

March 21, 2011

MEMBERS OF THE LOCAL PLANNING AGENCY
PLANNING AND ZONING BOARD
New Smyrna Beach, Florida

THIS SHALL SERVE AS YOUR OFFICIAL NOTIFICATION of the regular meeting of the LOCAL PLANNING AGENCY AND THE PLANNING AND ZONING BOARD on MONDAY, April 4, 2011 at 6:30 P.M., in the City Commission Chambers, 210 Sams Avenue, New Smyrna Beach, Florida, for consideration of the following:

ROLL CALL

APPROVAL OF MINUTES

Mobile workshop held January 29, 2011
Regular meeting held March 7, 2011

PUBLIC PARTICIPATION

VISIONING
Tattoo Parlors
Alcohol Regulations

OLD BUSINESS

NEW BUSINESS

- A. A-2-11: COLONY PARK EAST
Glenn D. Storch, Esquire, 420 South Nova Road, Daytona Beach Florida, 32114, applicant on behalf of the property owners, New Smyrna beach Acquisitions, LLC and Colony Park, LLC, 38068 Daughtery Road, Zephyrhills, Florida, 33540, requests annexation into the City of New Smyrna Beach

The subject property consists of approximately 41.45 acres and is generally located northeast of the intersection of State Road 44 and Colony Park Road.

- B. PUD-1-11: COLONY PARK EAST
Glenn D. Storch, Esquire, 420 South Nova Road, Daytona Beach, Florida, 32114, applicant on behalf of the property owners, New Smyrna Beach Acquisition, LLC and Colony Park, LLC. 38068 Daughtery Road, Zephyrhills,

Florida, 33540, requests rezoning from Volusia County B-3(C), Shopping Center (Thoroughfare Overlay Zone) and B-3, Shopping Center to City PUD(C), Planned Unit Development (Corridor Overlay Zone) and approval of the Colony Park PUD Master Development Agreement and Conceptual Development Plan.

The subject property consists of approximately 41.45 acres and is generally located northeast of the intersection of State Road 44 and Colony Park Road.

C. A-3-11: 4428 DORIS DRIVE

Duane Meade, 4428 Doris Drive, New Smyrna Beach, Florida, 32169, applicant and property owner requests the following:

- Annexation;
- *Comprehensive Plan* amendment from Volusia County Urban Low Intensity to City Low Density Residential; and
- Rezoning from Volusia County R-4(W), Urban Single-Family Residential (Indian River Lagoon Surface Water Improvements and Management Overlay Zone) to City R-1, Single-Family Residential.

The subject property consists of approximately 0.236 acres and is located at 4428 Doris Drive, immediately adjacent to the south municipal limit of the City.

D. ZT-5-11: SUBDIVISION APPROVAL PROCESS

The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168, requests approval of an amendment to the City's *Land Development Regulations* to revise the procedures for review and approval of preliminary and final plats and to eliminate the sketch plat requirement.

E. Z-1-11: FLAGLER AVENUE BOARDWALK

The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida, 32168, requests rezoning from B-4(4), Ocean Commercial to R, Recreation. The subject property consists of approximately 1.8 acres and is generally located south of Flagler Avenue, west of the Atlantic Ocean, north of Columbus Avenue and east of South Atlantic Avenue.

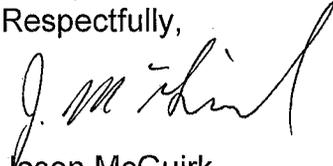
COMMENTS OR STATEMENTS BY MEMBERS OF THE BOARD

REPORTS AND COMMUNICATIONS BY THE STAFF

- April 6, 2011 – Form-Based Code Public Workshop #3
- Status Update – 10-Year Water Supply Plan, EAR-Based Amendments

ADJOURNMENT

Respectfully,



Jason McGuirk
Chairperson

cc: Mayor and City Commissioners
City Manager
City Clerk
City Attorney
Assistant City Attorney
Planning Manager
Planners
Members of the Press

Pursuant to Florida Statutes 286.01015, if an individual decides to appeal any decision made by the Planning & Zoning Board 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. Such person must provide a method for recording the proceedings.

In accordance with the Americans With Disabilities Act, persons needing assistance to participate in any of these proceedings should contact the Board Secretary listed below prior to the meeting:

Debora Jenkins, Planning and Zoning Secretary
City of New Smyrna Beach
210 Sams Avenue
New Smyrna Beach, FL 32168
(386) 424-2132

1 The Local Planning Agency/Planning and Zoning Board held a mobile workshop on
2 Saturday, January 29, 2011. The mobile workshop departed from the corner of Sams
3 Avenue and Julia Street at 8:00 a.m. The following Board members were in attendance:

4
5 ROLL CALL

6
7 Jesse Clark
8 Laurene Herwald
9 Kenneth Bohannon
10 Jason McGuirk
11 Marie Bushey

12
13 Travous Dever and Brooks Casey were absent.

14
15 Also present were City Manager Pam Brangaccio, Planning Manager Gail Henrikson,
16 CRA Director Tony Otte, CRA Board Member Steve Dennis, and CRA Board Member
17 Charles Belote.

18
19 Ms. Henrikson and Mr. Otte had all participants board the bus. Ms. Henrikson provided
20 a brief overview of the itinerary and reminded all Board members that the mobile
21 workshop was subject to the Sunshine Law. She advised all Board members that they
22 would not be able to discuss any items that might come before them in the future as an
23 agenda item.

24
25 The workshop departed for Ormond Beach City Hall.

26
27 ORMOND BEACH

28 The bus arrived at the Ormond Beach City Hall at approximately 8:45 a.m. The
29 participants departed the bus and were met by Laurene Kornel, Steve Spraker and
30 Becky Weedo, of the Ormond Beach Planning Department. Following a brief break, the
31 participants were seated in the Ormond Beach City Council Chambers for a
32 presentation by the Ormond Beach staff.

33
34 The Powerpoint presentation identified areas of the, particularly along the U. S. 1
35 corridor, where the City of Ormond Beach had instituted design guidelines, form-based
36 codes and/or other regulations designed to beautify the corridor. Ormond Beach staff
37 answered questions from the mobile workshop participants. At approximately 9:00
38 a.m., the participants and Ormond Beach staff left the City Hall and boarded the bus.

39
40 Ormond Beach staff provided a tour of the U. S. 1 corridor from the north to the south
41 city limits. They pointed buildings to the workshop participants that had benefitted from
42 the City's design guidelines. Staff also discussed the importance of having design
43 standards and such standards should not be viewed as an impediment to development.

44
45 Ormond Beach staff left the bus at the south City limits at approximately 9:45 a.m. The
46 mobile workshop proceeded to Magnolia Street in Daytona Beach, arriving there at
47 approximately 10:00 a.m.

1 DAYTONA BEACH

2
3 The mobile workshop participants were met in Daytona Beach by Jack White, developer
4 and by Jason Jeffries and Reed Burger with the Daytona Beach Community
5 Redevelopment Agency.

6
7 Mr. White provided the workshop participants with an overview of his mixed-use
8 development on Magnolia Street. He discussed incentives provided by the City of
9 Daytona Beach, density, parking and price ranges. Following the overview, Mr. White
10 invited the participants to view a unit and to visit the rooftop terrace. During the tour,
11 Mr. White answered various questions from the mobile workshop participants.

12
13 After leaving the Magnolia Street development project, the workshop participants, along
14 with Mr. Jeffries and Mr. Burger boarded the bus for a tour of the City. The CRA staff
15 members directed the bus to the beachside area of Daytona Beach, where several
16 redevelopment projects had either been completed or were underway. Daytona Beach
17 staff discussed the Main Street area on the beachside. This area, which is the hub of
18 Bike Week and Biketoberfest activities is usually vacant throughout the remainder of the
19 City. The City is discussing ways to bring activity to the area on a year-round basis.

20
21 Upon leaving the beachside, the CRA staff directed the bus along Beach Street, which
22 is one of the City's redevelopment areas on the Mainland. The CRA staff departed the
23 bus at Magnolia Street at approximately 11:30 a.m. The mobile workshop then
24 proceeded to the South Daytona City Hall, arriving there at approximately 11:45 a.m.

25
26 SOUTH DAYTONA

27 Upon arriving at the South Daytona City Hall, the workshop participants departed the
28 bus to meet with Tom Harowski, Planning Consultant for the City of South Daytona. Mr.
29 Harowski gave an overview of the history of development in South Daytona. Mr.
30 Harowski also discussed current ordinance changes that the City is working on to
31 improve the appearance of the U.S. 1 corridor and to encourage redevelopment of that
32 area.

