the timelines for review and scheduling of preliminary plat and final plat applications for final action by City Council

**Indicates quasi-judicial request(s).

If an individual decides to appeal any decision made by the Planning and Zoning Board/Local Planning Agency or 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.

Please contact the Palm Bay Land Development Division at (321) 733-3041 should you have any questions regarding the referenced cases.

Chandra Powell
Planning Specialist

ORDINANCE 2023-116

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 184, SUBDIVISIONS, BY MODIFYING THE PROCESS FOR SUBMISSION OF PRELIMINARY AND FINAL PLAT APPLICATIONS; 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 184, Subdivisions, Section 184.07, Preliminary Plat, is hereby amended and shall henceforth read as follows:

“Section 184.07 PRELIMINARY PLAT.

* * *

(B) *Application processing.* The Land Development Division shall process and coordinate the review of the preliminary plat application by the appropriate city departments >>in accordance with Section 166.033, Florida Statutes<<. The appropriate city departments are to review and comment on the submitted information. Written comments from the city departments are to be returned to the Land Development Division to be incorporated into a staff report generated by the Land Development Division. ~~The staff report is submitted to the Planning and Zoning Board at the time of the next regular meeting of the Board.~~

(C) *Public meetings.* The >>Once the application is determined to be sufficiently complete and meets all the regulations required by the City, a<< preliminary plat application shall be heard by the Planning and Zoning Board at its regular meeting in the month following the submittal deadline date >>at the next available regular meeting<<. Courtesy notice letters of the meeting are to be sent to the owners of abutting and opposite properties of the proposed subdivision. Failure to mail or receive such courtesy notice shall not affect any action or

proceedings taken however. Notice of such a meeting shall also be posted on the property for which subdivision is sought.

(D) *Preliminary approval.*

(1) After the Planning and Zoning Board has reviewed the preliminary plat, the city staff report with its recommendations, and testimony and exhibits submitted at the public meeting, the Planning and Zoning Board shall recommend approval, approval with conditions, or disapproval of the preliminary plat to the City Council >>in accordance with the timelines set forth in Section 166.033, Florida Statutes<<.

* * *

SECTION 2. The City of Palm Bay Code of Ordinances, Title XVII, Land Development Code, Chapter 184, Subdivisions, Section 184.08, Final Subdivision Plat, is hereby amended and shall henceforth read as follows:

“Section 184.08 FINAL SUBDIVISION PLAT.

* * *

(D) *Public meetings.* The final plat application shall be heard by the Planning and Zoning Board at its >>the next available<< regular meeting ~~in the month following the submittal deadline date.~~ Courtesy notice letters of the meeting are to be sent to the owners of abutting and opposite properties of the proposed subdivision. Failure to mail or receive such courtesy notice shall not affect any action or proceedings taken however. Notice of such a meeting shall also be posted on the property for which subdivision is sought.

* * *

SECTION 3. 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 4. 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 5. 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 6. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2023-XX, held on _____, 2023; and read in title only and duly enacted at Meeting 2023-XX, held on _____, 2023.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Applicant: City of Palm Bay

Case: T23-00029

cc: Case File

Strikethrough words shall be deleted; highlighted words that will 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: Patricia Smith, City Attorney

DATE: 1/4/2024

RE: Consideration of a Settlement Agreement and Release of Claims with FAR Research, Inc. and MLEF2-1, LLC.

BACKGROUND OF THE LITIGATION

In the Pending Litigation FAR has asserted claims against CITY and MLEF alleging CITY'S approval of MLEF's applications for Future Land Use Map (FLUM) Amendment and rezoning to Bayfront Mixed Use (BMU) violate state law or local ordinances. MLEF is the owner of approximately 21.83 acres located at the corner of Robert J. Conlan Blvd. and U.S. 1. MLEF submitted an application to CITY to change the land use of its property from Commercial and Industrial to BMU, and an application to amend the zoning from Highway Commercial (HC) and Heavy Industrial (HI) to allow it to construct a mixed use project consisting of multi-family housing and commercial development. The City initially approved Ordinance 2019-43 granting the application for a FLUM amendment and Ordinance 2019-44 granting the rezoning to BMU (Land Use Applications) during public hearings conducted on October 3, 2019, and February 6, 2020. CITY transmitted Ordinance 2019-43 to the Department of Economic Opportunity (DEO) after the February 6, 2020, hearing. After review, DEO "identified no provision that necessitates a challenge of the Ordinance adopting the amendment."

FAR initiated the Pending Litigation on March 13, 2020. In a Motion for Partial Summary Judgment, FAR successfully challenged the approval of the land use applications because the court found that the advertisement of the February hearing in Trader Jakes did not comply with state law. CITY readvertised and again approved MLEF's Land Use Applications at the October 29, 2020, public hearing.

Pursuant to state law, certiorari is the exclusive method to review municipal quasi-judicial decisions. Consequently, on November 30, 2020, FAR challenged the rezoning in a Petition for Certiorari. CITY and MLEF successfully defended the rezoning and the Circuit Court denied the petition.

Under § 163.3215, Florida Statutes an aggrieved or adversely affected party may maintain a de novo action for declaratory or injunctive relief against to challenge a local government's decision to grant an application on a development order that "materially alters the use or density or intensity of use on a particular piece of property, rendering it not consistent with the comprehensive plan adopted under this part." In addition, an aggrieved or adversely affected party may challenge whether a development order is consistent with the comprehensive plan (consistency challenge) through a de novo proceeding. In contrast to the petition for certiorari which was decided based upon the record before CITY at the time the application was approved; in a de novo proceeding new evidence is allowed and the parties may conduct discovery (i.e. requests for admissions, interrogatories and depositions).

FAR has twice amended its Complaint in the Pending Litigation. The Third Amended Complaint alleges the FLUM amendment and the rezoning are inconsistent with the comprehensive plan; CITY violated §163.3184(3)(c)2, Florida Statutes by not transmitting Ordinance 2019-43 to DEO after the October 29, 2020 hearing; the applications were noticed to be reheard at the October 6, 2020 meeting, the CITY announced a continuance to October 29, 2020 but did not renote the hearing in violation of *Testa v. Town of Jupiter Island*, 360 So. 3d 722 (Fla. 4th DCA 2023); CITY did not have the authority to rezone the property because CITY delegated the authority to the Bayfront Community Redevelopment Agency (BCRA); and the approval of the applications is inconsistent with the BCRA's plan. CITY has filed an Answer and Affirmative Defenses to the Third Amended Complaint denying the applications are inconsistent with the comprehensive plan, CITY violated §163.3184(3)(c)2, Florida Statutes or delegated authority to rezone property to the BCRA; the *Testa v. Town of Jupiter Island* decision was nullified by the legislature; and any challenges to the BCRA plan are without merit and time barred.

The parties have filed various motions or responses and have attended numerous court hearings. In addition, the parties have engaged in the discovery process including the time to respond to lengthy discovery requests and to prepare and conduct depositions. Although the parties each believe its position is correct, the outcome of litigation is uncertain and no one can predict with certainty how a judge may rule. In addition, although the case is on a trial docket, the trial docket is back logged from the COVID years and it is uncertain when the case will be tried. Moreover, continuing the litigation is expensive in terms of attorney fees, expert fees or opportunity costs associated with the MLEF property not being developed or FAR delaying plans to renovate or reconstruct its property. As a result, the parties have negotiated the proposed settlement to address concerns regarding how FAR and MLEF properties will be compatible end the litigation. Section 163.3215 requires a local government to have a public hearing on the terms of this settlement agreement.

SUMMARY OF THE PROPOSED SETTLEMENT AGREEMENT

Setbacks- shall be substantially consistent with the site plan approved by the City, dated August 2023. The site plan may be amended consistent with the deed restrictions.

Deed Restrictions- MLEF shall record deed restrictions on the property restricting the following uses shall only be permitted on the portion of the property previously zoned commercial:

- a. professional offices, not including a management/leasing office;
- b. clubs, lodges and fraternal organizations; and
- c. brews pubs and/or drinking establishments or restaurants serving alcohol.

In addition, the following uses may not be permitted on any part of the property:

- a. long term care facilities providing medical related services such as nursing homes and rehabilitation centers that provide overnight stay facilities;
- b. adult congregate living facilities or assisted living facilities;
- c. schools; or
- d. daycare centers.

Noise/Vested Interest- Recognition that FAR has a vested interest in the Heavy Industrial zoning of its property and may continue with approved industrial uses on the property in the present and future. FAR's vested interests includes the industrial use of its property and the noises that are inherent in maintaining its industrial use. In considering whether the use of FAR's property is unreasonable, the MLEF property will be deemed an industrial use receiving zone.

Expansion or Modification of FAR Property- Neither MLEF nor its successors or assigns shall object or assist tenants in objecting to any future development application by FAR to expand or modify its property under the Heavy Industrial zoning district. FAR may, but is not required, to build a wall around its property subject to

applicable land development regulations.

Drainage- FAR may continue with its historical drainage patterns and will not be required to change its drainage patterns as a condition of future development so long as the proposed development does not cause any new negative impacts to adjacent properties, is consistent with City's stormwater regulations and subject to approval by the St. Johns River Water Management District.

Scope of Agreement- No term or condition of the Settlement Agreement is intended to proscribe, limit, or affect the City's exercise of its police powers.

Mutual Releases- Upon the satisfaction of their respective obligations under the settlement agreement, the parties release each other from any claims, damages, expenses (including attorney fees) related to the action brought by FAR pursuant to chapter 163. This settlement agreement does not affect the counter claim initiated by MLEF against FAR and other defendants. CITY is not a party to MLEF's counter claim.

Attorney Fees and Costs- The parties will bear their own attorney fees and costs. Nothing in the Settlement Agreement shall be construed to permit the recovery of attorneys' fees and costs, including attorneys' fees and costs arising from appellate litigation, from the City.

Settlement Approval and Dismissal of the Case- Within seven (7) calendar days after the Effective Date, the Parties shall file a joint motion in the 163 Action providing notice of the settlement agreement and seeking continuing court jurisdiction to enforce the terms of this Settlement Agreement. Within three (3) calendar days after a court ruling on that motion, the Parties shall file a stipulation of dismissal of all claims in the 163 Action.

The exhibits to the proposed settlement agreement are in draft form and are being reviewed for accuracy and subject to modification.

REQUESTING DEPARTMENT:

City Attorney's Office

RECOMMENDATION:

Motion to approve the settlement agreement and authorize the City Manager to execute.

ATTACHMENTS:

Description

Draft Settlement Agreement

Third Amended Complaint

COPB Answer and Affirmative Defenses Third Amended Complaint

Staff Report CP-10-2019

Staff Report CPZ-10-2019

Ordinance 2019-43

Ordinance 2019-44

DEO Letter of Adoption

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (this “Settlement Agreement”) is made and entered into as of November __, 2023 (the “Effective Date”) by, between, and among FAR RESEARCH, INC. (“FAR”), MLEF2-1, LLC (“MLEF”) and the CITY OF PALM BAY, FLORIDA (“City”) (individually, “Party,” or collectively, “Parties”).

RECITALS

WHEREAS, FAR is the owner of certain real property located at 2210 Wilhelmina Ct. NE, Palm Bay, FL 32905; and 2600, 2601, 2650, and 2685 Rowena Dr. NE, Palm Bay, FL 32905; with parcel identification nos. 28-37-14-00-3.1, 28-37-14-00-12, 28-37-14-02-*4, 28-37-14-00-14, 28-37-14-00-11, and 28-37-14-00-1.1, as generally depicted in **Exhibit “A”** (collectively, “FAR Property”).

WHEREAS, MLEF is the owner of certain real property located adjacent to the FAR Property with parcel identification no. 28-37-11-78-C-1 as generally depicted in **Exhibit “B”** (“MLEF Property”).

WHEREAS, the FAR Property and MLEF Property are located within the City’s jurisdictional boundaries and are subject to the City’s regulations.

WHEREAS, since 1983, FAR has operated a chemical manufacturing plant on the FAR Property (or a portion thereof).

WHEREAS, the FAR Property has a future land use designation of Industrial and a zoning designation of Heavy Industrial.

WHEREAS, approximately 2/3 of the MLEF Property previously had a future land use designation of Industrial and the remainder 1/3 had a future land use designation of Commercial; and zoning designation of Heavy Industrial and Highway Commercial, respectively.

WHEREAS, on October 29, 2020, the City Council for the City adopted Ordinance 2019-43 to amend the future land use designation for the MLEF Property to Bayfront Mixed Use and Ordinance 2019-44 to amend the zoning designation to Bayfront Mixed Use (collectively, “Ordinances”).

WHEREAS, FAR filed a civil action against the City and MLEF in the 18th Judicial Circuit Court for Brevard County, Florida, captioned *FAR RESEARCH, INC. v. CITY of PALM BAY and MLEF2-1, LLC*, Action No. 05-2020-CA-020032 (the “163 Action”).

WHEREAS, other than the 163 Action and the amended counterclaim filed by MLEF in the 163 Action (“Second Amended Counterclaim”), there are no other claims, actions, or causes of action threatened or pending between the Parties or between one Party against another Party.

WHEREAS, the Parties wish to enter into this Settlement Agreement to fully and finally resolve the disputes addressed in the 163 Action.

WHEREAS, the City presented this Settlement Agreement to the City Council for the City of Palm Bay, Florida (“City Council”), for approval during a duly noticed City Council meeting held on _____, which was approved by the City Council. The City Council found that it was in the best interest of the public health, safety and welfare for the City Council to enter into this Settlement Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and benefits contained herein and for other good and valuable consideration exchanged by and between the Parties, which consideration each Party acknowledges to be sufficient, just, and adequate, the Parties covenant and agree as follows:

1. **Incorporation.** The recitals set forth above are incorporated herein as though set forth fully herein.
2. **Terms of Agreement.** In connection with the Parties’ mutual execution of this Agreement and the covenants and terms herein, the Parties agree as follows:

A. **MLEF Property**

- i. City’s approval of the future land use designation and zoning designation for the MLEF Property as Bayfront Mixed Use (“BMU”), shall be unaffected by this litigation.
- ii. Development of the MLEF Property, as it relates to setbacks, shall be substantially consistent with the site plan approved by the City, dated August 2023, attached as **Exhibit “C,”** as further delineated and subject to the deed restriction referenced in subsection iii below.
- iii. Notwithstanding the foregoing, MLEF may amend the site plan to allow for alternative commercial and residential uses, as may be allowed under the BMU subject to the following conditions, which shall be the subject of a deed restriction to be recorded in the public records for Brevard County, Florida, which deed restriction shall run with the land and shall be in the form attached to this Agreement as **Exhibit “D”**:
 1. In no event shall any structure other than structures not intended for public access or occupation such as stormwater ponds, landscaping, walls, etc., be constructed within 100’ from the current FAR Property line.
 2. Except for the portion of the MLEF Property originally depicted on the City’s zoning map as commercial, which is attached to this Agreement as

“Exhibit E,” the following uses are not permitted in any portion of the MLEF Property:

- a. professional offices, not including a management/leasing office;
 - b. clubs, lodges and fraternal organizations; and
 - c. brews pubs and/or drinking establishments or restaurants serving alcohol.
3. The following uses shall not be permitted on any portion of the MLEF Property, including the commercial outparcel:
- a. long term care facilities providing medical related services such as nursing homes and rehabilitation centers that provide overnight stay facilities;
 - b. adult congregate living facilities or assisted living facilities;
 - c. schools; or
 - d. daycare centers.

B. FAR Property

- i. Zoning. The City and MLEF acknowledge that the FAR Property is located in the City’s HI, Heavy Industrial Zone. **Exhibit “F,”** which is incorporated herein by reference and made a part hereof as if set forth fully herein, provides a list of all parcel identification numbers for FAR Property including all approved land uses, zoning, and conditional uses which shall be allowed to continue uninterrupted regardless of any future changes to the future land use or zoning designations, so long as the current and future uses or conditional uses are permitted under the current HI zoning or are one of the approved uses/occupancies shown thereon. The Parties acknowledge that FAR has a vested interest in the industrial use on the FAR Property, which includes the vested interest in factors inherent in the industrial use on the FAR Property such as the noise emanating from the FAR Property. Additionally, for the purposes of considering whether these unpleasant factors are an unreasonable use of land or for consideration of performance standards, if any, the MLEF Property will be deemed to be an industrial use receiving zone.
- ii. Expansion or Modification of FAR Property. MLEF (and its successors and assigns) shall not, nor shall it assist others such as its tenants, object or take any negative action to oppose any development application submitted by FAR to expand or modify the FAR Property for any legally permitted uses currently allowed either as permitted or as a conditional use under the existing City Land

Development Code regulating the Heavy Industrial zoning district. FAR may, but is not required to and subject to the requirements under the City's existing Land Development Code, develop a wall around the FAR Property or a portion thereof.

- iii. Drainage for the FAR Property. The FAR Property has a vested right to continue to rely on the drainage rights currently existing at the FAR Property. Future site plan approvals for the FAR Property will not require a substantial change to the existing drainage pattern so long as the proposed development does not cause any new negative impacts to adjacent properties, is consistent with City's stormwater regulations and subject to approval by the St. Johns River Water Management District.

3. **Scope of Agreement.** Any consideration or action by the City concerning the FAR Property and MLEF Property shall be undertaken in accordance with the requirements of state law, the City charter and City code of ordinances. No term or condition of this Settlement Agreement is intended to proscribe, limit, or affect the City's exercise of its police powers.

4. **Authority.** Each Party represents and warrants, with respect to itself, that the execution and delivery of this Settlement Agreement has been authorized by all necessary action of each Party, and that this Settlement Agreement constitutes the legal, valid, and binding agreement of each Party, enforceable in accordance with its terms. It is expressly understood and agreed that this Settlement Agreement shall not become binding upon the City unless and until the City Council approves this Settlement Agreement at a public meeting, as is required by Florida law.

5. **Notice:** All notices and other communications required hereunder shall be in writing and shall be delivered personally, or by registered or certified mail, return receipt requested, postage prepaid, or by Federal Express, or other nationally recognized overnight commercial delivery service, fees prepaid for next day delivery. Such notices shall be deemed to have been received: (i) upon delivery, if personally delivered; (ii) upon the earlier of actual receipt or the third day after mailing, if mailed by registered or certified United States mail, return receipt requested, postage prepaid; and (iii) upon the earlier of actual receipt or the next business day if sent by Federal Express or other nationally recognized overnight commercial delivery service, if fees are prepaid for next day delivery. The addresses for delivery of such notices shall be as follows:

To FAR:

FAR Research, Inc.
Attn: Jeremy Steinfink
2210 Wilhelmina Ct. NE
Palm Bay, FL 32905

With a copy to:

Akerman LLP
Attn: Richard G. Leland, Esq.
777 S. Flagler Dr.
Suite 1100 West Tower
West Palm Beach, FL 33401

To MLEF:

MLEF2-1, LLC
Attn: Alan Benenson, Managing Member,
MAS Development, LLC
2875 NE 191st Street
Suite 305
Aventura, FL 33180

With a copy to:

Government Law Group, PLLC
Attn: Keith Poliakoff, Esq.
200 South Andrews Avenue
Suite 601
Fort Lauderdale, FL 33301

To City:

City of Palm Bay
Attn: City Manager
120 Malabar Road SE
Palm Bay, FL 32907

With a copy to:

City of Palm Bay
Attn: City Attorney
120 Malabar Road SE
Suite 201
Palm Bay, FL 32907

6. **Governing Law; Venue.** This Settlement Agreement shall be construed, interpreted, enforced, and governed in accordance with the laws of the State of Florida. Venue for any action arising out of or related to this Agreement shall be in Brevard County, Florida.

7. **Non-Waiver.** Failure by any Party to insist upon the strict performance of any of the terms, conditions, or provisions of this Settlement Agreement shall not be deemed to be a waiver of such terms, conditions, and provisions, and the Parties, notwithstanding such failure, shall have the right to insist upon the strict performance of any or all such terms and conditions of this Settlement Agreement.

8. **Mutual Releases.**

A. Upon the satisfaction of their obligations of the terms of this Settlement Agreement as provided in Section 2, FAR hereby waives and releases, acquits, satisfies, and forever discharges the City, including its elected officials and employees, and any and all affiliates, legal representatives, successors, and assigns thereof (collectively, the “City-Related Parties”), and MLEF, including its officers, directors, members, shareholders, owners, employees, and agents (“MLEF-Related Parties”) from any and all claims, actions, causes of action, demands, damages, losses, liabilities, obligations, costs, expenses (including reasonable attorneys’ fees) and compensation whatsoever, to the extent relating to or arising in connection with the 163 Action, whether now existing or hereafter arising, known or unknown, from the beginning of time up to and including the Effective Date. The City, City-Related Parties, MLEF and MLEF-Related Parties are not released from their obligations contained in this Settlement Agreement.

- B. Upon the satisfaction of their obligations of the terms of this Settlement Agreement as provided in Section 2, MLEF hereby waives and releases, acquits, satisfies, and forever discharges the City, including its elected officials and employees, and any and all affiliates, legal representatives, successors, and assigns thereof (collectively, the “City-Related Parties”), and FAR, including its officers, directors, members, shareholders, owners, employees, and agents (“FAR-Related Parties”) from any and all claims, actions, causes of action, demands, damages, losses, liabilities, obligations, costs, expenses (including reasonable attorneys’ fees) and compensation whatsoever, to the extent relating to or arising in connection with the 163 Action, whether now existing or hereafter arising, known or unknown, from the beginning of time up to and including the Effective Date. The City, City-Related Parties, FAR and FAR-Related Parties are not released from their obligations contained in this Settlement Agreement.
- C. Upon the satisfaction of their obligations of the terms of this Settlement Agreement as provided in Section 2, City hereby waives and releases, acquits, satisfies, and forever discharges FAR, including its officers, directors, members, shareholders, owners, employees, and agents (“FAR-Related Parties”), and MLEF, including its officers, directors, members, shareholders, owners, employees, and agents (“MLEF-Related Parties”) from any and all claims, actions, causes of action, demands, damages, losses, liabilities, obligations, costs, expenses (including reasonable attorneys’ fees) and compensation whatsoever, to the extent relating to or arising in connection with the 163 Action, whether now existing or hereafter arising, known or unknown, from the beginning of time up to and including the Effective Date. FAR, FAR-Related Parties, MLEF and MLEF-Related Parties are not released from their obligations contained in this Settlement Agreement.
- D. The Mutual Releases provided above do not pertain to any claims, actions, causes of actions, demands, damages, losses, liabilities, obligations, costs, expenses (including reasonable attorneys’ fees) and compensation related to or arising from the Second Amended Counterclaim asserted by MLEF in the 163 Action.

9. **Severability.** If any part of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the other parts of this Settlement Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effectuated. To that end, this Settlement Agreement is declared severable.

10. **Disclaimer of Third Party Beneficiaries.** This Settlement Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue by reason hereof to, or for the benefit of, any third party not a formal party hereto. Nothing in this Settlement Agreement, expressed or implied, is intended or shall be construed to confer upon or give any other third person or entity any right, remedy, or claim under or by reason of this Settlement Agreement or any provisions or conditions hereof, other than as expressly stated herein.

11. **Attorneys' Fees; Costs.** The Parties expressly agree to bear the fees and costs of their respective counsel, experts, and consultants in the 163 Action and in the preparation of this Settlement Agreement.

12. **Civil Action.** Within seven (7) calendar days after the Effective Date, the Parties shall file a joint motion in the 163 Action jointly requesting (i) court approval of this Settlement Agreement; and (ii) continuing court jurisdiction to enforce the terms of this Settlement Agreement. Within three (3) calendar days after a court ruling on that motion, the Parties shall file a stipulation of dismissal of all claims in the 163 Action, in the form attached to this Agreement as **Exhibit "G."**

13. **Integration.** This Settlement Agreement constitutes the entire understanding and agreement between the Parties with respect to the settlement, cancels all previous oral and written negotiations, commitments, and writings in connection therewith, and can only be modified by a writing signed by all of the Parties.

14. **Construction.** For purposes of construction, this Settlement Agreement shall be deemed to have been jointly drafted by the respective Parties and their counsel, and the rule of construction of contracts that ambiguities are construed against the drafting party shall not be applied against any person.

15. **Enforcement; Remedies.** The Parties shall have all equitable and legal remedies available under Florida law to enforce the terms and conditions of this Settlement Agreement, and the terms of this Settlement Agreement shall be specifically enforceable in court. In the event of any dispute hereunder between FAR and MLEF or any action to interpret or enforce this Settlement Agreement, any provision hereof, or any matter arising herefrom, the prevailing party shall be paid by the non-prevailing party the reasonable attorneys' fees and costs incurred in enforcing its rights and remedies, whether incurred at the pre-trial, trial, or appellate levels, including any fees and costs incurred in determining the amount of awardable fees. Nothing in this Settlement Agreement shall be construed to permit the recovery of attorneys' fees and costs, including attorneys' fees and costs arising from appellate litigation, from the City.

16. **Cooperation of the Parties.** The Parties shall cooperate to accomplish the purpose of this Settlement Agreement, to execute this Settlement Agreement, and to execute any supplementary documents and to take all additional actions not inconsistent with the terms of this Settlement Agreement that are necessary and appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

17. **Counterparts.** The Parties may sign this Settlement Agreement in counterparts, all of which together will constitute one document. This Settlement Agreement will be considered signed when an original signature, an image of a handwritten signature, or a digitally captured signature is delivered by mail, courier, fax, electronically, or as an attachment to an email. Fax, scanned, and digitally captured signatures are to be deemed as original signatures.

[Remainder of Page Intentionally Left Blank]

DRAFT

In witness whereof, and intending to be legally bound hereby, the Parties have executed this agreement as of the Effective Date.

Signed, sealed and delivered before me:

WITNESSES

FAR RESEARCH, INC., a Delaware corporation

Print Name: _____

By: _____

Its: _____

Print Name

STATE OF FLORIDA

COUNTY OF _____

The forgoing instrument was acknowledged before me by ☐ physical presence or ☐ online notarization this _____ day of _____, 2023, by _____, as _____ of FAR Research, Inc., a Delaware corporation, on behalf of said entity. Said person ☐ is personally known to me or ☐ produced _____ as identification.

Print Name:

Notary Public, State of _____

Commission No. _____

My Commission expires: _____

Signed, sealed and delivered before me:

WITNESSES

Print Name: _____

Print Name

MLEF2-1, LLC, a Florida limited liability company, by **MAS Development, LLC**, a Florida limited liability company as its manager

By: _____

Alan Benenson, MGRM, MAS
Development, LLC

Its: Managing Member

STATE OF FLORIDA

COUNTY OF _____

The forgoing instrument was acknowledged before me by ☐ physical presence or ☐ online notarization this _____ day of _____, 2023, by Alan Benenson as Managing Member of MAS Development, LLC, as Manager of MLEF2-1, LLC, a Florida limited liability company, on behalf of said entity. Said person ☐ is personally known to me or ☐ produced _____ as identification.

Print Name:

Notary Public, State of _____

Commission No. _____

My Commission expires: _____

CITY OF PALM BAY, FLORIDA

By: _____
Suzanne Sherman, City Manager

Attest:

Terese M. Jones, City Clerk

Approved as to form:

Patricia D. Smith, City Attorney



All BCPAO maps and/or map applications are maintained for assessment and illustrative purposes only and do not represent surveys, plats, or any other legal instrument. Likewise, measurement and location tools are for assessment and illustrative purposes only and do not necessarily reflect real-world conditions. Due to the nature of Geographic Information Systems (GIS) and cadastral mapping, map layers may not precisely align and may not represent precise location, shape, and/or legal boundaries. Only a Florida-licensed surveyor can determine legally-relevant property boundaries, elevation, distance, area, and/or location in Florida.

MAP OF BOUNDARY SURVEY & TOPOGRAPHIC SURVEY
3370 DIXIE HIGHWAY, PALM BAY, FLORIDA

LEGAL DESCRIPTION:

TRACT "A"

A parcel of land lying in Government Lot 1 of Section 14, Township 28 South, Range 37 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Government Lot 1 of Section 14, and run S. 00 degrees 45'58" W., along the West line of said Government Lot 1, a distance of 100.00 feet; thence S. 88 degrees 24'42" E., parallel with and 100.00 feet distant South, by right angle measurement, from the North line of said Section 14, a distance of 885.35 feet to a point on the Westerly right of way line of U.S. Highway No.1; thence S.14 degrees 01'40" E., along said Westerly right of way line, a distance of 332.61 feet to the POINT OF BEGINNING; thence continue S. 14 degrees 01'40" E., along said Westerly right of way line, a distance of 205.32 feet to a point on the Northerly right of way line of Robert J. Conlan Boulevard (a 200 foot wide right of way); thence S. 75 degrees 57'10" W., along said Northerly right of way line, a distance of 317.20 feet to the point of curvature of a 2964.79 foot radius curve to the left; thence Southwesterly, along the arc of said curve, and along said Northerly right of way line, through a central angle of 06 degrees 14'56" a distance of 323.35 feet; thence departing said curve and right of way line, run N. 25 degrees 19'03" W., a distance of 261.57 feet; thence N. 76 degrees 41'26" E., a distance of 666.47 feet to the point of curvature of a 25.00 foot radius curve to the right; thence Easterly, along the arc of said curve, thru a central angle of 89 degrees 16'54" a distance of 38.96 feet to the POINT OF BEGINNING.

TRACT "B"

A parcel of land lying in Government Lot 1 of Section 14, Township 28 South, Range 37 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Government Lot 1 of Section 14, and run S. 00 degrees 45'58" W., along the West line of said Government Lot 1, a distance of 100.00 feet to the POINT OF BEGINNING; thence departing said West line, run S. 88 degrees 24'42" E., parallel with and 100 feet distant South, by right angle measurement, from the North line of said Section 14, a distance of 885.35 feet to a point on the Westerly right of way line of U.S. Highway No. 1; thence S. 14 degrees 01'40" E., along said Westerly right of way line, a distance of 202.60 feet to the point of curvature of a 25.00 foot radius curve to the right; thence Southwesterly, along the arc of said curve, thru a central angle of 90 degrees 43'06" a distance of 39.58 feet to a point of tangency; thence S. 76 degrees 41'26" W., a distance of 645.53 feet to the point of curvature of a 60.00 foot radius curve to the right; thence Northwesterly, along the arc of said curve, thru a central angle of 83 degrees 20'01" a distance of 87.27 feet to a point of reverse curvature of a 490.00 foot radius curve to the left; thence Northwesterly along the arc of said curve, thru a central angle of 36 degrees 40'31" a distance of 313.65 feet to a point of reverse curvature of a 60.00 foot radius curve to the right; thence Northerly, along the arc of said curve, thru a central angle of 57 degrees 25'02" a distance of 60.13 feet to a point of tangency on the aforesaid West line of Government Lot 1; thence N. 00 degrees 45'58" E., along said West line, a distance of 69.36 feet to the POINT OF BEGINNING.

TRACT "C"

A parcel of land lying in Government Lot 1 of Section 14, Township 28 South, Range 37 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Government Lot 1 of Section 14, and run S. 00 degrees 45'58" W., along the West line of said Government Lot 1, a distance of 69.36 feet to the POINT OF BEGINNING; thence continue S. 00 degrees 45'58" W., along said West line, a distance of 83.07 feet to a point on a 60.00 foot radius curve to the right having a tangent bearing of S. 17 degrees 53'18" W.; thence Southeasterly, along the arc of said curve, thru a central angle of 16 degrees 57'18" a distance of 17.76 feet to a point of compound curvature of a 450.00 foot radius curve to the right; thence Southeasterly, along the arc of said curve, thru a central angle of 33 degrees 16'41" a distance of 261.41 feet to a point of tangency; thence S. 25 degrees 19'03" E., a distance of 146.41 feet; thence N. 76 degrees 41'26" E., a distance of 718.00 feet to the point of curvature of a 25.00 foot radius curve to the right; thence Southeasterly, along the arc of said curve, thru a central angle of 89 degrees 16'54" a distance of 38.96 feet to a point on the Westerly right of way line of U.S. Highway No. 1; thence N. 14 degrees 01'40" W., along said Westerly right of way line, a distance of 130.01 feet to the point of curvature of a 25.00 foot radius curve to the right having a radial bearing of S. 75 degrees 58'20" W.; thence Southwesterly, along the arc of said curve, thru a central angle of 90 degrees 43'06" a distance of 39.58 feet to a point of tangency; thence S. 76 degrees 41'26" W., a distance of 645.53 feet to the point of curvature of a 60.00 foot radius curve to the right; thence Northwesterly, along the arc of said curve, thru a central angle of 83 degrees 20'01" a distance of 87.27 feet to a point of reverse curvature of a 490.00 foot radius curve to the left; thence Northwesterly, along the arc of said curve, thru a central angle of 36 degrees 40'31" a distance of 313.65 feet to a point of reverse curvature of a 60.00 foot radius curve to the right; thence Northerly, along the arc of said curve, thru a central angle of 57 degrees 25'02" a distance of 60.13 feet to the POINT OF BEGINNING.

TRACT "D"

A parcel of land lying in the Northwest 1/4 of the Northeast 1/4 of Section 14, Township 28 South, Range 37 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Northeast corner of said Northwest 1/4 of the Northeast 1/4, and run S. 00 degrees 45'58" W., along the East line of said Northwest 1/4 of the Northeast 1/4, a distance of 252.43 feet to the POINT OF BEGINNING; thence continue S. 00 degrees 45'58" W., along said East line, a distance of 292.20 feet; thence S. 65 degrees 26'11" W., a distance of 16.59 feet to a point on the West line of a 15 foot wide right of way recorded in Deed Book 191, page 315 of the Public Records of Brevard County, Florida; thence S. 00 degrees 45'58" W., a distance of 27.67 feet; thence N. 89 degrees 14'02" W., a distance of 104.04 feet; thence N. 34 degrees 10'56" W., a distance of 47.76 feet; thence N. 36 degrees 11'36" W., a distance of 117.79 feet; thence N. 88 degrees 23'32" W., a distance of 112.66 feet; thence N. 00 degrees 45'58" E., a distance of 32.46 feet; thence N. 88 degrees 23'32" W. a distance of 110.52 feet to a point on the Easterly right of way line of the Florida East Coast Railway (a 100 foot wide right of way); thence S. 24 degrees 38'41" E., along said Easterly right of way line, a distance of 718.87 feet to a point on the Northerly right of way line of Robert J. Conlan Boulevard (a 200 foot wide right of way); thence N. 65 degrees 23'47" E., along said Northerly right of way line, a distance of 371.41 feet to the point of curvature of a 2964.79 foot radius curve to the right; thence Northwesterly, along the arc of said curve, thru a central angle of 04 degrees 18'27" a distance of 222.90 feet; thence N. 25 degrees 19'03" W., a distance of 261.57 feet; thence S. 76 degrees 41'26" W., a distance of 51.53 feet; thence N. 25 degrees 19'03" W., a distance of 146.41 feet to the point of curvature of a 450.00 foot radius curve to the left; thence Northwesterly, along the arc of said curve, thru a central angle of 33 degrees 16'41" a distance of 261.41 feet to a point of compound curvature of a 60.00 foot radius curve to the left; thence Northwesterly, along the arc of said curve thru a central angle of 16 degrees 57'18" a distance of 17.76 feet to the POINT OF BEGINNING.

TOGETHER WITH that certain non-exclusive easement for the benefit of the subject property as described in Official Records Book 1434, page 733, of the Public Records of Brevard County, Florida.

TOGETHER WITH that certain non-exclusive easement for the benefit of the subject property as described in Official Records Book 1921, page 988, of the Public Records of Brevard County, Florida.

Tract "E"

The North 100 feet of Government Lot 1, lying West of U.s. 1; Less and Except the West 544.50 feey thereof, in Section 14, Township 28 South, Range 37 East, Brevard County, Florida.

Tract "F"

Lots 1 – 6, inclusive, Block A, less and except right of way for U.S. Highway No. 1; and Lots 1 – 26, inclusive, Block C, Huntington Terrace, according to the plat thereof, as recorded in Plat Book 6, Page(s) 52, Public Records of Brevard County, Florida.