33
34 Mr. Harowski and the workshop participants boarded the bus at approximately 12:15
35 p.m. to tour the City of South Daytona. Mr. Harowski directed the bus along U. S. 1 to
36 the south city limits. The bus then returned north, along the riverfront. During the tour,
37 Mr. Harowski pointed out areas that he had discussed during his overview. Mr.
38 Harowski also answered questions from the workshop participants.

39
40 The bus returned to the South Daytona City Hall at approximately 12:45 p.m., where Mr.
41 Harowski departed the bus.

42
43 The bus returned to New Smyrna Beach, arriving at approximately 1:00 p.m.

1 The Local Planning Agency/Planning and Zoning Board held a regular meeting on
2 Monday, March 7, 2011 in the City Commission Chambers, 210 Sams Avenue, New
3 Smyrna Beach, Florida. Chairperson Jason McGuirk called the meeting to order at 6:30
4 p.m.

5
6 **ROLL CALL**

7
8 The following members answered to roll call:

9 Jesse Clark
10 Brooks Casey
11 Marie Bushey
12 Kenneth Bohannon
13 Jason McGuirk
14 Laurene Herwald

15
16 Travous Dever was absent.

17
18 Also present were Planning Manager Gail Henrikson, Planner Marissa Moore; Assistant
19 City Attorney Greg McDole; Recording Secretary Debbie Jenkins and members of the
20 public.

21
22 **APPROVAL OF MINUTES**

23
24 **Mr. Clark made a motion to approve the minutes of the Planning and Zoning**
25 **Board meeting held February 7, 2011, seconded by Mr. Bohannon. Motion**
26 **passed on a roll-call vote, 5-0. Laurene Herwald abstained as she was absent**
27 **from the February 7, 2011 meeting.**

28
29 **PUBLIC PARTICIPATION**

30 None.

31
32 **VISIONING**

33
34 **Green Building Ordinance**

35 Mr. Knotek gave a brief overview of the proposed Green Building Ordinance. He stated
36 that the services that the Building Department provides were paid for by fees collected
37 in the department and not from the general fund, which allows flexibility in setting the
38 fees. He stated that the program is a voluntary program that would provide savings to
39 the community in the long-term. He stated that this voluntary program would need
40 incentives to encourage participation. He stated adopting this program would show that
41 the City is committed to green building practices.

42
43 Ms. Herwald stated she is aware of other resources that are currently in place with the
44 State and Federal government. She did not support the green building ordinance at this
45 time because other programs are already in place.

46
47 Ms. Bushey stated the former mayor had formed a green government group to do
48 research on this topic. She stated she spoke with someone from that group who stated

1 that they still have the entire packet of information collected and would be willing to
2 meet with the board and staff.

3
4 Ms. Moore stated that there was still a lot more work to be done beyond what had
5 already been submitted from that group.

6
7 Mr. Knotek stated that there was discussion to form a committee to review each City
8 building with regards to the green building ordinance.

9
10 Mr. Clark stated that while he favors the program, the funding of the incentives was still
11 an issue.

12
13 Mr. Knotek stated that reducing the process for permitting would bring costs down.

14
15 Mr. Casey stated his concerns are whether the City could really afford this program. He
16 stated that until the City demonstrates how the program can be funded he would not
17 support it. He is concerned that the incentives would be at the cost of the taxpayers. He
18 asked if the inspections would be more difficult to do for a green building versus other
19 projects.

20
21 Mr. Knotek stated that it would be possible that the inspectors would run into unknown
22 situations.

23
24 Ms. Bushey stated that the City should work towards this program but she would like to
25 see more concrete numbers and information regarding the implementation of this
26 program. She stated there were too many grey areas.

27
28 Mr. McGuirk asked Mr. Knotek to bring examples with specific numbers showing how
29 the incentives and funding of the program would work.

30
31 Mr. Knotek agreed to put some examples together for the board.

32
33 Public Participation

34 None

35
36 OLD BUSINESS

37 A. PUD-4-09: HOG EYE CAMP ROAD SQUARE /SAXON DRIVE & EAST 7TH
38 AVENUE

39 Stewart Mitchell, P.O. Box 940579, Maitland, Florida, applicant and property
40 owner requests the following:

- 41 • Rezoning from R-1 – Single Family Residential and B-5 – Planned
- 42 Shopping Center to PUD, Planned Unit Development and
- 43 • Approval of the Hog Eye Camp Road Square Planned Unit Development
- 44 Master Development Agreement and Conceptual Development Plan.
- 45

1 The subject property contains approximately 17.66 acres and is generally located
2 south of the intersection of East 3rd Avenue, on the east and west sides of Saxon
3 Drive.
4

5 Ms. Henrikson reviewed the staff report. She stated that the issues with lot clearing
6 have been resolved and the applicant has submitted a wetland mitigation report. She
7 explained that the applicant was withdrawing the request for a Future Land Use
8 Amendment.
9

10 Ms. Henrikson stated that staff recommended approval with three conditions:

- 11 • All outstanding comments, as shown on Exhibit C, are addressed and the final
12 plat is approved by all staff members;
- 13 • A tree survey is submitted for staff review in order to verify that minimum tree
14 preservation requirements will be met; and
- 15 • The Master Development Agreement is revised to incorporate the language
16 regarding the transfer of density from the west side of Saxon Drive and the north
17 side of East 7th Avenue to the multi-family site on the east side of Saxon Drive.
18

19 Ms. Bushey asked where the upland buffer mitigation would be located.
20

21 Ms. Henrikson stated that the areas between the west side of the retaining wall and the
22 required buffer would be used for additional upland buffer, which would address the
23 mitigation requirements.
24

25 Jim Morris, 420 S. Nova Road, Daytona Beach, representative for the applicant, stated
26 the staff's conditions were acceptable to the applicant. He commented that no wetlands
27 were affected by this proposal. He stated that Stewart Mitchell has been a good steward
28 of this property for many years. He stated he wanted to introduce Mr. Mitchell to the
29 board at this time.
30

31 Stewart Mitchell, P.O. Box 940579, Maitland, Florida, stated the stewardship of this
32 property has been in his family through four generations. He stated that the time has
33 come for this property to evolve and he has put a lot of thought into this proposal. He
34 mentioned that he had Dot Moore, an archeologist, out on the property back in the mid
35 1990's and nothing was found at that time.
36

37 Mike McQuarrie, Zahn Engineering, 240 S. Palmetto Street, Daytona Beach, gave a
38 power point presentation showing the areas of the proposed project. He commented on
39 the residential versus commercial density. He stated that the wetlands were to be
40 preserved and the how the impact would affect the upland buffer. He explained the vinyl
41 sheet pile stormwater retention system and how it would be phased in.
42

43 **Mr. Bohannon made the motion to approve the recommendation to City**
44 **Commission, seconded by Mr. Clark. Motion passed on a roll-call vote, 4-1 with**
45 **the following conditions:**
46

- 47 1. All outstanding comments, as shown on Exhibit C, are addressed and the

1 **Master Development Agreement and Conceptual Development Plan is**
2 **approved by all staff members;**

3 **2. A tree survey is submitted for staff review in order to verify that minimum**
4 **tree preservation requirements will be met.**

5 **3. The Master Development Agreement is revised to incorporate the language**
6 **regarding the transfer of density from the west side of Saxon Drive and the**
7 **north side of East 7th Avenue to the multi-family site on the east side of**
8 **Saxon Drive.**

9
10 **Ms. Bushey dissented and Mr. Casey abstained due to a conflict of interest.**

11
12 **Ms. Bushey dissented stating that “this is a fragile eco-system that we are**
13 **dealing with and I can respect the fact that they want to try and salvage some**
14 **trees but this will permanently and forever damage a very fragile eco-system and**
15 **I can see a much better use of preservation for this land. Furthermore, we have an**
16 **insurmountable amount of homes for sale in New Smyrna Beach including**
17 **beachside, there is just not a need for it right now.”**

18
19 B. S-1-10: CALLALISA CREEK VISTAS / SAXON DRIVE BETWEEN EAST 7TH
20 AND EAST 9TH AVENUES (Final Plat)

21 Stewart Mitchell, P.O. Box 940579, Maitland, Florida, applicant and property
22 owner requests final plat approval for a seven lot single-family subdivision to be
23 developed in one phase with associated storm water and infrastructure. The
24 subject area is zoned R-1 – Single-Family Residential, consists of approximately
25 2.82 acres and is located generally on the west side of Saxon Drive, south of the
26 intersection of Saxon Drive and East 7th Avenue.

27
28 Ms. Henrikson reviewed the staff report. She stated staff recommended approval with
29 two conditions. One being all the outstanding comments be addressed and the other
30 being that the tree survey needs to be verified by staff.

31
32 Jim Morris, 420 S Nova Road, Daytona Beach, representative for the applicant, stated
33 the applicant agrees with the staff report and will make the changes staff has
34 recommended.