Chicago Title Insurance Company, Order No. 7945388, dated 9/13/2019, Schedule B, Section II

Title Commitment Notes.

1–5. Standard Exceptions or Non–Survey related exceptions.

6. Title to any submerged land included within the land described in this Policy is not insured. (As to Lots 1 through 6, Block A – Parcel 1)

7. Easement granted Florida Power and Light Company, Grantee, recorded March 8, 1973, in Official Records Book 1424, Page 836. (Does not affect the subject parcel.)

8. Subject to the terms and conditions set forth in that certain Easement as set out in Warranty Deed by and between Thomas J. Nissen, Grantor, and MOMAC Precast, Inc., a Florida corporation, Grantee, recorded April 15, 1974, in Official Records Book 1434, Page 733. (Affects Tract D, plotted hereon.)

9. Easement by and between J. L. Sapundjeff, Grantor, and City of Palm Bay, Florida, Grantee, recorded April 29, 1974, in Official Records Book 1438, Page 881. (Affects Tract B, plotted hereon.)

10. Easement by and between C. L. Smith, Grantor, and City of Palm Bay, Florida, Grantee, recorded May 8, 1974, in Official Records Book 1441, Page 318. (Affects Tract B, plotted hereon.)

11. Subject to the terms and conditions set forth in that certain Easement set out in Warranty Deed by and between Thomas J. Nissen, Grantor, and Rinker Materials Corporation, a Florida corporation, Grantee, recorded August 4, 1978, in Official Records Book 1921, Page 988. (Does not affect the subject parcel.)

12. Easement by and between Rinker Materials Corporation, Grantor, and Florida Power and Light Company, Grantee, recorded July 3, 1984, in Official Records Book 2523, Page 1203. (Affects Tract D, plotted hereon.)

13. Restrictions, Easements and Reservations contained in Special Warranty Deed recorded January 22, 2004, in Official Records Book 5178, Page 533. (Affects Tracts B & C, plotted hereon.)

14. Restrictions contained in Special Warranty Deed recorded June 22, 2011, in Official Records Book 6405, Page 1779.

15. Rights of tenants occupying all or part of the insured land under unrecorded leases or rental agreements.

Fidelity National Title Insurance Company Order No. 7445552, dated 1/22/19
Title Commitment Notes for Parcel E:

1–5. Standard Exceptions or Non–Survey related exceptions.

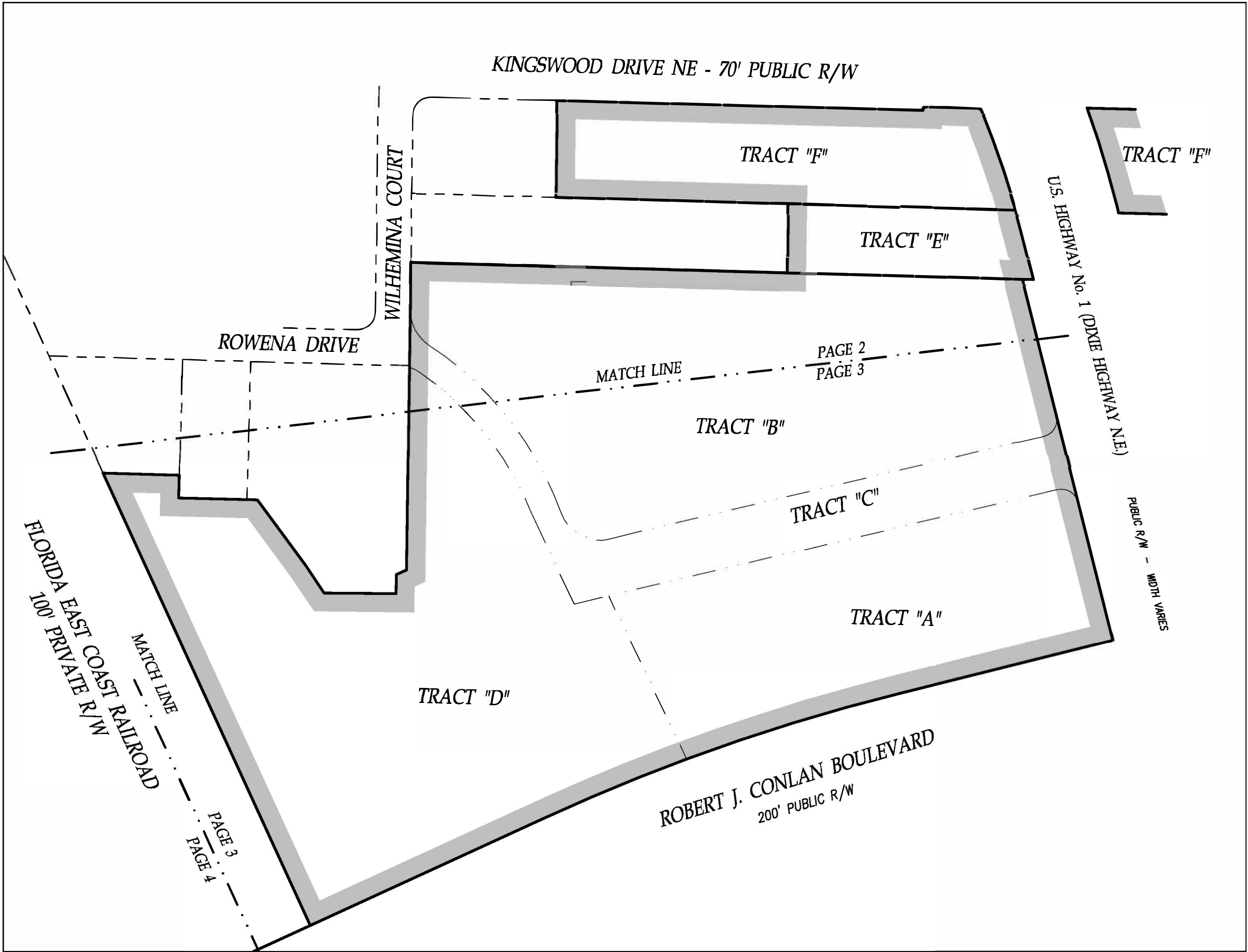
Fidelity National Title Insurance Company Order No. 7454545, dated 2/12/19
Title Commitment Notes for Parcel F:

1–7. Standard Exceptions or Non–Survey related exceptions.

CERTIFICATION:
I HEREBY CERTIFY: THAT THE ATTACHED SURVEY WAS DONE UNDER MY DIRECTION AND MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 54-17, FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027 FLORIDA STATUTES.

DATE: 4/29/2020
JOEL A. SEYMOUR PROFESSIONAL LAND SURVEYOR AND MAPPER
STATE OF FLORIDA NO. LS 6133
DRAWN BY: JAS SCALE 1 INCH = 50 FEET

KEY MAP - NOT TO SCALE



LEGEND

A = ARC
A/C = AIR CONDITIONER
BFE = BASE FLOOD ELEVATION
BLDG = BUILDING
BLK = BLOCK
BM = BENCHMARK
BRG = BEARING
(C) = CALCULATED
CATV = CABLE TELEVISION
CBS = CONCRETE BLOCK STRUCTURE
CHD = CHED
C/L = CENTERLINE
CLF = CHAIN LINK FENCE
CMF = CONCRETE MONUMENT FOUND
CMP = CORRUGATED METAL PIPE
CONC = CONCRETE
COR = CORNER
(D) = DEED
DB = DEED BOOK
DA = DELTA ANGLE
ELEC = ELECTRIC
ELEV = ELEVATION
ENC = ENCROACHMENT
EOP = EDGE OF PAVEMENT
ESMT = EASEMENT
FB = FIELD BOOK
FEMA = FEDERAL EMERGENCY MANAGEMENT AGENCY
FF = FINISHED FLOOR
FNC = FENCE
FND = FOUND
FPL = FLORIDA POWER & LIGHT COMPANY
GOVT = GOVERNMENT
HPDE = HIGH DENSITY POLYETHYLENE
ID = IDENTIFICATION
INV = INVERT
IPF = IRON PIPE FOUND
IRC = IRON ROD & CAP FOUND
IRF = IRON ROD FOUND
IRS = 5/8" IRON ROD SET "LB 7838"
LB = LICENSED BUSINESS NUMBER
LS = (RLS) or (PLS) REGISTERED OR PROFESSIONAL LAND SURVEYOR
(M) = MEASURED
NAVD = NORTH AMERICAN VERTICAL DATUM
NOF = NAIL & DISK FOUND
NDS = 1 1/4" NAIL & DISK SET "LB 7838"
NGVD = NATIONAL GEODETIC VERTICAL DATUM
No. = NUMBER
O/H = OVERHEAD
ORB = OFFICIAL RECORDS BOOK
O/S = OFFSET
(P) = PLAT
PB = PLAT BOOK
PC = POINT OF CURVATURE
POC = POINT OF COMPOUND CURVATURE
PCP = PERMANENT CONTROL POINT
PI = POINT OF INTERSECTION
PLS = PROFESSIONAL LAND SURVEYOR
POB = POINT OF BEGINNING
POC = POINT OF COMMENCEMENT
PRC = POINT OF REVERSE CURVATURE
PRM = PERMANENT REFERENCE MONUMENT
PSM = PROFESSIONAL SURVEYOR AND MAPPER
PT = POINT OF TANGENCY
PUE = PUBLIC UTILITY & DRAINAGE EASEMENT
PUE = PUBLIC UTILITY EASEMENT
R = RADIUS
RCP = REINFORCED CONCRETE PIPE
REF = REFERENCE
RNG = RANGE
R/W = RIGHT OF WAY
SEC = SECTION
SFHA = SPECIAL FLOOD HAZARD AREAS
TEL = TELEPHONE RISER
TWP = TOWNSHIP
TYP = TYPICAL
UP = UTILITY POLE
VCP = VITRIFIED CLAY PIPE
WD = WOOD
WIT-COR = 5/8" IRON ROD SET WITH CAP "WITNESS LB 7838"
WM = WATER METER
XCF = CROSS CUT FOUND

NOTES:
1. BEARINGS BASED N LINE OF SUBJECT PARCEL BEING S 88°24'42" E AS PER FURNISHED DESCRIPTION (SEE SKETCH)
2. ELEVATIONS BASED ON CITY OF PALM BAY BENCHMARKS DH-047 AND DH-048 BEING AT AN ELEVATION OF 20.00 FEET AND 22.57 FEET NGVD 1929 RESPECTIVELY.
3. FLOOD ZONE "X" (WEST OF HIGHWAY), MAP No. 12008C0612G AND 12008C0613G, COMMUNITY No. 120404, MARCH 17, 2014, FLOOD ZONE INFORMATION DEPICTED HEREON IS APPROXIMATE. FEMA RETAINS SOLE AUTHORITY REGARDING BOUNDARY AND EXTENT OF SFHA.
4. HORIZONTAL CLOSURE MEETS OR EXCEEDS THE ACCURACY REQUIREMENTS FOR SUBURBAN LAND AS PER FLORIDA STATUTE SJ-17-6.003
5. BEARINGS, DISTANCES OR ANGLES SHOWN ARE THE SAME AS PLAT, DEED OR RECORD UNLESS SHOWN OTHERWISE.
6. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY.
7. THE SURVEYOR HAS NOT LOCATED NOR ATTEMPTED TO LOCATE ANY UNDERGROUND UTILITIES, FOUNDATIONS, OR STRUCTURES OTHER THAN THOSE THAT MAY BE SHOWN HEREON.
8. ONLY BOUNDARY CORNER MONUMENTS AS SHOWN HEREON ARE TO BE USED FOR THE LOCATION AND CONSTRUCTION OF IMPROVEMENTS. THE SURVEYOR DID NOT HAVE THE BENEFIT OF AN UTILITY LOCATION SERVICE AT THE TIME OF SURVEY.

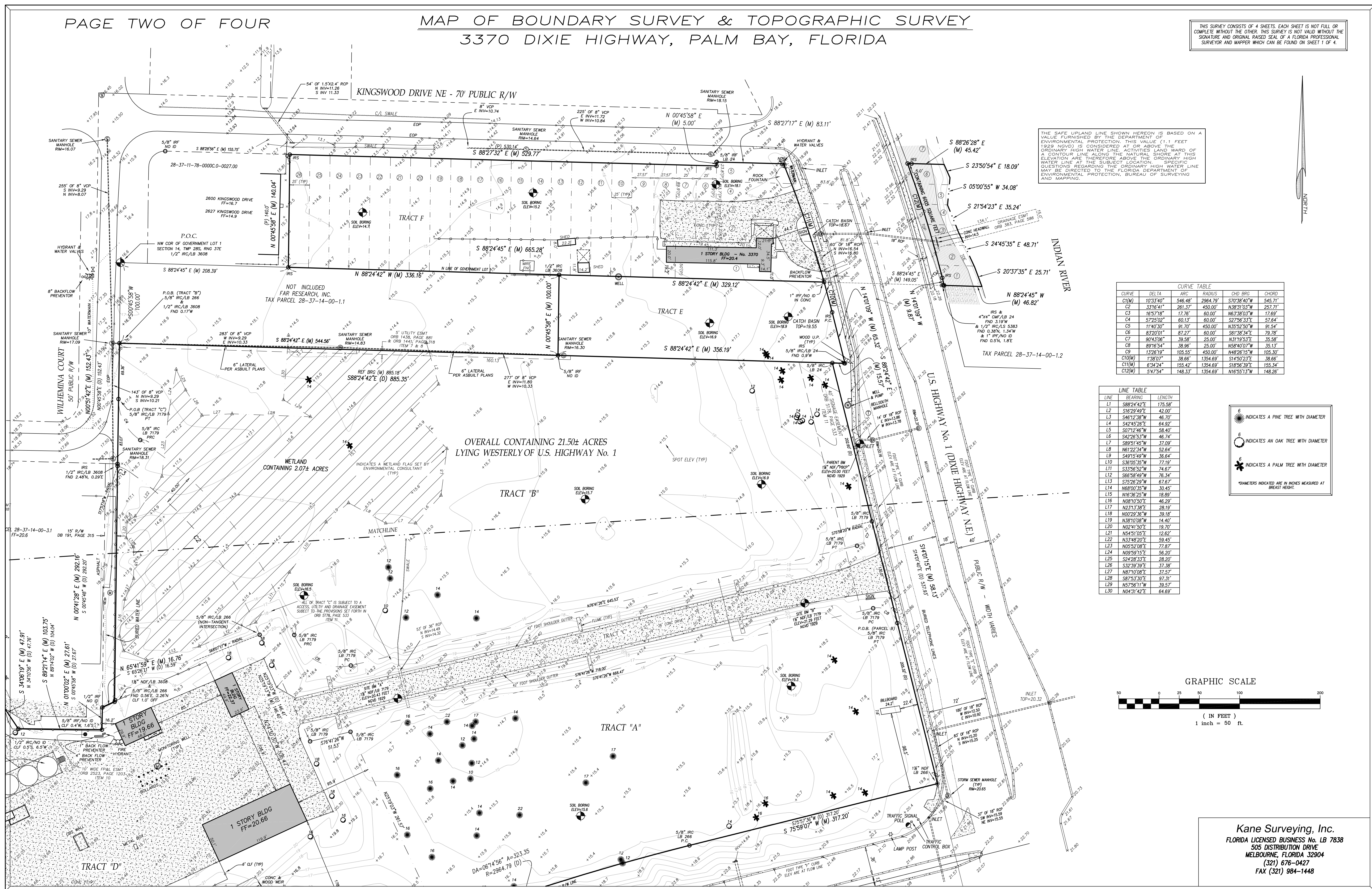
CERTIFIED TO:
MLEF2-1, LLC
New Wave Loans Residential, LLC, a Delaware limited liability company ISAOA/ATIMA
Fidelity National Title Insurance Company
Matthew B. Wedacatch, P.A.

BOUNDARY & TOPOGRAPHIC	DATE: 2/20/19	JOB No.
ADDED WETLAND	DATE: 3/22/19	FB
REVISED CERTIFICATION	DATE: 4/23/19	14-28-37/rinker/ot
TITLE COMMITMENT UPDATED	DATE: 2/25/2020	
ADDED CONTOURS	DATE: 3/17/2020	

Kane Surveying, Inc.
FLORIDA LICENSED BUSINESS NO. LB 7838
505 DISTRIBUTION DRIVE
MELBOURNE, FLORIDA 32904
(321) 676-0427
FAX (321) 984-1448

REVISED – ADDED PAGE 4	DATE 4/28/2020

THIS SURVEY CONSISTS OF 4 SHEETS. EACH SHEET IS NOT FULL OR COMPLETE WITHOUT THE OTHER. THIS SURVEY IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA PROFESSIONAL SURVEYOR AND MAPPER WHICH CAN BE FOUND ON SHEET 1 OF 4.



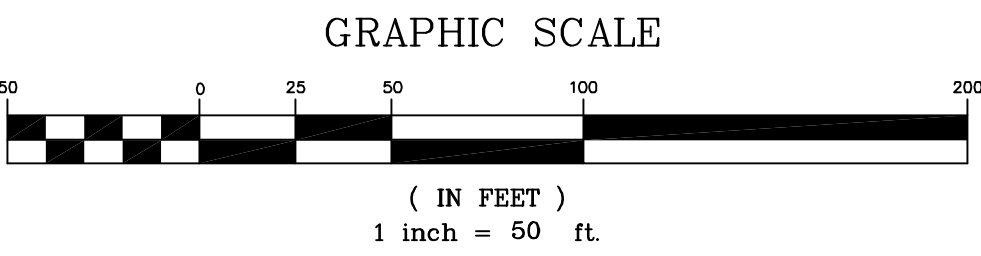
MAP OF BOUNDARY SURVEY & TOPOGRAPHIC SURVEY
3370 DIXIE HIGHWAY, PALM BAY, FLORIDA

THIS SURVEY CONSISTS OF 4 SHEETS. EACH SHEET IS NOT FULL OR COMPLETE WITHOUT THE OTHER. THIS SURVEY IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA PROFESSIONAL SURVEYOR AND MAPPER WHICH CAN BE FOUND ON SHEET 1 OF 4.



CURVE TABLE				
CURVE	DELTA	ARC	RADIUS	CHORD
C1(M)	10°33'40"	546.48'	2964.79'	545.71'
C2	3°16'41"	261.37'	450.00'	257.71'
C3	16°52'18"	17.76'	60.00'	17.69'
C4	5°22'02"	60.13'	60.00'	57.64'
C5	11°40'30"	91.70'	450.00'	91.54'
C6	8°32'01"	87.27'	60.00'	79.78'
C7	9°43'06"	39.58'	25.00'	35.58'
C8	8°16'54"	38.96'	25.00'	35.13'
C9	13°26'19"	105.55'	450.00'	105.30'
C10(M)	1°38'07"	38.66'	1354.69'	38.66'
C11(M)	6°34'24"	155.42'	1354.69'	155.54'

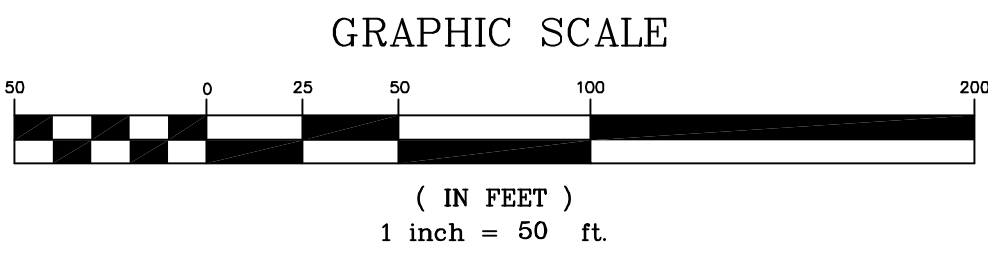
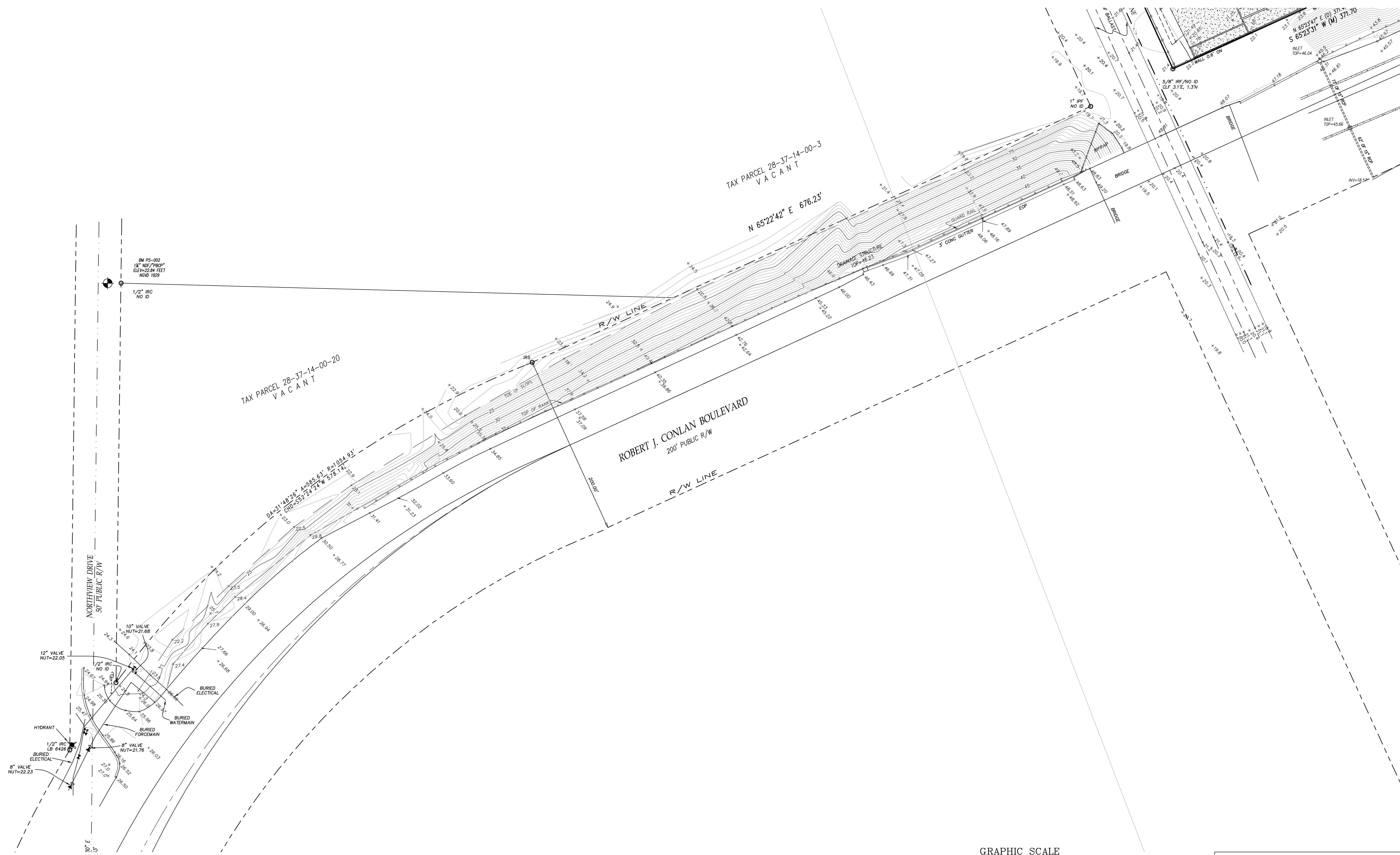
INDICATES A PINE TREE WITH DIAMETER
INDICATES AN OAK TREE WITH DIAMETER
INDICATES A PALM TREE WITH DIAMETER
*DIAMETERS INDICATED ARE IN INCHES MEASURED AT BREAST HEIGHT.



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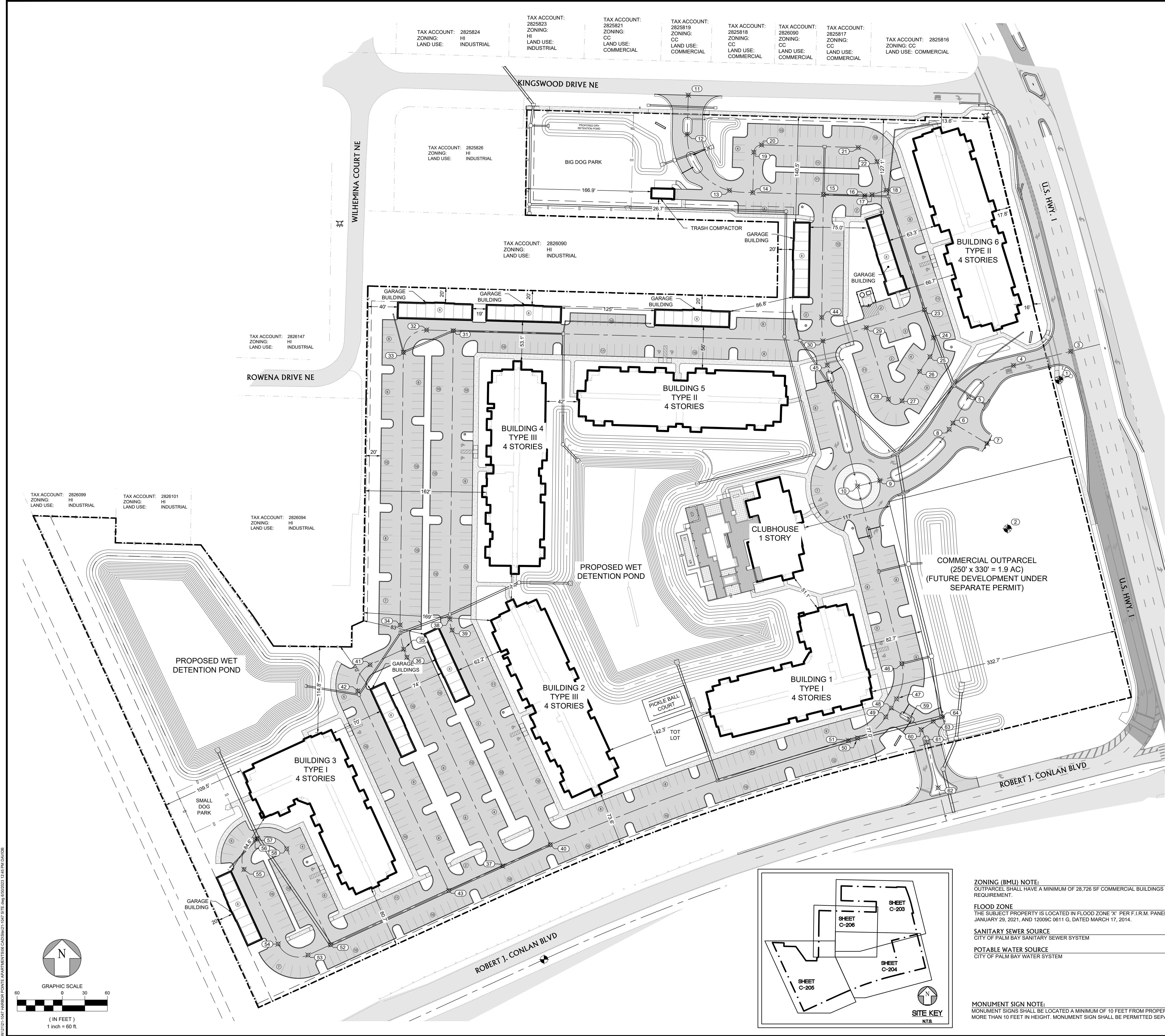
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(321) 676-0427
FAX (321) 984-1448

12-25-2022 12:25:24 PM DWB



SITE INFORMATION

GENERAL STATEMENT

THE PROPOSED PROJECT INVOLVES CONSTRUCTION AND DEVELOPMENT OF A 352-UNIT MULTI-FAMILY RESIDENTIAL FACILITY WITHIN THE CITY OF PALM BAY. THE PROJECT WILL CONSIST OF SIX (6) APARTMENT BUILDINGS WITH FOUR (4) FLOORS, EIGHT (8) GARAGE BUILDINGS WITH EIGHT (8) BAYS PER GARAGE, AND ONE (1) CLUBHOUSE FACILITY. AMENITIES WILL INCLUDE TWO (2) DOG PARKS, ONE (1) PICKLE BALL COURT, AND ONE (1) TOT LOT. INFRASTRUCTURE IMPROVEMENTS INCLUDE PARKING AREAS, STORMWATER DRAINAGE PIPES AND STRUCTURES, TWO (2) WET DETENTION PONDS, ONE (1) DRY RETENTION POND, SEWER SERVICE TO INCLUDE THE CONSTRUCTION OF ONE (1) ON-SITE LIFT STATION, POTABLE WATER DISTRIBUTION, AND FIRE SUPPRESSION/PROTECTION SYSTEMS.

APPLICANT/OWNER

ALAN BENENSON
MAS DEVELOPMENT CORP
3323 NE 163RD ST
NORTH MIAMI BEACH, FL 33160

ENGINEER

MBV ENGINEERING, INC.
1250 W. EAU GALIE BLVD., UNIT L
MELBOURNE, FL 32935
PHONE: (321) 253-1510

SITE ADDRESS

3370 DIXIE HIGHWAY (US-1)
PALM BAY, FL 32905

SURVEYOR

KANE SURVEYING, INC.
505 DISTRIBUTION DRIVE
MELBOURNE, FLORIDA 32904
PHONE: (321) 676-0427

FUTURE LAND USE

BMU - (BAYFRONT MIXED USE)

ZONING

COMMERCIAL

TAX PARCEL I.D. NUMBER(S)

28-37-11-78-C-1

TAX ACCOUNT NO.

2825825

LEGAL DESCRIPTION:

SEE SHEET C-206 FOR LEGAL DESCRIPTION.

GENERAL SITE NOTES:

- ALL POSTS AND HARDWARE FOR ANY SIGNS INSTALLED IN CITY OF PALM BAY RIGHTS-OF-WAY SHALL ADHERE TO THE REQUIREMENTS ON SHEET G-102.
- ALL POSTS AND HARDWARE FOR ANY SIGNS INSTALLED IN FOOT RIGHTS-OF-WAY SHALL ADHERE TO THE REQUIREMENTS ON SHEET G-102.
- ALL DISTURBED AREAS IN THE RIGHTS-OF-WAY SHALL BE RETURNED TO THE ORIGINAL CONDITION OR BETTER.
- LIGHTING SHALL BE DESIGNED, INSTALLED, MAINTAINED, AND DIRECTED SO AS TO AVOID GLARE ON ADJOINING PROPERTIES AND RIGHTS-OF-WAY THROUGH THE USE OF SEMI- AND FULL-CUTOFF SHIELDS.
- SEE SHEET C-206 FOR POINT COORDINATE TABLE.
- SHOULD THE COMMERCIAL OUTPARCEL BE SOLD A CROSS ACCESS EASEMENT AND DRAINAGE EASEMENT SHALL BE PROVIDED FOR AND RECORDED PRIOR TO APPROVAL OF CONSTRUCTION SITE PLANS FOR THE OUTPARCEL.
- ALL MOTORIZED GATES SHALL INCLUDE A CLICK-TO-ENTER SYSTEM OR SIREN OPERATED SWITCH AND KNOX KEY SWITCH BACKUP. ALL MANUAL GATES SHALL HAVE A KNOX PADLOCK.

PROJECT INFORMATION

PROJECT SITE AREA	936,895 SF	21,503 AC.	100.00 %
ROADS / PARKING	258,389 SF	5,932 AC.	27.59 %
BUILDINGS	143,831 SF	3,297 AC.	15.33 %
SIDEWALK	35,701 SF	0.820 AC.	3.81 %
WET PONDS	116,526 SF	2.675 AC.	12.44 %
TOTAL IMP. AREA	554,247 SF	12.724 AC.	59.17 %
NON-IMP. AREA	382,927 SF	8.779 AC.	40.83 %

BUILDING SETBACKS

	REQ'D	PROVIDED
FRONT (US-1)	0'	17.8'
REAR (REC)	20'	20.0'
SIDE INTERIOR (WILHELMINA)	5'	40.0'
SIDE INTERIOR (KINGSWOOD)	5'	13.6'
SIDE CORNER (ROBERT J CONLAN)	0'	73.6'

BUILDING INFORMATION

TOTAL EXISTING BUILDINGS	NONE
TOTAL PROPOSED BUILDINGS	8 MULTI-FAMILY 8 DETACHED GARAGES

	REQUIRED	PROVIDED
MAXIMUM HEIGHT	60 FT	57 FT
MINIMUM LOT AREA	43,560 SF (1 AC)	936,894 SF
MAXIMUM BUILDING COVERAGE	60%	15.33%
DENSITY	40 UPA (MAX)	16.4 UPA

*NOTE: ADDITIONAL 10 FEET OF BUILDING HEIGHT ALLOWED FOR CROSS ACCESS FOR PEDESTRIANS. ADDITIONAL 10 FEET ALLOWED FOR SHARED STORMWATER.

RESIDENT BUILDINGS	QUANTITY	HEIGHT
TYPE I	2	4-STORY / 57'
TYPE II	2	4-STORY / 57'
TYPE III	2	4-STORY / 57'
TOTAL RESIDENT BUILDINGS	6	

UNIT BREAKDOWN PER UNIT TYPE:

BUILDING TYPE I (15 UNITS PER FLOOR):
(24) 1 BED/ 1 BATH (MINIMUM SF = 625 SF, PROPOSED UNIT A1 = 647 SF)
(24) 2 BED/ 2 BATH (MINIMUM SF = 967 SF, PROPOSED UNIT B1 = 1,147 SF)
(12) 3 BED/ 2 BATH (MINIMUM SF = 1,300 SF, PROPOSED UNIT C1 = 1,490 SF)
BUILDING TYPE II (15 UNITS PER FLOOR):
(24) 1 BED/ 1 BATH (MINIMUM SF = 625 SF, PROPOSED UNIT A2 = 869 SF)
(24) 2 BED/ 2 BATH (MINIMUM SF = 967 SF, PROPOSED UNIT B2 = 1,315 SF)
(6) 3 BED/ 2 BATH (MINIMUM SF = 1,300 SF, PROPOSED UNIT C1 = 1,490 SF)
BUILDING TYPE III (14 UNITS PER FLOOR):
(16) 1 BED/ 1 BATH (MINIMUM SF = 625 SF, PROPOSED UNIT A3 = 794 SF)
(32) 2 BED/ 2 BATH (MINIMUM SF = 967 SF, PROPOSED UNIT B3 = 1,104 SF)
(8) 3 BED/ 2 BATH (MINIMUM SF = 1,300 SF, PROPOSED UNIT C1 = 1,490 SF)

TOTALS:

128 1 BED/ 1 BATH
168 2 BED/ 2 BATH
56 3 BED/ 2 BATH
352 TOTAL UNITS

COMMERCIAL REQUIREMENT

20% MINIMUM COMMERCIAL BASED ON GROUND FLOOR AREA OF ALL PRINCIPAL USE BUILDING.

PRINCIPAL USE BUILDINGS AREA
= (2) TYPE I BUILDINGS, (2) TYPE II BUILDINGS, (2) TYPE III BUILDINGS
= (2) x 19,241 SF + (2) x 19,867 SF, (2) x 20,041 SF
= 117,898 SF

COMMERCIAL AREA REQ.
= 117,898 SF x 20% = 23,580 SF
COMMERCIAL AREA PROVIDED
= 23,580 SF

PARKING INFORMATION

PARKING REQUIRED PER CODE
1.5 SPACES PER 1 BED UNIT: 128 UNITS x 1.5 SPACES = 192 SPACES
2 SPACES PER 2 OR MORE BED UNIT: (168 2 BED + 56 3 BED) x 2 SPACES = 448 SPACES
REQUIRED PARKING
640 SPACES

DETACHED GARAGES
SURFACE PARKING
TOTAL PARKING PROVIDED
63 SPACES
641 SPACES
704 SPACES

ADA PARKING (REQUIRED)
ADA PARKING (PROVIDED)
15 SPACES
16 SPACES

ZONING (BMU) NOTE:

OUTPARCEL SHALL HAVE A MINIMUM OF 28,726 SF COMMERCIAL BUILDINGS TO COMPLY WITH THE CODE REQUIREMENT.