35
36 Public Participation

37 None.

38
39 Ms. Bushey stated that she was confused as to why the staff was bringing this to the
40 Board with outstanding comments.

41
42 Ms. Henrikson stated that a lot of the comments are advisory and some of the other
43 items have been address. She reviewed all the outstanding comments with the Board.
44 She stated that the applicant has been told that all the comments need to be addressed
45 and the plat needs to be approved by the City Commission and recorded within 60 days
46 or the applicant will have to return to the Planning and Zoning Board to be reheard.

1 **Mr. Bohannon made the motion to recommend the City Commission approve the**
2 **request with staff's conditions, seconded by Mr. Clark. Motion passed on a roll-**
3 **call vote, 4-1 with the following two conditions:**

- 4
5 **1. All outstanding comments, as shown on Exhibit B, are addressed and the**
6 **final plat is approved by all staff members;**
7 **2. A tree survey is submitted for staff review in order to verify that minimum**
8 **tree preservation requirements will be met.**
9

10 **Ms. Bushey dissented, stating "No, I am not comfortable without having this tree**
11 **analysis and documentation to support it."**

12
13 **Mr. Casey abstained due to a conflict of interest.**

14
15
16 A. ZT-2-11: LDR Amendment – CCSL/805 N Atlantic

17 Mark H. Rakowski, 822 East 8th Avenue, New Smyrna Beach, applicant on behalf
18 of the property owner, Zsuzsanna Celenza Trust, 11028 Shady Oak Street,
19 Orlando, requests to amend the City's Land Development Regulations to
20 relocate the City's Coastal Construction Setback Line for property located at 805
21 North Atlantic Avenue.
22

23 Ms. Moore reviewed the staff report. She stated that there was a title issue in question
24 and the property owner would need to demonstrate clear title in order for any
25 development to occur. She stated that four applications to relocate the CCSL have been
26 submitted since 1998 and that all have been approved by City Commission. She
27 stated that staff was recommending approval based on City Commission's policies.
28

29 Mr. Clark questioned if the Board has discussed this issue in the past.
30

31 Ms. Henrikson stated that the Board had discussed relocating the CCSL between
32 Crawford Road and Sapphire Road at a Visioning session last March.
33

34 Mark Rakowski, 822 E. 8th Ave, New Smyrna Beach, representative for the applicant,
35 stated the applicant's goal was to build a house on the property. He explained where
36 the new line was being proposed.
37

38 Public Participation

39 None.
40

41 Ms. Bushey asked for clarification on the map.
42

43 Ms. Herwald stated that she had an issue with goal number 5 in the *Comprehensive*
44 *Plan*. She commented on the sand replacement on the beach after the hurricanes and
45 that approving this request might exacerbate that issue.
46

47 Ms. Henrikson explained the seawall line and the purpose of the City line versus the
48 State line.

1 Ms. Bushey asked would a variance be necessary to rebuild if there was damage to
2 property from the storm.

3
4 Mr. Bohannon asked Mr. McDole how the board could reconcile the City Commission's
5 directive with the Goals in the *Comprehensive Plan*.

6
7 Mr. McDole stated that nothing was preventing the board from making a
8 recommendation on this issue, as the City Commission would ultimately review and
9 approve or deny it.

10
11 **Mr. Casey made the motion to recommend the City Commission approve the**
12 **request, seconded by Mr. Bohannon. Motion passed on a roll-call vote, 4-2.**
13 **Marie Bushey and Laurene Herwald dissented.**

14
15 **Ms. Bushey dissented stating "I recognize the hardship of the landowner not**
16 **being able to build anything but the coastal setback was put in place for a reason**
17 **so I am going to have to say no then."**

18
19 **Ms. Herwald dissented stating "No, I state the coastal management goal number**
20 **5."**

21
22 B. ZT-3-11: LDR Amendment-CCSL/Buenos Aires Street

23 Mark H. Rakowski, 822 East 8th Avenue, New Smyrna Beach, applicant on behalf
24 of the property owner, Great Southeastern Supply, Inc., 5900 Dean Road,
25 Orlando, requests to amend the City's Land Development Regulations to
26 relocate the City's Coastal Construction Setback Line for property located
27 between 301 Buenos Aires Street and 309 Buenos Aires Street.

28
29 Ms. Moore reviewed the staff report. She stated some of the differences between this
30 case and last case. She stated that there was no evidence of the property ever being
31 platted. She stated that as with the other case, there was a possible title issue. She
32 explained that the property is considered a non-conforming lot because it would not
33 meet minimum lot size requirements and there would be other zoning issues that would
34 have to be addressed. She stated in light of the fact that the owners knew of this line
35 when they purchased it and the other zoning issues mentioned, the staff was
36 recommending denial.

37
38 Mark Rakowski, 822 E. 8th Avenue, New Smyrna Beach, representative for the property
39 owner, stated that there appears to be 24 x 34-foot buildable area as the CCSL exists
40 today. The applicant is requesting to move the CCSL east about 105 feet putting it right
41 in line with the seawalls on the adjacent properties to the north and south. He stated
42 there is no seawall on the property at this point. He stated that the staff has a
43 compromise position within the report that he would like to discuss. He handed out a
44 proposed revised sketch and description to the board members. He explained the staff's
45 compromise position on this case (attached). He stated that his client did not intend to
46 build a principal structure east of the State line. He stated that the client was requesting

LPA/PLANNING AND ZONING BOARD
March 7, 2011
MINUTES

1 to be able to build a pool or even a patio east of the CCSL in addition to relocating the
2 line. He asked the Board to consider this compromise.

3
4 Ms. Bushey asked when the owner purchased the property.

5
6 Mr. Rakowski stated he believed it was in 2003.

7
8 Mr. McGuirk asked whether, if the adjacent property owner were to purchase the
9 property, what could they do with the property with the existing CCSL line.

10
11 Ms. Henrikson stated it could become extra parking, be used for a swimming pool, or
12 be used for extra density.

13
14 Mr. McGuirk asked if a building could be built.

15
16 Ms. Henrikson stated that there were certain limitations as to what could be built but
17 yes, a building could be built and variances might be necessary for setbacks.

18
19 Public Participation

20 None.

21
22 Mr. McGuirk stated his concerns for the property. He stated that currently it is an
23 eyesore created by regulations preventing the owners from doing anything with it over
24 the years. He agreed with Ms. Herwald regarding the sand but felt that would be a
25 separate issue.

26
27 Ms. Bushey asked if the applicant could build a house on the lot.

28
29 Ms. Henrikson stated not a single family unit or a duplex could not be constructed due
30 to current zoning regulations.

31
32 Mr. Rakowski stated that the client was looking at building a three-unit building or a
33 commercial building with two residential units.

34
35 Ms. Henrikson stated that because the B-4 zoning district does not allow duplex or
36 single family residential development, the property would need to be rezoned.

37
38 Mr. Clark stated that clearly there are some zoning issues that need to be resolved.

39
40 Ms. Bushey stated she was not comfortable approving this.

41
42 **Mr. Casey made the motion to recommend the City Commission approve the**
43 **request, as revised by Mr. Rakowski, seconded by Mr. Bohannon. Motion passed**
44 **on a roll-call vote, 5-1.**

45
46 **Marie Bushey dissented stating "she is not comfortable moving the coastal**
47 **construction setback line."**

1 C. HBOD-1-11: Historic Building Overlay District

2 Joyce and Doug MacLean, 532 North Riverside Drive, New Smyrna Beach,
3 Florida, 32168, applicants and property owners, request approval of a Historic
4 Building Overlay, in order to operate an assisted living facility in the historic
5 building located at 532 North Riverside Drive. The subject property consists of
6 approximately 1.3 acres, is zoned R-1, Single-Family Residential, and is
7 generally located southwest of the intersection of North Riverside Drive and
8 Ronnoc Lane.
9

10 Ms. Henrikson reviewed the staff report. She stated that it was formally a bed and
11 breakfast. She stated it is a contributing structure to the historic district and was built in
12 the 1870's. She explained the parking analysis that was submitted and that staff was
13 recommending approval with the condition that the applicant obtain a business license
14 and install their requested sign within six months of City Commission approval.
15

16 Mr. Bohannon asked if there were limits on the size of the sign.
17

18 Ms. Henrikson stated that the sign could be no larger than 48 square feet.
19

20 Joyce Maclean, 532 North Riverside Drive, New Smyrna Beach, stated she had lived
21 there since 1995 and that the property has been for sale for four years. She stated that
22 there is no interest in the B & B industry. She said there was some interest from buyers
23 who were only interested in the land. She stated that potential buyers were looking to
24 buy the property and demolish the home in order to rebuild. She explained the natural
25 progression that has been taking place towards making the home into an assisted living
26 facility. She stated that most of the commercial upgrades have already been
27 established for the B & B but it has been very expensive to keep up and recently she
28 and her husband have had to make some changes as their elderly parents have come
29 to live with them. She stated the proposal is for a 15-bed assisted living facility. She has
30 done some research and stated there is a real need for this type of facility. She stated
31 that the proposed sign would just be replacing the one that was there before.
32

33 Mr. McGuirk asked what the sign standards were.
34

35 Ms. Henrikson stated that the historic building overlay district is similar to a PUD in that
36 details would be specific to the project and are negotiated.
37

38 Mr. McGuirk said that he would want to place a restriction to prohibit signage from being
39 placed on the building and that there should be a limitation on the size of the sign along
40 Riverside Drive.
41

42 **Mr. Bohannon made the motion to recommend the City Commission approve the**
43 **request, seconded by Ms. Bushey. Motion passed on a roll-call vote, 6-0 with the**
44 **following conditions:**
45

- 46 1. No signage allowed on building.
- 47 2. Restriction on size of signage as follows:

1 **Maximum total size of allowable signage is 32 square feet with a maximum**
2 **width of 8 feet and a maximum height of 7 feet.**

3 **3. The sign must be installed within six months.**

4 **4. The property owners must obtain a business tax receipt for the assisted**
5 **living facility within six months.**

6
7
8 Marie Bushey excused herself from the meeting at 8:18 p.m.

9
10 D. CPA-5-10: Revised EAR Amendments

11 The City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida,
12 32168, requests approval of the EAR (Evaluation and Appraisal Report) – based
13 amendments to the Comprehensive Plan. If approved, the amendments will
14 update the Plan for the new 2025 planning horizon, amend the future land use
15 map, create an Economic Development Element and amend the following
16 elements of the Comprehensive Plan: Future Land Use; Transportation;
17 Housing; Sanitary Sewer, Potable Water, Solid Waste, Drainage, and Natural
18 Groundwater Aquifer Recharge; Conservation; Coastal Management; Historical
19 and Archaeological Preservation; Public School Facilities; Recreation and Open
20 Space; Intergovernmental Coordination; and Capital Improvements. The
21 proposed EAR-based amendments also incorporate language related to
22 alternative water supply and conservation and education measures to be taken
23 by the City.

24
25 Ms. Henrikson reviewed the process and briefly remarked about the FEC property. She
26 stated that she expects that the City will found not in compliance on that. She stated
27 that generally it is not unusual to be found not in compliance but that it is a new issue for
28 the City.

29
30 Mr. Bohannon asked where did case CPA-1-10 come into the EAR-based amendments.

31
32 Ms. Henrikson stated that it was included in the EAR-based amendment package
33 because it is a large-. Because State law only allows local governments to adopt large-
34 scale amendments twice per year, case CPA-1-10 was included in the EAR-based
35 amendment package.

36
37 Mr. McGuirk asked why the future land use element for SR 44 PUD was added back in.

38
39 Ms. Henrikson stated that it was added back in for two reasons, one being that a larger
40 discussion needs to take place and second, to free up some capacity to address
41 concerns generated by the FEC property.

42
43 Mr. McGuirk was concerned about the impact on SR 44, particularly on the south side
44 where there was a two-acre minimum lot size in order for development to occur. He
45 stated that this was addressed prior and questioned what putting the SR 44 PUD future
46 land use category back in the *Comprehensive Plan* meant with regard to future
47 development.

LPA/PLANNING AND ZONING BOARD
March 7, 2011
MINUTES

1 Ms. Henrikson explained that because the Commercial land use has a floor area ratio of
2 2.0 and the SR 44 Corridor land use has a floor area ratio of 1.0, changing the land use
3 designation to Commercial would affect water, school and transportation capacity. Ms.
4 Henrikson stated that the Board could strike that sentence. She suggested that it be a
5 discussion at one of the quarterly workshops.

6
7 Mr. Clark agreed that there was a real need to discuss this further.

8
9 Ms. Henrikson stated the intent was not to close the discussion on SR 44.

10
11 Mr. Bohannon asked about the cap of 25% on high density residential property.

12
13 Ms. Henrikson stated that it is a Commercial future land use so if the intent was to be
14 100% residential, it would actually be beneficial to apply a high density residential land
15 use designation. She stated that the table was already included in the existing
16 comprehensive plan. She stated it was just moved to a different section because it was
17 difficult to locate.

18
19 Mr. Bohannon asked what happened on March 1st and March 2nd.

20
21 Ms. Henrikson explained that there was a conference call about two weeks ago and the
22 St. Johns River Water Management District is about ready to settle and it should be
23 adopted on March 29th with the exception of FEC property.

24
25 Public Participation

26 Mark Rakowski, 822 E 8th Street, New Smyrna Beach, stated that on behalf of some of
27 the oceanfront property owners, he has applied for a *Comprehensive Plan* amendment
28 to allow the Hospitality Future Land Use designation to be applied to oceanfront parcels.

29 Mr. Rakowski stated that he has been contacted by property owners north of Flagler
30 Avenue to speak with the City Commission on amending ordinance 19-10 to extend the
31 area where the Hospitality designation could be applied to north of Flagler Avenue. Mr.
32 Rakowski asked the Board to recommend that ordinance 19-10 be amended on its
33 second reading to read from East 8th Street to Esther Street.

34
35 Ms. Henrikson stated that staff would be hesitant to make a recommendation to go
36 forward on that request until after the two town hall meetings and the City Commission
37 workshop dealing with some of those issues have been conducted.

38
39 Mr. Rakowski stated that it has been discussed before and if it doesn't get passed on
40 the second reading scheduled for March 29th, now the City would need another large-
41 scale comprehensive plan amendment to change the word Flagler Avenue to Esther
42 Street.

43
44 Mr. McGuirk asked what would be the benefit of waiting.

1 Ms. Henrikson stated because the town hall meetings and the City Commission
2 workshop were scheduled obtain public input from residents and business owners
3 regarding issues affecting the beachside areas.
4

5 Mr. McGuirk asked whether, if the Board recommended the change tonight, the City
6 Commission could make the change that recommendation.
7

8 Mr. McDole stated that there is a limit on how much change can be made between first
9 and second reading and it would have to be examined and determined Mr. Gummey.
10

11 Mr. Clark asked what the timeline is to forward this to the City Commission
12

13 Ms. Henrikson stated that the City has 120 days to review the comments, make
14 revisions and adopt the amendments.
15

16 Ms. Herwald agreed with Ms. Henrikson as to having the workshops before
17 recommending the revision requested by Mr. Rakowski.
18

19 Mr. Clark stated his concerns about waiting to make the change months down the road.
20

21 Mr. Bohannon commented that Ms. Henrikson did a good job addressing the DCA
22 comments.
23

24 **Mr. Bohannon made the motion to recommend the City Commission approve the**
25 **EAR-based amendment package, seconded by Mr. Clark. Motion passed on a roll-**
26 **call vote, 5-0 with the condition that CPA-1-10 be revised to allow the Hospitality**
27 **Future Land Use designation from East 8th Avenue to Esther Street.**
28
29

30 REPORTS AND COMMUNICATIONS BY THE BOARD

31 Mr. Bohannon stated again that Ms. Henrikson did a good job with the DCA Comments.
32
33

34 Mr. McGuirk agreed with Mr. Bohannon.
35

36 REPORTS AND COMMUNICATIONS BY THE BOARD

37 Ms. Henrikson asked if anyone had brought the cameras from the mobile workshop.
38
39

40 Ms. Henrikson stated that she will bring the developed photos back to the board at the
41 March 21st workshop.
42

43 Ms. Henrikson stated that the next workshop would be in May and the topic could be SR
44 44.
45

46 Ms. Henrikson stated that there is another Form Based Code workshop scheduled for
47 April 6th and she defined Form Based Code for the Board.
48

LPA/PLANNING AND ZONING BOARD

March 7, 2011

MINUTES

1 Mr. McGuirk asked about the 10 year water supply plan.

2
3 Ms. Henrikson stated that it was discussed briefly in the Ear-based amendment. She
4 stated the administrative hearing had been placed in abeyance but that a status report
5 must be provided to the State by April 1st. She stated that she felt an agreement will be
6 made on the matter.

7
8 Mr. McDole commented on the first CCSL that there was an issue of inverse
9 condemnation that he did not wish to discuss in front of applicant. He stated that it was
10 a platted lot and there was nothing that could be done with it. He stated that he was
11 happy with the board's decision but that he did not want to discuss the implications of
12 denying the request in front of the applicant.

13
14 ADJOURNMENT

15
16 With there being no further business, the meeting was adjourned at 8:48 p.m.

1 The Local Planning Agency/Planning and Zoning Board held a mobile workshop on
2 Saturday, January 29, 2011. The mobile workshop departed from the corner of Sams
3 Avenue and Julia Street at 8:00 a.m. The following Board members were in attendance:

4
5 ROLL CALL

6
7 Jesse Clark
8 Laurene Herwald
9 Kenneth Bohannon
10 Jason McGuirk
11 Marie Bushey

12
13 Travous Dever and Brooks Casey were absent.