FLOOD ZONE

THE SUBJECT PROPERTY IS LOCATED IN FLOOD ZONE "X" PER F.I.R.M. PANEL NO. 12009C 0162 H DATED JANUARY 29, 2021, AND 12009C 0611 G, DATED MARCH 17, 2014.

SANITARY SEWER SOURCE

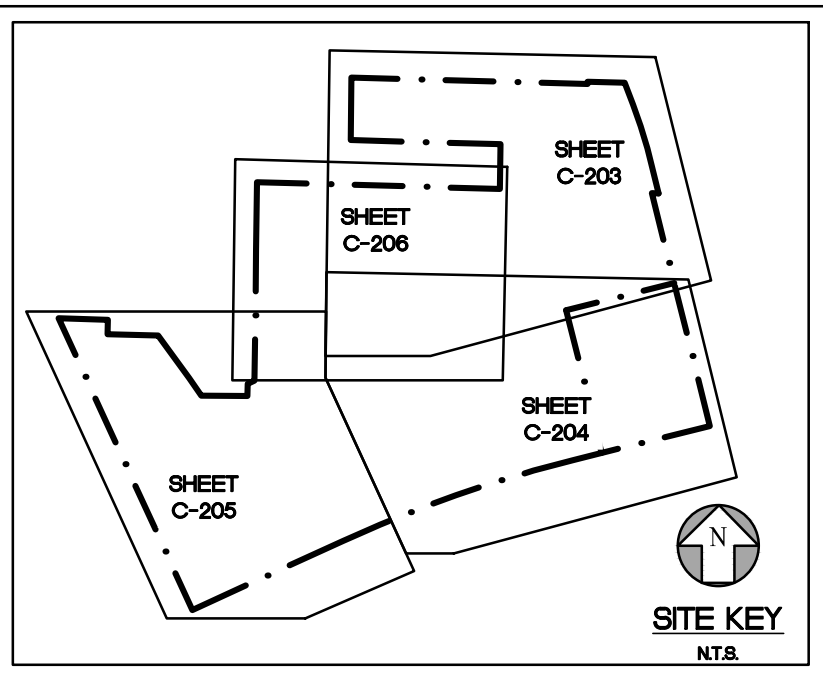
CITY OF PALM BAY SANITARY SEWER SYSTEM

POTABLE WATER SOURCE

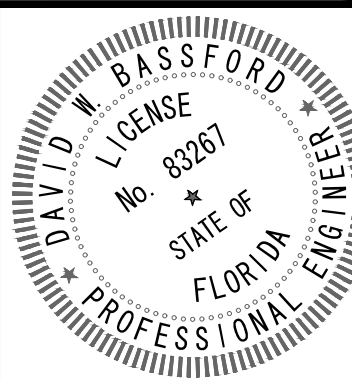
CITY OF PALM BAY WATER SYSTEM

MONUMENT SIGN NOTE:

MONUMENT SIGNS SHALL BE LOCATED A MINIMUM OF 10 FEET FROM PROPERTY BOUNDARY AND NO MORE THAN 10 FEET IN HEIGHT. MONUMENT SIGN SHALL BE PERMITTED SEPARATELY BY OTHERS.



MUNICIPAL APPROVAL STAMP



DAVID W. BASSFORD
P. E. #83267

DATE
8/30/2023

C-201

SHEET

21-1047

PERMITTING SET

SITE DATA PLAN

HARBOR POINTE APARTMENTS

FLORIDA

CITY OF PALM BAY

JOB NO.	DESIGNED	DRAWN	DATE	CHECKED	DATE ISSUED
21-1047	DWB/RW	AFR	10-01-2021	DWB	4/4/2022
06-07-2023	△	△	△	△	△
05-24-2023	△	△	△	△	△
04-28-2023	△	△	△	△	△
05-09-2023	△	△	△	△	△
02-27-2023	△	△	△	△	△
08-30-2022	△	△	△	△	△
06-16-2022	△	△	△	△	△
04-06-2022	△	△	△	△	△
04-01-2022	△	△	△	△	△

MBV ENGINEERING, INC.
MOA BOWLES VILLALBA & ASSOCIATES
CIVIL • STRUCTURAL • SURVEYING • ENVIRONMENTAL
1250 W. EAU GALIE BLVD. SUITE H
MELBOURNE, FLORIDA 32935
P: 321-253-1510
F: 321-253-1511
ALSO WITH OFFICES IN:
VERO: 772-698-0036, FT. PIERCE: 772-686-8006, PALM CITY: 772-488-9699

REVISIONS

**This Instrument Prepared by and
After Recording Please Return to:**

Andrew J. Wamsley, Esq.
AKERMAN LLP
201 East Las Olas Blvd., Ste. 1800
Fort Lauderdale, FL 33301

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration") is made and entered into on this ____ day of _____, 202__ (the "Effective Date") by MLEF2-1, LLC, a Florida limited liability company, whose post office address is c/o MAS Development, LLC, 2875 NE 191st Street, Suite 305, Aventura, Florida 33180 ("MLEF").

RECITALS

WHEREAS, MLEF is the fee simple owner of that certain real property located in the City of Palm Bay, Brevard County, Florida, more particularly described on Exhibit "A" attached hereto and made a part hereof (the "MLEF Property"); and

WHEREAS, the MLEF Property is adjacent to that certain real property owned by FAR Research, Inc., more particularly described on Exhibit "B" attached hereto and made a part hereof (the "FAR Property"); and

WHEREAS, MLEF desires to impose certain restrictions on the MLEF Property for the benefit of the FAR Property.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MLEF declares that the MLEF Property is and shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to the covenants and restrictions set forth in this Declaration and same shall run with title to, and be binding upon the MLEF Property, all as and to the extent, and upon the terms and conditions, more particularly set forth below:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference, as though set forth fully herein.

2. Restrictions. The MLEF Property is hereby subject to the following restrictions:

(A) In no event shall any structure other than structures not intended for public access or occupation such as stormwater ponds, landscaping, walls, etc., be constructed within one hundred (100) feet from the property line separating the MLEF Property from the FAR Property.

(B) Except for the portion of the MLEF Property originally depicted on the City of Palm Bay, Florida's zoning map as commercial, which is attached to this Declaration as Exhibit "C," the following uses are not permitted in any portion of the MLEF Property:

- (i) professional offices, not including a management/leasing office;
- (ii) clubs, lodges and fraternal organizations; and
- (iii) brew pubs and/or drinking establishments or restaurants serving alcohol.

(C) The following uses shall not be permitted on any portion of the MLEF Property (including any portion that may be zoned as commercial or for commercial use):

- (i) long term care facilities providing medical related services such as nursing homes and rehabilitation centers that provide overnight stay facilities;
- (ii) adult congregate living facilities or assisted living facilities;
- (iii) schools; and
- (iv) daycare centers.

3. Property Affected. This Declaration and the covenants, conditions, limitations and restrictions set forth herein shall be binding upon, inure to the benefit of the FAR Property and constitute a burden upon all of the MLEF Property in accordance with the terms set forth herein. Accordingly, all portions of land within the MLEF Property shall hereafter be owned, held, transferred, sold, conveyed, demised, devised, assigned, leased, ground leased, mortgaged, occupied, used and enjoyed subject to by the terms and provisions of this Declaration.

4. Duration. The terms and provisions of and covenants, conditions, limitations and restrictions set forth in this Declaration shall continue and be binding upon the MLEF Property, the owners thereof, their respective successors and assigns and all owners or other persons claiming through or under any of them in perpetuity or for the duration specifically set forth in the restriction. This Declaration is binding unless and until a release of this Declaration is executed by the owner of the FAR Property and is recorded in the public records of Brevard County, Florida.

5. Enforcement and Nonwaiver. This Declaration, the terms, provisions, covenants, conditions, limitations and restrictions herein shall be enforceable by the owner of the FAR Property or any portion thereof. Such right of enforcement as provided herein will include both damages for and injunctive relief against the breach of any provision hereof, and every remedy allowed by law or in equity, either public or private, shall be applicable against any violation of any term or provision of or covenant, condition or restriction set forth in this Declaration. No failure to enforce any provision of this Declaration nor delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of the breach of any provision of this Declaration shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Declaration.

6. Attorneys' Fees. In the event of any action to enforce or interpret any provision or right under this Declaration, the prevailing party will be entitled to recover reasonable attorneys' fees, court costs, expert witness fees, and other litigation related expenses, and other costs of enforcement from the non-prevailing party or parties.

7. Construction. The provisions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any covenant, restriction, or other provision or portion hereof will not affect the validity or enforceability of any other covenant, restriction, or provision. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular. All captions and titles used in this Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs or sections hereof.

8. Governing Law; Venue. This Declaration and all rights and obligations created hereby shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action arising out of or related to this Declaration shall be in Brevard County, Florida.

9. Severability. This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

10. Non-merger. Notwithstanding any applicable law or legal concept or theory, no interest, right, benefit, obligation, term, provision or covenant contained herein or established hereby shall be deemed to merge with any other interest, right, benefit, obligation, term, provision or covenant contained herein or established hereby.

(signatures on next page)

IN WITNESS WHEREOF, the Owner has hereunto set his hand and seal this ____ day of _____, 202__.

Signed, sealed and delivered before me:

WITNESSES:

Print Name: _____
Address: _____

Print Name: _____
Address: _____

MLEF2-1, LLC, a Florida limited liability company, by **MAS Development, LLC**, a Florida limited liability company as its manager

By: _____
Alan Benenson, MGRM, MAS Development, LLC

Its: Managing Member

STATE OF FLORIDA

COUNTY OF _____

The forgoing instrument was acknowledged before me by ☐ physical presence or ☐ online notarization this _____ day of _____, 202__, by Alan Benenson as Managing Member of MAS Development, LLC, as Manager of MLEF2-1, LLC, a Florida limited liability company, on behalf of said entity. Said person ☐ is personally known to me or ☐ produced _____ as identification.

Print Name: _____
Notary Public, State of _____
Commission No. _____
My Commission expires: _____

JOINDER, CONSENT AND SUBORDINATION
TO DECLARATION

The undersigned hereby certifies that it is the holder of a mortgage, lien or other encumbrance upon the property described in the following documents:

1. [Name of Document providing for interest]

and that the undersigned hereby joins in and consents to the execution of the Declaration of Restrictive Covenants ("Declaration"), to which this Joinder and Consent to Settlement Agreement is attached, and agrees that its mortgage, lien or other encumbrance shall be subordinated to the rights created under the Declaration.

Signed, sealed and delivered
in the presence of:

JV Capital and Properties, LLC
a Florida limited liability company

Print Name: _____
Address: _____

By:

Name: Luis Pérez

Print Name: _____
Address: _____

Its Manager

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 202_, by Luis Pérez, as Manager of JV Capital and Properties, LLC, a Florida limited liability company, on behalf of the corporation. Said person (check one) ☐ is personally known to me or ☐ produced _____ as identification.

Print Name: _____
Notary Public, State of Florida
Commission No.: _____
My Commission Expires: _____

JOINDER, CONSENT AND SUBORDINATION
TO DECLARATION

The undersigned hereby certifies that it is the holder of a mortgage, lien or other encumbrance upon the property described in the following recorded documents:

1. Florida Real Estate Mortgage, Assignment of Leases and Rents and Security Agreement, dated May 15, 2019, between MLEF2-1, LLC, and New Wave Loans Residential, LLC, recorded in Official Records Book 8439, Page 1512, document number 2019104190, recorded on May 15, 2019

and that the undersigned hereby joins in and consents to the execution of the Declaration of Restrictive Covenants ("Declaration"), to which this Joinder and Consent to Settlement Agreement is attached, and agrees that its mortgage, lien or other encumbrance shall be subordinated to the rights created under the Declaration.

Signed, sealed and delivered
in the presence of:

a Florida limited liability company

Print Name: _____

Address: _____

By: _____

Print Name: _____

Address: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 202_, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. Said person (check one) ☐ is personally known to me or ☐ produced _____ as identification.

Print Name: _____

Notary Public, State of Florida

Commission No.: _____

My Commission Expires: _____

EXHIBIT "A"

MLEF Property

A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND S. 00 DEGREES 45'58" W., ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 100.00 FEET; THENCE S. 88 DEGREES 24'42" E., PARALLEL WITH AND 100.00 FEET DISTANT SOUTH, BY RIGHT ANGLE MEASUREMENT, FROM THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 885.35 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO 1; THENCE S. 14 DEGREES 01'40" E., ALONG SAID LINE, A DISTANCE OF 205.32 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ROBERT J. CONLAN BOULEVARD (A 200 FOOT WIDE RIGHT OF WAY); THENCE S. 75 DEGREES 57'10" W., ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 317.20 FEET TO THE POINT OF CURVATURE OF A 2964.79 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE AND ALONG SAID NORTHERLY RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 06 DEGREES 14'56" A DISTANCE OF 323.35 FEET; THENCE DEPARTING SAID CURVE AND RIGHT OF WAY LINE, RUN N. 25 DEGREES 19'03" W., A DISTANCE OF 261.57 FEET; THENCE N. 76 DEGREES 41' 25" E., A DISTANCE OF 666.47 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE EASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 89 DEGREES 16' 54" A DISTANCE OF 38.96 FEET TO THE POINT OF BEGINNING.

TRACT 'B'

A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND RUN S. 00 DEGREES 45' 58" W., ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING. THENCE DEPARTING SAID WEST LINE, RUN S. 88 DEGREES 24' 42" E, PARALLEL WITH AND 100 FEET DISTANT SOUTH, BY RIGHT ANGLE MEASUREMENT, FROM THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 885.35 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF US HIGHWAY NO.1L THENCE S. 14 DEGREES 01' 40" E., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 202.60 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 90 DEGREES 43' 06" A DISTANCE OF 39.58 FEET TO A POINT OF TANGENCY; THENCE S. 76 DEGREES 41' 26" W., A DISTANCE OF 645.53 FEET TO THE POINT OF CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY, ALONG THE ARC OD SAID CURVE, THRU A CENTRAL ANGLE OF 83 DEGREES 20' 01" A DISTANCE OF 87.27 FEET TO A POINT OF REVERSE CURVATURE OF A 490.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 36 DEGREES 40' 31" A DISTANCE OF 313.65 FEET TO A POINT CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 57 DEGREES 25' 02" A DISTANCE OF 60.13 FEET TO A POINT OF TANGENCY ON THE AFORESAID WEST LINE OF GOVERNMENT LOT 1; THENCE N. 00 DEGREES 45' 58" E., ALONG SAID WEST LINE, A DISTANCE OF 69.36 FEET TO THE POINT OF BEGINNING.

TRACT 'C'

A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND RUN S. 00 DEGREES 45' 58" W., ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 69.36 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 00 DEGREES 45' 58" W., ALONG SAID WEST LINE, A DISTANCE OF 83.070 FEET TO A POINT ON A 60.00 FOOT RADIUS CURVE TO THE RIGHT HAVING A TANGENT BEARING OF S. 17 DEGREES 53' 18" W.; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 16 DEGREES 57' 18" A DISTANCE OF 17.76 FEET TO A POINT OF COMPOUND CURVATURE OF A 450.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 33 DEGREES 16' 41" DISTANCE OF 261.41 FEET TO THE POINT OF CURVATURE OF A 25.00 RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 89 DEGREES 16' 54" A DISTANCE OF 38.96 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF US HIGHWAY NO. 1; THENCE N. 14 DEGREES 01' 40" W., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE 130.01 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT HAVING A RADIAL BEARING OF S. 75 DEGREES 58' 20" W.; THENCE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 90 DEGREES 43' 06" A DISTANCE OF 39.58 FEET TO A POINT OF TANGENCY; THENCE S. 76 DEGREES 41' 26" W., A DISTANCE OF 645.53 FEET TO THE POINT OF CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 83 DEGREES 20' 01" A DISTANCE OF 87.27 FEET TO A POINT OF REVERSE CURVATURE OF A 490.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 36 DEGREES 40' 31" A DISTANCE OF 313.65 FEET TO A POINT OF REVERSE CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 57 DEGREES 25' 02" A DISTANCE OF 60.13 FEET TO THE POINT OF BEGINNING.

TRACT 'D'

A PARCEL OF LAND LYING IN THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4, AND RUN S. 00 DEGREES 45' 58" W., ALONG THE EAST LINE OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4, A DISTANCE OF 252.43 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 00 DEGREES 45' 58" W., ALONG SAID EAST LINE, A DISTANCE OF 292.20 FEET; THENCE S. 65 DEGREES 26' 11" W., A DISTANCE OF 16.59 FEET TO A POINT ON THE WEST LINE OF A 15 FOOT WIDE RIGHT OF WAY RECORDED IN DEED BOOK 191, PAGE 315 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S. 00 DEGREES 45' 58" W., A DISTANCE OF 27.67 FEET; THENCE N. 89 DEGREES 14' 02" W., A DISTANCE OF 104.04 FEET; THENCE N. 34 DEGREES 10' 56" W., S DISTANCE OF 47.76 FEET; THENCE N. 36 DEGREES 11' 36" W., A DISTANCE OF 117.79 FEET; THENCE N. 88 DEGREES 23' 32" W., A DISTANCE OF 112.66 FEET; THENCE N. 00 DEGREES 45' 58" E., A DISTANCE OF 32.46 FEET; THENCE N. 88 DEGREES 23' 32" W. A DISTANCE OF 110.52 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY (A 100 FOOT RIGHT OF WAY); THENCE S. 24 DEGREES 38' 41" E., ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 718.87 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE ON ROBERT J. CONLAN BOULEVARD (A 200 FOOT WIDE RIGHT OF WAY); THENCE N. 65 DEGREES 32' 47" E. ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 371.41 FEET TO THE POINT OF CURVATURE OF A 2964.79 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 04 DEGREES 18' 27" A DISTANCE OF 222.90 FEET; THENCE N. 25 DEGREES 19' 03" E., A DISTANCE OF 261.57 FEET; THENCE S. 76 DEGREES 41' 26" W., A DISTANCE OF 51.53 FEET; THENCE N. 25 DEGREES 19' 03" W., A DISTANCE OF 146.41 FET TO THE POINT OF CURVATURE OF A 450.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 33 DEGREES 16' 41" A DISTANCE OF 261.41 FEET TO A POINT OF COMPOUND CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE THRU A CENTRAL ANGLE OF 16 DEGREES 57' 18" A DISTANCE OF 17.76 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THAT CERTAIN NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF THE SUBJECT PROPERTY AS DESCRIBED IN OFFICIAL RECORDS BOOK 1434, PAGE 733, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

TOGETHER WITH THAT CERTAIN NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF THE SUBJECT PROPERTY AS DESCRIBED IN OFFICIAL RECORDS BOOK 1921, PAGE 988, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

TRACT 'E'

THE NORTH 100 FEET OF GOVERNMENT LOT 1, LYING WEST OF US HIGHWAY NO.1; LESS AND EXCEPT THE WEST 544.50 FEET THEREOF, IN SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA.

TACT 'F'

LOTS 1-6, INCLUSIVE, BLOCK A, LESS AND EXCEPT RIGHT OF WAY FOR US HIGHWAY NO. 1; AND LOTS 1-26. INCLUSIVE, BLOCK C, HUNTINGTON TERRACE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE(S) 52, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

EXHIBIT "B"

FAR Property

A portion of the East 1/2 of the Northwest 1/4 of the Northeast 1/4 of Section 14, Township 28 South, Range 37 East, Brevard County, Florida, described as follows: Begin at the intersection of the South right-of-way line of Rowena Drive, lying in Finan Subdivision as recorded in Plat Book 19, Page 128, Public Records of Brevard County, Florida, and the East right-of-way line of the Florida East Coast Railroad, and run East along said South right-of-way line a distance of 290.0 feet to the Point of Beginning of the herein described parcel; thence continue East along said South right-of-way line a distance of 229.90 feet to the East right-of-way of a 15 foot road right-of-way as described in Deed Book 191, Page 315 (now vacated); thence run South 0°50'30" East along said East right-of-way line a distance of 295.31 feet; thence run South 63°49'43" West a distance of 16.60 feet to the West right-of-way line of said vacated right-of-way; thence run South 0°50'30" East along said West right-of-way line a distance of 27.66 feet; thence run South 89°09'30" West a distance of 104.04 feet; thence run North 35°47'24" West a distance of 47.76 feet; thence run North 37°48'04" West a distance of 117.79 feet; thence run West 12.66 feet; thence run North 0°50'30" West a distance of 200.0 feet to the Point of Beginning. Subject parcel contains a 15 ft. vacated right-of-way as described in Official Records Book 2552, Page 2232, and an ingress and egress 25 foot easement as described in Official Records Book 1434, Page 733, and excluding Official Records Book 2552, Page 2236.

Begin at the intersection of the South Right of Way Line of Rowena Drive, lying in Finan Subdivision, recorded in Plat Book 19, Page 128, Public Records of Brevard County, Florida, and the East Right of Way line of the Florida East Coast Railroad, thence run East along said South Right of Way line a distance of 190 feet to the Point of Beginning. From said Point of Beginning, run East along the South Right of Way line of Rowena Drive 100 feet, thence South 0° 50'30" East 200 feet; thence West parallel to the South Right of Way Line of Rowena Drive 100 feet; thence North 0° 50'30" East 200.00 feet to the Point of Beginning, said lying and being in Brevard County, Florida.

also described as

Property located at 2650 Rowena Drive, N.E., Palm Bay, FL 32901, described as Part of East 1/2 of the Northwest 1/4 of the Northeast 1/4, Section 14, Township 28 South, Range 37 East, Brevard County, Florida, more particularly described in Deed recorded in Official Records Book 1519, page 46, Public Records of Brevard County, Florida.

Begin at the intersection of the South right-of-way line of Rowena Drive, lying in Finan Subdivision recorded in Plat Book 19, Page 128, Public Records of Brevard County, Florida, and the East right-of-way line of the Florida East Coast Railroad; thence run East along said South right-of-way line a distance of 190 feet; thence S 00° 50' 30" E a distance of 167.54 feet; thence West a distance of 110.13 feet to the East right-of-way of the Florida East Coast Railroad; thence N 26° 10' 25" W along said right-of-way a distance of 186.66 feet to the Point of Beginning, said land lying in a portion of the East 1/2 of the Northwest 1/4 of the Northeast 1/4 of Section 14, Township 28 South, Range 37 East, Brevard County, Florida.

Lot 3, FINAN SUBDIVISION, as recorded in Plat Book 19, Page 128, Public Records of Brevard County, Florida: and the following described parcel: For a point of commencement begin at the Northeast corner of the Northwest one-quarter of the Northeast one-quarter of Section 14, Township 28 South, Range 37 East, Brevard County, Florida, thence run West a distance of 170.01 feet to the Point of Beginning of the herein described parcel; thence run South a distance of 200.0 feet to the North right of way line of Rowena Drive, thence run West along said right of way line a distance of 110.0 feet, thence run North a distance of 200.0 feet, thence run East a distance of 110.0 feet to the Point of Beginning.

Lots 4 and 5, FINAN SUBDIVISION, according to the plat thereof, recorded in Plat Book 19, Page 128, of the Public Records of Brevard County, Florida;

Tax I.D. Number: 28 37 14 02 4 and 28 37 14 02 5

EXHIBIT "C"

City of Palm Bay, Florida Zoning Map



EXHIBIT E

City of Palm Bay, Florida Zoning Map



EXHIBIT F

Address/Parcel No.	Approval	Permit Description¹
2210 Wilhelmina Ct. NE 28-37-14-00-3.1	Site Plan 204	1982 Site Plan
	Site Plan 652	Site Plan with additional improvements and as-built survey
	Site Plan 285	Development of warehouse to store and manufacture chemicals ²
	87-01818	Installation of ammonia tank
	89-02450	Sidewalk extension
	89-02451	Concrete curb improvements
	89-02452	Installation of tank foundation piers
	90-03868	Install fire walls in buildings 2 and 3
	90-03869	Install circuit for wastewater tank farm pump
	91-00707	Retention wall for outside chemical storage
	91-01641	Affluent tank and containment area
	91-03517	Install new panel and circuits
	91-03518	Install new panel and circuits
	92-03530	Modify building 7 used for processing and adjacent storage areas used for chemical products storage. Chemical products are also stored in the bays adjacent to building 7.
	92-03673	Install concrete wall at building 7
	92-05694	Roof replacement
	92-07249	Install new roof at building 7
	93-02910	Repairs to building 1
	93-03110	
	93-03535	
	93-03776	Replacement and installation of additional signal devices for building 1
	93-05739	
	94-0555	Install ventilation fans in areas where flammable liquids are stored (buildings 3, 5 and 6A-F)
	94-01069	Wire exhaust fans and emergency lights for flammable storage areas (buildings 3, 5 and 6A-F)
	94-2966	Replace circuit breaker
	95-05780	Construct electrical feeder building & expand electrical service
	95-05789	Roof replacement
	99-05299	Modifications to buildings 5 and 8
	06-08143	Wires for lights, pumps and controls and declaring boundary of retention area under existing canopy as Class I, Division I electric hazard zone
	07-0825	Add branch lines (building 3) & sprinklers
	07-0943	Install chain-link fence and gate
	07-06527	Additions/Alterations to buildings 6 & 7
	07-06530	Modify portion of building 9 for shower and dressing area

¹ The information provided is for general description purposes. Refer to the permit documents for the existing use and use, structures or improvements permitted.

² Reference to “chemicals” or “chemical products” includes flammable and combustible chemicals and petroleum products, as referenced in the permitting documents.

	08-04679	Install new main A line piping in storage rooms
	08-04685	Install new lights & fans/blowers for buildings 6 & 7
	09-00088	Install wire for dryer equipment for building 5
	09-00924	Install wiring for explosion proof motor for explosion proof area in building 14
	09-01395	Install wiring for vacuum pump
	10-00225	Relocate on/off switch for XP control and add emergency stop button
	10-02662	Install wire for HP mixer & sensors – XP wiring
	10-04338	Demolition of portion of building 6
	10-04340	Repairs/modifications to building 6
	11-02481	Replacement/removal of electrical components such as panels
	11-03470	Fire alarm
	12-02093	Demolition of building 1 / outside chemical storage area
	19-04400	Install/remove/replace fence
	19-04685	Install HVAC
2601 Rowena Dr. 28-37-14-02-*-4	Site Plan 324	1978 Site Plan
	92-01003	Restore electric to original condition
	92-01352	Repair wall
	92-06015	Increase service to 200 AMP
	93-00512	Install fire suppression system
	94-03740	Re-roof
2650 Rowena Dr. 28-37-14-00-14	Site Plan	Need site plan for this parcel
	87-03585	Barb wire permit
	92-04416	Accessory wall sign
	01-04539	Commercial re-roof permit
	14-01508	Commercial re-roof permit
	20-09207	Remove Non-Load Bearing Wall
	20-11861	Retroactive permit to remove wall
	Resolution 2022-42	CUP for storage of chemical/petroleum products
	PW23-01892	Construction of new driveway
	PW23-1893	Installation and connection of fire lines
2685 Rowena Dr. 28-37-14-00-11	Site Plan	Need site plan for this parcel
	90-02374	Interior work
	90-02375	Electric permit
	92-004417	Accessory wall sign
	96-05329	Commercial interior work
	Site Plan / Permit 06-001411	Renovation of existing building
	06-02633	Install fire alarm
	06-03173 & 06-03280	Add and relocate sprinkler heads
	07-01060	Work on fire alarm system

	23-03174	Replace roll-up door
2600 Rowena Dr. 28-37-14-00-12	Site Plan	Need site plan for this parcel
	06-03971	Install backflow preventer
	07-02850	Chain link fence and gate
	14-05204	Repair metal roof

§ 185.046 HI — HEAVY INDUSTRIAL DISTRICT.

(A) *Intent.* The provisions of this district are intended to apply to an area in close proximity to major transportation facilities and which can serve general manufacturing, storage and distribution needs of the city and region. Lot sizes and other restrictions are intended to minimize adverse impacts to adjacent properties.

(B) *Principal uses and structures:*

- (1) Warehousing.
- (2) Wholesaling.
- (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.
- (11) Public utility equipment and facilities.
- (12) Freight handling and transportation terminals.
- (13) Printing, publishing and similar uses.
- (14) Textile and apparel manufacturing, processing and storage.
- (15) Lumber and wood products manufacturing, processing and storage.
- (16) Public uses.
- (17) Communication towers and facilities.
- (18) Salvage Yards.
- (19) Medical Recycling Facility.
- (20) Self-storage facilities.

(C) *Accessory uses and structures:*

- (1) Customary accessory uses clearly incidental and subordinate to one (1) or more principal used.
- (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) Manufacturing, assembly and processing uses or facilities not specifically provided as a principal use including block and concrete plants, furniture factories, food processing, citrus processing plants, salvage yards, and canneries and similar uses.
- (2) Storage of liquefied petroleum products.
- (3) Fabricated metal products.
- (4) Chemicals and similar products.
- (5) Automotive fuel tanks and pumps subject to the following provisions:
 - (a) Location of facilities. Gasoline/ fuel 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 zoned land. No gasoline/fuel pump, storage tank or ether equipment shall be located closer than one thousand (1,000) feet from any municipal or public supply well.

(b) The use of fuel pumps shall be strictly limited to the owner of the property. Sales to members of the public in general or to any private individual are hereby strictly prohibited.

(c) The proposed use will not constitute a nuisance or hazard because of vehicular traffic movement, delivery of fuel movement, noise or fume generation.

(d) Development and operation of the fuel pumps and attendant storage tanks shall be in compliance with §§176.01 et seq.

(6) Planned industrial developments.

(7) Crematoriums.

(8) 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.

(9) Smoke-producing industries, such as paper mills, rubber mills or regional incinerators, provided the land where such facility is operated shall be located no less than one-half (½) mile from the closest right-of-way line of Interstate 95.

(E) *Prohibited uses and structures:* All uses not specifically or provisionally permitted herein.

(F) *Lot and structure requirements:*

(1) Minimum lot area — thirty thousand (30,000) square feet.

(2) Minimum lot width — one hundred and fifty (150) 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 abating property zoned residential. Landscaping shall be provided in accordance with the landscape requirements of this chapter.

(G) *Lot and structure requirements for Salvage Yards:*

(1) Minimum lot area — five (5) acres.

(2) Minimum lot width — two hundred (200) feet.

(3) Minimum lot depth — three hundred (300) feet.

(4) Maximum building coverage — fifty percent (50%).

(5) Minimum floor area — None.

(6) Maximum height — fifty (50) 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) A six (6) foot high completely opaque masonry wall, or wood fence shall be provided along the entire length of any side or rear property line abating property zoned residential. Landscaping shall be provided in accordance with the landscape requirements of this chapter.

('74 Code, § 25-138) (Ord. 89-08, passed 4-27-89; Ord. 94- 33, passed 6-16-94; Am. Ord. 94- 34, passed 6-16-94; Am. Ord. 94- 51, passed 11-16-94; Am. Ord. 95- 44, passed 11-2-95; Am. Ord. 98- 20, passed 7-16-98; Am. Ord. 98- 31, passed 9-17-98; Am. Ord. 2015-59, passed 12-1-15; Am. Ord. 2016-17, passed 4-21-16; Am. Ord. 2023-17, passed 4-20-23)

IN THE CIRCUIT COURT OF THE 18TH
JUDICIAL CIRCUIT IN AND FOR BREVARD
COUNTY, FLORIDA

CASE NO.: 05-2020-CA-020032-XXXX-XX

FAR RESEARCH, INC., a Delaware
corporation,

Plaintiff,

vs.

CITY OF PALM BAY, a Florida municipal
corporation, and MLEF2-1, LLC, a Florida
limited liability company,

Defendants.

MLEF2-1, LLC, a Florida limited liability
company, individually and in the name of the
State of Florida

Counter-Plaintiff,

vs.

FAR RESEARCH, INC., a Delaware
corporation,

Counter-Defendant.

THIRD AMENDED COMPLAINT

Plaintiff/Counter-Defendant, FAR RESEARCH, INC. (“FAR”), a Delaware corporation,
sues Defendant, the CITY OF PALM BAY (“City”), a Florida municipal corporation, and
Defendant/Counter-Plaintiff, MLEF2-1, LLC (“MLEF”), a Florida limited liability company, and
alleges:

PARTIES, JURISDICTION, AND VENUE

1. This is an action to enforce the statutory rights afforded to Plaintiff/Counter-Defendant pursuant to, Chapter 163, *Florida Statutes*, Chapter 86, *Florida Statutes*, and for declaratory, injunctive, monetary, and supplemental relief.

2. Plaintiff/Counter-Defendant, FAR, is a Delaware corporation with its principal place of business in Palm Bay, Brevard County, Florida.

3. Defendant, City, is a Florida municipal corporation with its principal place of business in Brevard County, Florida.

4. Defendant/Counter-Plaintiff, MLEF, is a Florida limited liability company with its principal place of business in Miami-Dade County, Florida.

5. Venue is proper in Brevard County because Brevard County is where the cause of action accrued.

BACKGROUND

The FAR Property

6. FAR is an International Company owning property at or about 2210 Wilhelmina Court NE, Palm Bay, Florida 32905 (“FAR Property”).

7. FAR purchased the FAR Property in 1983.

8. At the time FAR acquired the FAR Property, the Future Land Use Map (“FLUM”) – which is part of the City of Palm Bay Comprehensive Plan (“Plan”) – designated the FAR Property as reserved for Industrial uses.

9. Uses permitted for land within the Industrial category include manufacturing, warehousing, research and development, institutional uses, and similar uses. Future Land Use Element (FLUE) 1.1I, Plan.

FAR's Chemical Plant Operation

10. Since 1983, FAR has operated a chemical manufacturing plant ("Chemical Plant") on the FAR Property.

11. FAR is a leader in scaling up manufacturing of multi-step chemical synthesis.

12. The Chemical Plant manufactures highly-reactive chemicals used in pharmaceuticals, coatings, adhesives, composites for satellites and electronics, flavors, and fragrances.

13. The property located directly adjacent to the eastern and southern border of the FAR Property is owned by MLEF ("MLEF Property").

The MLEF Property

14. MLEF purchased the MLEF Property in 2019.

15. The MLEF Property is located immediately adjacent to the eastern and southern border of the FAR Property.

16. The MLEF Property address is 3370 Dixie Hwy NE, Palm Bay, Florida 32905.

17. The MLEF Property is located at the corner of Robert J. Conlan Blvd. and U.S. 1.

18. Robert J. Conlan Blvd. and U.S. 1 are two major roadways.

19. The MLEF Property consists of approximately 21.83 acres.

20. At the time MLEF purchased the MLEF Property, the FLUM designated approximately two-thirds (or 13.57 acres) of the MLEF Property as Industrial ("Industrial Portion").

21. The Industrial Portion was located immediately adjacent to the FAR Property.

22. The remainder approximate one-third (or 8.26 acres) of the MLEF Property had an FLUM designation of Commercial ("Commercial Portion").

23. The Commercial Portion was located on the eastern side of the MLEF Property – or was the portion farthest away from the FAR Property.

24. The properties immediately adjacent to the northern, southern, and western borders of the Industrial Portion have FLUM designations of Industrial.

25. The eastern border of the MLEF Property parallels U.S. 1.

26. The MLEF Property has consistently – some time prior to 1983 and through 2019 – had FLUM designations of Industrial and Commercial and zoning designations of Heavy Industrial (“HI”) and Highway Commercial (“HC”), respectively.