14
15 Also present were City Manager Pam Brangaccio, Planning Manager Gail Henrikson,
16 CRA Director Tony Otte, CRA Board Member Steve Dennis, and CRA Board Member
17 Charles Belote.

18
19 Ms. Henrikson and Mr. Otte had all participants board the bus. Ms. Henrikson provided
20 a brief overview of the itinerary and reminded all Board members that the mobile
21 workshop was subject to the Sunshine Law. She advised all Board members that they
22 would not be able to discuss any items that might come before them in the future as an
23 agenda item.

24
25 The workshop departed for Ormond Beach City Hall.

26
27 ORMOND BEACH

28 The bus arrived at the Ormond Beach City Hall at approximately 8:45 a.m. The
29 participants departed the bus and were met by Laurene Kornel, Steve Spraker and
30 Becky Weedo, of the Ormond Beach Planning Department. Following a brief break, the
31 participants were seated in the Ormond Beach City Council Chambers for a
32 presentation by the Ormond Beach staff.

33
34 The Powerpoint presentation identified areas of the, particularly along the U. S. 1
35 corridor, where the City of Ormond Beach had instituted design guidelines, form-based
36 codes and/or other regulations designed to beautify the corridor. Ormond Beach staff
37 answered questions from the mobile workshop participants. At approximately 9:00
38 a.m., the participants and Ormond Beach staff left the City Hall and boarded the bus.

39
40 Ormond Beach staff provided a tour of the U. S. 1 corridor from the north to the south
41 city limits. They pointed buildings to the workshop participants that had benefitted from
42 the City's design guidelines. Staff also discussed the importance of having design
43 standards and such standards should not be viewed as an impediment to development.

44
45 Ormond Beach staff left the bus at the south City limits at approximately 9:45 a.m. The
46 mobile workshop proceeded to Magnolia Street in Daytona Beach, arriving there at
47 approximately 10:00 a.m.

1 DAYTONA BEACH

2
3 The mobile workshop participants were met in Daytona Beach by Jack White, developer
4 and by Jason Jeffries and Reed Burger with the Daytona Beach Community
5 Redevelopment Agency.

6
7 Mr. White provided the workshop participants with an overview of his mixed-use
8 development on Magnolia Street. He discussed incentives provided by the City of
9 Daytona Beach, density, parking and price ranges. Following the overview, Mr. White
10 invited the participants to view a unit and to visit the rooftop terrace. During the tour,
11 Mr. White answered various questions from the mobile workshop participants.

12
13 After leaving the Magnolia Street development project, the workshop participants, along
14 with Mr. Jeffries and Mr. Burger boarded the bus for a tour of the City. The CRA staff
15 members directed the bus to the beachside area of Daytona Beach, where several
16 redevelopment projects had either been completed or were underway. Daytona Beach
17 staff discussed the Main Street area on the beachside. This area, which is the hub of
18 Bike Week and Biketoberfest activities is usually vacant throughout the remainder of the
19 City. The City is discussing ways to bring activity to the area on a year-round basis.

20
21 Upon leaving the beachside, the CRA staff directed the bus along Beach Street, which
22 is one of the City's redevelopment areas on the Mainland. The CRA staff departed the
23 bus at Magnolia Street at approximately 11:30 a.m. The mobile workshop then
24 proceeded to the South Daytona City Hall, arriving there at approximately 11:45 a.m.

25
26 SOUTH DAYTONA

27 Upon arriving at the South Daytona City Hall, the workshop participants departed the
28 bus to meet with Tom Harowski, Planning Consultant for the City of South Daytona. Mr.
29 Harowski gave an overview of the history of development in South Daytona. Mr.
30 Harowski also discussed current ordinance changes that the City is working on to
31 improve the appearance of the U.S. 1 corridor and to encourage redevelopment of that
32 area.

33
34 Mr. Harowski and the workshop participants boarded the bus at approximately 12:15
35 p.m. to tour the City of South Daytona. Mr. Harowski directed the bus along U. S. 1 to
36 the south city limits. The bus then returned north, along the riverfront. During the tour,
37 Mr. Harowski pointed out areas that he had discussed during his overview. Mr.
38 Harowski also answered questions from the workshop participants.

39
40 The bus returned to the South Daytona City Hall at approximately 12:45 p.m., where Mr.
41 Harowski departed the bus.

42
43 The bus returned to New Smyrna Beach, arriving at approximately 1:00 p.m.

Interoffice Memorandum

City of New Smyrna Beach

To: New Smyrna Beach Planning and Zoning Board Members
From: Kevin Jameson, Planner, Development Services
Subject: Tattoo Parlors Visioning
Date: 24 March 2011

Recently, the City has seen an increase in the number of inquiries received regarding tattoo parlors. The City's Land Development Regulations (LDR) does not specially list tattoo parlors as a permitted use in any of its zoning districts. Therefore, this use is considered to be prohibited in the City.

On 9 September 2010 the United States Court of Appeals for the Ninth Circuit ruled that "We hold that tattooing is purely expressive activity fully protected by the First Amendment, and that a total ban on such activity is not a reasonable "time, place, or manner" restriction."

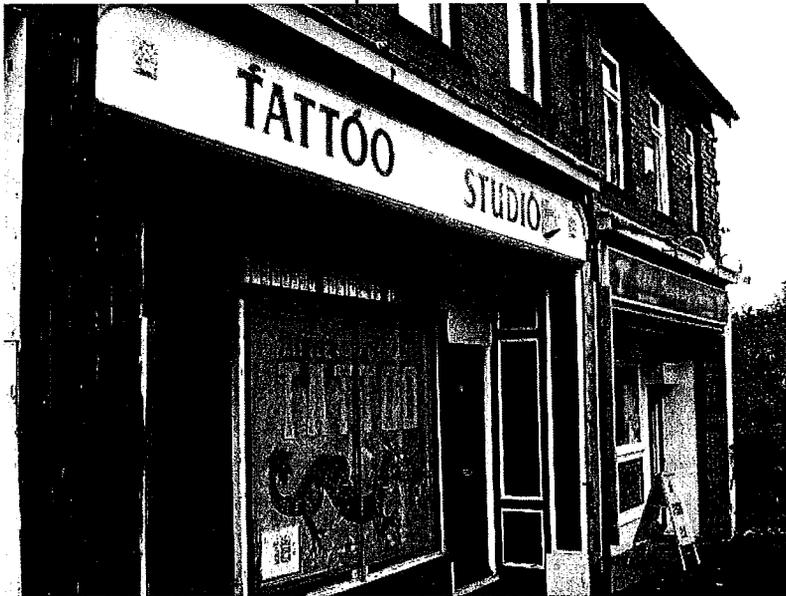
As such, it would be advisable for the City to review what type of policy staff should pursue in drawing up code to allow, but regulate the "time, place, or manner" of tattoo parlor operation. Staff is concerned that poorly regulated tattoo parlor operations could have a negative effect upon surrounding properties.

It would appear from staff discussions that there are two schools of thought on the operation of tattoo parlors.

The first is that the application of tattoos is an adult entertainment activity. Tattoo parlors have traditionally co-existed with activities such as bars, strip clubs, gambling establishments and in general a fringe aspect of society that is often perceived to engage in unlawful activities. As such, tattoo shops should comply with the existing regulations for those activities deemed to be adult entertainment and be limited to those districts zoned for adult entertainment activities. In the City of New Smyrna Beach adult entertainment uses are restricted to industrially zoned properties.

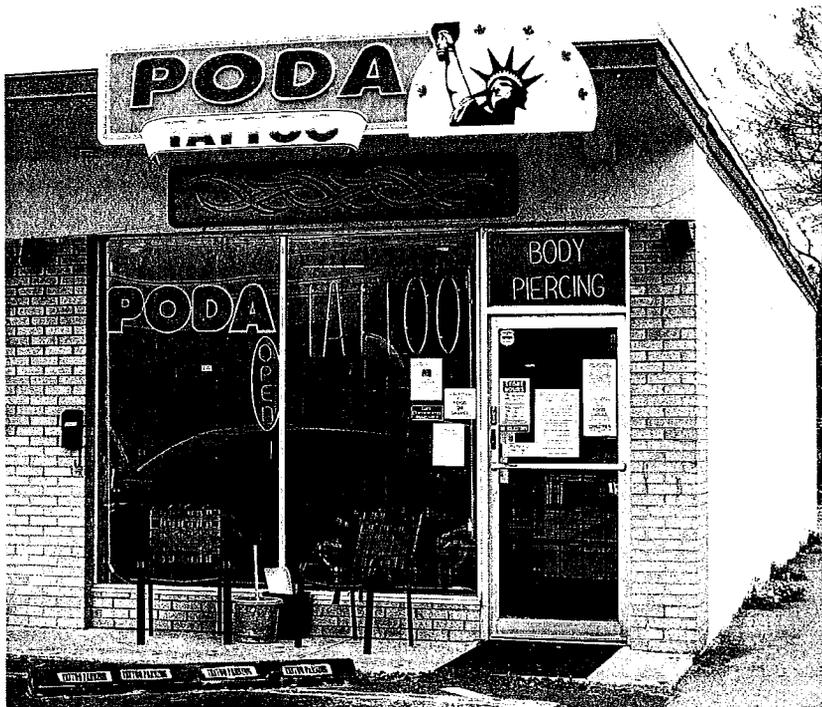
The second is that tattooing has become more acceptable and mainstream in recent years. Tattoo shops can be a viable business that can exist within a more regular commercial district, and indeed as tattoo shop operators are often of an artistic bent, they may be an asset to a community. As such, it may be in the interest of the City to regulate, but to allow tattooing establishments in districts that do not allow adult entertainment activities.

Below are several examples of tattoo parlors with notes:



tattoostates.blogspot.com

This shop has in its favor signage that is not neon based nor does it depict any nudity. A concern would be that with all windows covered, it is not a positive contribution to a streetscape that would invite members of the community to participate in their district.



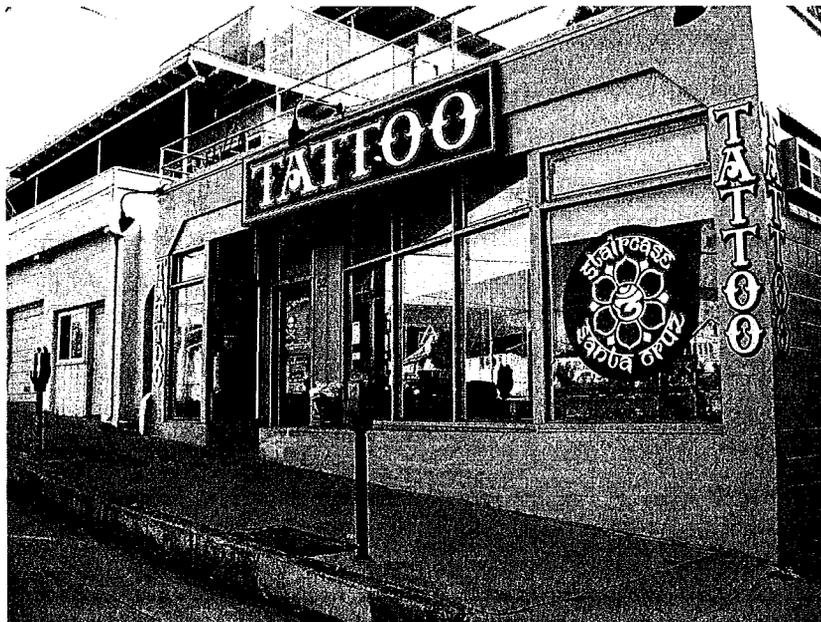
www.dunedindailyphoto.com

This shop (above), while clean and with uncovered windows, presents several issues. The heavy use of neon, the bars across the door and windows, and the sidewalk blocked by a waiting area with chairs, a trash can, and an ash bucket, create an area that pass by foot traffic is not likely to enter. This could decrease activity in adjacent commercial properties and could encourage unlawful activity.



ustattoostudios.com

This shop appears similar to the adjacent structure, the sidewalk is clear, the windows are open, and the waiting area is inside the business. This appears to be just another business in a commercial district.



waymarking.com

This shop (above), while it may be excessively signed, does not use the public sidewalk as waiting area, one can see through the windows and door, and presents an image of being a part of the community rather than being a fortress against the community.

Staff has been advised by the City Attorney that the city cannot enact an outright ban of tattoo parlors. Therefore, staff is requesting input from the Planning and Zoning Board on the following:

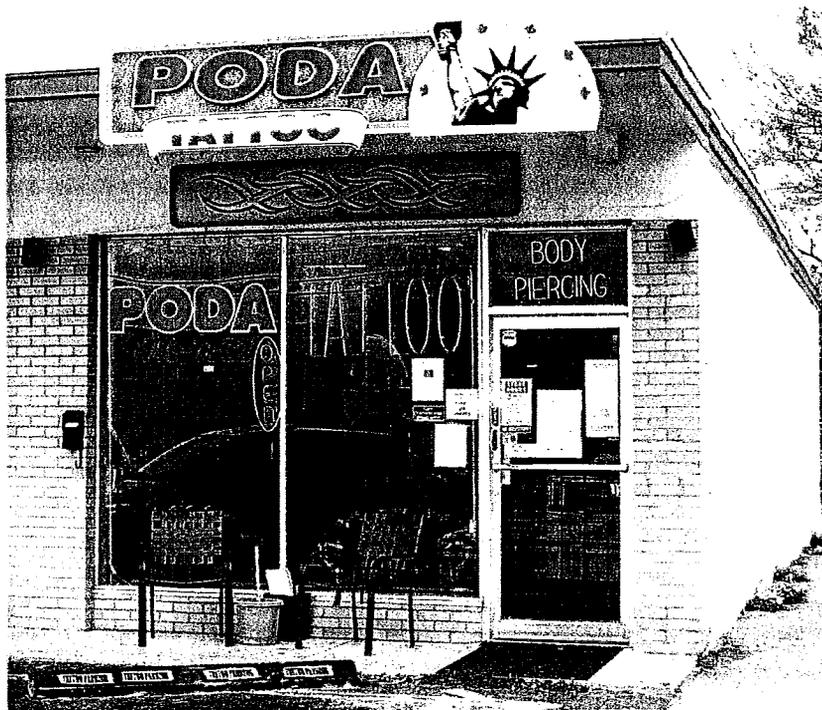
- 1) Should tattoo parlors be allowed only in districts where adult entertainment businesses are permitted or should they be allowed in commercial districts throughout the City?
- 2) What design, signage, hours of operation, etc., if any, should be applied to tattoo parlors?
- 3) Should staff include differentiations between shops offering permanent tattoos, temporary (henna) tattoos, and body piercings?

Below are several examples of tattoo parlors with notes:



tattoostates.blogspot.com

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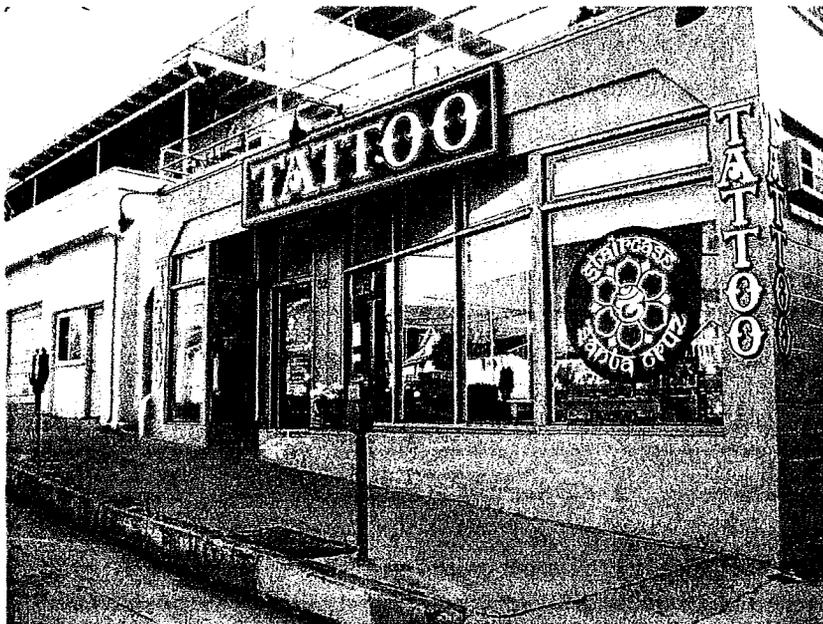
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This shop (above), while clean and with uncovered windows, presents several issues. The heavy use of neon, the bars across the door and windows, and the sidewalk blocked by a waiting area with chairs, a trash can, and an ash bucket, create an area that pass by foot traffic is not likely to enter. This could decrease activity in adjacent commercial properties and could encourage unlawful activity.



ustattooosudios.com

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waymarking.com

Interoffice Memorandum City of New Smyrna Beach

To: Planning and Zoning Board Members
From: Gail Henrikson, AICP, Planning Manager *GAH*
Subject: ALCOHOL REGULATIONS
Date: March 19, 2011

BACKGROUND

Sections 801.03 and 801.04 of the City's *Land Development Regulations* and Chapter 10 of the City's *Code of Ordinances*, detail the City's regulations regarding the sale of alcohol for consumption on premises and for package stores. Generally, the sale of alcohol for consumption on premises is prohibited within 300 feet of a school or church and within 1,000 feet of another business that also serves alcohol for consumption on premises. A complete copy of the City's alcohol regulations is attached to this memo.