27. The existing residential units abutting the northern border of the MLEF Property are non-conforming uses.

28. Based on information made available to FAR, MLEF intends on developing multi-family apartments on the MLEF Property.

29. Multi-family residential use is not authorized in the Commercial or Industrial FLU or the HC or HI zoning districts.

HC and HI Zoning Districts Do Not Allow Residential Use

30. The purpose of the HC district is:

to provide areas within Palm Bay which are deemed to be uniquely suited for the development and maintenance of highway oriented businesses and regional scale facilities, the areas to be primarily located along or near the intersection of major arterials and major transportation nodes. Section 185.044(A), City Code.

31. Section 185.044(B), City Code, lists uses authorized in the HC district which include uses such as retail stores, personal and professional services establishments, churches, schools, day care centers, and public uses.

32. Section 185.044(B), City Code, does not list residential use as a principal, accessory, or conditional use for the HC district. Therefore, residential use is a prohibited use within the HC district. *See* Section 185.044(E)(1), City Code, which lists as prohibited uses “[a]ll uses not specifically or provisionally permitted herein; any use not in keeping with the commercial character of the district.”

33. Section 185.046(A), City Code, states that the provisions of the HI district:

are intended to apply to an area in close proximity to major transportation facilities and which can serve general manufacturing, storage and distribution needs of the city and region.

34. Section 185.046(B), City Code, lists uses authorized in the HI district which include uses such as manufacturing plants, warehousing, public utilities, and communication towers.

35. Section 185.046(B), City Code, does not list residential use as a principal, accessory, or conditional use for the HI district. Therefore, residential use is a prohibited use within the HI district. *See* Section 185.046(E), City Code, defining prohibited use as “[a]ll uses not specifically or provisionally permitted herein.”

36. The Plan does not allow residential use in the Commercial or Industrial FLU.

MLEF’s Petitions the City to Authorize Residential Use

37. Because neither the FLU nor the zoning, as it existed at the time MLEF purchased the MLEF Property, authorized residential use, MLEF was required to amend both the FLU and zoning designation for the MLEF Property.

38. To develop residential units on the MLEF Property, MLEF was required to submit a request to the City to amend the property’s FLUM designation to one that would allow for residential use (“Plan Amendment Request”).

39. Additionally, MLEF was required to submit to the City a request to change the MLEF Property's zoning designation to be consistent with the new FLUM designation ("Rezone Request") (Plan Amendment Request and Rezone Request, collectively, "Requests").

40. Shortly after MLEF purchased the MLEF Property in 2019, MLEF submitted the Plan Amendment Request to amend the FLUM designation for the Industrial Portion and Commercial Portion to Bayfront Mixed Use ("BMU").

41. Concurrent with the Plan Amendment Request, MLEF submitted the Rezone Request to change the zoning designation for the MLEF Property from HI and HC to BMU.

42. The BMU FLU has only one zoning district, BMU.

43. Accordingly, the City cannot approve the Rezoning Request without concurrently approving the Plan Amendment Request. The Requests must both be approved or both be denied.

The Public Hearings to Approve the Requests

44. The City Council conducted three public hearings – on October 3, 2019 ("2019 October Hearing"); February 6, 2020 ("February Hearing"); and October 29, 2020 ("2020 October Hearing") – to consider the Requests (collectively, "Hearings").

45. The City was required, under Sections 163.3184(11) and 166.041(3)(c), Florida Statutes, to conduct two public hearings in consideration of the Plan Amendment and Rezone Requests.

46. The proposed ordinance for the Plan Amendment Request is Ordinance 2019-43 ("Plan Amendment Ordinance") and for the Rezone Request is Ordinance 2019-44 ("Rezone Ordinance") (collectively, "Ordinances").

47. The City Council conducted the 2020 October Hearing after this Court granted FAR's Motion for Partial Summary Judgment, invalidating the Ordinances approved during the

February Hearing, holding that the City violated Sections 163.3184(11) and 166.041(3)(c), *Florida Statutes*, by failing to properly advertise the February Hearing.

48. As a result of the Court's ruling on FAR's Motion for Partial Summary Judgment, the City conducted a hearing on October 6, 2020.

49. The notice for the October 6, 2020, hearing was properly published in a newspaper of general publication, Florida Today, on September 25, 2020.

50. During the October 6, 2020 (2020 October Hearing), the City Council voted to continue the hearing to October 29, 2020.

51. The City never publish a notice in a newspaper of general circulation for the 2020 October Hearing as required under Sections 163.3184(11) and 166.041(3)(c), *Florida Statutes*.

52. For the Plan Amendment, Section 163.3184(11)(b), *Florida Statutes*, requires:

(b) The local governing body shall hold at least two advertised public hearings on the proposed comprehensive plan or plan amendment as follows:

1. The first public hearing shall be held at the transmittal stage. It shall be held on a weekday at least 7 days after the day that the first advertisement is published pursuant to the requirements of chapter 125 or chapter 166.

2. **The second public hearing shall be held at the adoption stage. It shall be held on a weekday at least 5 days after the day that the second advertisement is published pursuant to the requirements of chapter 125 or chapter 166.** [Emphasis added.]

53. For the Plan Amendment and Rezone, Section 166.041(3)(c)2.a., *Florida Statutes*, requires:

The local governing body shall hold two advertised public hearings on the proposed ordinance. At least one hearing shall be held after 5 p.m. on a weekday, unless the local governing body, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. **The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.**

54. Ultimately, the City Council adopted the Ordinances to amend the FLUM from Commercial and Industrial to BMU and rezone the MLEF Property from HC and HI to BMU, during the 2020 October Hearing.

55. The City's approval of the Requests violated the mandates in Chapter 163, *Florida Statutes*, the Plan, and its zoning code.

56. The process utilized by the City to approve the Requests violated Chapter 163, *Florida Statutes* (governing FLUM amendments and rezoning).

Florida Statutes Governing Land Use and Development

57. Chapter 163, *Florida Statutes*, governs the procedures and requirements in preparing, adopting, implementing and amending a local government's comprehensive plan.

58. Section 163.3161, *Florida Statutes*, states in relevant part:

(6) It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that **no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.**

(8) The provisions of this act in their interpretation and application are declared to be the minimum requirements necessary to accomplish the stated intent, purposes, and objectives of this act; to protect human, environmental, social, and economic resources; and **to maintain, through orderly growth and development, the character and stability of present and future land use and development in this state.**

[Emphasis added.]

59. Section 163.3177, *Florida Statutes*, consists of elements required to be part of a local government's comprehensive plan.

60. Section 163.3177(2), *Florida Statutes*, requires that "[t]he several elements of the comprehensive plan shall be consistent."

61. Section 163.3177(6)(a)(3), *Florida Statutes*, requires:

The future land use plan element shall include criteria to be used to:

g. Provide for the compatibility of adjacent land uses.

62. Section 163.3177(6)(a), *Florida States*, requires that the comprehensive plan “shall” include a future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industrial . . . and other categories of the public and private uses of land.” This element “shall establish the long-term end toward which land use programs and activities are ultimately directed.” *Id.*

63. Section 163.3177(6)(a)(1), *Florida Statutes*, requires:

Each future land use category must be defined in terms of uses included, and must include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives.

64. Section 163.3177(6)(a)(2), *Florida Statutes*, requires:

The future land use plan and plan amendments **shall be based upon surveys, studies, and data regarding the area**, as applicable, including:

- a. The amount of land required to accommodate anticipated growth.
- b. The projected permanent and seasonal population of the area.
- c. The character of undeveloped land.
- d. The availability of water supplies, public facilities, and services.
- e. The need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community.
- f. The compatibility of uses on lands adjacent to or closely proximate to military installations.

g. The compatibility of uses on lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02.

h. The discouragement of urban sprawl.

i. The need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy.

j. The need to modify land uses and development patterns within antiquated subdivisions.

[Emphasis added.]

65. Section 163.3177(6)(a)(8), *Florida Statutes*, requires the FLUM amendment be based upon:

a. An analysis of the availability of facilities and services.

b. An analysis of the suitability of the plan amendment for its proposed use considering the character of the undeveloped land, soils, topography, natural resources, and historic resources on site.

c. An analysis of the minimum amount of land needed to achieve the goals and requirements of this section.

66. Section 163.3177(6)(a)(9), *Florida Statutes*, requires:

a. The primary indicators that a plan or plan amendment does not discourage the proliferation of urban sprawl are listed below. The evaluation of the presence of these indicators shall consist of an analysis of the plan or plan amendment within the context of features and characteristics unique to each locality in order to determine whether the plan or plan amendment:

(XI) Fails to encourage a functional mix of uses.

b. The future land use element or plan amendment shall be determined to discourage the proliferation of urban sprawl if it incorporates a development pattern or urban form that achieves four or more of the following:

(III) Promotes walkable and connected communities and provides for compact development and a mix of uses at densities and intensities that will support a range of housing choices and a multimodal transportation system, including pedestrian, bicycle, and transit, if available.

67. The process to amend an existing comprehensive is contained in Section 163.3184, *Florida Statutes*.

68. The plan amendment process under Section 163.3184, *Florida Statutes*, generally involves two phases, commonly known as the “Transmittal Phase” and “Adoption Phase.”

69. For the Transmittal Phase, Section 163.3184(3)(b)1, *Florida Statutes*, requires:

The local government, **after the initial public hearing** held pursuant to subsection (11), **shall transmit** within 10 working days **the amendment or amendments and appropriate supporting data and analyses to the reviewing agencies**. The local governing body shall also transmit a copy of the amendments and supporting data and analyses to any other local government or governmental agency that has filed a written request with the governing body. [Emphasis added.]

70. Section 163.3184(1)(c), *Florida Statutes*, defines the term “reviewing agencies,” to include, “[i]n the case of municipal plans and plan amendments, the county in which the municipality is located.”

71. The purpose of the transmittal requirement is to provide the reviewing agencies with an opportunity to provide comments regarding the proposed amendments. See Section 163.3184(3)(b)(2), *Florida Statutes*.

72. For the Adoption Phase, Section 163.3184(3)(c)(2), *Florida Statutes*, requires:

All comprehensive plan amendments adopted by the governing body, along with the supporting data and analysis, **shall be transmitted within 10 working days after the second public hearing to the state land planning agency** and any other agency or local government that provided timely comments under subparagraph (b)2. [Emphasis added.]

73. Per Section 163.3184(3)(c)(3), *Florida Statutes*:

The state land planning agency shall notify the local government of any deficiencies within 5 working days after receipt of an amendment package. For purposes of

completeness, an amendment shall be deemed complete if it contains a full, executed copy of the adoption ordinance or ordinances; in the case of a text amendment, a full copy of the amended language in legislative format with new words inserted in the text underlined, and words deleted stricken with hyphens; in the case of a future land use map amendment, a copy of the future land use map clearly depicting the parcel, its existing future land use designation, and its adopted designation; and a copy of any data and analyses the local government deems appropriate.

74. Per Section 163.3184(3)(c)4, *Florida Statutes*:

An amendment adopted under this paragraph does not become effective until 31 days after the state land planning agency notifies the local government that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the state land planning agency or the Administration Commission enters a final order determining the adopted amendment to be in compliance. [Emphasis added.]

**Approval of the Plan Amendment Request Violates
Sections 163.3161, 163.3177, and 163.3184 Florida Statutes**

75. The City adopted the Plan “to provide compliance with Chapter 163 Florida Statutes [sic].” P.1, Plan.

76. The City’s Plan itself fails to contain any criteria to be used to provide for the compatibility of adjacent land uses, as required under Section 163.3177(6)(a)(3)g, *Florida Statutes*.

77. The BMU land use as provided in FLU-1.1I, Plan, is inconsistent with the adoption Ordinance as transmitted to the Florida Department of Economic Opportunity (“FEDO”) as it fails to contain the minimum residential density (8 units per acre).¹

78. Sections 163.3161 and 163.3177, *Florida Statutes*, require land development within the City’s limits to be consistent with the Plan.

¹ Kathy also references the fact that the adoption of the BMU FLU, the City failed to provide surveys and data as statutorily required. I did not include this because I believe we are time-barred challenge the validity of Ordinance 2015-54, adopting the BMU FLU. However, I added language regarding the inconsistency because in that case, what we are challenging is the Comp Plan provision in the Com Plan itself, which was never properly adopted.

79. In adopting the Plan Amendment for the MLEF Property, the City failed to provide any data or analysis to support the amendment to BMU during the transmittal phase as required under Section 163.3177(6)(a)(8), *Florida Statutes*.

80. The Plan Amendment violates Section 163.3177(6)(a)(9), *Florida Statutes*, discouraging urban sprawl.

81. Allowing residential development adjacent to existing industrial uses does not encourage a “functional” mix of uses. It fails to discourage urban sprawl as it does not promote walkable and connected communities, or support the use of individual alternative modes of transportation, such as walking and biking, in the area.

82. There are no supporting features or functional integration between the residential and industrial uses.

83. The City failed to comply with the requirements of Section 163.3184(3)(b)1, *Florida Statutes*.

84. Brevard County is a “reviewing agency,” as defined by Section 163.3184(1)(c)10, *Florida Statutes*.

85. The City did not transmit a copy of the Plan Amendment to Brevard County during the Transmittal Phase.

86. The City did not transmit a copy of the Plan Amendment to Brevard County during the Adoption Phase.

87. The City failed to comply with the transmittal requirements during the Adoption Phase as provided under Section 163.3184(3)(c)4, *Florida Statutes*, which requires the comprehensive plan amendment adopted by the governing body and supporting data and analysis

(“Adoption Package”) “shall be transmitted within 10 working days after the second public hearing to the state land planning agency,” or the Florida Department of Economic Opportunity ("FDEO").

88. The City never transmitted the Adoption Package, as required under Section 163.3184(3)(c)(4), *Florida Statutes*, after the 2020 October Hearing.

89. The Plan Amendment Ordinance includes four site-specific conditions.

90. The Plan Amendment is inconsistent with numerous Plan provisions.

91. The City did not pursue a text amendment to add new policies under Objective FLU-8.3, Plan, to incorporate the four site-specific conditions.

92. Per Objective FLU-8.3, Plan, “The City Council shall provide for specific conditions on Future Land Use Map Amendment cases, where deemed appropriate by City Council, with these specific conditions included as policies under this objective.”

93. Per Policy FLU-1.1I, Plan, “. . . Individual future land use map amendments may establish stricter intensity standards as conditions of approval and shall be incorporated into a specific policy under Objective FLU-8.3.”

94. Policy FLU-1.1I, Plan, provides that in the BMU future land use category “Commercial Uses shall not exceed 20% and Residential uses shall not exceed 80%.”

95. Section 185.058, LDR, governing the BMU zoning district, requires a “minimum” of 20% Commercial uses.

96. Policy FLU-1.1I and Section 185.058, LDR, are in conflict with each other as FLU-1.1I, Plan, limits Commercial Uses to a maximum of 20% whereas Section 185.058, LDR, requires a minimum of 20% Commercial Uses.

97. The Plan Amendment violates Plan provisions related to non-conforming uses.

98. The City relies on non-conforming residences located to the north of the MLEF Property to justify MLEF's mostly residential development stating, "The proposed land use amendment is compatible with the surrounding land uses by providing a transition between the commercial and industrial land uses by providing a high quality diversified living environment."

99. Placement of high-density residential development to allow for a transition between industrial uses to the non-conforming residential uses is to expand these non-conforming uses in violation of Policy FLU1.1H, Plan, prohibiting "[e]xpansion of land uses which are inconsistent with the Future Land Use Plan"; and Policy FLU-1.1G, Plan, stating, "[r]enovation of land uses which are inconsistent with the Future Land Use Plan shall be discouraged by provisions in the Land Development Regulations."

100. The Plan Amendment violates Plan provisions related to the prevention of residential uses to be located adjacent to industrial uses:

Policy 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.

Objective FLU-2.3 Prevent incompatible land uses from locating in residential areas in order to promote neighborhood stability and prevent deterioration.

Policy FLU-2.3A The Land Development Regulations shall continue to contain provisions to ensure that land uses surrounded by and/or abutting residential areas are not in conflict with the scale, intensity, density and character of the residential area.

Policy FLU-2.3B The Land Development Regulations shall continue to contain provisions to ensure that access to future high-density development or non-residential uses shall not be through low density residential areas.

Policy FLU-4.1J The Land Development Regulations shall contain provisions to prohibit industrial traffic through predominantly residential areas.

101. The Plan specifically prohibits the City from approving the Plan Amendment Request, which allowed residential uses to be developed on the MLEF Property, encroaching upon surrounding Industrial developments. Per Policy FLU-4.1E, “[t]he Land Development Regulations shall include provisions to prevent encroachment of non-industrial uses in areas reserved for industrial development.”

102. The Plan specifically prohibits the City from approving the Plan Amendment Request, which converted approximately 2/3 of MLEF Property (or 13.57 acres) from Industrial to BMU, reducing the overall Industrial acreage in the City. Per Objective FLU-4.1 of the Plan, the City is required to “provide an additional 150 acres of industrial land in areas serviced by all utilities and compatible with adjoining development.”

103. The Plan and *Florida Statutes* require Plan amendments to be compatible with the surrounding area.

104. Section 163.3164(9), *Florida Statutes*, defines “Compatibility” as:

a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly by another use or condition.

105. Objective FLU-2.3, Plan, prohibits “incompatible land uses from locating in residential areas in order to promote neighborhood stability and prevent deterioration.”

106. Industrial uses are incompatible with residential uses.

107. The Plan Amendment does not allow incompatible land uses to be located adjacent to residential uses which, per FLU-2.3, Plan, create instability and deterioration and therefore, violate Plan provisions related to the creation of stable neighborhoods such as:

Goal FLU-1 Ensure a high quality, diversified living environment through the efficient distribution of compatible land uses.

Goal FLU-2 Provide for and maintain viable neighborhoods and residential development meet the existing and future needs of the residents of Palm Bay.

Policy FLU-2.3A The Land Development Regulations shall continue to contain provisions to ensure that land uses surrounded by and/or abutting residential areas are not in conflict with the scale, intensity, density and character of the residential area.

Goal FLU-8 A diverse and self-sustaining pattern of land uses which support the present and future population of the City of Palm Bay.

108. Amending the FLUM to accommodate a project based on pedestrian and bike path interconnectivity to land located to the south (the Village subdistrict as discussed below) without plans for sidewalk development and for a project located as far north from the Village subdistrict as possible is inefficient and inconsistent with several Plan provisions:

Goal FLU-1 Ensure a high quality, diversified living environment through the *efficient* distribution of compatible land uses. [Emphasis added.]

Policy FLU-5.1F The City shall plan and design community services and facilities to minimize cost, maximize *efficiency*, and mitigate impacts on the natural environment and nearby properties. [Emphasis added.]

109. The Plan Amendment to accommodate the residential development violates several Plan provisions intended for the protection and accommodation of students:

Policy FLU-5.2B By October 2001, develop and incorporate into the Land Development Regulations provisions which discourage land uses that would interfere with the safe and efficient transportation of students.

Policy FLU-5.2C By October 2001, develop and incorporate into the Land Development Regulations provisions which encourage the siting of elementary schools in locations which are within walking distance of the neighborhoods which they will serve.

110. The Plan Amendment to accommodate residential development immediately adjacent to U.S. 1 without making improvements to the roadway or consideration of data regarding traffic safety is inconsistent with Objective TCE-1.2, Plan, which requires the City to “Improve

the safety of the transportation system through a reduction in the rate of accidents on the public roadway system.”

**Approval of the Plan Amendment Request Without Competent Substantial Evidence
Violates Sections 163.3184 and 163.3177(6)(a)2, Florida Statutes**

111. Section 163.3177(6)(a)2, *Florida Statutes*, requires plan amendments to “be based upon surveys, studies, and data regarding the area. . .”

112. Section 163.3184(3)(b)1, *Florida Statutes*, requires the data and studies in support of plan amendments to be transmitted to the reviewing agencies.

113. The Plan Amendment was never transmitted during the Transmittal and Adoption Phases to Brevard County.

114. The Plan Amendment transmitted to the FDEO during the Transmittal Phase failed to include the data and studies as required under Sections 163.3184(3)(b)1, *Florida Statutes*.

115. Florida law requires an applicant requesting an amendment to a comprehensive plan or a rezoning provide competent substantial evidence to show that the request is consistent with the comprehensive plan, zoning code, and the allowed uses are compatible with existing uses in the surrounding area (“Existing Uses”).

116. The Plan Amendment and Rezone Requests did not contain any competent substantial evidence to support either Requests.

117. MLEF failed to provide any competent substantial evidence during any of the Hearings.

118. Jake Wise represented MLEF during the Hearings.

119. During the 2019 October Hearing, Wise stated that the mixed use would serve as a “great kind of transitional area” – transitioning from an industrial use – in which the adjacent

neighbor, FAR, is operating a chemical plant, and surrounding land consisting mainly of land reserved for industrial uses – to non-conforming residential uses to the north.

120. Wise did not provide any data to support the “transition” statement.

121. The City staff reports – recommending approval of the Plan Amendment and Rezoning Requests – failed to contain any competent substantial evidence to support the approvals.

122. City staff failed to provide any competent substantial evidence during any of the Hearings to support the Requests.

123. The City Council failed to consider any “analysis” required under Section 163.3177, *Florida Statutes*, prior to approving the Requests.

124. The City Council failed to make any findings of fact to justify their approval of the Requests.

125. The City Council’s approval of the Requests were not “based upon relevant and appropriate data” as none was provided – not in the application, not in the staff report, and not during any of the Hearings.

126. With respect to the Plan Amendment Request, the City did not cite to any data or evidence in support of the Request as required under Section 163.3177, *Florida Statutes*.

127. The City did not submit any competent substantial evidence to support consistency with any of the Plan provisions listed above.

128. Instead, the City - per the Staff Report - merely expressed the opinion that the Plan Amendment Request should be granted because “[t]he proposed land use amendment would be considered compatible with the surrounding land uses by providing a transition between the Commercial and Industrial land uses by, providing a high-quality diversified living environment.”

129. Other than the conclusory statement listed in the immediately preceding paragraph, the City did not provide any competent substantial evidence to support the conclusion that the BMU FLU – consisting of 80% residential and 20% commercial – for the MLEF Property, which is surrounded to the north, west, and south by Industrial FLU is consistent with Policy FLU-4.1F, Plan, requiring the City “Develop and incorporate into the Land Development Regulations criteria for mixed use development which includes industrial uses.”

130. The City Council approved the Plan Amendment Request without any data or studies in consideration of the project’s impact on evacuation routes violates Policy FLU-2.2E, Plan, which requires the City:

Assess the impact of new residential development upon hurricane evacuation times prior to approval of such developments and require the developer to mitigate projected reductions in these evacuation times.

131. The Plan Amendment failed to include a text amendment to the Plan to incorporate the site specific conditions as required under FLU-1.1I and FLU-8.3, Plan.

132. The Rezoning was based on Section 185.058, LDR, which is invalid as it is inconsistent with Policy FLU-1.1I, Plan, governing the BMU future land use designation because Policy FLU-1.1I, Plan, limits Commercial Uses to a maximum of 20% whereas Section 185.058, LDR, requires a minimum 20% Commercial Uses.

Bayfront Community Redevelopment District (“BCRD”) Historical Background

133. The City Council adopted Resolution 95-72, on December 21, 1995, finding certain area – the Bayfront Community Redevelopment Area (“BCRA”) - in the City as a “blighted area,” as defined in Section 163.340(8), *Florida Statutes*.

134. The BCRD comprises the entirety of the BCRA.

135. The City Council adopted Resolution 99-20, on June 17, 1999, creating the Bayfront Community Redevelopment Agency (“Agency”) and declaring itself as the Agency. Section 3 of the Resolution states, “The powers of the Community Redevelopment Agency shall be enacted in accordance with and as contemplated by the Redevelopment Act.”

136. The City Council adopted Resolution 99-21, on June 17, 1999, approving the Bayfront Community Redevelopment Plan (“BCRD Plan”).

137. The City Council adopted Resolution 99-19, on June 28, 1999, creating a redevelopment trust fund and appointing itself, as the governing body of the Agency, trustee of the trust fund.

138. The City Council could not have been the governing body of the Agency until proper delegation is given by the Brevard County Board of County Commissioners (“BCC”).

139. Brevard County, Florida, is a Charter County.

140. Per Section 163.410, *Florida Statutes*, “In any county which has adopted a home rule charter, the powers conferred by this part shall be exercised exclusively by the governing body of any such county.”

141. Section 163.370(2), *Florida Statutes*, provides local governments with powers “necessary or convenient to carry out and effectuate the purposes and provisions of this part,” which includes, per Section 163.370(2)(1), *Florida Statutes*, the power to “zone or rezone.”

142. Section 163.358, *Florida Statutes*, authorizes the City Council to delegate the powers listed in Section 163.370(2), *Florida Statutes*, to the Agency. Section 163.358, *Florida Statutes*, states in relevant part:

Each county and municipality has all powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including those powers granted under s. 163.370. A county or municipality may

delegate such powers to a community redevelopment agency created under s. 163.356. . . .

143. The BCC adopted Resolution 99-111 (“Delegation Resolution”), delegating all of the powers set forth in Part III, Chapter 163, *Florida Statutes*, to the City for the creation and operation of the Agency.

144. Section 1(z) of the Delegation Resolution delegated to the City Council the power to “zone and rezone.”

145. The City Council adopted Ordinance 2000-38 on August 17, 2000, removing itself as trustee of the BCRA Trust Fund and appointed the Agency as the trustee.

146. The City Council adopted Ordinance 2000-39 (“Agency Ordinance”) on August 17, 2000, creating the Agency (after being properly delegated authority by the BCC) and appointed a seven member board of commissioners as the Agency.

147. The Agency consisted of the five City Council Members and two at-large members.

148. Section 5 of the Agency Ordinance delegated “[a]ll rights, powers, duties, privileges, and immunities vested in a community redevelopment agency,” which would include the power to “zone or rezone” property per Section 163.370(2)(1), *Florida Statutes*, to the Agency.

149. The Agency Ordinance contains language incorporating it into the City’s Land Development Code (“LDC”). Subsection 5A of the Ordinance is incorporated into the City’s LDC as Section 52.004.

150. Based on the Delegation Resolution and Agency Ordinance, the authority to zone and rezone land within the BCRD belonged to the BCRA.

151. The MLEF and FAR Properties are located within the BCRD.

152. The City Council does not have authority to rezone the MLEF Property in violation of the Delegation Resolution or Agency Ordinance.

The 2010 BCRD Plan Was Not Properly Adopted And Has No Force And Effect

153. Section 163.360(c)(4), *Florida Statutes*, sets out the procedures the City is required to follow in adopting the 2010 BCRD Plan.

154. Section 163.360(2), *Florida Statutes*, requires the 2010 BCRD Plan to “[c]onform to the comprehensive plan for the county or municipality as prepared by the local planning agency under the Community Planning Act.”

155. Section 163.360(4), *Florida Statutes*, sets out the procedures the City is to follow in adopting the 2010 BCRD Plan.

156. Section 163.360(4), *Florida Statutes*, states in relevant part:

Prior to its consideration of a community redevelopment plan, the community redevelopment agency ***shall submit such plan to the local planning agency of the county or municipality for review*** and recommendations as to its conformity with the comprehensive plan for the development of the county or municipality as a whole. The local planning agency shall submit its written recommendations with respect to the conformity of the proposed community redevelopment plan to the community redevelopment agency within 60 days after receipt of the plan for review. Upon receipt of the recommendations of the local planning agency, or, if no recommendations are received within such 60 days, then without such recommendations, the community redevelopment agency may proceed with its consideration of the proposed community redevelopment plan. Emphasis added.

157. The City Council adopted the 2010 BCRD Plan via Resolution 2010-07 (“BCRD Plan Resolution”).

158. The 2010 BCRD Plan is invalid as it is not consistent with the City’s Comprehensive Plan in violation of the consistency requirement of Section 163.360(2), *Florida Statutes*.

159. According to the BCRD Plan Resolution, no finding of consistency was made by the City Council.

160. The 2010 BCRD Plan is invalid as it was not adopted pursuant to the requirements of Section 163.360(4), *Florida Statutes*.

161. Neither the BCRA nor the City Council ever provided the proposed 2010 BCRD Plan to the Planning and Zoning Board for review to ensure Plan consistency as required under Section 163.360(4), *Florida Statutes*.

162. The 2010 BCRD Plan was not adopted pursuant to the requirements of Section 163.360, *Florida Statutes*, and is therefore, invalid.

**The Comprehensive Plan Amendment to the BMU FLU and Zoning Violates the
Delegation Resolution and Agency Ordinance**

163. The 2010 BCRD Plan consists of five subdistricts.

164. The MLEF Property is located within the Riverview subdistrict.

165. The Village subdistrict, located to the south of the Riverview subdistrict, is also another subdistrict within the BCRD.

166. According to the 2010 BCRD Plan, Section 4.4, the BMU FLU was adopted for a majority of the Village subdistrict and areas adjacent to the Village subdistrict.

167. The BMU FLU was not intended for the remainder of the BCRD.

168. In 2015, the City Council adopted Ordinances 2015-54 and 2015-55, which adopted a new BMU FLU and Zoning District respectively, and amended the current BMU FLU and zoning district to BMU Village (“BMUV”) FLU and zoning district.

169. The new BMU FLU and zoning district still applied to the BCRD but were prohibited from being applied to the Village subdistrict.

170. According to the minutes for the adoption hearing on December 1, 2015, Mike McGarry, then-member of the Agency, stated in relevant part:

the proposal was presented to the BCRA in October. The BCRA voted to table the item in order to schedule a workshop and review input from the public. The workshop was not scheduled and staff submitted the application with the BCRA as the applicant. The BCRA did not authorize submission of the application. At the board meeting in November, the BCRA directed staff to schedule the workshop as requested.

171. The City Council adopted Ordinance 2015-55, amending the BMU zoning district for areas within the BCRD, without the approval or recommendation of the Agency.

172. The City Council's approval of Ordinance 2015-55 without the Agency's approval or recommendation violates the Delegation Resolution and Agency Ordinance.

173. The City Council's adoption of Ordinance 2015-54 and 2015-55 effectively changed the development scheme contemplated in the previously adopted 2010 BCRD Plan.

174. To the extent the 2010 BCRD Plan is valid, the 2010 BCRD Plan was rendered invalid by being inconsistent with the newly revised Plan.

The BCRD Plans Were Never Incorporated Into the Comprehensive Plan.

175. The City Council adopted the BCRD Plan in 1999 via Resolution 99-21.

176. The City Council adopted an amendment to the BCRD Plan in 2008 via Resolution 2000-73.

177. The City Council adopted the 2010 BCRD Plan in 2010 via the BCRD Plan Resolution (all renditions of the BCRD Plan listed above are collectively, "BCRD Plans").

178. Amendments to the Comprehensive Plan must be made pursuant to the procedures set out in Part II, Chapter 163, *Florida Statutes*.

179. One of the procedural requirements for amending the Comprehensive Plan is set out in Section 163.3184(11), *Florida Statutes*, which requires the amendment be adopted by Ordinance.

180. Because the BCRD Plans were adopted by Resolution and not by Ordinance, the BCRD Plans could not have been made a part of the Comprehensive Plan.

181. The BCRD Plans cannot be the driving force in consideration of the Requests.

FAR's Inconsistent and Incompatible Evidence

182. FAR opposed the Plan Amendment Request and Rezone Request at each of the Hearings.

183. Even though the burden was on MLEF, the applicant, to submit competent substantial evidence in support of the Requests, FAR presented ample competent substantial evidence to show that the Plan Amendment Request and Rezone Request were inconsistent with the Plan and were not compatible with the Existing Uses.

184. The Requests propose the MLEF Property be used for mostly residential purposes with a small mix of commercial use.

185. Residential uses are not compatible with industrial uses.

186. Residential multi-family – apartments – accommodating families, kids, elderly, and pets are not compatible with a chemical production plant.

187. The location of the MLEF Property is not conducive for pedestrian traffic.

188. The location of the MLEF Property is not conducive for young kids to walk to a bus stop or to school.

189. The constant traffic and noise on, coming to, and going from the immediately adjacent industrial uses is not compatible with residential neighborhoods.

COUNT I-INCONSISTENCY CHALLENGE PER SECTION 163.3215, F.S.

190. FAR incorporates allegations in paragraphs 1- 189 above.

191. FAR is an “aggrieved or adversely affected party.” Section 163.3215(2), *Florida Statutes*; see also Ch. 2002-296 Section 10, Laws of Florida (expanding the definition to include the landowners, developer or applicant for a development order); cf *Parker v. Leon County*, 627 So. 2d 476 (Fla 1993).

192. The City’s approval of the Plan Amendment Request and Rezone Request are “development order(s)” under Section 163.3215(1), *Florida Statutes*. See Sections 163.3164(15) and (16), *Florida Statutes*.

193. Section 163.3194(1)(a), *Florida Statutes*, states:

After a comprehensive plan . . . has been adopted . . . all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan . . . shall be consistent with such plan.

194. Section 163.3215(3), *Florida Statutes*, provides the means by which an aggrieved or adversely affected party may challenge a development order approval that is inconsistent with the adopted comprehensive plan.

195. The City’s approval of the Plan Amendment Request and Rezone Request adversely affects FAR because residential uses developed immediately adjacent to FAR’s Chemical Plant will potentially increase FAR’s liability for personal and property damage.

196. The City’s approval of the Plan Amendment Request and Rezone adversely affects FAR because residential uses developed immediately adjacent to FAR’s Chemical Plant will cause the FAR Property to become incompatible with the area so that FAR’s renovation or reconstruction of its property may be denied as incompatible with the “surrounding residential uses.” See Policy FLU-1.1H, Plan, “Renovation of land uses which are inconsistent with the Future Land Use Plan shall be discouraged by provisions in the Land Development Regulations.”

197. The Plan Amendment and Rezone approval - allowing for the development of residential units on land currently designated as Industrial – are incompatible with the Plan and inconsistent with the Plan provisions listed above.

198. The Plan Amendment Request and Rezoning Request rely on Policy FLU-1.1I, Plan, which is invalid in and of itself as the BMU residential density requirement contained under this provision is inconsistent with Ordinance 2015-54, the Ordinance establishing the current BMU future land use development standards.

199. The Rezoning was based on Section 185.058, LDC, which is invalid as it is inconsistent with the limitations on the percentage mix of Residential Uses and Commercial Uses required in the development standards of the BMU future land use in Policy FLU-1.1I.

200. This claim is timely filed. *See 5220 Biscayne Blvd., LLC v. Stebbins*, 937 So. 2d 1189 (Fla. 3d DCA 2006).

WHEREFORE, FAR requests this Court declare the City’s approval of the Plan Amendment Request and Rezone Request are inconsistent with the City’s Code and Comprehensive Plan; provide injunctive relief consistent with the declaration; grant FAR its reasonable attorney’s fees as authorized under Section 163.3215(8)(c), *Florida Statutes*; and grant any other relief the Court deems just and proper.

COUNT II-VIOLATION OF SECTION 163.3177, FLORIDA STATUTES

201. FAR incorporates allegations in paragraphs 1- 189 above.

202. Section 163.3177(6)(a)2, *Florida Statutes*, requires plan amendments to “be based upon surveys, studies, and data regarding the area. . .”

203. Florida law requires an applicant requesting an amendment to a comprehensive plan or a rezoning provide competent substantial evidence to show that the request is consistent with the comprehensive plan, zoning code, and the allowed uses are compatible with the Existing Uses.

204. The City Council approved the Plan Amendment Request without requiring MLEF to provide competent substantial evidence to show that the Request is consistent with the Plan and compatible with Existing Uses.

205. The City Council approved the Plan Amendment Request without consideration of any surveys, studies, and data regarding the area as required by Section 163.3177(6)(a)(2), *Florida Statutes*.

206. The Plan Amendment violated the requirements under Section 163.3177(6)(a)(8), *Florida Statutes* as it was not based on any analyses.

207. The Plan Amendment violated the requirements under Section 163.3177(6)(a)(9), *Florida Statutes*, as it does not discourage urban sprawl.

208. Accordingly, the City's action in adopting the ordinance to revise the FLU designation for the MLEF Property is ultra vires and therefore, is void ab initio and is of no force and effect.