There are exemptions from the distance requirements in both the *Code of Ordinances* and the *Land Development Regulations*. These exemptions include businesses such as restaurants, hotels, bowling alleys and billiard halls. Additionally, exempted uses must meet certain conditions. For example, a restaurant with less than 150 seats must also have full table service and is prohibited from having pool tables, dart boards, and video games, among other conditions. If the restaurant does not meet all these requirements, staff cannot sign off on the alcohol license or the business tax receipt.

Package stores must also be a minimum of 1,000 feet from another package store. Again, there are exemptions in the *Land Development Regulations* to allow package stores to locate closer to each other under certain circumstances. Stores that only sell wine and/or beer are not considered package stores and are exempt from the distance requirements.

Recently, staff has received several inquiries from business owners who wish to sell wine and/or beer in a retail setting but would also like to have customers who purchase wine/or beer to be able to drink it on site. Because wine and beer will also be consumed on premises, these stores become subject to the 1000-foot distance requirement. On places such as Canal Street, Flagler Avenue and U.S. 1, this regulation may have prevented several businesses from opening.

Business owners do have the ability to apply for a variance to reduce the distance requirement. To date, however, no business owner has ever applied for a variance to this regulation. Additionally, a business owner would need to show a hardship with either the land or building and would have to demonstrate that no other business could be operated at that location without approval of a variance. It would likely be very difficult for a business owner to meet the variance requirements, as the commercial zoning districts allow several other uses besides package stores or businesses that serve alcohol for consumption on premises.

ACTION REQUESTED

Because the issue of the sale and consumption of alcohol raises many social, economic and moral concerns, staff understands that a much broader City-wide discussion would be required if changes are to be considered to the regulations. At this time, staff is requesting input from the Planning and Zoning Board as to whether there may need to be changes made to the alcohol regulations or whether current regulations are sufficient.

801.03 Distance Requirements for Places of Business Where Alcoholic Beverages are Served to Customers for Consumption on the Premises.

A. Distance Limitations.

1. General Separation Requirements.

No location shall be approved for a place of business where alcoholic beverages are served to customers for consumption on the premises unless such location is at least more than one thousand feet (1000') away from any other location where there exists a current place of business serving alcoholic beverages to customers for consumption on the premises. Businesses identified as exempt under Subsection 801.03 C. shall not be included in determining compliance with aforesaid separation requirement. Ord. 19-92.

2. West Canal Street Neighborhood.

The *West Canal Street Neighborhood* is an area bounded on six sides by: *first*, the south side of Washington Street between Dimmick Street and the Florida East Coast Railway right-of-way; *second*, the west side of the Florida East Coast Railway right-of-way between Washington Street and Canal Street; *third*, the north side of Canal Street between the Florida East Coast Rail Way right-of-way and Lewis Street; *fourth*, the east side of Lewis Street between Canal Street and Julia Street; *fifth*, the south side of Julia Street between Lewis Street and Dimmick Street; and *sixth*, the east side of Dimmick Street between Julia Street and Washington Street

Places of business where alcoholic beverages are served to customers for consumption on the premises established in the West Canal Street Neighborhood between January 14, 2003 and January 14, 2005 and located less than a thousand feet (1,000') and more than two-hundred feet (200') of another place of business where alcoholic beverages are served to customers for consumption on the premises shall be allowed to continue said use as a non-conforming use subject to the conditions that the non-conforming use is not discontinued and a City occupational license for the non-conforming use is continuously maintained. In the event that the non-conforming use shall be discontinued or the non-conforming use shall fail to maintain a City occupational license, the non-conforming use as a place of business where alcoholic beverages are served to customers for consumption on the premises shall be automatically terminated upon the happening of either event and the non-conforming use shall no longer be allowed as a permitted non-conforming use.

B. Measurement of Distances.

The distance between the location for a proposed place of business where alcoholic beverages are to be sold to customers for consumption on the premises, and a location where such a place of business currently exists, shall be measured by following a straight line from the nearest point of the building or portion of a building which is the proposed premises, to the nearest point of the building or portion of a building which is the existing premises. Said distances shall be verified by a plat of survey prepared by a Florida registered land surveyor. The platted survey shall be prepared at the property owner's expense and submitted to the City prior to opening for business.

[Revised 4/30/92]

C. Exempt Businesses.

The following businesses serving alcoholic beverages to customers for consumption on the premises shall be exempt from distance limitations as set out

in Paragraph A. above:

- (1) Any bonafide hotel, motel, or motor court, of not fewer than 50 rooms; or any bonafide hotel or motel of fewer than 50 guest rooms which derives at least 51 percent of its gross revenues from the rental of hotel/motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants, and which is listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, or is within or contributes to a registered historic district pursuant to 26 U.S.C. 48(g)(3)(B), or has been found to meet the criteria of historical significance of the Division of Archives, History and Records Management, Department of State, as certified by the Division, or by locally established historic preservation board or commission, or like body which has been granted the authority to designate historically significant properties by the jurisdiction within which the hotel or motel is located.
- (2) Any residential condominium accommodation which is licensed under the provisions of Chapter 509, Florida Statutes (1985).
- (3) Any restaurant having a service area equipped to serve 150 persons at one time; however, no restaurant shall operate as a package store.

Any business operating under this provision shall, as a condition of commencing operation, and there-after every twelve (12) months, provide the City Manager of New Smyrna Beach, or official designated by the City Manager, either:

- a. a letter or other acceptable documentation from the State of Florida Division of Alcoholic Beverages and Tobacco stating that the business is (or will be) licensed to sell alcoholic beverages only under Section 561.20(2)(a)3, and that the business holds no other license (or will hold no other license) to sell alcoholic beverages; or
- b. an affidavit from a Florida licensed certified public accountant stating that he or she has examined the books and records of said business, and on the basis of the examination, has determined that the business is equipped to serve 150 persons at one time, and it is reasonable to anticipate that for a newly licensed business, it will derive at least 51 percent of its gross revenue from the sale of food and non-alcoholic beverages, or for an established business that in the last 12 months has derived at least 51 percent of its gross revenue from the sale of food and non alcoholic beverages. The affidavit must be made under oath and attested before a Florida notary public.

Any business failing to provide the City Manager or official designated by the City Manager with either a letter or other acceptable document from the Division of Alcoholic Beverages and Tobacco, or an affidavit from a verified public accountant shall be ineligible for an exemption under this provision and shall remain ineligible until the business complies with this provision.

- (4) Any restaurant having a service area equipped to serve less than 150 persons at one time, so long as, and provided that, said restaurant operates in a manner consistent with the operating requirements and prohibitions listed below.
 - a. Operating Requirements.
 1. Table service by waiters or waitresses;
 2. Menus listing at least five (5) entrees;

MARCH 19, 2011
VISIONING – ALCOHOL REGULATIONS

3. Complete place settings including tableware and flatware for each seat in the restaurant;
 4. Full-time cook on the premises;
 5. Kitchen equipped in a manner consistent with the property's use as a restaurant to wit: cooking equipment, exhaust fans, fire extinguishers, adequate refrigeration, food preparation areas, and other items normally found in a restaurant kitchen. All of the above kitchen equipment must be connected and in good working order.
- b. Operating Prohibitions.
1. Pool table(s);
 2. Dart boards;
 3. Video games;
 4. Glass door refrigeration equipment displaying alcoholic beverages;
 5. Operating as a package store.
- (5) A bowling establishment having 12 or more lanes and the necessary equipment to operate them.
 - (6) Any facility either owned or operated by the City of New Smyrna Beach, Volusia County, or the United States government.
 - (7) Airport terminal as defined by Section 561.01 (13), Florida Statutes.
 - (8) Fairgrounds or Civic Center owned or operated by the City of New Smyrna Beach, Volusia County, State of Florida, or the United States government.
 - (9) Subordinate lodges or clubs of national fraternal or benevolent associations.
 - (10) Golf clubs, tennis clubs, and beach or cabana clubs which are municipally or privately owned or leased.
 - (11) Non-profit corporations or clubs devoted to promoting community, municipal, or county development, or any phase of community, municipal, or county development;
 - (12) Clubs assisting, promoting, and developing subordinate lodges or clubs of national fraternal or benevolent associations;
 - (13) Any chartered or incorporated club owning or leasing and maintaining any bonafide regular standard golf course consisting of at least 9 holes, with clubhouse, locker room and attendant golf facilities, and comprising in all, at least 35 acres of land owned or leased by such club, provided that said club maintains the golf course and golf facilities in a manner consistent with a use as a golf course.
 - (14) Any chartered or incorporated club owning or leasing and maintaining a bonafide tennis club or four-wall indoor racquetball club consisting of not fewer than 6 regulation-size tennis courts or 6 regulation-size four-wall indoor racquetball courts, or a combination of such courts totaling in the aggregate, not fewer than 6 courts with clubhouse facilities, pro shop, locker rooms and attendant tennis or racquetball facilities, all located on a contiguous tract of land owned or leased by such a club; provided that such a club maintains the courts and facilities in good working condition.
 - (15) Any charter or incorporated club which owns or leases and which maintains a bonafide beach or cabana club consisting of beach facilities, swimming pool, locker rooms with facilities for at least 100 persons, and a restaurant with seats at tables for at least 100

persons, comprising in all, an area of at least 5,000 square feet located on a contiguous tract of land of at least 2 acres.