WHEREFORE, FAR requests this Court declare the City's approval of the Plan Amendment Request is void ab initio and is of no force and effect; provide injunctive relief consistent with the declaration; and grant any other relief the Court deems just and proper.

COUNT III – VIOLATION OF SECTION 163.3184, FLORIDA STATUTES

209. FAR incorporates allegations in paragraphs 1-189 above.

210. Section 163.3184, *Florida Statutes*, regulates the procedures the City is required to follow in processing the Plan Amendment.

211. Section 163.3184(3)(b)1, *Florida Statutes*, requires the City to transmit a copy of the Plan Amendment to reviewing agencies during the Transmittal Phase.

212. Section 163.3184(1)(c), *Florida Statutes*, defines “reviewing agencies” to include the “county in which the municipality is located.”

213. The City is located within Brevard County.

214. The City is statutorily required to submit the Plan Amendment to Brevard County.

215. The City did not transmit the Plan Amendment to Brevard County during the Transmittal and Adoption Phases.

216. Therefore, the Plan Amendment failed to comply with the procedures provided under Section 163.3184(3)(b)1, *Florida Statutes*.

217. Section 163.3184(3)(c)2, *Florida Statutes*, requires the City to transmit the Adoption Package to the FDEO within 10 days from the adoption hearing or 2020 October Hearing.

218. The City never transmitted the Adoption Package to the FDEO after the 2020 October Hearing as required under Section 163.3184(3)(c)2, *Florida Statutes*.

219. The failure to transmit the Adoption Package rendered Ordinance 2019-43 invalid as the 10 day transmittal timeframe has passed. See also, Section 163.3184(3)(c)4, *Florida Statutes*, stating in relevant part, “[a]n amendment adopted under this paragraph does not become effective until 31 days after the state land planning agency [referring to the FDEO] notifies the local government that the plan amendment package is complete.”

220. The City’s failure to transmit the Plan Amendment to Brevard County and transmit the Adoption Package to the FDEO violates the requirements under Section 163.3184, *Florida Statutes*, and is therefore, ultra vires, of no force and effect, and void ab initio.

WHEREFORE, FAR requests this Court declare the City's approval of the Plan Amendment Request is void ab initio and is of no force and effect; provide injunctive relief consistent with the declaration; and grant any other relief the Court deems just and proper.

COUNT IV – VIOLATION OF NOTICE REQUIREMENT

221. FAR incorporates allegations in paragraphs 1- 189 above.

222. Section 163.3184(11), *Florida Statutes*, requires the City to conduct two duly noticed public hearings in consideration of the Plan Amendment Request as provided in Chapter 166, Florida Statutes.

223. Section 166.041(3)(a), *Florida Statutes*, requires the City to conduct two public hearings prior to adopting any ordinances.

224. Section 166.041(3)(c), Florida Statutes, contains the specific notice requirements applicable to the Plan Amendment Request and Rezone Request.

225. Per Section 166.041(3)(c)2.a., Florida Statutes, "The second hearing shall be held at least 10 days after the first hearing and **shall** be advertised at least 5 days prior to the public hearing." [Emphasis added.]

226. Prior to conducting the second hearing on the Plan Amendment Request and Rezone Request, the City published a hearing notice in a newspaper of general circulation, Florida Today, advertising the proposed adoption of the Ordinances during the hearing scheduled for October 6, 2020.

227. During the October 6, 2020, hearing, the City Council voted to continue the hearing until the 2020 October Hearing.

228. The City never published any notice in a newspaper of general circulation for the 2020 October Hearing.

229. The City's failure to publish notice in a newspaper of general circulation notifying the public of the hearing to be conducted on October 29, 2020, violates the requirements of Sections 163.3184(11) and 166.041(3)(c), *Florida Statutes*, and therefore, the Ordinances are of no force and effect, and are void ab initio. See Tesla v. Town of Jupiter Island, --So. 3d -- (Fla. 4th DCA 2023)

WHEREFORE, FAR requests this Court declare the City's approval of the Plan Amendment and Rezone Ordinances are void ab initio and are of no force and effect; provide injunctive relief consistent with the declaration; and grant any other relief the Court deems just and proper.

**COUNT V – REZONING MLEF PROPERTY VIOLATES
DELEGATION AND AGENCY ORDINANCES**

230. FAR incorporates allegations in paragraphs 1- 189 above.

231. The Delegation Resolution delegated to the City Council the authority to create the Agency, adopt the BCRD Plan, and the powers listed in Section 163.370(2)(1), *Florida Statutes*, which included the power to “zone and rezone.”

232. The Agency Ordinance, pursuant to the authority under Section 163.358, *Florida Statutes*, delegated to the Agency all authority delegable pursuant to Part III, *Florida Statutes*, which includes per Section 163.370(2)(1), *Florida Statutes*, the power to “zone and rezone.”

233. Accordingly, the City Council was without Authority to zone or rezone land within the BCRD.

234. The MLEF Property is located within the BCRD.

235. Pursuant to the Delegation Resolution and Agency Ordinance, the rezoning of the MLEF Property must be approved by the BCRA.

236. The BCRA did not approve the rezoning of the MLEF Property.

237. The City Council's action in approving the Rezoning Request violated the Delegation Resolution and Agency Ordinance and is therefore, ultra vires, is of no force and effect, and is void ab initio.

WHEREFORE, FAR requests this Court declare the City's approval of the MLEF Property Rezoning Request is void ab initio and is of no force and effect; provide injunctive relief consistent with the declaration; and grant any other relief the Court deems just and proper.

**COUNT VI- ADOPTION OF ORDINANCE 2015-55 VIOLATES DELEGATION
RESOLUTION AND AGENCY ORDINANCE**

238. FAR incorporates allegations in paragraphs 1- 189 above.

239. The Delegation Resolution delegated to the City Council, the authority to create the Agency, adopt the BCRD Plan, and the powers listed in Section 163.370(2)(l), *Florida Statutes*, which included the power to "zone and rezone."

240. The Agency Ordinance, pursuant to the authority under Section 163.358, *Florida Statutes*, delegated to the Agency all authority delegable pursuant to Part III, *Florida Statutes*, which includes per Section 163.370(2)(l), *Florida Statutes*, the power to "zone and rezone."

241. Accordingly, the City Council was without Authority to zone or rezone land within the BCRD.

242. The City Council, in adopting Ordinance 2015-55, revised the zoning district for areas contained in the BCRD.

243. Pursuant to the Delegation Resolution and Agency Ordinance, the rezoning of the properties within the BCRD lies with the Agency.

244. The Agency did not request or approve the adoption of Ordinance 2015-55.

245. According to the minutes for the adoption hearing on December 1, 2015, Mike McGarry, a then-member of the Agency, stated in relevant part:

the proposal was presented to the BCRA in October. The BCRA voted to table the item in order to schedule a workshop and review input from the public. The workshop was not scheduled and staff submitted the application with the BCRA as the applicant. The BCRA did not authorize submission of the application. At the board meeting in November, the BCRA directed staff to schedule the workshop as requested.

246. The City Council's action in adopting Ordinance 2015-55 is in violation of the Delegation Resolution and Agency Ordinance and is therefore, ultra vires, is of no force and effect and is void ab initio.

WHEREFORE, FAR requests this Court declare Ordinance 2015-55 is void ab initio and is of no force and effect; provide injunctive relief consistent with the declaration; and grant any other relief the Court deems just and proper.

**COUNT VII - VIOLATION OF SECTION 163.360, FLORIDA STATUTES:
INVALIDITY OF THE BCRD PLAN**

247. FAR incorporates allegations in paragraphs 1-189 above.

248. Section 163.360(c)(4), *Florida Statutes*, sets out the procedures the City is required to follow in adopting the 2010 BCRD Plan.

249. Section 163.360(2), *Florida Statutes*, requires the 2010 BCRD Plan to “[c]onform to the comprehensive plan for the county or municipality as prepared by the local planning agency under the Community Planning Act.”

250. Section 163.360(4), *Florida Statutes*, sets out the procedures the City is required to follow in adopting the 2010 BCRD Plan.

251. Section 163.360(4), *Florida Statutes*, states in relevant part:

Prior to its consideration of a community redevelopment plan, the community redevelopment agency ***shall submit such plan to the local planning agency of the county or municipality for review*** and recommendations as to its conformity with the comprehensive plan for the development of the county or municipality as a whole. The local planning agency shall submit its written recommendations with respect to the

conformity of the proposed community redevelopment plan to the community redevelopment agency within 60 days after receipt of the plan for review. Upon receipt of the recommendations of the local planning agency, or, if no recommendations are received within such 60 days, then without such recommendations, the community redevelopment agency may proceed with its consideration of the proposed community redevelopment plan. Emphasis added.

252. The City Council adopted the 2010 BCRD Plan via Resolution 2010-07 (“BCRD Plan Resolution”).

253. The 2010 BCRD Plan is invalid as it is not consistent with the City’s Comprehensive Plan in violation of the consistency requirement of Section 163.360(2), *Florida Statutes*.

254. According to the BCRD Plan Resolution, no finding of consistency was made by the City Council.

255. The 2010 BCRD Plan is invalid as it was not adopted pursuant to the requirements of Section 163.360(4), *Florida Statutes*.

256. Neither the Agency nor the City Council ever provided the proposed 2010 BCRD Plan to the Planning and Zoning Board for review to ensure Plan consistency as required under Section 163.360(4), *Florida Statutes*.

257. WHEREFORE, FAR requests this Court declare the 2010 BCRD Plan invalid; provide injunctive relief consistent with the declaration; and grant any other relief the Court deems just and proper.

**COUNT VIII – ADOPTION OF ORDINANCE 2015-54 AND ORDINANCE 2015-55,
INVALIDATE 2010 BCRD PLAN**

258. FAR incorporates allegations paragraphs 1 – 189 above.

259. Section 163.360(2), *Florida Statutes*, requires the 2010 BCRD Plan to “[c]onform to the comprehensive plan for the county or municipality as prepared by the local planning agency under the Community Planning Act.”

260. The City Council’s adoption of Ordinances 2015-54 and 2015-55 effectively changed the development scheme contemplated in the previously adopted 2010 BCRD Plan.

261. Per the 2010 BCRD Plan, BMU FLU designation was reserved almost exclusively for the Village subdistrict and land located immediately adjacent to the Village subdistrict. However, Ordinances 2015-54 and 2015-55, amended the FLU and zoning such that BMU FLU and zoning were prohibited from being located within the Village subdistrict.

262. To the extent the 2010 BCRD Plan is valid, the adoption of the Ordinances rendered invalid the 2020 BCRD Plan by making the 2010 BCRD Plan inconsistent with the Comprehensive Plan.

WHEREFORE, FAR requests this Court declare the 2010 BCRD Plan invalid; provide injunctive relief consistent with the declaration; and grant any other relief the Court deems just and proper

COUNT IX – FAILURE TO ADOPT BCRD PLAN INTO COMPREHENSIVE PLAN

263. FAR incorporates allegations in paragraphs 1 - 189 above.

264. The City Council adopted the BCRD Plan in 1999 via Resolution 99-21.

265. The City Council adopted an amendment to the BCRD Plan in 2008 via Resolution 2000-73.

266. The City Council adopted the 2010 BCRD Plan in 2010 via the BCRD Plan Resolution.

267. Amendments to the Plan must be made pursuant to the procedures set out in Part II, Chapter 163, *Florida Statutes*.

268. One of the procedural requirements for amending the Plan is set-out in Section 163.3184(11), *Florida Statutes*, which requires the Plan amendment be adopted by Ordinance.

269. Because the BCRD Plans were adopted by Resolution and not by Ordinance, the BCRD Plans could not have been made a part of the Comprehensive Plan.

270. The BCRD Plans cannot be the driving force in consideration of the Requests.

WHEREFORE, FAR requests this Court declare the 2010 BCRD Plan was never incorporated into the Comprehensive Plan; provide injunctive relief consistent with the declaration to include prohibiting the City from relying on the BCRD Plan as the basis to support a Comprehensive Plan amendment or rezoning request; and grant any other relief the Court deems just and proper.

DATED: February ___, 2023.

Respectfully submitted,

/s/ Samuel A. Miller

Samual A. Miller, Esq.

Florida Bar No.: 034991

Thu Pham, Esq.

Florida Bar No.: 106586

Richard G. Leland

Bar No.: 1033981

AKERMAN LLP

420 South Orange Avenue - Suite 1200

Orlando FL 32801

Phone: (407) 423-4000

Fax: (407) 843-6610

E-mail: samual.miller@akerman.com

Secondary email: masterdocketlit@akerman.com
sharlene.harrison-carera@akerman.com

Email: thu.pham@akerman.com

Secondary email: lisa.jefferson@akerman.com

Email: richard.leland@akerman.com

Secondary: lisa.jefferson@akerman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 2, 2023, I e-filed the foregoing document by using the Court's E-Portal filing system and that a copy of the foregoing document was furnished by electronic mail to:

Alan G. Kipnis, Esq.
Florida Bar. No. 181788
E-Mail: Akipnis@govlawgroup.com;
Steven M. Dickstein
Florida Bar No. 1010439
E-Mail: SDickstein@govlawgroup.com
Keith M. Poliakoff
Florida Bar No. 477656
E-Mail: Kpoliakoff@govlawgroup.com
GOVERNMENT LAW GROUP
200 S. Andrews Avenue, Suite 601
Ft. Lauderdale, FL
Telephone: (954) 909-0592
Counsel for Defendant, MLEF2-1, LLC

Daniel Y. Gielchinsky, Esq.
Monique D. Hayes, Esq.
DGIM LAW, PLLC
2875 NE 191st Street, Suite 705
Aventura, FL 33180
Email: dan@dgimlaw.com
Email: monique@dgimlaw.com
Secondary: colleen@dgimlaw.com
Secondary: eservice@dgimlaw.com
*Counsel for Interested Party, Kaplan
Residential, LLC*

Patricia D. Smith, Esq.
City Attorney
City of Palm Bay, Florida
Patricia.smith@palmbayflorida.org
Debbie.hunt@palmbayflorida.org
Legal.Mail@palmbayflorida.org
Counsel for Defendant, City of Palm Bay, Florida

Steven L. Brannock, Esq., and
Sarah C. Pellenbarg, Esq.
sbrannock@bhappeals.com
spellenbarg@bhappeals.com
eservice@bhappeals.com
BRANNOCK HUMPHRIES & BERMAN
1111 W. Cass Street, Suite 200
Tampa, FL 33606
Telephone: (813) 223-4300
Counsel for Defendant, City of Palm Bay, Florida

/s/ Samuel A. Miller

Samual A. Miller

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR
BREVARD COUNTY, FLORIDA

FAR RESEARCH, INC., a Delaware
corporation

Plaintiff,

v.

CASE 05-2020-CA-020032-XXXX-XX

CITY OF PALM BAY, a Florida
municipal corporation, and MLEF2-1, LLC,
a Florida limited liability company

Defendants.

_____ /

MLEF2-1, LLC, a Florida limited liability company,
individually and in the name of the State of Florida
Counter-Plaintiff,

vs.

FAR RESEARCH, INC., a Delaware corporation,
Counter-Defendant.

_____ /

**CITY OF PALM BAY ANSWER AND AFFIRMATIVE DEFENSES THIRD AMENDED
COMPLAINT**

City of Palm Bay (City) answers the Third Amended Complaint of FAR Research, Inc. as
follows:

ANSWER

1. Admitted for jurisdictional purposes only; denied that Plaintiff is entitled to any such relief.
2. Without knowledge, therefore denied.
3. Admitted.
4. Without knowledge, therefore denied.
5. Admitted.

6. Without knowledge, therefore denied.
7. Without knowledge, therefore denied.
8. Admitted.
9. Admitted.
10. Admitted.
11. Without knowledge, therefore denied.
12. Without knowledge, therefore denied.
13. Admitted.
14. Admitted.
15. Admitted.
16. Admitted.
17. Admitted.
18. Admit U.S. 1 is a major roadway, all other allegations denied.
19. Admitted.
20. Admitted.
21. Denied.
22. Admitted.
23. Denied.
24. Admitted.
25. Admitted.
26. Admitted.

27. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

28. MLEF plans to develop a mixed-use project consisting of commercial and affordable multi-family residential housing; all other allegations are denied.

29. Denied.

30. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

31. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

32. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

33. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

34. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

35. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

36. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

37. Denied.

38. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

39. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

40. Admitted MLEF submitted a request to change the FLUM designation of the property to Bayfront Mixed Use, all other allegations are denied.

41. Admitted.

42. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

43. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

44. Admitted.

45. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

46. Admitted.

47. Admitted.

48. Admitted.

49. Admitted.

50. Admitted.

51. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

52. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

53. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

54. Admitted.

55. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

56. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

57. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

58. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

59. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

60. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

61. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

62. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

63. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

64. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

65. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

66. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

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74. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

75. Admitted.

76. Denied.

77. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

78. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

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84. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

85. Denied.

86. Denied.

87. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

88. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

89. Admitted.

90. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

91. Denied.

92. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

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106. Denied.

107. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

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112. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

113. Denied.

114. Denied.

115. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

116. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

117. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

118. Admitted.

119. Admitted the quote was from Wise; all other allegations are denied.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

131. Denied.

132. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

133. Admitted.

134. Admitted.

135. Admitted.

136. Admitted.

137. Admitted.

138. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

139. Admitted.

140. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

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144. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

145. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

146. Admitted the City Council adopted Ordinance 200-39 on August 17, 2000, all other allegations are denied.

147. Admitted.

148. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

149. Admitted.

150. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

151. Admitted.

152. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

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155. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

156. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

157. Denied, the City Council approved the modification of the Bayfront Community Redevelopment Plan via Resolution 2010-07.

158. Denied, the modification of the Bayfront Community Redevelopment Plan is governed by Section 163.361, Florida Statutes.

159. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

160. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

161. Denied.

162. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

163. Denied, the Palm Bay BCRD is comprised of five Character Districts.

164. Admitted the Property is located within the Riverview District; all other allegations are denied.

165. Admitted the Riverview District is a Character District within the Palm Bay BCRD; all other allegations are denied.

166. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

167. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

168. Admitted.

169. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

170. The portion of the minutes stated are accurately quoted; all other allegations are denied.

171. City Council adopted Ordinance 2015-55; all other allegations are denied.

172. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

173. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

174. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

175. Admitted.

176. Admitted.

177. Denied.

178. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

179. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

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181. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

182. Denied.

183. Denied.

184. Denied.

185. Denied.

186. Denied.

187. Denied.

188. Denied.

189. Denied.

190. City incorporates its responses to paragraphs 1-189.

191. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

192. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

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197. Denied.

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199. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

200. Denied.

201. City incorporates its responses to paragraphs 1-189.

202. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

203. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

204. Denied.

205. Denied.

206. Denied.

207. Denied.

208. Denied.

209. City incorporates its responses to paragraphs 1-189.

210. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

211. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

212. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

213. Admitted.

214. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

215. Denied.

216. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

217. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

218. Denied.

219. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

220. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

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225. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

226. Admitted.

227. Admitted.

228. Denied.

229. Denied.

230. City incorporates its responses to paragraphs 1-189.

231. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

232. Denied.

233. Denied.

234. Admitted.

235. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

236. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied as the BCRA has never been granted authority to rezone property.

237. Denied.

238. City incorporates its responses to paragraphs 1-189.

239. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

240. Denied, Ordinance 2000-39 delegated all rights, powers, duties, privileges, and immunities vested in a community redevelopment agency by Section 163.330, Florida Statutes.

241. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

242. Admitted.

243. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

244. Admitted, the BCRA did not request the adoption of Ordinance 2015-55; all other allegations including any inference that City Council needed a request by the BCRA to approve an ordinance in the land development code is denied.

245. Admitted the language is located in the minutes of the December 1, 2015 BCRA meeting; all other allegations are denied.

246. Denied.

247. City incorporates its responses to paragraphs 1-189.

248. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

249. The language is accurately quoted from Section 163.360(2), Florida Statutes; all other allegations are denied.

250. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

251. The portion of the minutes stated are accurately quoted; all other allegations are denied.

252. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

253. Denied.

254. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

255. Denied.

256. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

257. City denies Plaintiff/Counter-Defendant is entitled to the relief requested or the Court has jurisdiction to provide any relief.

258. City incorporates its responses to paragraphs 1-189.

259. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

260. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

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262. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

263. City incorporates its responses to paragraphs 1-189.

264. Admitted.

265. Admitted.

266. Admitted.

267. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

268. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

269. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

270. The allegations in this paragraph state Plaintiff's/Counter-Defendant's legal argument and/or legal conclusions to which no response is required. To the extent the allegations are deemed factual, they are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense: Plaintiff/Counter-Defendant fails to state a cause of action- Statute of Limitations

Plaintiff/Counter-Defendant's claims are barred by the operation of the applicable statute of limitations. The City adopted the 2010 BCRD Plan on February 18, 2010. Injunctive relief related to a resolution or ordinance adopted by the City of Palm Bay must be filed within four years. The claim was initially filed in the Second Amended Complaint which was deemed filed on December 4, 2020, well outside of the four-year statute of limitations.

Second Affirmative Defense-Challenge to the Adoption of Ordinance 2015-55 is Barred by Laches

Plaintiff/Counter-Defendant's claims are barred by the doctrine of laches. Plaintiff/Counter-Defendant has failed to timely raise any claim regarding the validity of Ordinance 2015-55. Plaintiff/Counter-Defendant has inexcusably delayed in bringing forth any claim regarding the validity of the ordinance thereby allowing a non-party to rely on the ordinance, rezone and develop its property pursuant to Ordinance 2015-55. Moreover, the City has contracted with the third party to provide economic incentives based upon the development. The City and the third party would be prejudiced by allowing the Plaintiff/Counter-Defendant to raise a claim regarding the validity of the ordinance at this late stage.

Third Affirmative Defense: Plaintiff/Counter-Defendant Fails to State a Cause of Action- Statute of Limitations

Plaintiff/Counter-Defendant seeks to have the Court declare Ordinance 2015-55 void ab initio. Injunctive relief related to a resolution or ordinance adopted by the City of Palm Bay must be filed

within four years. Ordinance 2015-55 was adopted December 1, 2015. The Second Amended Complaint was deemed filed on December 4, 2020, well outside of the four year statute of limitations.

Fourth Affirmative Defense- Inconsistency Challenge is Moot

The challenge to the rezoning based upon the development of residential units being incompatible with industrial or inconsistent with the Comprehensive Plan is moot since section 166.04151(7) Florida Statutes specifically allows residential to be placed in property zoned industrial. The amendment of section 166.04151(7) Florida Statutes is an intervening event that makes it impossible for the court to grant any effectual relief thereby making the claim moot.

Fifth Affirmative Defense: Change in Law

The October 6, 2020 hearing was properly advertised and was continued by City Council to a date certain, October 20, 2020, at the time there was no case requiring a continuance to a date certain to be advertised in a newspaper of general circulation. The case Testa v. Town of Jupiter Island, Case No. 4D22-432, 2023 Fla. App. LEXIS 823 (Fla. 4th DCA, February 8, 2023) is not good law and has or will be overturned by amendments to the statute or upon review by the Florida Supreme Court. case.

Sixth Affirmative Defense: Plaintiff/Counter-Defendant Has Waiver Any Violation of Notice Requirements

Plaintiff/Counter-Defendant was present and represented by legal counsel at the October 6, 2020 public hearing and was notified that the hearing was continued to October 29, 2020. FAR attended the October 29, 2020 hearing, did not raise any objection and fully participated in the hearing thereby waiving any challenge that the ordinances adopted did not strictly adhere to section 166.041(7), Florida Statutes.

Seventh Affirmative Defense: Violation of Notice Requirement Challenge Barred by Latches

Plaintiff/Counter-Defendant has inexcusably delayed in bringing forth any claim regarding the validity of the ordinances adopted by the City Council at the October 29, 2020 hearing, therefore this challenge is barred by the doctrine of latches.

Eighth Affirmative Defense: Lack of Jurisdiction

Rezoning is quasi-judicial. A challenge to notice is a challenge to the procedural due process provided in a quasi-judicial action and can only be brought through a Petition for Certiorari. This court only has jurisdiction to determine the consistency of the rezoning with the comprehensive plan pursuant to section §163.3215, Florida Statutes.

I hereby certify that a copy of the foregoing document was served via the Florida Court E-Filing Portal/email on July 3, 2023 upon the following:

<p>Samual A. Miller, Esq. Thu Pham, Esq. Richard Leland, Esq. AKERMANLLP 420 South Orange Avenue Suite 1200 Orlando FL 32801 Email: samualmiller@akerman.com Email: thu.pham@akerman.com Email: richard.leland@akerman.com Secondary: masterdocketlit@akerman.com Secondary: Sharlene.harrison-carera@akerman.com Secondary: lisa.jefferson@akerman.com</p>	<p>Alan G. Kipnis, Esq. Steven M. Dickstein, Esq. Keith M. Poliakoff, Esq. GOVERNMENT LAW GROUP 200 S. Andrews Ave, Ste. 601 Fort Lauderdale, FL 33301 E-Mail: Akipnis@govlawgroup.com E-Mail: Sdickstein@govlawgroup.com E-Mail: Kpoliakoff@saul.com</p>
--	--

/s/ Patricia D. Smith _____

Patricia D. Smith



LAND DEVELOPMENT DIVISION
120 MALABAR ROAD SE
PALM BAY, FL 32907
TELEPHONE: 321-733-3042

REVISED
STAFF REPORT
PREPARED BY:
Christopher Balter
Planner II

CASE NUMBER

CP-10-2019

PLANNING & ZONING BOARD HEARING DATE

July 10, 2019

APPLICANT/PROPERTY OWNER

MLEF2-1, LLC
Jake Wise, P.E. (Representing)

PROPERTY LOCATION/ADDRESS

Parcels 28-37-14-00-10, 28-37-14-00-22, 28-37-14-00-1,
28-37-11-78-C-1, 28-37-11-78-A-1
North of and adjacent to Robert J. Conlan Boulevard NE,
in the vicinity east of the Florida East Coast Railroad

SUMMARY OF REQUEST

The applicant is requesting a large-scale Comprehensive Plan Future Land Use (FLU) Map Amendment to change 21.83 acres of Industrial Use (IND) and Commercial Use (COM) to Bayfront Mixed Use (BMU).

EXISTING ZONING	EXISTING LAND USE	SITE IMPROVEMENTS	SITE ACREAGE
HC, Highway Commercial; HI, Heavy Industrial	Commercial Use and Industrial Use	Abandoned Cement Plant and Hotel	21.83 +/-

SURROUNDING ZONING & LAND USE

NORTH: HC, Highway Commercial and HI, Heavy Industrial; Restaurant, Single-Family Homes, and Manufacturing Businesses

EAST: HC, Highway Commercial; U.S.1, and the Indian River Lagoon

SOUTH: HC, Highway Commercial and HI, Heavy Industrial; (Across R.J. Conlan) Raytheon Technologies

WEST: HI, Heavy Industrial; Florida East Coast Railroad

COMPATIBILITY with the COMPREHENSIVE PLAN

The current nature of the future land use designations surrounding the subject parcel is Commercial and Industrial. The proposed land use amendment would be considered compatible with the surrounding land uses by providing a transition between the Commercial and Industrial land uses by providing a mix of land uses.

ANALYSIS:

Per Chapter 183: Comprehensive Plan Regulations, Section 183.01(B), the purpose and intent of the Comprehensive Plan is to encourage the most appropriate use of land and resources to promote the health, safety, and welfare of the community.

1. FUTURE LAND USE ELEMENT

The Comprehensive Plan (Plan) FLU Element Goal FLU-1 is to ensure a high quality, diversified living environment through the efficient distribution of compatible land uses.

The Comprehensive Plan (Plan) FLU Element Goal FLU-2 is to provide for and maintain viable neighborhoods and residential development to meet the existing and future needs of the residents of Palm Bay.

The Comprehensive Plan (Plan) FLU Element Goal FLU-3 is to provide for economically viable commercial areas which promote a sound and diversified local economy and serve the retail and service needs of the City's residents

The Comprehensive Plan (Plan) FLU Element Goal FLU-8 is to provide for a diverse and self-sustaining pattern of land uses which support the present and future population of the City of Palm Bay.

The Comprehensive Plan (Plan) FLU Element Goal FLU-9 is to create large scale, sustainable mixed-use communities.

The subject parcels are located within an existing industrial and commercial area. The intended use for the 21.83-acre parcels is a mix of a Multi-Family Residential development and commercial uses. The proposed land use amendment would be considered compatible with the surrounding land uses by providing a transition between the Commercial and Industrial land uses by, providing a high-quality diversified living environment. The development will further these goals by providing a mix of allowable uses, on a property that has been unused and blighted for many years. The City currently has 1,920.66 acres of land designated as Industrial Uses on the Comprehensive Plan Future Land Use Map. Approximately half of the designated land is undeveloped or vacant.

2. COASTAL MANAGEMENT ELEMENT

The subject property is not located within the Coastal Management Area.

3. CONSERVATION ELEMENT

The environmental character of the City is maintained through conservation, appropriate use, and protection of natural resources.

The subject property is not located within any of the Florida scrub jay polygons identified in the City's Habitat Conservation Plan (HCP). No other protected species are known to

inhabit the subject property. Any protected species that would be found on the subject property would need to be mitigated for as required by State and Federal regulations, and per Comprehensive Plan Policy CON-1.7B.

Recreation: The proposed FLU amendment would not exceed the existing park land or recreational level of service standards for the planning area.

4. HOUSING ELEMENT

The proposed FLU amendment does not adversely impact the supply and variety of safe, decent, attractive and affordable housing within the City. Instead, it will serve to create additional multifamily housing opportunities needed in Palm Bay.

5. INFRASTRUCTURE/CAPITAL IMPROVEMENTS ELEMENTS

The City evaluates present and future water, sewer, drainage, and solid waste and assesses the ability of infrastructure to support development.

Utilities: The FLU change will not cause level of service to fall below the standards adopted in the Comprehensive Plan for these services for the current planning period. Public water and sewerage facilities are available at the site. If developed, the owner/developer will be responsible for extending service to the site in accordance with current City regulations.

Drainage: If developed, a drainage plan must be prepared in accordance with current regulations and approved by the City, along with appropriate outside agencies including the St. Johns River Water Management District. Any proposed stormwater management system will be reviewed and approved by the City during the site plan review process.

Any development of the subject property will alter the present natural site conditions as the property is partially undeveloped and therefore, would have some impact. The property is located within Flood Zone X, which is an area of minimal flood hazard outside the Special Flood Hazard Area (100-year flood) and the 500-year flood zone.

6. INTERGOVERNMENTAL COORDINATION ELEMENT

Public Schools: The proposed FLU amendment to Bayfront Mixed Use for a large parcel (21.83 acres) will add housing units. Some impacts to the public-school system area are anticipated and will require concurrency from the Brevard County School Board.

7. TRANSPORTATION ELEMENT

The objectives of the Comprehensive Plan's Transportation Element are to provide a safe, balanced, efficient transportation system that maintains roadway level of service and adequately serves the needs of the community. If developed, a traffic impact analysis will be required to determine any negative impacts on the existing transportation system along with any suggested improvements, which will be taken under consideration during the Site Plan review/approval process.

CONDITIONS:

1. Future development will be restricted to a right-in right-out driveway connection to R.J. Conlan.
2. A Traffic Study will be required and will be reviewed during the administrative staff approval process to determine any impacts to the adjacent road network and any improvements necessary to mitigate such impacts with emphasis on access management.
3. A Phase One environmental study will be required at the time of any development proposal.
4. No residential structures shall be placed within 100 feet of the existing businesses that front Rowena Drive.

STAFF RECOMMENDATION:

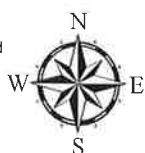
Case CP-10-2019 is recommended for approval subject to the staff comments contained in this report.



EagleView Pictometry, LLC

Map for illustrative purposes only. Not to be construed
as binding or as a survey.

Map created by the Land Development Division



CASE NO. CP-10-2019



AERIAL LOCATION MAP CASE CP-10-2019 & CPZ-10-2019

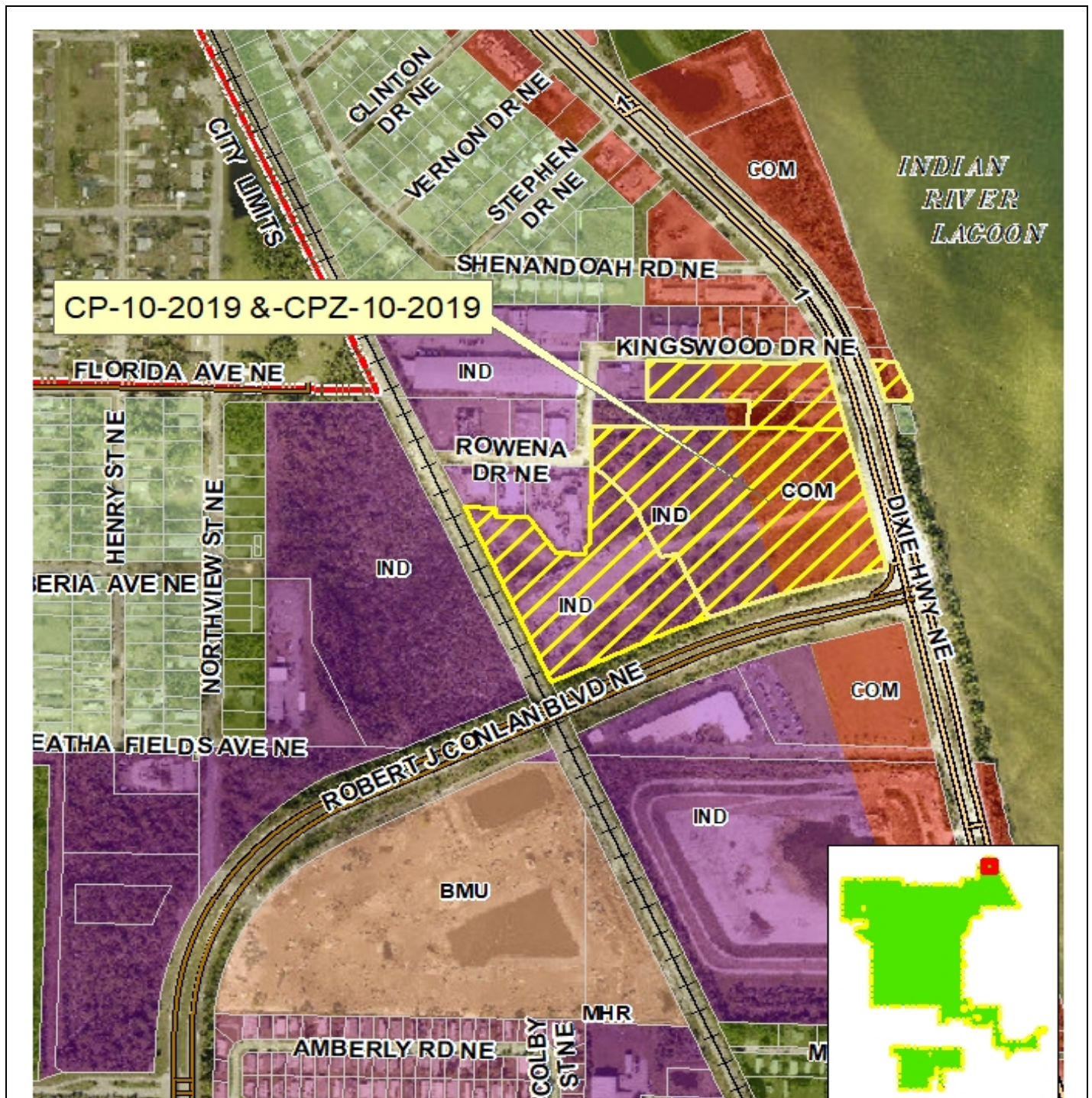
Subject Property

Located in the vicinity east of the Florida East Coast Railway, north of Robert J. Conlan Boulevard NE, and south of Kingswood Drive NE



Not to Scale

Map for illustrative purposes only; not to be construed as binding or as a survey



FUTURE LAND USE MAP CASE CP-10-2019 & CPZ-10-2019

Subject Property

Located in the vicinity east of the Florida East Coast Railway, north of Robert J. Conlan Boulevard NE, and south of Kingswood Drive NE

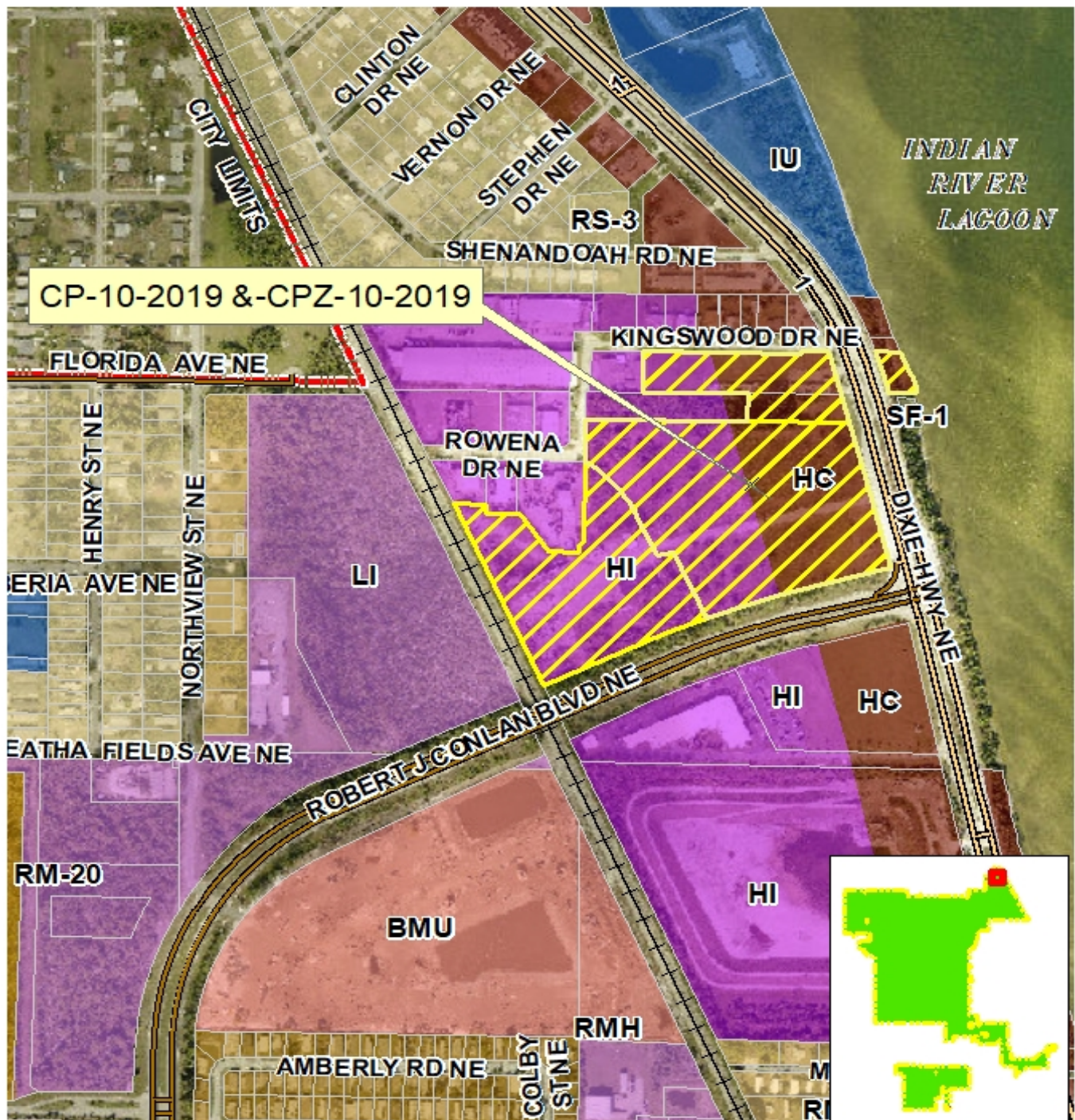
Future Land Use Classification

IND – Industrial Use and
COM – Commercial Use



Not to Scale

Map for illustrative purposes only; not to be construed as binding or as a survey



ZONING MAP

CASE CP-10-2019 & CPZ-10-2019

Subject Property

Located in the vicinity east of the Florida East Coast Railway, north of Robert J. Conlan Boulevard NE, and south of Kingswood Drive NE

Current Zoning Classification

HC – Highway Commercial District and
HI – Heavy Industrial District



Not to Scale

Map for illustrative purposes only; not to be construed as binding or as a survey



Land Development Division
120 Malabar Road SE
Palm Bay, FL 32907
321-733-3042
Landdevelopmentweb@palmbayflorida.org

COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION

This application must be completed, legible, and returned, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, Monday through Friday, during division office hours, to be processed for consideration 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:

☐ **Small Scale** (Less than 10 acres) ☒ **Large Scale** (10 acres or more) ☐ **Text Amendment** (Comp. Plan)

PARCEL ID 28-37-14-00-10 / 28-37-14-00-22 / 28-37-14-00-1 / 28-37-11-78-C-1 / 28-37-11-78-A-1

TAX ACCOUNT NO. 2826097/ 2861830/ 2826089/ 2825825/ 2825813

LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:

Multiple parcels. See additional sheets for property information

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage): 21.83 acres

LAND USE CLASSIFICATION AT PRESENT OR PLAN SECTION AFFECTED (ex.: Commercial, Single Family, Policy CIE-1.1B, etc.):

Industrial and Commercial

LAND USE CLASSIFICATION DESIRED OR PROPOSED TEXT CHANGE (attach additional sheets if necessary):

BMU

PRESENT USE OF THE PROPERTY: Hotel and former cement plant

STRUCTURES NOW LOCATED ON THE PROPERTY: Hotel and former cement plant

HAS A REZONING APPLICATION BEEN FILED IN CONJUNCTION WITH THIS APPLICATION:

Yes

(Impacts to transportation facilities, water and sewer facilities, drainage, recreation facilities, and solid waste must be examined and justified before acceptance by the Florida Department of Economic Opportunity and the City of Palm Bay.)

CITY OF PALM BAY, FLORIDA
COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION
PAGE 2 OF 3

JUSTIFICATION FOR CHANGE (attach additional sheets containing supporting documents and evidence if necessary):

The current land uses on the property is split between industrial and commercial uses. This site is located at the far north reaches of the City with commercial and residential use to the north, existing industrial to the west, recently approved Bayfront mixed use property to the south and a developed, tech center to the southeast (industrial/ commercial split land use). The proposed BMU land use allows for commercial uses on the subject property as currently allowed, but also provides a transitional land use between the residential, commercial, and BMU adjacent to the site. The site is large enough to provide significant buffering to the industrial uses and railroad tracks to the west. Granting the FLU change to BMU will provide the framework to develop this highly visible property into a more aesthetically pleasing development with greater potential for increased revenue and tax base for the City of Palm Bay.

SPECIFIC USE INTENDED FOR PROPERTY:

The intended use for the property is predominantly multifamily residential use as required by City Code, with the remainder of the site developed as potential commercial use as allowed by the City Code. No uses are proposed at this time that would require a conditional use or any of those uses specifically forbidden as listed in the City of Palm Bay Code of Ordinances.

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION FOR AN AMENDMENT TO THE COMPREHENSIVE PLAN OR FUTURE LAND USE MAP:

- ☒ *Application Fee. Make check payable to "City of Palm Bay."
- ☐ **Small Scale Map** \$1,200.00
(Less than 10 acres)
- ☒ **Large Scale Map** \$2,000.00
(10 acres or more)
- ☐ **Text Amendment** \$2,000.00
(Comp. Plan)
- ☒ Property map showing adjacent properties and clearly outlining the subject parcel (for land use amendment(s)).
- ☒ 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.)
- ☒ School Board of Brevard County [School Impact Analysis Application](#) (if applicable).
- ☒ Sign(s) posted on the subject property. Refer to [Section 51.07\(C\)](#) of the Legislative Code for guidelines.
- ☒ **Where property is not owned by the applicant, a [letter](#) must be attached giving the notarized consent of the owner to the applicant to request the comprehensive plan or future land use map amendment.**

CITY OF PALM BAY, FLORIDA
COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION
PAGE 3 OF 3

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.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.

Signature of Applicant



Date

5-29-19

Printed Name of Applicant

Jake Wise, PE- Construction Engineering Group, LLC

Full Address

2651 W Eau Gallie Blvd, Suite A; Melbourne, FL 32935

Telephone

321-610-1760

Email

Jwise@cegengineering.com

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

LEGAL DESCRIPTION:

TRACT "A"
A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND RUN S. 00 DEGREES 45'58" W., ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 100.00 FEET; THENCE S. 88 DEGREES 24'42" E., PARALLEL WITH AND 100.00 FEET DISTANT SOUTH, BY RIGHT ANGLE MEASUREMENT, FROM THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 885.35 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1; THENCE S. 14 DEGREES 01'40" E., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 332.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 14 DEGREES 01'40" E., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 205.32 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ROBERT J. CONLAN BOULEVARD (A 200 FOOT WIDE RIGHT OF WAY); THENCE S. 75 DEGREES 57'10" W., ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 317.20 FEET TO THE POINT OF CURVATURE OF A 2964.79 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE AND ALONG SAID NORTHERLY RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 06 DEGREES 14'56" A DISTANCE OF 323.35 FEET; THENCE DEPARTING SAID CURVE AND RIGHT OF WAY LINE, RUN N. 25 DEGREES 19'03" W., A DISTANCE OF 261.57 FEET; THENCE N. 76 DEGREES 41'26" E., A DISTANCE OF 666.47 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE EASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 89 DEGREES 16'54" A DISTANCE OF 38.96 FEET TO THE POINT OF BEGINNING.


TRACT "B"
A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND RUN S. 00 DEGREES 45'58" W., ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID WEST LINE, RUN S. 88 DEGREES 24'42" E., PARALLEL WITH AND 100 FEET DISTANT SOUTH, BY RIGHT ANGLE MEASUREMENT, FROM THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 885.35 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1; THENCE S. 14 DEGREES 01'40" E., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 202.60 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 90 DEGREES 43'06" A DISTANCE OF 39.58 FEET TO A POINT OF TANGENCY; THENCE S. 76 DEGREES 41'26" W., A DISTANCE OF 645.53 FEET TO THE POINT OF CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 83 DEGREES 20'01" A DISTANCE OF 87.27 FEET TO A POINT OF REVERSE CURVATURE OF A 490.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 36 DEGREES 40'31" A DISTANCE OF 313.65 FEET TO A POINT OF REVERSE CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 57 DEGREES 25'02" A DISTANCE OF 60.13 FEET TO A POINT OF TANGENCY ON THE AFORESAID WEST LINE OF GOVERNMENT LOT 1; THENCE N. 00 DEGREES 45'58" E., ALONG SAID WEST LINE, A DISTANCE OF 69.36 FEET TO THE POINT OF BEGINNING.

TRACT "C"
A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND RUN S. 00 DEGREES 45'58" W., ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 69.36 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 00 DEGREES 45'58" W. ALONG SAID WEST LINE, A DISTANCE OF 83.07 FEET TO A POINT ON A 60.00 FOOT RADIUS CURVE TO THE RIGHT HAVING A TANGENT BEARING OF S. 17 DEGREES 53'18" W.; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 16 DEGREES 57'18" A DISTANCE OF 17.76 FEET TO A POINT OF COMPOUND CURVATURE OF A 450.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 33 DEGREES 16'41" A DISTANCE OF 261.41 FEET TO A POINT OF TANGENCY; THENCE S. 25 DEGREES 19'03" E., A DISTANCE OF 146.41 FEET; THENCE N. 76 DEGREES 41'26" E., A DISTANCE OF 718.00 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 89 DEGREES 16'54" A DISTANCE OF 38.96 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1; THENCE N. 14 DEGREES 01'40" W., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 130.01 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT HAVING A RADIAL BEARING OF S. 75 DEGREES 58'20" W.; THENCE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 90 DEGREES 43'06" A DISTANCE OF 38.58 FEET TO A POINT OF TANGENCY; THENCE S. 76 DEGREES 41'26" W., A DISTANCE OF 645.53 FEET TO THE POINT OF CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 83 DEGREES 20'01" A DISTANCE OF 87.27 FEET TO A POINT OF REVERSE CURVATURE OF A 490.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 36 DEGREES 40'31" A DISTANCE OF 313.65 FEET TO A POINT OF REVERSE CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 57 DEGREES 25'02" A DISTANCE OF 60.13 FEET TO THE POINT OF BEGINNING.

TRACT "D"
A PARCEL OF LAND LYING IN THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHEAST CORNER OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4, AND RUN S. 00 DEGREES 45'48" W., ALONG THE EAST LINE OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4, A DISTANCE OF 252.43 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 00 DEGREES 45'48" W., ALONG SAID EAST LINE, A DISTANCE OF 292.20 FEET; THENCE S. 65 DEGREES 26'11" W., A DISTANCE OF 16.59 FEET TO A POINT ON THE WEST LINE OF A 15 FOOT WIDE RIGHT OF WAY RECORDED IN DEED BOX 191, PAGE 315 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S. 00 DEGREES 45'48" W., A DISTANCE OF 27.67 FEET; THENCE N. 89 DEGREES 14'02" W., A DISTANCE OF 104.04 FEET; THENCE N. 34 DEGREES 10'56" W., A DISTANCE OF 47.76 FEET; THENCE N. 36 DEGREES 11'36" W., A DISTANCE OF 117.79 FEET; THENCE N. 88 DEGREES 23'32" W., A DISTANCE OF 112.66 FEET; THENCE N. 00 DEGREES 45'48" E., A DISTANCE OF 32.46 FEET; THENCE N. 88 DEGREES 23'32" W. A DISTANCE OF 110.52 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY (A 100 FOOT WIDE RIGHT OF WAY); THENCE S. 24 DEGREES 38'41" E., ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 718.87 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ROBERT J. CONLAN BOULEVARD (A 200 FOOT WIDE RIGHT OF WAY); THENCE N. 65 DEGREES 23'47" E., ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 371.41 FEET TO THE POINT OF CURVATURE OF A 2964.79 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 04 DEGREES 18'27" A DISTANCE OF 222.90 FEET; THENCE N. 25 DEGREES 19'03" W., A DISTANCE OF 261.57 FEET; THENCE S. 76 DEGREES 41'26" W., A DISTANCE OF 51.53 FEET; THENCE N. 25 DEGREES 19'03" W., A DISTANCE OF 146.41 FEET TO THE POINT OF CURVATURE OF A 450.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 33 DEGREES 16'41" A DISTANCE OF 261.41 FEET TO A POINT OF COMPOUND CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE THRU A CENTRAL ANGLE OF 16 DEGREES 57'18" A DISTANCE OF 17.76 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THAT CERTAIN NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF THE SUBJECT PROPERTY AS DESCRIBED IN OFFICIAL RECORDS BOOK 1434, PAGE 733, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

TOGETHER WITH THAT CERTAIN NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF THE SUBJECT PROPERTY AS DESCRIBED IN OFFICIAL RECORDS BOOK 1921, PAGE 988, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.



CONSTRUCTION
ENGINEERING
GROUP

Consulting Engineers

2651 Eau Gallie Blvd., Suite A
Melbourne, FL 32935

Tel. 321.253.1221
www.cegroupengineering.com
COA #0000077

HARBOR POINTE

PALM BAY, FL

LOCATION MAP AND LEGAL DESCRIPTION

DATE
05/28/2019

COUNTY
BREVARD

SCALE
NTS

APPROVED BY
JTW

THIS SHEET
FIG. 1

_____, May 20, 2019

Re: Letter of Authorization

As the property owner of the site legally described as:

28-37-14-00-10 / 28-37-14-00-22 / 28-37-14-00-1 / 28-37-11-78-C-1 / 28-37-11-78-A-1

I, Alan Benenson - MLEF2-1, LLC, hereby authorize to represent my
Rezoning request(s):

Rep. Name: 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


(Property Owner Signature)

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 20 day of
May, 20 19 by ALAN BENENSON

(SEAL)



Alexandra Nussenbaum
Commission # GG181887
Expires: February 1, 2022
Bonded thru Aaron Notary


Alexandra Nussenbaum, Notary Public

☒ Personally Known or
☐ Produced Identification
Type of Identification Produced: _____

**PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
RECOMMENDATION
July 10, 2019**

As the Planning and Zoning Board minutes are not fully transcribed at this time, an excerpt of the minutes is being provided.

CP-10-2019 – JAKE WISE, PE

Staff Recommendation:

Case CP-10-2019 is recommended for approval, subject to the staff comments contained in the staff report.

Planning and Zoning Board Recommendation:

Motion by Mr. Warner, seconded by Ms. Maragh to submit Case CP-10-2019 to City Council for approval of a large scale Comprehensive Plan Future Land Use Map amendment from Industrial Use and Commercial Use to Bayfront Mixed Use, subject to the staff comments contained in the staff report. The motion carried with members voting as follows:

Mr. Weinberg	Aye
Ms. Jordan	Aye
Mr. Boerema	Aye
Ms. Domonousky	Absent - Excused
Mr. Felix	Aye
Mr. Maragh	Aye
Mr. Warner	Aye

City Council approval of the large scale amendment will require a transmittal of the proposal to the Florida Department of Economic Opportunity for review, pursuant to Chapter 163, Florida Statutes.



LAND DEVELOPMENT DIVISION
120 MALABAR ROAD SE
PALM BAY, FL 32907
TELEPHONE: 321-733-3042

REVISED
STAFF REPORT
PREPARED BY:
Christopher Balter
Planner II

CASE NUMBER

CPZ-10-2019

PLANNING & ZONING BOARD HEARING DATE

July 10, 2019

APPLICANT/PROPERTY OWNER

MLEF2-1, LLC
Jake Wise, P.E. (Representing)

PROPERTY LOCATION/ADDRESS

Parcels 28-37-14-00-10, 28-37-14-00-22, 28-37-14-00-1,
28-37-11-78-C-1, 28-37-11-78-A-1
North of and adjacent to Robert J. Conlan Boulevard NE,
in the vicinity east of the Florida East Coast Railroad

SUMMARY OF REQUEST

The applicant is requesting a rezoning of the subject parcels from HC, Highway Commercial District and **HI**, Heavy Industrial District, to the BMU, Bayfront Mixed Use District.

EXISTING ZONING	EXISTING LAND USE	SITE IMPROVEMENTS	SITE ACREAGE
HC, Highway Commercial; HI, Heavy Industrial	Commercial Use and Industrial Use	Abandoned Cement Plant and Hotel	21.83 +/-

SURROUNDING ZONING & LAND USE

NORTH: HC, Highway Commercial and HI, Heavy Industrial; Restaurant, Single-Family Homes, and Manufacturing Businesses

EAST: HC, Highway Commercial; U.S.1, and the Indian River Lagoon

SOUTH: HC, Highway Commercial and HI, Heavy Industrial; (Across R.J. Conlan) Raytheon Technologies

WEST: HI, Heavy Industrial; Florida East Coast Railroad [Click or tap here to enter text.](#)

COMPATIBILITY with the COMPREHENSIVE PLAN

The applicant has applied for an amendment of the City's Comprehensive Plan Future Land Use Map to Bayfront Mixed Use, simultaneously with this request. If approved the Bayfront Mixed Use zoning designation will be consistent with the City's Comprehensive Plan.

ANALYSIS:

The following analysis is per Chapter 185: Zoning Code, Section 185.201(C) which states that all proposed amendments shall be submitted to the Planning and Zoning Board, which shall study such proposals in accordance with items 1 through 4 of Section 185.201(C).

Item 1 - *The need and justification for the change.*

The applicant states the justification for change is “to change the zoning district to allow for a true Bayfront development on U.S.1 overlooking the Indian River.” The Bayfront Mixed Zoning District will allow for a mix of commercial and multifamily uses. The change in zoning will allow for a transition between the existing single-family homes and the existing businesses and help to revitalize the Bayfront Community Redevelopment District.

Item 2 - *When pertaining to the rezoning of land, the effect of the change, if any, on the particular property and on surrounding properties.*

The designation of BMU zoning district for the subject properties is compatible with the surrounding area, and is consistent with the City’s desire and plan for redevelopment in the Riverview District.

Item 3 - *When pertaining to the rezoning of land, the amount of undeveloped land in the general area and in the city having the same classification as that requested.*

Approximately 24.13 acres of BMU, Bayfront Mixed Use zoned land is within the City limits. Which is the Northshore project currently under construction.

Item 4 - *The relationship of the proposed amendment to the purpose of the city plan for development, with appropriate consideration as to whether the proposed change will further the purposes of this chapter and the Comprehensive Plan (Plan).*

The proposed amendment will further the purposes of Chapter 185, the Comprehensive Plan and the Bayfront Community Redevelopment Agency’s plan for the Riverview District. The plan is to become a beautiful and multi-functional riverfront boulevard lined with pedestrian/bicycle facilities supported by higher intensity residential and mixed land uses.

STAFF RECOMMENDATION:

Case CPZ-10-2019 is recommended for approval subject to the staff comments contained in this report.



AERIAL LOCATION MAP CASE CP-10-2019 & CPZ-10-2019

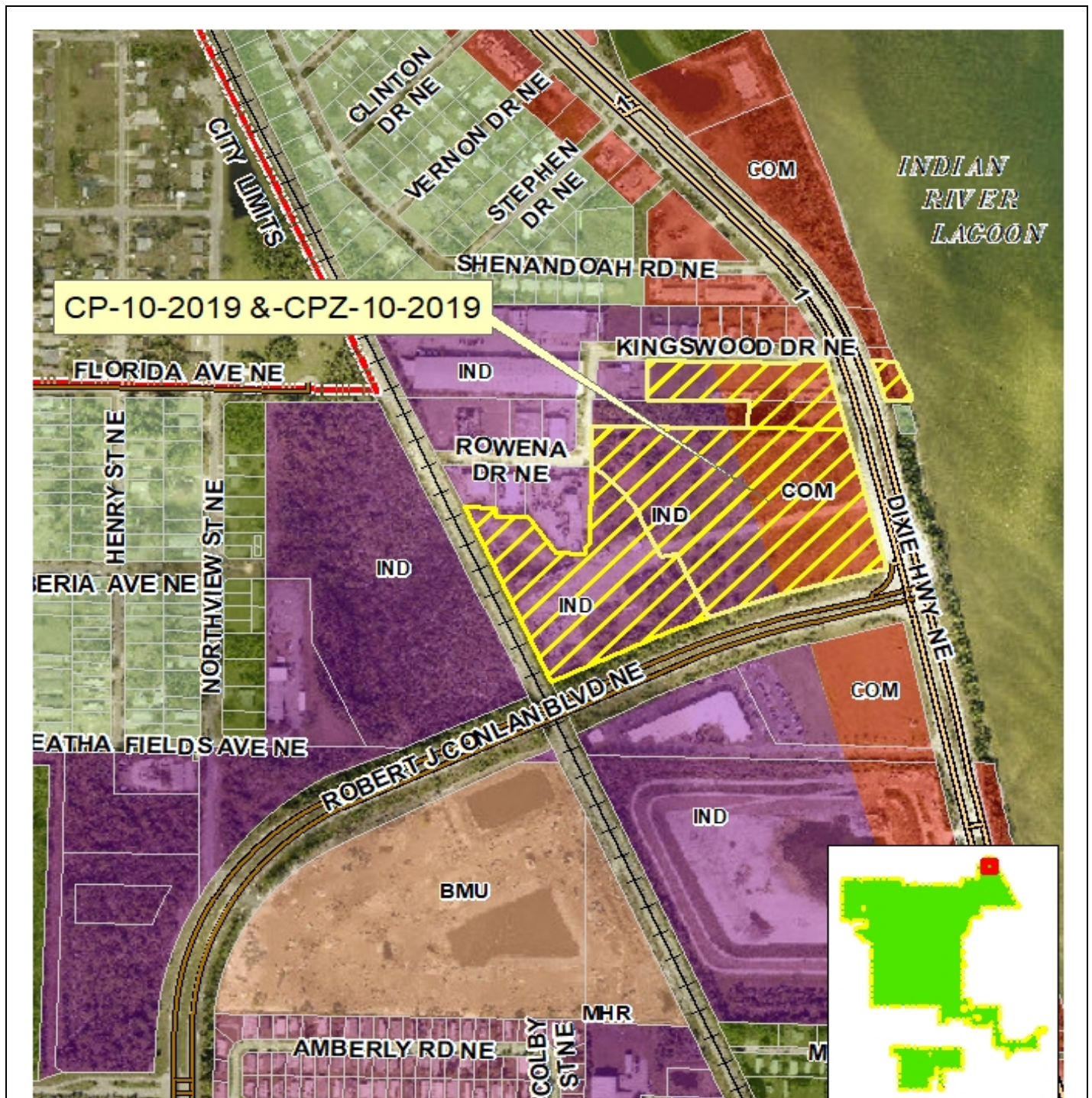
Subject Property

Located in the vicinity east of the Florida East Coast Railway, north of Robert J. Conlan Boulevard NE, and south of Kingswood Drive NE



Not to Scale

Map for illustrative purposes only; not to be construed as binding or as a survey



FUTURE LAND USE MAP CASE CP-10-2019 & CPZ-10-2019

Subject Property

Located in the vicinity east of the Florida East Coast Railway, north of Robert J. Conlan Boulevard NE, and south of Kingswood Drive NE

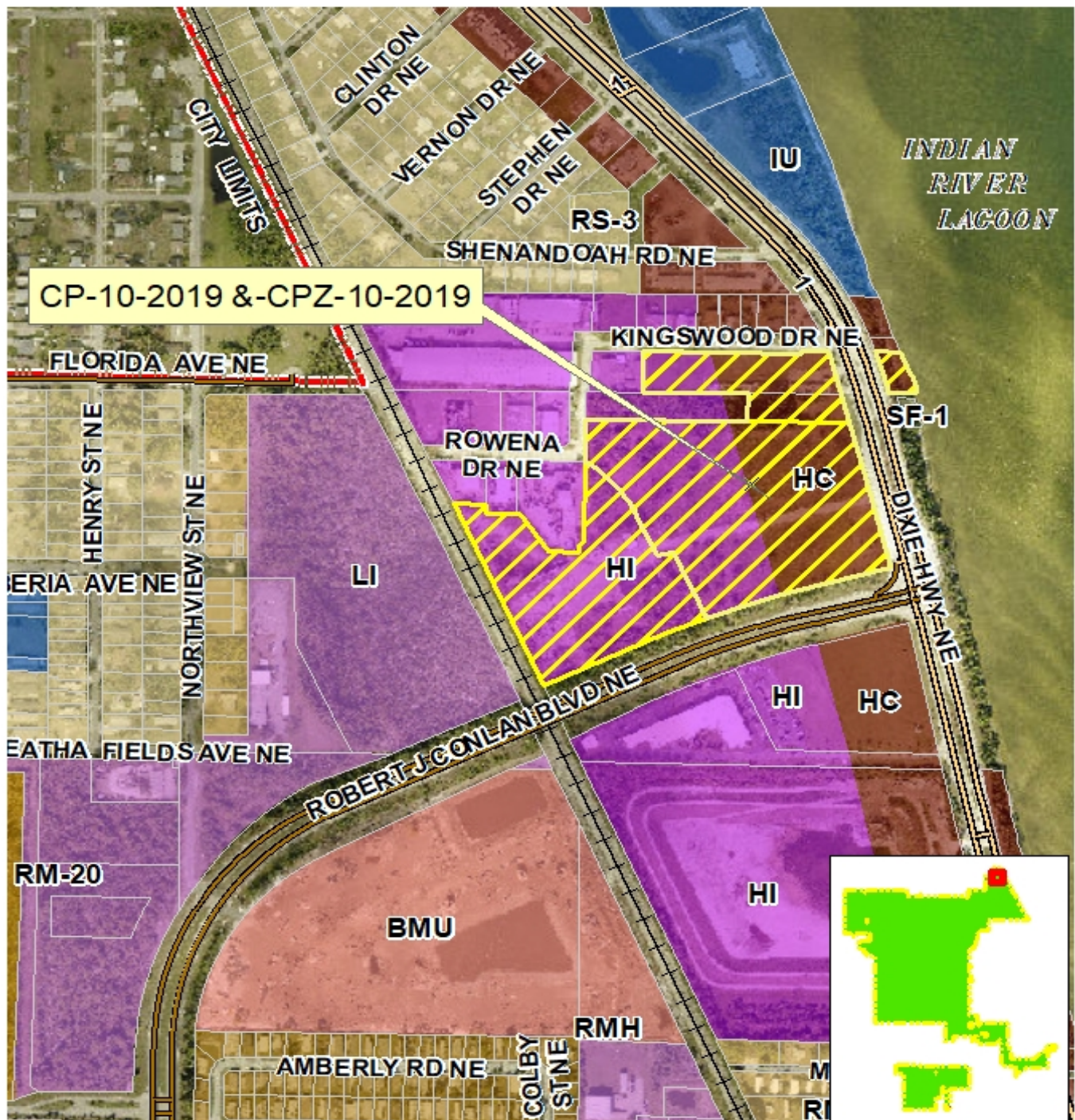
Future Land Use Classification

IND – Industrial Use and
COM – Commercial Use



Not to Scale

Map for illustrative purposes only; not to be construed as binding or as a survey



ZONING MAP

CASE CP-10-2019 & CPZ-10-2019

Subject Property

Located in the vicinity east of the Florida East Coast Railway, north of Robert J. Conlan Boulevard NE, and south of Kingswood Drive NE

Current Zoning Classification

HC – Highway Commercial District and
HI – Heavy Industrial District



Not to Scale

Map for illustrative purposes only; not to be construed as binding or as a survey



Land Development Division
120 Malabar Road SE
Palm Bay, FL 32907
321-733-3042
Landdevelopmentweb@palmbayflorida.org

REZONING APPLICATION

This application must be completed, legible, and returned, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, Monday through Friday, during division office hours, to be processed for consideration 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.

PARCEL ID 28-37-14-00-10 / 28-37-14-00-22 / 28-37-14-00-1 / 28-37-11-78-C-1 / 28-37-11-78-A-1

TAX ACCOUNT NO. 2826097/ 2861830/ 2826089/ 2825825/ 2825813

GENERAL LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:

Multiple parcels. See additional sheets for property information

SECTION 14, 11 TOWNSHIP 28 RANGE 37

PROPERTY ADDRESS (If assigned): Approx 3370 Dixie Hwy NE + adjoining parcels, Palm Bay, FL 32905

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage): 21.83 acres

ZONE CLASSIFICATION AT PRESENT (ex.: RS-2, CC, etc.): HC - Highway Commercial and HI - Heavy Industrial

ZONE CLASSIFICATION DESIRED (ex.: IU, LI, etc.): BMU - Bayfront Mixed Use

STRUCTURES NOW LOCATED ON THE PROPERTY: Hotel and former cement plant

REZONING REQUIREMENTS FOR SUBMITTAL PER SECTION 185.201(C) (attach additional sheet if necessary):

THE NEED AND JUSTIFICATION FOR THE CHANGE:

We are requesting a zoning change for the assemblage of the 21.83 acres to BMU-Bayfront Mixed Use to allow a true bayfront development on US 1 overlooking the Indian River to include a multifamily component, as well as the potential to add commercial uses as allowed by City Code for BMU zoning as well as the current zoning on the site. The proposed BMU zoning also provides a transitional land use between the residential, commercial, and BMU adjacent to the site. The site is large enough to provide significant buffering to the industrial uses and railroad tracks to the west.

EFFECT OF THE ZONING CHANGE, IF ANY, ON THE PROPOSED PROPERTY AND SURROUNDING PROPERTIES:

The effect of this zoning change is that it will allow the property (abandoned hotel & abandoned former cement plant) to be revitalized into an aesthetically pleasing development, and benefit the City's plan and the Bayfront Community Redevelopment Agency's plans of making this the new downtown-style corridor of Palm Bay. It will create short-term and long-term jobs and increase the City's tax base. It will bring market rate units and new residents that will shop and dine in Palm Bay.

AMOUNT OF UNDEVELOPED LAND WITH THE SAME REQUESTED CLASSIFICATION:

0 in the general area

 in the City

The only property in the general area with the BMU zoning is the Aqua Apartments site which also successfully changed to BMU, and is currently under construction.

CITY OF PALM BAY, FLORIDA
REZONING APPLICATION
PAGE 2 OF 2

EXPLAIN THE RELATIONSHIP OF THE PROPOSED REQUEST WITH THE PURPOSE OF THE CITY PLAN FOR DEVELOPMENT, WITH CONSIDERATION AS TO WHETHER THE CHANGE WILL FURTHER THE PURPOSES OF CHAPTER 185.201(C) AND THE CITY PLAN:

This assemblage of properties falls within the city's BCRA (Bayfront Community Redevelopment Agency) boundaries. Currently, this area has a lot of industrial buildings, as well as many vacant and undeveloped land or buildings that pose for dumping, trespassing, and all the harmful things that come with that. At this moment, there is a project called Aqua that also changed their zoning from Heavy/Light Industrial to BMU, and the project is currently under construction. The BCRA and the City of Palm Bay are striving to make the Robert J. Conlan Blvd corridor and Dixie Hwy (US-1) corridor a more developed and active area of the city to generate more modern living options. Our desire would be to bring multifamily as well as the potential for commercial uses to support the City's and the BCRA's vision and desires for this area.

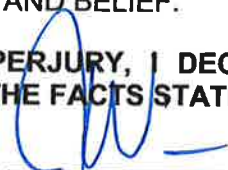
THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:

- ☒ **X** \$650.00 Application Fee. Make check payable to "City of Palm Bay."
- ☒ **X** 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 can be obtained for a fee from the Brevard County Planning and Zoning Department at 321-633-2060.)
- ☒ **X** School Board of Brevard County [School Impact Analysis Application](#) (if applicable).
- ☒ **X** Sign(s) posted on the subject property. Refer to [Section 51.07\(C\)](#) of the Legislative Code for guidelines.
- ☒ **X** **Where property is not owned by the applicant, a [letter](#) must be attached giving the notarized consent of the owner to the applicant to request the rezoning.**

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.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING REZONING APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.

Signature of Applicant



Date 5-29-19

Printed Name of Applicant Jake Wise, PE- Construction Engineering Group, LLC

Full Address 2651 W Eau Gallie Blvd, Suite A; Melbourne, FL 32935

Telephone 321-610-1760

Email Jwise@cegengineering.com

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

LEGAL DESCRIPTION:

TRACT "A"
A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND RUN S. 00 DEGREES 45'58" W., ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 100.00 FEET; THENCE S. 88 DEGREES 24'42" E., PARALLEL WITH AND 100.00 FEET DISTANT SOUTH, BY RIGHT ANGLE MEASUREMENT, FROM THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 885.35 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1; THENCE S. 14 DEGREES 01'40" E., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 332.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 14 DEGREES 01'40" E., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 205.32 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ROBERT J. CONLAN BOULEVARD (A 200 FOOT WIDE RIGHT OF WAY); THENCE S. 75 DEGREES 57'10" W., ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 317.20 FEET TO THE POINT OF CURVATURE OF A 2964.79 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE AND ALONG SAID NORTHERLY RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 06 DEGREES 14'56" A DISTANCE OF 323.35 FEET; THENCE DEPARTING SAID CURVE AND RIGHT OF WAY LINE, RUN N. 25 DEGREES 19'03" W., A DISTANCE OF 261.57 FEET; THENCE N. 76 DEGREES 41'26" E., A DISTANCE OF 666.47 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE EASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 89 DEGREES 16'54" A DISTANCE OF 38.96 FEET TO THE POINT OF BEGINNING.


TRACT "B"
A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND RUN S. 00 DEGREES 45'58" W., ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID WEST LINE, RUN S. 88 DEGREES 24'42" E., PARALLEL WITH AND 100 FEET DISTANT SOUTH, BY RIGHT ANGLE MEASUREMENT, FROM THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 885.35 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1; THENCE S. 14 DEGREES 01'40" E., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 202.60 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 90 DEGREES 43'06" A DISTANCE OF 39.58 FEET TO A POINT OF TANGENCY; THENCE S. 76 DEGREES 41'26" W., A DISTANCE OF 645.53 FEET TO THE POINT OF CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 83 DEGREES 20'01" A DISTANCE OF 87.27 FEET TO A POINT OF REVERSE CURVATURE OF A 490.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 36 DEGREES 40'31" A DISTANCE OF 313.65 FEET TO A POINT OF REVERSE CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 57 DEGREES 25'02" A DISTANCE OF 60.13 FEET TO A POINT OF TANGENCY ON THE AFORESAID WEST LINE OF GOVERNMENT LOT 1; THENCE N. 00 DEGREES 45'58" E., ALONG SAID WEST LINE, A DISTANCE OF 69.36 FEET TO THE POINT OF BEGINNING.

TRACT "C"
A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND RUN S. 00 DEGREES 45'58" W., ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 69.36 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 00 DEGREES 45'58" W. ALONG SAID WEST LINE, A DISTANCE OF 83.07 FEET TO A POINT ON A 60.00 FOOT RADIUS CURVE TO THE RIGHT HAVING A TANGENT BEARING OF S. 17 DEGREES 53'18" W.; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 16 DEGREES 57'18" A DISTANCE OF 17.76 FEET TO A POINT OF COMPOUND CURVATURE OF A 450.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 33 DEGREES 16'41" A DISTANCE OF 261.41 FEET TO A POINT OF TANGENCY; THENCE S. 25 DEGREES 19'03" E., A DISTANCE OF 146.41 FEET; THENCE N. 76 DEGREES 41'26" E., A DISTANCE OF 718.00 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 89 DEGREES 16'54" A DISTANCE OF 38.96 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1; THENCE N. 14 DEGREES 01'40" W., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 130.01 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT HAVING A RADIAL BEARING OF S. 75 DEGREES 58'20" W.; THENCE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 90 DEGREES 43'06" A DISTANCE OF 38.58 FEET TO A POINT OF TANGENCY; THENCE S. 76 DEGREES 41'26" W., A DISTANCE OF 645.53 FEET TO THE POINT OF CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 83 DEGREES 20'01" A DISTANCE OF 87.27 FEET TO A POINT OF REVERSE CURVATURE OF A 490.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 36 DEGREES 40'31" A DISTANCE OF 313.65 FEET TO A POINT OF REVERSE CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 57 DEGREES 25'02" A DISTANCE OF 60.13 FEET TO THE POINT OF BEGINNING.

TRACT "D"
A PARCEL OF LAND LYING IN THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHEAST CORNER OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4, AND RUN S. 00 DEGREES 45'48" W., ALONG THE EAST LINE OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4, A DISTANCE OF 252.43 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 00 DEGREES 45'48" W., ALONG SAID EAST LINE, A DISTANCE OF 292.20 FEET; THENCE S. 65 DEGREES 26'11" W., A DISTANCE OF 16.59 FEET TO A POINT ON THE WEST LINE OF A 15 FOOT WIDE RIGHT OF WAY RECORDED IN DEED BOX 191, PAGE 315 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S. 00 DEGREES 45'48" W., A DISTANCE OF 27.67 FEET; THENCE N. 89 DEGREES 14'02" W., A DISTANCE OF 104.04 FEET; THENCE N. 34 DEGREES 10'56" W., A DISTANCE OF 47.76 FEET; THENCE N. 36 DEGREES 11'36" W., A DISTANCE OF 117.79 FEET; THENCE N. 88 DEGREES 23'32" W., A DISTANCE OF 112.66 FEET; THENCE N. 00 DEGREES 45'48" E., A DISTANCE OF 32.46 FEET; THENCE N. 88 DEGREES 23'32" W. A DISTANCE OF 110.52 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY (A 100 FOOT WIDE RIGHT OF WAY); THENCE S. 24 DEGREES 38'41" E., ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 718.87 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ROBERT J. CONLAN BOULEVARD (A 200 FOOT WIDE RIGHT OF WAY); THENCE N. 65 DEGREES 23'47" E., ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 371.41 FEET TO THE POINT OF CURVATURE OF A 2964.79 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 04 DEGREES 18'27" A DISTANCE OF 222.90 FEET; THENCE N. 25 DEGREES 19'03" W., A DISTANCE OF 261.57 FEET; THENCE S. 76 DEGREES 41'26" W., A DISTANCE OF 51.53 FEET; THENCE N. 25 DEGREES 19'03" W., A DISTANCE OF 146.41 FEET TO THE POINT OF CURVATURE OF A 450.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 33 DEGREES 16'41" A DISTANCE OF 261.41 FEET TO A POINT OF COMPOUND CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE THRU A CENTRAL ANGLE OF 16 DEGREES 57'18" A DISTANCE OF 17.76 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THAT CERTAIN NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF THE SUBJECT PROPERTY AS DESCRIBED IN OFFICIAL RECORDS BOOK 1434, PAGE 733, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

TOGETHER WITH THAT CERTAIN NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF THE SUBJECT PROPERTY AS DESCRIBED IN OFFICIAL RECORDS BOOK 1921, PAGE 988, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.



CONSTRUCTION
ENGINEERING
GROUP

Consulting Engineers

2651 Eau Gallie Blvd., Suite A
Melbourne, FL 32935

Tel. 321.253.1221
www.cegroupengineering.com
COA #0000077

HARBOR POINTE

PALM BAY, FL

LOCATION MAP AND LEGAL DESCRIPTION

DATE
05/28/2019

COUNTY
BREVARD

SCALE
NTS

APPROVED BY
JTW

THIS SHEET
FIG. 1

_____, May 20, 2019

Re: Letter of Authorization

As the property owner of the site legally described as:

28-37-14-00-10 / 28-37-14-00-22 / 28-37-14-00-1 / 28-37-11-78-C-1 / 28-37-11-78-A-1

I, Alan Benenson - MLEF2-1, LLC, hereby authorize to represent my
Rezoning request(s):

Rep. Name: 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


(Property Owner Signature)

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 20 day of
May, 20 19 by ALAN BENENSON

(SEAL)



Alexandra Nussenbaum
Commission # GG181887
Expires: February 1, 2022
Bonded thru Aaron Notary


Alexandra Nussenbaum, Notary Public

☒ Personally Known or

☐ Produced Identification

Type of Identification Produced: _____

**PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
RECOMMENDATION
July 10, 2019**

As the Planning and Zoning Board minutes are not fully transcribed at this time, an excerpt of the minutes is being provided.

CPZ-10-2019 – JAKE WISE, PE

Staff Recommendation:

Case CPZ-10-2019 is recommended for approval, subject to the staff comments contained in the staff report.

Planning and Zoning Board Recommendation:

Motion by Mr. Warner, seconded by Ms. Maragh to submit Case CP-10-2019 to City Council for approval of a zoning amendment from an HC, Highway Commercial District and an HI, Heavy Industrial District to a BMU, Bayfront Mixed Use District. The motion carried with members voting as follows:

Mr. Weinberg	Aye
Ms. Jordan	Aye
Mr. Boerema	Aye
Ms. Domonousky	Absent - Excused
Mr. Felix	Aye
Mr. Maragh	Aye
Mr. Warner	Aye

ORDINANCE 2019-43

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 183, COMPREHENSIVE PLAN REGULATIONS, SECTION 183.01, COMPREHENSIVE PLAN, SUBSECTION (D), ADOPTION OF FUTURE LAND USE MAP, BY AMENDING FUTURE LAND USE MAP; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Bay has designated the Planning and Zoning Board as its Local Planning Agency and said Local Planning Agency held a public hearing on an amendment to the Comprehensive Plan on September 18, 2019, after public notice, and

WHEREAS, the City Council of the City of Palm Bay, pursuant to Chapter 163, Florida Statutes, held a public hearing on an amendment to the Comprehensive Plan on October 3, 2019, after public notice, and

WHEREAS, the City Council of the City of Palm Bay, pursuant to Chapter 163, Florida Statutes, submitted the amendment to the Florida Department of Economic Opportunity for review and comment, and

WHEREAS, the Florida Department of Economic Opportunity submitted a Comment Report regarding this amendment, and

WHEREAS, the City Council of the City of Palm Bay has considered the Comments provided and has addressed all items, and

WHEREAS, the City Council of the City of Palm Bay, pursuant to Chapter 163, Florida Statutes, held an adoption public hearing on the amendment to the Comprehensive Plan on February 6, 2020, after public notice, and

WHEREAS, the City Council of the City of Palm Bay desires to adopt said amendment to the Comprehensive Plan of the City of Palm Bay.

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

SECTION 1. The Comprehensive Plan of the City of Palm Bay, Brevard County, Florida, is hereby amended to provide for the change in land use of property from Industrial Use and Commercial Use to Bayfront Mixed Use, which property is legally described herein as Exhibit "A".

SECTION 2. The Future Land Use Map is hereby changed to reflect this amendment.

SECTION 3. All staff report conditions and limitations shall be met and those conditions and limitations shall be made a part of the Comprehensive Plan. Specifically:

- 1) Future development shall be restricted to a right-in right-out driveway connection to Robert J. Conlan Boulevard;
- 2) A Traffic Study shall be required and shall be reviewed during the administrative staff approval process to determine any impacts to the adjacent road network and any improvements necessary to mitigate such impacts, with emphasis on access management;
- 3) A Phase One environmental study shall be required at the time of any development proposal; and
- 4) No residential structures shall be placed within 100 feet of the existing businesses that front Rowena Drive.

SECTION 4. 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 5. This ordinance shall become effective 31 days after the state land planning agency notifies the local government that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the state land planning agency or the Administration Commission enters a final order determining the adopted amendment to be in compliance pursuant to Section 163.3184(3)(c)4, Florida Statutes. The Department only issues a final order for Expedited State Review amendments if they are challenged by an affected party.

Read in title only at Meeting 2019-24, held on October 3, 2019; reheard and read in title only and duly enacted at Meeting 2020-38, held on October 29, 2020.

ATTEST:

Terese M. Jones, CITY CLERK



Reviewed by CAO: PS

Applicant: MLEF2-1, LLC
Case: CP-10-2019

cc: 10-30-20 Applicant
Case File

William Capote, MAYOR

ORDINANCE 2019-43

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WHEREAS, the City Council of the City of Palm Bay, pursuant to Chapter 163, Florida Statutes, held a public hearing on an amendment to the Comprehensive Plan on October 3, 2019, after public notice, and

WHEREAS, the City Council of the City of Palm Bay, pursuant to Chapter 163, Florida Statutes, submitted the amendment to the Florida Department of Economic Opportunity for review and comment, and

WHEREAS, the Florida Department of Economic Opportunity submitted a Comment Report regarding this amendment, and

WHEREAS, the City Council of the City of Palm Bay has considered the Comments provided and has addressed all items, and

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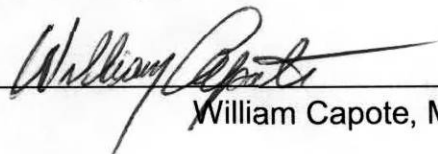
SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect

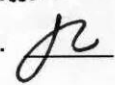
SECTION 5 This ordinance shall become effective 31 days after the state land planning agency notifies the local government that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the state land planning agency or the Administration Commission enters a final order determining the adopted amendment to be in compliance pursuant to Section 163.3184(3)(c)4 Florida Statutes. The Department only issues a final order for Expedited State Review amendments if they are challenged by an affected party.

Read in title only at Meeting 2019-24, held on October 3, 2019, and read in title only and duly enacted at Meeting 2020 03 held on February 6, 2020

ATTEST

Terese M. Jones, CITY CLERK


William Capote, MAYOR

Reviewed by CAO. 

Applicant MLEF2 1 LLC
Case CP 10 2019

cc 02-07 20 Applicant
Case File

LEGAL DESCRIPTION

TRACT "A"

A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND RUN S. 00 DEGREES 45'58" W. ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 100.00 FEET; THENCE S. 88 DEGREES 24'42" E., PARALLEL WITH AND 100.00 FEET DISTANT SOUTH, BY RIGHT ANGLE MEASUREMENT FROM THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 885.35 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1; THENCE S. 14 DEGREES 01'40" E., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 332.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 14 DEGREES 01'40" E., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 205.32 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ROBERT J. CONLAN BOULEVARD (A 200 FOOT WIDE RIGHT OF WAY); THENCE S. 75 DEGREES 57'10" W. ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 317.20 FEET TO THE POINT OF CURVATURE OF A 2964.79 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID NORTHERLY RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 08 DEGREES 14'56" A DISTANCE OF 323.35 FEET; THENCE DEPARTING SAID CURVE AND RIGHT OF WAY LINE, RUN N. 25 DEGREES 19'03" W., A DISTANCE OF 261.57 FEET; THENCE N. 76 DEGREES 41'26" E., A DISTANCE OF 666.47 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 89 DEGREES 16'54" A DISTANCE OF 38.96 FEET TO THE POINT OF BEGINNING.

TRACT "B"

A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST BREVARD COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND RUN S. 00 DEGREES 45'58" W. ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID WEST LINE, RUN S. 88 DEGREES 24'42" E. PARALLEL WITH AND 100 FEET DISTANT SOUTH, BY RIGHT ANGLE MEASUREMENT, FROM THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 885.35 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1. THENCE S. 14 DEGREES 01'40" E., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 202.60 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 90 DEGREES 43'06" A DISTANCE OF 39.58 FEET TO A POINT OF TANGENCY; THENCE S. 76 DEGREES 41'26" W. A DISTANCE OF 645.53 FEET TO THE POINT OF CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 83 DEGREES 20'01" A DISTANCE OF 87.27 FEET TO A POINT OF REVERSE CURVATURE OF A 490.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 36 DEGREES 40'31" A DISTANCE OF 313.65 FEET TO A POINT OF REVERSE CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 57 DEGREES 25'02" A DISTANCE OF 60.13 FEET TO A POINT OF TANGENCY ON THE AFORESAID WEST LINE OF GOVERNMENT LOT 1; THENCE N. 00 DEGREES 45'58" E., ALONG SAID WEST LINE, A DISTANCE OF 69.36 FEET TO THE POINT OF BEGINNING.

TRACT "C"

A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH RANGE 37 EAST BREVARD COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND RUN S. 00 DEGREES 45'58" W. ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 69.36 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 00 DEGREES 45'58" W. ALONG SAID WEST LINE, A DISTANCE OF 83.07 FEET TO A POINT ON A 60.00 FOOT RADIUS CURVE TO THE RIGHT HAVING A TANGENT BEARING OF S. 17 DEGREES 53'18" W., THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 16 DEGREES 57'18" A DISTANCE OF 17.76 FEET TO A POINT OF COMPOUND CURVATURE OF A 450.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 33 DEGREES 16'41" DISTANCE OF 261.41 FEET TO A POINT OF TANGENCY; THENCE S. 25 DEGREES 19'03" E., A DISTANCE OF 146.41 FEET; THENCE N. 76 DEGREES 41'26" E., A DISTANCE OF 718.00 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 89 DEGREES 16'54" A DISTANCE OF 38.96 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1; THENCE N. 14 DEGREES 01'40" W. ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 130.01 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT HAVING A RADIAL BEARING OF S. 75 DEGREES 58'20" W.; THENCE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 90 DEGREES 43'06" A DISTANCE OF 38.58 FEET TO A POINT OF TANGENCY; THENCE S. 76 DEGREES 41'26" W. A DISTANCE OF 645.53 FEET TO THE POINT OF CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 83 DEGREES 20'01" A DISTANCE OF 87.27 FEET TO A POINT OF REVERSE CURVATURE OF A 490.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 36 DEGREES 40'31" A DISTANCE OF 313.65 FEET TO A POINT OF REVERSE CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 57 DEGREES 25'02" A DISTANCE OF 60.13 FEET TO THE POINT OF BEGINNING.

TRACT "D"

A PARCEL OF LAND LYING IN THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST BREVARD COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHEAST CORNER OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4, AND RUN S. 00 DEGREES 45'48" W. ALONG THE EAST LINE OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4, A DISTANCE OF 252.43 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 00 DEGREES 45'48" W. ALONG SAID EAST LINE, A DISTANCE OF 292.20 FEET; THENCE S. 65 DEGREES 26'11" W. A DISTANCE OF 16.59 FEET TO A POINT ON THE WEST LINE OF A 15 FOOT WIDE RIGHT OF WAY RECORDED IN DEED BOX 191 PAGE 315 OF THE PUBLIC RECORDS OF BREVARD COUNTY FLORIDA; THENCE S. 00 DEGREES 45'48" W., A DISTANCE OF 27.67 FEET; THENCE N. 89 DEGREES 14'02" W., A DISTANCE OF 104.04 FEET; THENCE N. 34 DEGREES 10'56" W. A DISTANCE OF 47.76 FEET; THENCE N. 36 DEGREES 11'36" W., A DISTANCE OF 117.79 FEET; THENCE N. 88 DEGREES 23'32" W., A DISTANCE OF 112.68 FEET; THENCE N. 00 DEGREES 45'48" E., A DISTANCE OF 32.46 FEET; THENCE N. 88 DEGREES 23'32" W. A DISTANCE OF 110.52 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY (A 100 FOOT WIDE RIGHT OF WAY); THENCE S. 24 DEGREES 38'41" E. ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 718.87 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ROBERT J. CONLAN BOULEVARD (A 200 FOOT WIDE RIGHT OF WAY); THENCE N. 65 DEGREES 23'47" E., ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 371.41 FEET TO THE POINT OF CURVATURE OF A 2964.79 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 04 DEGREES 18'27" A DISTANCE OF 222.90 FEET; THENCE N. 25 DEGREES 19'03" W. A DISTANCE OF 261.57 FEET; THENCE S. 76 DEGREES 41'26" W. A DISTANCE OF 51.53 FEET; THENCE N. 25 DEGREES 19'03" W. A DISTANCE OF 146.41 FEET TO THE POINT OF CURVATURE OF A 450.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 33 DEGREES 16'41" A DISTANCE OF 261.41 FEET TO A POINT OF COMPOUND CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THRU A CENTRAL ANGLE OF 16 DEGREES 57'18" A DISTANCE OF 17.76 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THAT CERTAIN NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF THE SUBJECT PROPERTY AS DESCRIBED IN OFFICIAL RECORDS BOOK 1434, PAGE 733, OF THE PUBLIC RECORDS OF BREVARD COUNTY FLORIDA.

TOGETHER WITH THAT CERTAIN NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF THE SUBJECT PROPERTY AS DESCRIBED IN OFFICIAL RECORDS BOOK 1921 PAGE 988, OF THE PUBLIC RECORDS OF BREVARD COUNTY FLORIDA.



**CONSTRUCTION
ENGINEERING
GROUP**
Consulting Engineers

2631 East Collis Blvd., Suite A
Melbourne, FL 32935

Tel: 321.253.1221
www.cegroupinc.com
COA #0008097

HARBOR POINTE

PALM BAY, FL

LOCATION MAP AND LEGAL DESCRIPTION

DATE	05/28/2019
COUNTY	BREVARD
APPROVED BY	JTW
SCALE	THIS SHEET
NTS	FIG 1



FUTURE LAND USE MAP CASE CP-10-2019 & CPZ-10-2019

Subject Property

Located in the vicinity east of the Florida East Coast Railway, north of Robert J Conlan Boulevard NE and south of Kingswood Drive NE

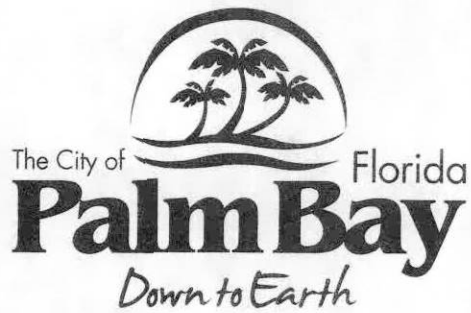
Future Land Use Classification

IND – Industrial Use and
COM – Commercial Use



Not to Scale

Map for illustrative purposes only, not to be construed as binding or as a survey



February 13, 2020

MLEF2 1 LLC
c/o Mr Jake Wise, P E
Construction Eningeering Group LLC
2651 W Eau Gallie Boulevard, Suite A
Melbourne FL 32935

Dear Mr Wise

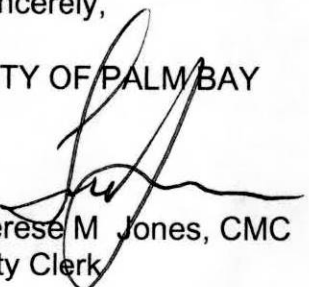
Enclosed are certified copies of Ordinances 2019-43 and 2019-44

The City Council approved the ordinances at Regular Council Meeting 2020 03 held on February 6, 2020, subject to the conditions in Section 3

If you should have any questions or require additional information please contact Mr Larry Bradley Growth Management Director, at (321) 733-3042

Sincerely,

CITY OF PALM BAY



Terese M Jones, CMC
City Clerk

/tjl

Enclosures Ordinances 2019-43 and 2019-44

Cases CP 10 2019 and CPZ 10-2019

Legislative Department



LEGISLATIVE MEMORANDUM

TO Honorable Mayor and Members of the City Council

FROM Lisa Morrell, City Manager

DATE October 3, 2019

RE Comprehensive Plan Future Land Use Map Amendment Request – MLEF2 1, LLC (Jake Wise, P E , Representing)

A handwritten signature in black ink, appearing to read "Lisa Morrell".

MLEF2-1 LLC (Jake Wise P E Representing) has applied for a large scale Comprehensive Plan Future Land Use (FLU) Map Amendment to change 21.83 acres of Industrial Use (IND) and Commercial Use (COM) to Bayfront Mixed Use (BMU)

City Council approval of the large scale amendment will require a transmittal of the proposal to the Florida Department of Economic Opportunity for review pursuant to Chapter 163 Florida Statutes

REQUESTING DEPARTMENT

Growth Management

RECOMMENDATION

Motion to approve Case CP-10-2019 subject to the conditions contained in the staff report including the following conditions

- 1 Future development will be restricted to a right-in right-out driveway connection to R.J Conlan
- 2 A Traffic Study will be required and will be reviewed during the administrative staff approval process to determine any impacts to the adjacent road network and any improvements necessary to mitigate such impacts with emphasis on access management
- 3 A Phase One environmental study will be required at the time of any development proposal
- 4 No residential structures shall be placed within 100 feet of the existing businesses

October 3 2019

Page | 2

that front Rowena Drive

Planning and Zoning Board Recommendation

Approval of the request by a vote of 5 to 1, subject to the staff comments contained in the staff report

- Attachments
- 1) Case CP-10-2019 (available upon request)
 - 2) Board minutes excerpt (available upon request)
 - 3) Ordinance

PJM/cp/ab



RECEIVED

JAN 06 2020

City of Palm Bay
Accounting Division

December 19 2019

CITY OF PALM BAY
120 MALABAR RD. SE PALM BAY, FL 32907
AFFIDAVIT OF PUBLICATION

NOTICE OF PUBLIC HEARING

CITY OF PALM BAY, FLORIDA
NOTICE OF PUBLIC HEARING

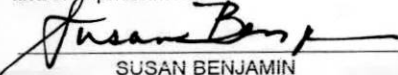
COMES NOW Affiant, SUSAN BENJAMIN, and states.

1 Affiant is an owner of Trader Jake's news paper with knowledge of the publication of the NOTICE OF PUBLIC HEARING in the above-styled cause.

2. Affiant further says that Trader Jakes is a newspaper published at Melbourne in said Brevard County, Florida, and that the said Trader Jakes has heretofore been continuously published in said Brevard County, Florida each week, for a period of 1 year next preceding the first publication of the attached copy of advertisement and Affiant further says that she has neither paid nor promised any person firm or corporation any discount, rebate commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

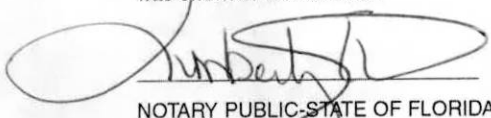
3 The NOTICE OF PUBLIC HEARING in the above-styled cause a true and correct copy of which is included herein was published for one (1) week, specifically December 20 2019

All of the matters set forth are true and correct. I understand that the penalty for making a false statement under oath includes fines and/or imprisonment.


SUSAN BENJAMIN

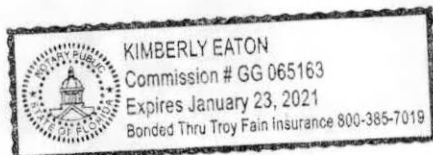
STATE OF FLORIDA
COUNTY OF BREVARD

SWORN TO OR SUBSCRIBED before me,
on the 20 day of January, 2019,
the undersigned, by Susan Benjamin who
was sworn or took an oath


NOTARY PUBLIC-STATE OF FLORIDA

Publication cost \$250

Ad/Invoice Number:012698



Notice is hereby given that the City Council of the City of Palm Bay, Florida, will hold a public hearing for the purpose of enacting Ordinance Nos. 2019-43, 2019-44, 2019-68, 2019-69, 2019-70 and 2019-71 at City Hall, 120 Malabar Road, SE, Palm Bay, on January 2, 2020, at 7:00 P.M., titled as shown:

ORDINANCE 2019-43

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 183, COMPREHENSIVE PLAN REGULATIONS, SECTION 183.01, COMPREHENSIVE PLAN, SUBSECTION (D), ADOPTION OF FUTURE LAND USE MAP, BY AMENDING FUTURE LAND USE MAP, PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR AN EFFECTIVE DATE.

ORDINANCE 2019-44

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM HC (HIGHWAY COMMERCIAL DISTRICT) AND HI (HEAVY INDUSTRIAL DISTRICT) TO BMU (BAYFRONT MIXED USE DISTRICT); WHICH PROPERTY IS LOCATED WEST OF AND ADJACENT TO DIXIE HIGHWAY, IN THE VICINITY BETWEEN KINGSWOOD DRIVE AND ROBERT J. CONLAN BOULEVARD, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A CHANGE OF THE ZONING MAP PROVIDING FOR AN EFFECTIVE DATE.

ORDINANCE 2019-68

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 178, SIGNS, IN ORDER TO PROVIDE ADDITIONAL PROVISIONS RELATED TO TEMPORARY SIGNS, BENCH SIGNS AND SIGNS IN RESIDENTIAL ZONING DISTRICTS; 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.

ORDINANCE 2019-69

A ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, APPROVING A FINAL DEVELOPMENT PLAN TO BE KNOWN AS 'THE COURTYARDS AT WATERSTONE' IN PUD (PLANNED UNIT DEVELOPMENT) ZONING; WHICH PROPERTY IS LOCATED SOUTH OF AND ADJACENT TO MARA LOMA BOULEVARD, IN THE VICINITY WEST OF BABCOCK STREET, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A COMMENCEMENT PERIOD; PROVIDING FOR A CHANGE OF THE ZONING MAP; PROVIDING FOR AN EFFECTIVE DATE.

ORDINANCE 2019-70

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, VACATING AND ABANDONING A PORTION OF THE REAR TWENTY (20) FOOT PUBLIC UTILITY AND DRAINAGE EASEMENT, LOCATED WITHIN LOT 17, BLOCK 2364, PORT MALABAR UNIT 45, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 22, PAGE 7, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE.

ORDINANCE 2019-71

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XX, UTILITIES CODE, BY CREATING A NEW CHAPTER 203, TO BE TITLED "MANDATORY CONNECTION TO POTABLE WATER AND SEWER UTILITIES"; 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.

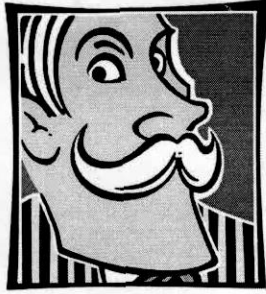
Interested parties may appear at the meeting and be heard with respect to the proposed ordinance(s). The ordinance draft(s) may be inspected by the public from 8:30 A.M. to 5:00 P.M., weekdays, in the Office of the City Clerk, City Hall, 120 Malabar Road, SE, Palm Bay, Florida.

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 5:00 p.m., before the hearing. (Section 59.03, Palm Bay Code of Ordinances).

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 (Section 286.0105, Florida Statutes). Such person must provide a method for recording the proceedings verbatim.

Terese M. Jones, CMC
City Clerk

OVER



TRADER JAKE'S

RECEIVED

FEB 03 2020

City of Palm Bay
Accounting Division

January 22, 2020

CITY OF PALM BAY
120 MALABAR RD SE PALM BAY FL 32907
AFFIDAVIT OF PUBLICATION

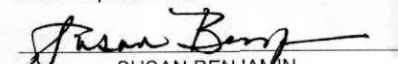
COMES NOW Affiant, SUSAN BENJAMIN, and states

1 Affiant is an owner of Trader Jake's newspaper with knowledge of the publication of the NOTICE OF PUBLIC HEARING in the above-styled cause.

2. Affiant further says that Trader Jakes is a newspaper published at Melbourne, in said Brevard County, Florida, and that the said Trader Jakes has heretofore been continuously published in said Brevard County Florida, each week, for a period of 1 year next preceding the first publication of the attached copy of advertisement and Affiant further says that she has neither paid nor promised any person firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper

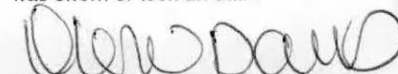
3. The NOTICE OF PUBLIC HEARING in the above-styled cause, a true and correct copy of which is included herein was published for one (1) week, specifically January 24 2020

All of the matters set forth are true and correct. I understand that the penalty for making a false statement under oath includes fines and/or imprisonment.


SUSAN BENJAMIN

STATE OF FLORIDA
COUNTY OF BREVARD

SWORN TO OR SUBSCRIBED before me, on the 28 day of January 2020 the undersigned, by Susan Benjamin who was sworn or took an oath



NOTARY PUBLIC-STATE OF FLORIDA

Publication cost \$150

Ad/Invoice Number:012729

ISD
2/11/19

NOTICE OF PUBLIC HEARING

CITY OF PALM BAY, FLORIDA

Notice is hereby given that the City Council of the City of Palm Bay, Florida, will hold a public hearing for the purpose of enacting Ordinances 2019-43 and 2019-44 at City Hall, 120 Malabar Road, SE, Palm Bay, on February 6, 2020, at 7:00 P.M. titled as shown:

ORDINANCE 2019-43

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 183, COMPREHENSIVE PLAN REGULATIONS, SECTION 183.01, COMPREHENSIVE PLAN, SUBSECTION (D), ADOPTION OF FUTURE LAND USE MAP BY AMENDING FUTURE LAND USE MAP; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR AN EFFECTIVE DATE.

ORDINANCE 2019-44

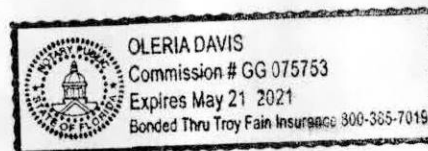
AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM HC (HIGHWAY COMMERCIAL DISTRICT) AND HI (HEAVY INDUSTRIAL DISTRICT) TO BMU (BAYFRONT MIXED USE DISTRICT); WHICH PROPERTY IS LOCATED WEST OF AND ADJACENT TO DIXIE HIGHWAY, IN THE VICINITY BETWEEN KINGSWOOD DRIVE AND ROBERT J. CONLAN BOULEVARD, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A CHANGE OF THE ZONING MAP; PROVIDING FOR AN EFFECTIVE DATE.

Interested parties may appear at the meeting and be heard with respect to the proposed ordinance(s). The ordinance draft(s) may be inspected by the public from 8:30 A.M. to 5:00 P.M., weekdays, in the Office of the City Clerk, City Hall, 120 Malabar Road, SE, Palm Bay, Florida.

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 5:00 p.m., before the hearing (Section 59.03 Palm Bay Code of Ordinances).

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 (Section 286.0105, Florida Statutes). Such person must provide a method for recording the proceedings verbatim.

Terese M. Jones, CMC
City Clerk



A Daily Publication By:



CITY OF PALM BAY
120 MALABAR RD SE
PALM BAY, FL 32907
ATTN TERRI LEFLER

STATE OF FLORIDA COUNTY OF BREVARD

Before the undersigned authority personally appeared said legal clerk, who on oath says that he or she is a Legal Advertising Representative of the **FLORIDA TODAY** a daily newspaper published in Brevard County, Florida that the attached copy of advertisement, being a Legal Ad in the matter of

PUBLIC NOTICE

as published in **FLORIDA TODAY** in the issue(s) of

9/25/2020

Affiant further says that the said **FLORIDA TODAY** is a newspaper in said Brevard County, Florida and that the said newspaper has heretofore been continuously published in said Brevard County, Florida each day and has been entered as periodicals matter at the post office in **MELBOURNE** in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and Subscribed before me this 25th day of September 2020, by legal clerk who is personally known to me

A handwritten signature in black ink, appearing to be "Terr LeFler", written over a horizontal line.

Affiant

A handwritten signature in black ink, appearing to be "Nancy Heyrman", written over a horizontal line.

Notary State of Wisconsin County of Brown

5.15.23

My commission expires

Ad No: GCI0499034
Publication Cost: \$638.00
Customer No: CITY OF PALM BAY
PO#: PUBLIC HEARING

NANCY HEYRMAN
Notary Public
State of Wisconsin

NOTICE OF PUBLIC HEARING AND FINAL READING FOR COMPREHENSIVE PLAN AMENDMENT AND REZONING

The City of Palm Bay, Florida, proposes to adopt the following ordinances: 2019-43 and 2019-44.

The Palm Bay City Council will hold public hearings on the ordinances on October 6, 2020, at 6:00 P.M., at City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.



ORDINANCE 2019-43 (CP-10-2019; MLEF2-1, LLC)

(A large-scale Comprehensive Plan Future Land Use Map amendment from Industrial Use and Commercial Use to Bayfront Mixed Use.)

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 183, COMPREHENSIVE PLAN REGULATIONS, SECTION 183.01, COMPREHENSIVE PLAN, SUBSECTION (D), ADOPTION OF FUTURE LAND USE MAP, BY AMENDING FUTURE LAND USE MAP; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR AN EFFECTIVE DATE.

Tax Parcels 10, 22, and 1, Section 14, Township 28, Range 37 along with Lot 1 of Block C and Lot 1 of Block A, Huntington Terrace Subdivision, Section 11, Township 28, Range 37, Brevard County, Florida, containing 21.83 acres, more or less. (Located in the vicinity east of the Florida East Coast Railway, north of Robert J. Conlan Boulevard NE, and south of Kingswood Drive NE)

***ORDINANCE 2019-44 (CPZ-10-2019; MLEF2-1, LLC)**

(A zoning amendment from HC (Highway Commercial District) zoning and HI (Heavy Industrial District) zoning to BMU (Bayfront Mixed Use District) zoning.)

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM HC (HIGHWAY COMMERCIAL DISTRICT) AND HI (HEAVY INDUSTRIAL DISTRICT) TO BMU (BAYFRONT MIXED USE DISTRICT); WHICH PROPERTY IS LOCATED WEST OF AND ADJACENT TO DIXIE HIGHWAY, IN THE VICINITY BETWEEN KINGSWOOD DRIVE AND ROBERT J. CONLAN BOULEVARD, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A CHANGE OF THE ZONING MAP; PROVIDING FOR AN EFFECTIVE DATE.

Tax Parcels 10, 22, and 1, Section 14, Township 28, Range 37 along with Lot 1 of Block C and Lot 1 of Block A, Huntington Terrace Subdivision, Section 11, Township 28, Range 37, Brevard County, Florida, containing 21.83 acres, more or less. (Located in the vicinity east of the Florida East Coast Railway, north of Robert J. Conlan Boulevard NE, and south of Kingswood Drive NE)

*Indicates quasi-judicial request(s).

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 5:00 p.m., before the hearing (Section 59.03, Palm Bay Code of Ordinances).

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 (Section 286.0105, Florida Statutes). Such person must provide a method for recording the proceedings verbatim.

Pursuant to Section 286.011, Florida Statutes, and Executive Order 20-69, notice is hereby given that the City of Palm Bay shall hold the above public meeting on October 6, 2020, beginning at 6:00 P.M. and lasting until the meeting is complete. The meeting will be conducted via communications media technology (teleconference/video conference).

Interested parties are invited to submit written or oral communication on the aforementioned ordinances. Interested parties may appear in person, subject to legal and social distancing measures. Information regarding the virtual City Council meeting format can be found at www.palmbayflorida.org/agenda, or contact the Office of the City Clerk at (321) 952-3414.

Full legal descriptions of properties are available from the Land Development Division. Please contact the City of Palm Bay's Land Development Division at (321) 733-3041 should you have any questions regarding the referenced cases.

Terese M. Jones, CMC
City Clerk

FT-GD04/9934-01

ORDINANCE 2019-44

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM HC (HIGHWAY COMMERCIAL DISTRICT) AND HI (HEAVY INDUSTRIAL DISTRICT) TO BMU (BAYFRONT MIXED USE DISTRICT); WHICH PROPERTY IS LOCATED WEST OF AND ADJACENT TO DIXIE HIGHWAY, IN THE VICINITY BETWEEN KINGSWOOD DRIVE AND ROBERT J. CONLAN BOULEVARD, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A CHANGE OF THE ZONING MAP; 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 Zoning Ordinance of the City of Palm Bay, Brevard County, Florida, is hereby amended to provide for the rezoning of property from HC (Highway Commercial District) and HI (Heavy Industrial District) to BMU (Bayfront Mixed Use District), being legally described herein as Exhibit "A".

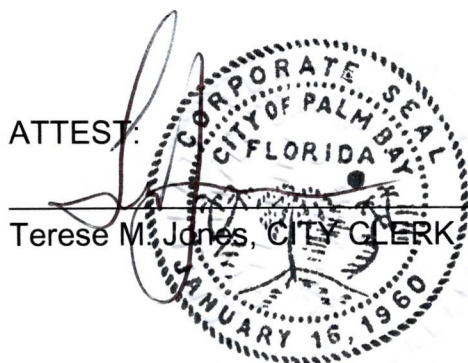
SECTION 2. The Zoning Map of the City of Palm Bay is hereby revised to reflect this amendment.

SECTION 3. The provisions within this ordinance shall take effect immediately upon adoption, pending the enactment of Ordinance 2019-43.

Read in title only at Meeting 2019-24, held on October 3, 2019; reheard and read in title only and duly enacted at Meeting 2020-38, held on October 29, 2020.

ATTEST:

Terese M. Jones, CITY CLERK



William Capote, MAYOR

City of Palm Bay, Florida
Ordinance 2019-44

Reviewed by CAO: B

Applicant: MLEF2-1, LLC
Case: CPZ-10-2019

cc: 10-30-20 Applicant
Case File

ORDINANCE 2019-44

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM HC (HIGHWAY COMMERCIAL DISTRICT) AND HI (HEAVY INDUSTRIAL DISTRICT) TO BMU (BAYFRONT MIXED USE DISTRICT), WHICH PROPERTY IS LOCATED WEST OF AND ADJACENT TO DIXIE HIGHWAY, IN THE VICINITY BETWEEN KINGSWOOD DRIVE AND ROBERT J CONLAN BOULEVARD, AND LEGALLY DESCRIBED HEREIN, PROVIDING FOR A CHANGE OF THE ZONING MAP, 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 Zoning Ordinance of the City of Palm Bay, Brevard County, Florida, is hereby amended to provide for the rezoning of property from HC (Highway Commercial District) and HI (Heavy Industrial District) to BMU (Bayfront Mixed Use District), being legally described herein as Exhibit A

SECTION 2 The Zoning Map of the City of Palm Bay is hereby revised to reflect this amendment

SECTION 3 The provisions within this ordinance shall take effect immediately upon adoption, pending the enactment of Ordinance 2019-43

Read in title only at Meeting 2019 24 held on October 3 2019, and read in title only and duly enacted at Meeting 2020-03 held on February 6 2020


ATTEST

Terese M Jones, CITY CLERK



William Capote, MAYOR

City of Palm Bay Florida
Ordinance 2019-44

Reviewed by CAO: 

Applicant MLEF2-1 LLC
Case CPZ 10 2019

cc 02 07 20

Applicant
Case File

LEGAL DESCRIPTION

TRACT "A"

A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST BREVARD COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND RUN S. 00 DEGREES 45'58" W. ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 100.00 FEET; THENCE S. 88 DEGREES 24'42" E., PARALLEL WITH AND 100.00 FEET DISTANT SOUTH, BY RIGHT ANGLE MEASUREMENT FROM THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 885.35 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1; THENCE S. 14 DEGREES 01'40" E., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 332.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 14 DEGREES 01'40" E., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 205.32 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ROBERT J. CONLAN BOULEVARD (A 200 FOOT WIDE RIGHT OF WAY); THENCE S. 75 DEGREES 57'10" W., ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 317.20 FEET TO THE POINT OF CURVATURE OF A 2964.79 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID NORTHERLY RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 06 DEGREES 14'56" A DISTANCE OF 323.35 FEET; THENCE DEPARTING SAID CURVE AND RIGHT OF WAY LINE, RUN N. 25 DEGREES 19'03" W. A DISTANCE OF 261.57 FEET; THENCE N. 76 DEGREES 41'26" E. A DISTANCE OF 666.47 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 89 DEGREES 16'54" A DISTANCE OF 38.96 FEET TO THE POINT OF BEGINNING.

TRACT "B"

A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST BREVARD COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND RUN S. 00 DEGREES 45'58" W. ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID WEST LINE, RUN S. 88 DEGREES 24'42" E., PARALLEL WITH AND 100 FEET DISTANT SOUTH BY RIGHT ANGLE MEASUREMENT FROM THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 885.35 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1; THENCE S. 14 DEGREES 01'40" E. ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 202.60 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 90 DEGREES 43'06" A DISTANCE OF 39.58 FEET TO A POINT OF TANGENCY; THENCE S. 76 DEGREES 41'26" W. A DISTANCE OF 645.53 FEET TO THE POINT OF CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 83 DEGREES 20'01" A DISTANCE OF 87.27 FEET TO A POINT OF REVERSE CURVATURE OF A 490.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 36 DEGREES 40'31" A DISTANCE OF 313.65 FEET TO A POINT OF REVERSE CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 57 DEGREES 25'02" A DISTANCE OF 60.13 FEET TO A POINT OF TANGENCY ON THE AFORESAID WEST LINE OF GOVERNMENT LOT 1; THENCE N. 00 DEGREES 45'58" E., ALONG SAID WEST LINE, A DISTANCE OF 69.36 FEET TO THE POINT OF BEGINNING.

TRACT "C"

A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 14, TOWNSHIP 28 SOUTH RANGE 37 EAST BREVARD COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 OF SECTION 14, AND RUN S. 00 DEGREES 45'58" W. ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 69.36 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 00 DEGREES 45'58" W. ALONG SAID WEST LINE, A DISTANCE OF 83.07 FEET TO A POINT ON A 60.00 FOOT RADIUS CURVE TO THE RIGHT HAVING A TANGENT BEARING OF S. 17 DEGREES 53'18" W.; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 16 DEGREES 57'18" A DISTANCE OF 17.76 FEET TO A POINT OF COMPOUND CURVATURE OF A 450.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 33 DEGREES 16'41" DISTANCE OF 261.41 FEET TO A POINT OF TANGENCY; THENCE S. 25 DEGREES 19'03" E., A DISTANCE OF 146.41 FEET; THENCE N. 76 DEGREES 41'26" E. A DISTANCE OF 718.00 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 89 DEGREES 16'54" A DISTANCE OF 38.96 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 1; THENCE N. 14 DEGREES 01'40" W., ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 130.01 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT HAVING A RADIAL BEARING OF S. 75 DEGREES 58'20" W. THENCE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 90 DEGREES 43'06" A DISTANCE OF 38.58 FEET TO A POINT OF TANGENCY; THENCE S. 76 DEGREES 41'26" W. A DISTANCE OF 645.53 FEET TO THE POINT OF CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 83 DEGREES 20'01" A DISTANCE OF 87.27 FEET TO A POINT OF REVERSE CURVATURE OF A 490.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 36 DEGREES 40'31" A DISTANCE OF 313.65 FEET TO A POINT OF REVERSE CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 57 DEGREES 25'02" A DISTANCE OF 60.13 FEET TO THE POINT OF BEGINNING.

TRACT "D"

A PARCEL OF LAND LYING IN THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 14, TOWNSHIP 28 SOUTH RANGE 37 EAST BREVARD COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHEAST CORNER OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND RUN S. 00 DEGREES 45'48" W., ALONG THE EAST LINE OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4, A DISTANCE OF 252.43 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 00 DEGREES 45'48" W. ALONG SAID EAST LINE, A DISTANCE OF 292.20 FEET; THENCE S. 65 DEGREES 26'11" W. A DISTANCE OF 16.59 FEET TO A POINT ON THE WEST LINE OF A 15 FOOT WIDE RIGHT OF WAY RECORDED IN DEED BOX 191 PAGE 315 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S. 00 DEGREES 45'48" W., A DISTANCE OF 27.67 FEET; THENCE N. 89 DEGREES 14'02" W. A DISTANCE OF 104.04 FEET; THENCE N. 34 DEGREES 10'56" W. A DISTANCE OF 47.76 FEET; THENCE N. 36 DEGREES 11'36" W., A DISTANCE OF 117.79 FEET; THENCE N. 88 DEGREES 23'32" W. A DISTANCE OF 112.68 FEET; THENCE N. 00 DEGREES 45'48" E. A DISTANCE OF 32.46 FEET; THENCE N. 88 DEGREES 23'32" W. A DISTANCE OF 110.52 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY (A 100 FOOT WIDE RIGHT OF WAY); THENCE S. 24 DEGREES 38'41" E., ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 718.87 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ROBERT J. CONLAN BOULEVARD (A 200 FOOT WIDE RIGHT OF WAY); THENCE N. 65 DEGREES 23'47" E., ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 371.41 FEET TO THE POINT OF CURVATURE OF A 2964.79 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 04 DEGREES 18'27" A DISTANCE OF 222.90 FEET; THENCE N. 25 DEGREES 19'03" W. A DISTANCE OF 261.57 FEET; THENCE S. 76 DEGREES 41'26" W. A DISTANCE OF 51.53 FEET; THENCE N. 25 DEGREES 19'03" W. A DISTANCE OF 146.41 FEET TO THE POINT OF CURVATURE OF A 450.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THRU A CENTRAL ANGLE OF 33 DEGREES 16'41" A DISTANCE OF 261.41 FEET TO A POINT OF COMPOUND CURVATURE OF A 60.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THRU A CENTRAL ANGLE OF 16 DEGREES 57'18" A DISTANCE OF 17.76 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THAT CERTAIN NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF THE SUBJECT PROPERTY AS DESCRIBED IN OFFICIAL RECORDS BOOK 1434, PAGE 733, OF THE PUBLIC RECORDS OF BREVARD COUNTY FLORIDA.

TOGETHER WITH THAT CERTAIN NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF THE SUBJECT PROPERTY AS DESCRIBED IN OFFICIAL RECORDS BOOK 1921 PAGE 988, OF THE PUBLIC RECORDS OF BREVARD COUNTY FLORIDA.

HARBOR POINTE

PALM BAY, FL

LOCATION MAP AND LEGAL DESCRIPTION

DATE 05/28/2019

COUNTY BREVARD

APPROVED BY JTW

SCALE

THIS SHEET

NTS

FIG 1



**CONSTRUCTION
ENGINEERING
GROUP**
Consulting Engineers

2651 East Collins Blvd., Suite A
Melbourne, FL 32935

Tel. 321.253.1221
www.cegroupinc.com
COA #008097



ZONING MAP

CASE CP-10-2019 & CPZ-10-2019

Subject Property

Located in the vicinity east of the Florida East Coast Railway north of Robert J Conlan Boulevard NE and south of Kingswood Drive NE

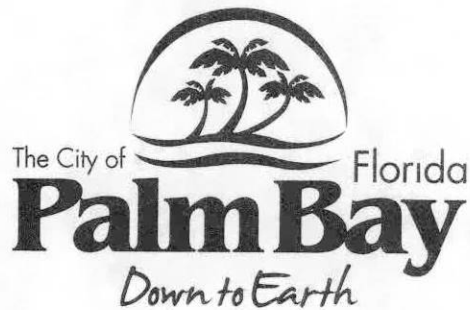
Current Zoning Classification

HC – Highway Commercial District and
HI – Heavy Industrial District



Not to Scale

Map for illustrative purposes only; not to be construed as binding or as a survey



February 13, 2020

MLEF2-1 LLC
c/o Mr Jake Wise P E
Construction Enineering Group, LLC
2651 W Eau Gallie Boulevard Suite A
Melbourne, FL 32935

Dear Mr Wise

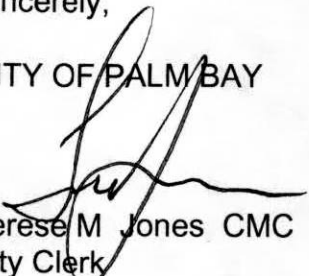
Enclosed are certified copies of Ordinances 2019-43 and 2019-44

The City Council approved the ordinances at Regular Council Meeting 2020-03, held on February 6, 2020 subject to the conditions in Section 3

If you should have any questions or require additional information, please contact Mr Larry Bradley Growth Management Director at (321) 733-3042

Sincerely,

CITY OF PALM BAY



Terese M Jones CMC
City Clerk

/tjl

Enclosures Ordinances 2019-43 and 2019-44

Cases CP 10-2019 and CPZ-10-2019

Legislative Department

120 Malabar Road SE • Palm Bay FL 32907 3009
Phone: 321 952.3414 • Fax: 321 953.8971
Visit our website: www.palmbayflorida.org



LEGISLATIVE MEMORANDUM

TO Honorable Mayor and Members of the City Council

FROM Lisa Morrell, City Manager

DATE October 3 2019

RE Comprehensive Plan Zoning Request – MLEF2-1, LLC (Jake Wise, P E , Representing)

A handwritten signature in black ink, likely of the City Manager, Lisa Morrell.

MLEF2 1, LLC (Jake Wise, P E , Representing) has applied for a rezoning of the subject parcels from HC, Highway Commercial District and HI, Heavy Industrial District, to the BMU, Bayfront Mixed Use District

REQUESTING DEPARTMENT
Growth Management

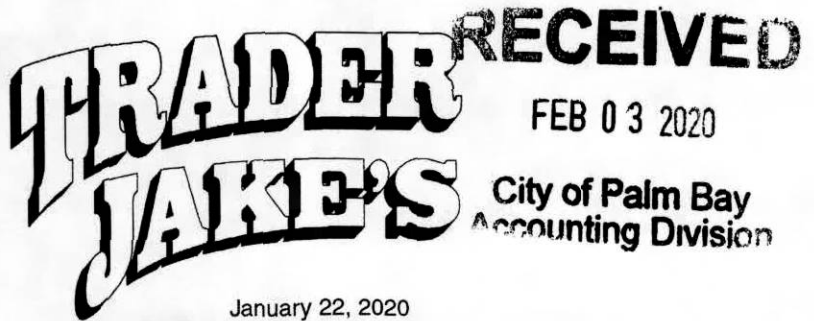
RECOMMENDATION

Motion to approve Case CPZ 10-2019 subject to the staff comments contained in the staff report

Planning and Zoning Board Recommendation
Approval of the request by a vote of 5 to 1

Attachments 1) Case CPZ 10 2019 (available upon request)
 2) Board minutes excerpt (available upon request)
 3) Ordinance

PJM/cp/ab



CITY OF PALM BAY
120 MALABAR RD. SE PALM BAY FL 32907
AFFIDAVIT OF PUBLICATION

COMES NOW Affiant, SUSAN BENJAMIN, and states:

1 Affiant is an owner of Trader Jake's newspaper with knowledge of the publication of the NOTICE OF PUBLIC HEARING in the above-styled cause.

2. Affiant further says that Trader Jakes is a newspaper published at Melbourne, in said Brevard County, Florida, and that the said Trader Jakes has heretofore been continuously published in said Brevard County, Florida each week, for a period of 1 year next preceded the first publication of the attached copy of advertisement: and Affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

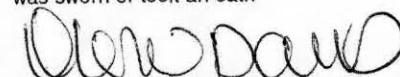
3. The NOTICE OF PUBLIC HEARING in the above-styled cause, a true and correct copy of which is included herein was published for one (1) week, specifically January 24, 2020.

All of the matters set forth are true and correct. I understand that the penalty for making a false statement under oath includes fines and/or imprisonment.


SUSAN BENJAMIN

STATE OF FLORIDA
COUNTY OF BREVARD

SWORN TO OR SUBSCRIBED before me, on the 28 day of January, 2020, the undersigned by Susan Benjamin who was sworn or took an oath



NOTARY PUBLIC-STATE OF FLORIDA

Publication cost \$150

Ad/Invoice Number: 012729



NOTICE OF PUBLIC HEARING

CITY OF PALM BAY, FLORIDA

Notice is hereby given that the City Council of the City of Palm Bay, Florida, will hold a public hearing for the purpose of enacting Ordinances 2019-43 and 2019-44 at City Hall, 120 Malabar Road, SE, Palm Bay, on February 6, 2020, at 7:00 P.M., titled as shown:

ORDINANCE 2019-43

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 183, COMPREHENSIVE PLAN REGULATIONS, SECTION 183.01, COMPREHENSIVE PLAN, SUBSECTION (D), ADOPTION OF FUTURE LAND USE MAP BY AMENDING FUTURE LAND USE MAP; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR AN EFFECTIVE DATE.

ORDINANCE 2019-44

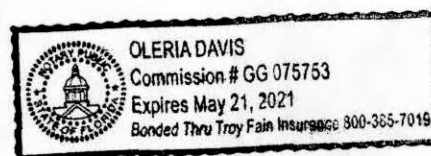
AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM HC (HIGHWAY COMMERCIAL DISTRICT) AND HI (HEAVY INDUSTRIAL DISTRICT) TO BMU (BAYFRONT MIXED USE DISTRICT); WHICH PROPERTY IS LOCATED WEST OF AND ADJACENT TO DIXIE HIGHWAY, IN THE VICINITY BETWEEN KINGSWOOD DRIVE AND ROBERT J. CONLAN BOULEVARD, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A CHANGE OF THE ZONING MAP; PROVIDING FOR AN EFFECTIVE DATE.

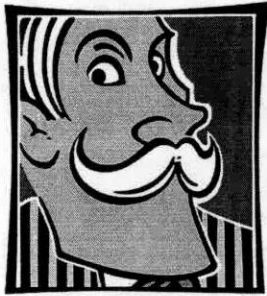
Interested parties may appear at the meeting and be heard with respect to the proposed ordinance(s). The ordinance draft(s) may be inspected by the public from 8:30 A.M. to 5:00 P.M., weekdays, in the Office of the City Clerk, City Hall, 120 Malabar Road, SE, Palm Bay, Florida.

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 5:00 p.m. before the hearing (Section 59.03, Palm Bay Code of Ordinances).

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 (Section 286.0105, Florida Statutes). Such person must provide a method for recording the proceedings verbatim.

Terese M. Jones, CMC
City Clerk





RECEIVED

JAN 06 2020

City of Palm Bay
Accounting Division

December 19, 2019

CITY OF PALM BAY
120 MALABAR RD. SE PALM BAY, FL 32907
AFFIDAVIT OF PUBLICATION

NOTICE OF PUBLIC HEARING

CITY OF PALM BAY, FLORIDA
NOTICE OF PUBLIC HEARING

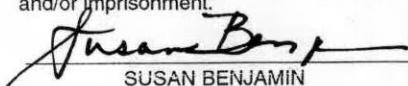
COMES NOW Affiant, SUSAN BENJAMIN, and states:

1 Affiant is an owner of Trader Jake's newspaper with knowledge of the publication of the NOTICE OF PUBLIC HEARING in the above-styled cause.

2. Affiant further says that Trader Jakes is a newspaper published at Melbourne, in said Brevard County, Florida, and that the said Trader Jakes has heretofore been continuously published in said Brevard County, Florida, each week, for a period of 1 year next preceding the first publication of the attached copy of advertisement: and Affiant further says that she has neither paid nor promised any person firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper

3 The NOTICE OF PUBLIC HEARING in the above-styled cause, a true and correct copy of which is included herein was published for one (1) week, specifically December 20 2019.

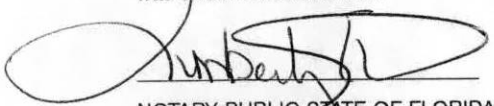
All of the matters set forth are true and correct. I understand that the penalty for making a false statement under oath includes fines and/or imprisonment.



SUSAN BENJAMIN

STATE OF FLORIDA
COUNTY OF BREVARD

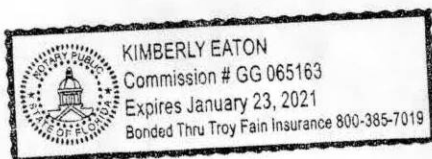
SWORN TO OR SUBSCRIBED before me,
on the 2nd day of January, 2019,
the undersigned by Susan Benjamin who 202
was sworn or took an oath.



NOTARY PUBLIC-STATE OF FLORIDA

Publication cost \$250

Ad/Invoice Number:012698



Notice is hereby given that the City Council of the City of Palm Bay, Florida, will hold a public hearing for the purpose of enacting Ordinance Nos. 2019-43, 2019-44, 2019-68, 2019-69, 2019-70 and 2019-71 at City Hall, 120 Malabar Road, SE, Palm Bay, on January 2, 2020, at 7:00 P.M. titled as shown:

ORDINANCE 2019-43

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 183, COMPREHENSIVE PLAN REGULATIONS, SECTION 183.01, COMPREHENSIVE PLAN, SUBSECTION (D), ADOPTION OF FUTURE LAND USE MAP, BY AMENDING FUTURE LAND USE MAP; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR AN EFFECTIVE DATE.

ORDINANCE 2019-44

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM HC (HIGHWAY COMMERCIAL DISTRICT) AND HI (HEAVY INDUSTRIAL DISTRICT) TO BMU (BAYFRONT MIXED USE DISTRICT); WHICH PROPERTY IS LOCATED WEST OF AND ADJACENT TO DIXIE HIGHWAY, IN THE VICINITY BETWEEN KINGSWOOD DRIVE AND ROBERT J. CONLAN BOULEVARD, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A CHANGE OF THE ZONING MAP PROVIDING FOR AN EFFECTIVE DATE.

ORDINANCE 2019-68

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 178, SIGNS, IN ORDER TO PROVIDE ADDITIONAL PROVISIONS RELATED TO TEMPORARY SIGNS, BENCH SIGNS AND SIGNS IN RESIDENTIAL ZONING DISTRICTS; 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.

ORDINANCE 2019-69

A ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, APPROVING A FINAL DEVELOPMENT PLAN TO BE KNOWN AS 'THE COURTYARDS AT WATERSTONE' IN PUD (PLANNED UNIT DEVELOPMENT) ZONING; WHICH PROPERTY IS LOCATED SOUTH OF AND ADJACENT TO MARA LOMA BOULEVARD, IN THE VICINITY WEST OF BABCOCK STREET, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A COMMENCEMENT PERIOD; PROVIDING FOR A CHANGE OF THE ZONING MAP PROVIDING FOR AN EFFECTIVE DATE.

ORDINANCE 2019-70

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, VACATING AND ABANDONING A PORTION OF THE REAR TWENTY (20) FOOT PUBLIC UTILITY AND DRAINAGE EASEMENT, LOCATED WITHIN LOT 17, BLOCK 2364, PORT MALABAR UNIT 45, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 22, PAGE 7, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE.

ORDINANCE 2019-71

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XX, UTILITIES CODE, BY CREATING A NEW CHAPTER 203, TO BE TITLED "MANDATORY CONNECTION TO POTABLE WATER AND SEWER UTILITIES"; 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.

Interested parties may appear at the meeting and be heard with respect to the proposed ordinance(s). The ordinance draft(s) may be inspected by the public from 8:30 A.M. to 5:00 P.M., weekdays, in the Office of the City Clerk, City Hall, 120 Malabar Road, SE, Palm Bay, Florida.

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 5:00 p.m., before the hearing. (Section 59.03, Palm Bay Code of Ordinances).

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 (Section 286.0105, Florida Statutes). Such person must provide a method for recording the proceedings verbatim.

Terese M. Jones, CMC
City Clerk

OVER

A Daily Publication By:



CITY OF PALM BAY
120 MALABAR RD SE
PALM BAY, FL 32907
ATTN TERRI LEFLER

STATE OF FLORIDA COUNTY OF BREVARD

Before the undersigned authority personally appeared said legal clerk, who on oath says that he or she is a Legal Advertising Representative of the **FLORIDA TODAY** a daily newspaper published in Brevard County, Florida that the attached copy of advertisement, being a Legal Ad in the matter of

PUBLIC NOTICE

as published in **FLORIDA TODAY** in the issue(s) of

9/25/2020

Affiant further says that the said **FLORIDA TODAY** is a newspaper in said Brevard County, Florida and that the said newspaper has heretofore been continuously published in said Brevard County, Florida each day and has been entered as periodicals matter at the post office in **MELBOURNE** in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and Subscribed before me this 25th day of September 2020, by legal clerk who is personally known to me

Affiant

Notary State of Wisconsin County of Brown

5.15.23

My commission expires

Ad No: GCI0499034
Publication Cost: \$638.00
Customer No: CITY OF PALM BAY
PO#: PUBLIC HEARING

NANCY HEYRMAN
Notary Public
State of Wisconsin

NOTICE OF PUBLIC HEARING AND FINAL READING FOR COMPREHENSIVE PLAN AMENDMENT AND REZONING

The City of Palm Bay, Florida, proposes to adopt the following ordinances: 2019-43 and 2019-44.

The Palm Bay City Council will hold public hearings on the ordinances on October 6, 2020, at 6:00 P.M., at City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.



ORDINANCE 2019-43 (CP-10-2019; MLEF2-1, LLC)

(A large-scale Comprehensive Plan Future Land Use Map amendment from Industrial Use and Commercial Use to Bayfront Mixed Use.)

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 183, COMPREHENSIVE PLAN REGULATIONS, SECTION 183.01, COMPREHENSIVE PLAN, SUBSECTION (D), ADOPTION OF FUTURE LAND USE MAP, BY AMENDING FUTURE LAND USE MAP; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR AN EFFECTIVE DATE.

Tax Parcels 10, 22, and 1, Section 14, Township 28, Range 37 along with Lot 1 of Block C and Lot 1 of Block A, Huntington Terrace Subdivision, Section 11, Township 28, Range 37, Brevard County, Florida, containing 21.83 acres, more or less. (Located in the vicinity east of the Florida East Coast Railway, north of Robert J. Conlan Boulevard NE, and south of Kingswood Drive NE)

***ORDINANCE 2019-44 (CPZ-10-2019; MLEF2-1, LLC)**

(A zoning amendment from HC (Highway Commercial District) zoning and HI (Heavy Industrial District) zoning to BMU (Bayfront Mixed Use District) zoning.)

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM HC (HIGHWAY COMMERCIAL DISTRICT) AND HI (HEAVY INDUSTRIAL DISTRICT) TO BMU (BAYFRONT MIXED USE DISTRICT); WHICH PROPERTY IS LOCATED WEST OF AND ADJACENT TO DIXIE HIGHWAY, IN THE VICINITY BETWEEN KINGSWOOD DRIVE AND ROBERT J. CONLAN BOULEVARD, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A CHANGE OF THE ZONING MAP; PROVIDING FOR AN EFFECTIVE DATE.

Tax Parcels 10, 22, and 1, Section 14, Township 28, Range 37 along with Lot 1 of Block C and Lot 1 of Block A, Huntington Terrace Subdivision, Section 11, Township 28, Range 37, Brevard County, Florida, containing 21.83 acres, more or less. (Located in the vicinity east of the Florida East Coast Railway, north of Robert J. Conlan Boulevard NE, and south of Kingswood Drive NE)

*Indicates quasi-judicial request(s).

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 5:00 p.m., before the hearing (Section 59.03, Palm Bay Code of Ordinances).

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 (Section 286.0105, Florida Statutes). Such person must provide a method for recording the proceedings verbatim.

Pursuant to Section 286.011, Florida Statutes, and Executive Order 20-69, notice is hereby given that the City of Palm Bay shall hold the above public meeting on October 6, 2020, beginning at 6:00 P.M. and lasting until the meeting is complete. The meeting will be conducted via communications media technology (teleconference/video conference).

Interested parties are invited to submit written or oral communication on the aforementioned ordinances. Interested parties may appear in person, subject to legal and social distancing measures. Information regarding the virtual City Council meeting format can be found at www.palmbayflorida.org/agenda, or contact the Office of the City Clerk at (321) 952-3414.

Full legal descriptions of properties are available from the Land Development Division. Please contact the City of Palm Bay's Land Development Division at (321) 733-3041 should you have any questions regarding the referenced cases.

Terese M. Jones, CMC
City Clerk

F:\JCI\0459034-01

Ron DeSantis
GOVERNOR



Ken Lawson
EXECUTIVE DIRECTOR

March 13, 2020

The Honorable William Capote
Mayor, City of Palm Bay
120 Malabar Road
Palm Bay, Florida 32907

Dear Mayor Capote:

The Department of Economic Opportunity ("Department") has completed its review of the comprehensive plan amendment adopted by the City of Palm Bay (Amendment No. 19-05ESR) by Ordinance No. 2019-43 on February 6, 2020. We have reviewed the amendment in accordance with the expedited state review process set forth in Section 163.3184(2) and (3), Florida Statutes, and identified no provision that necessitates a challenge of the Ordinance adopting the amendment.

If the plan amendment is not challenged by an affected person, the amendment will become effective 31 days after the Department notified the local government that the plan amendment package was complete. If the plan amendment is challenged by an affected person, the amendment will not become effective until the Department or the Administration Commission enters a final order determining the amendment to be "In Compliance."

If you have any questions concerning this review, please contact Wisnerson Benoit, Planning Analyst, by telephone at (850) 717-8524 or by email at Wisnerson.Benoit@deo.myflorida.com.

Sincerely,

James D. Stansbury, Chief
Bureau of Community Planning and Growth

JDS/wb

cc: Christopher Balter, Planner II, City of Palm Bay
Hugh Harling, Jr., P.E., Executive Director, East Central Florida Regional Planning Council

Florida Department of Economic Opportunity | Caldwell Building | 107 E. Madison Street | Tallahassee, FL 32399
850.245.7105 | www.FloridaJobs.org
www.twitter.com/FLDEO | www.facebook.com/FLDEO

An equal opportunity employer/program. Auxiliary aids and service are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TTD equipment via the Florida Relay Service at 711.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Terese Jones, City Clerk

DATE: 1/4/2024

RE: Appointment of one (1) member to the Community Development Advisory Board.

One vacancy exists on the above subject board. The board is comprised of members representing various field within the community. This position represents the 'Employer within the City'.

The vacancy has been announced at two (2) regular Council meetings and applications solicited for same. The following application was received:

Alfred Ramsey Agarie
1680 Main Street, NE
Palm Bay 32905

REQUESTING DEPARTMENT:
Legislative

FISCAL IMPACT:
None

RECOMMENDATION:
Motion to approve the appointment of one (1) member to serve on the Community Development Advisory Board.

ATTACHMENTS:

Description

A. Agarie



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 Board -
Full Name: Alfred Ramsey Agorle
Home Address: 1680 Main Street NE -
City: Palm Bay FL Zip Code: 32905
Telephone Number: 321-508-9624 Fax Number:
Email Address: alfyagorle@gmail.com

EMPLOYMENT

Employer: Self Occupation: Business owner
Address: 4371 Dixie Hwy NE
City: Palm Bay FL State: FL Zip Code: 32905
Telephone Number: 321-508-9624 (2) Fax Number: 321-302-9934
Email Address: alfytrucking@gmail.com
Job Responsibilities: Direct and Manage, Dispatch and Schedule

EDUCATION

High School Name: Pennwood High School
Location: Kingston Years Completed: 78 Major/Degree: Science
College Business or Trade School: College of Art Science & Tech.
Location: Kingston Years Completed: 81 Major/Degree: Engineer
Professional School: University of the West Indies
Location: Kingston Years Completed: 83 Major/Degree: Business
Other: Admin & Management
Location: Years Completed: Major/Degree:

APPLICANT INFORMATION

Have you ever held a business tax receipt? ☒ Yes ☐ No If yes, please provide the following:

owner of 3 business in the city of Palm Bay

Title: President & Director, Trucking Service, Service station

Issue Date: 10-6-2023 Issuing Authority: City of Palm Bay

If any disciplinary action has been taken, please state the type and date of the action taken:

Disciplinary Action: N/A Disciplinary Date: N/A

Are you a resident of the City? ☒ Yes ☐ No If yes, how long? 38 Years — Months

How long have you been a resident of Brevard County? 38 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? N/A

Do you presently serve on a City board(s)? ☐ Yes ☒ No If yes, please list board(s):

N/A

Have you previously served on a City board(s)? ☒ Yes ☐ No If yes, please list board(s):

Port of Rec, Code enforcement

Are you currently serving on a board, authority, or commission for another governmental agency?

☐ Yes ☒ No If yes, what board(s): N/A

N/A

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: N/A

N/A

Where: N/A When: N/A

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: W.I.C.C.S., BACASCA,

Palm Bay Citizen

N/A

What are your hobbies / interests? Socializing with friends and
Family, play games & cook, love to collect old cars

Why do you want to serve on this board / committee? To volunteer and
help my city to grow to be a better place
to live, work and play Love 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: Indian Gender: Male 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: A. Agonz Date: 12-27-23

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: 1/4/2024

RE: Consideration of councilmembers attending the Florida League of Cities Leadership Inaugural Class in Kissimmee, February 9, 2024.

The Florida League of Cities Leadership Inaugural Class will be held at the Embassy Suites South - Lake Buena Vista, in Kissimmee, on Friday, February 9, 2024.

Councilmembers interested in attending need to announce same at tonight's meeting. If you are attending, please notify Legislative staff by Friday, January 12th, so all travel arrangements can be made.

REQUESTING DEPARTMENT:

FISCAL IMPACT:

Cost per person is approximately \$365. Funding is available in Legislative operating accounts 001-1110-511-4005 and 001-1110-511-5505.

RECOMMENDATION:

Request for consensus to approve travel for members of Council as requested.

ATTACHMENTS:

Description

Conference Announcement

FLC Leadership Class I - February 2024

The Florida League of Cities is proud to bring you the **FLC Leadership Class** on **February 9, 2024**, at the Embassy Suites Orlando Lake Buena Vista South, located at 4955 Kyngs Heath Road in Kissimmee, FL.

NOTE: By registering for this event, you acknowledge that Florida League of Cities, Incorporated (FLC) may capture event photos or videos and will have the irrevocable right to use, reproduce, distribute, publish and display any media featuring your image.

AGENDA

9:30 AM – 10:00 AM: Registration

10:00 AM: Welcome by President Greg Ross

10:00 AM – Noon: Communicating as a Leader - Steve Vancore,
Vancore/Jones Inc.

Noon – 3 PM: Luncheon and Keynote Address - J. Lenora Bresler,
Bresler Instant Leader Transformations, Lakeland

3:00 PM – 3:15 PM: Break and Photo

3:15 PM – 4:45 PM: Facilitated Problem-Solving

4:45 PM – 5:00 PM: Closing Remarks and Adjournment