D. Existing Conditions.

Places of business where alcoholic beverages are sold to customers for consumption on the premises which had a current valid liquor license in existence on August 1, 1987, shall not in any manner be affected by this part so long as said use is not abandoned for a period longer than six (6) months, nor shall any right of renewal of such licenses be changed by the distance limitations or any provisions of this part.

[Revised 4/30/92]

801.04 Distance Requirements for Package Stores

A. Distance Limitations

No location shall be approved for a package store unless such location is at least more than one thousand feet (1000') from any other package store or other business which provides on site consumption of alcoholic beverages. Businesses identified as exempt under Subsection 801.04 C. shall not be included in determining compliance with the aforescribed separation requirement. Ord. 19-92.

B. Measurement of Distances

Same as Section 801.03B. except for package stores only.

C. Exempt Business

The following package stores shall be exempt from distance limitations as set out in Section 801.04A:

- (1) Any package store which held a current valid liquor license and municipal business license in existence on January 22, 1991, shall not in any manner be affected by this part so long as said use maintains itself open and in operation and said use shall not cease to be active and in operation for a period not to exceed two years, nor shall said operation have an expired liquor license or business occupational license for a period not to exceed two years. Failure to maintain both criteria shall constitute abandonment, nor shall any right of renewal of such licenses be changed by distance limitations or any provisions of this part.
- (2) Any package store developed as a part of a retail facility, where such retail facility (operation) is under single ownership; where the square footage of the package store does not exceed twenty (20) percent of the total retail operation; where the retail operation (including the package store) operates under a single business identification; and where the adjoining retail operation engages in the sale of products, services, and commodities other than alcoholic.

Chapter 10 ALCOHOLIC BEVERAGES*

***Cross references:** Alcoholic beverages prohibited at airports, § 22-147; businesses, ch. 30; operation of a vessel while under the influence of intoxicating liquors, § 90-147.

State law references: Beverage laws, F.S. chs. 561--565.

Sec. 10-1. Definitions.

The city adopts by reference the definitions set out in F.S. § 561.01.

(Code 1975, § 5-1)

Cross references: Definitions generally, § 1-2.

Sec. 10-2. Compliance with state law.

(a) *Required for manufacture, sale.* It shall be unlawful for any person in the city to manufacture, sell, barter or exchange any alcoholic or intoxicating liquors or beverages, whether spirituous, vinous or malt, except as permitted by the laws of the state.

(b) *Required for possession, custody, control.* It shall be unlawful for any person in the city to possess, have custody of or control over any alcoholic or intoxicating liquors or beverages, except as permitted by the laws of the state.

(Code 1975, §§ 5-2, 5-3)

Sec. 10-3. Sale prohibited near church or school.

It shall be unlawful for any person to sell liquor, beer or wine within 300 feet in an air line from any church or public or private school operated for the instruction of minors in the common branches of learning measured from building to building at their closest points, except at such places of business as are already established; however, the distance limitation provided in this section shall not apply where beer or wine for off-premises consumption is sold and the point of sale of the beer or wine and the church or school are separated from one another by a federal or state highway.

(Code 1975, § 5-4)

State law references: Authority of city to regulate location not affected by state beverage law, F.S. § 562.45(2).

Sec. 10-4. Hours of sale regulated, violations prohibited.

The sale of alcoholic beverages is prohibited Monday through Saturday between the hours of 2:00 a.m. and 7:00 a.m., and on Sunday between the hours of 2:00 a.m. and 11:00 a.m.; except that beer and wine may be sold, consumed or served or permitted to be served or consumed after the hour of 7:00 a.m. on Sunday.

(Code 1975, § 5-5; Ord. No. 52-92, § 1, 8-5-1992)

State law references: Authority to regulate hours of sale not affected by state beverage law, F.S. § 562.45(2).

Sec. 10-5. Consumption in public places regulated.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Alcoholic beverages means as defined in F.S. § 561.01(4).

Intoxicating liquors means as defined in F.S. § 568.01.

(b) *Prohibitions.* It shall be unlawful for any person to consume, possess, or control any type of alcoholic beverages or any other intoxicating liquors other than a beverage in an unopened container at or upon any park, playground or other recreational facility owned by the city, or in which the city is lessee, or in or upon any street right-of-way of the city, including but not limited to sidewalks, alleyways, and paved or unpaved portions of the right-of-way. This prohibition shall not apply to activities, either public or private, for which prior approval of the director of the parks and recreation department has been obtained.

(c) *Penalty.* Any person guilty of violating this section by the open display or consumption of any alcoholic beverage or intoxicating liquor in or upon any area specified in subsection (b) of this section, shall upon conviction, be subject to the penalties provided in section 1-14.

(Code 1975, § 5-8)

PUD-1-11: COLONY PARK CENTER PUD

APRIL 4, 2011

I. Background

- A. **Applicant:** Glenn D. Storch, Esquire, 420 South Nova Road, Daytona Beach Florida, 32114
- B. **Property Owners:** New Smyrna Beach Acquisitions, LLC and Colony Park, LLC, 38068 Daughtery Road, Zephyrhills, Florida, 33540
- C. **Request:** rezoning from Volusia County B-3(C), Shopping Center (Thoroughfare Overlay Zone) and B-3, Shopping Center to City PUD(C), Planned Unit Development (Corridor Overlay Zone) and approval of the Colony Park PUD Master Development Agreement and Conceptual Development Plan
- D. **Site Data:** The subject property consists of approximately 41.45 acres and is generally located northeast of the intersection of State Road 44 and Colony Park Road (see location map attached as **Exhibit A**)
- E. **TAX ID #s:** 7343-06-00-0233, 7343-06-00-0310, 7343-06-00-0061, and 7343-06-00-0064

II. Findings

- A. The subject property is an approximately 41.45-acre site consisting of two parcels. The property currently has Volusia County Future Land Use (FLU) designations of Urban Medium Intensity, which allows up to eight units per acre, and Commercial. The property is currently zoned Volusia County R-4, Urban Single-Family, Volusia County B-3, Shopping Center, and Volusia County B-3(C), Shopping Center (Thoroughfare Overlay Zone). The southernmost 660 feet of the property is within the Corridor Overlay Zone. To the west of the subject property are the Home Depot and the Murphy Oil convenience store and gas station. The surrounding future land use, existing uses, and zoning are as follows:

North

Future Land Use: County Urban Medium Intensity
Existing Land Use: Vacant
Zoning: County R-4. Urban Single-Family

South (across State Road 44)

Future Land Use: City State Road 44 Corridor PUD
Existing Land Use: Vacant
Zoning: City PUD, Planned Unit Development

1
2 The COZ regulations also state that the City Commission may approve other
3 uses and structures similar in nature to those listed in the regulations. The
4 City Commission must find that those uses and structures are compatible
5 with the PUD development and the surrounding area.
6

7 E. The list of permitted uses in the Master Development Agreement would be
8 generally compatible with the overall PUD development. Staff is requesting that
9 if automobile repair, rebuilding and reconditioning will be allowed, that language
10 be added to the MDA requiring that all work be done within an enclosed building
11 or screened by an opaque wall or fence.
12

13 F. The surrounding area is largely undeveloped. The Home Depot and Murphy
14 Express gas station are located immediately to the west of the subject property.
15 Immediately to the east of the subject property is land owned by Volusia County
16 that will eventually be developed as a park. This property was purchased by the
17 County from the owners of the subject property. No residential development is
18 located adjacent to the subject property. Therefore, the proposed uses would be
19 compatible with the surrounding area.
20

21 G. In a larger context, the issue of permitted uses along State Road 44 is one that
22 will require additional discussion by the City Commission, Planning and Zoning
23 Board and other stakeholders. The list of permitted uses in the COZ regulations
24 was drafted in the late 1980s and does not necessarily reflect the realities of
25 non-residential development in the 21st Century. For example, certain types of
26 uses that would typically locate on arterial roadways, such as fast food
27 restaurants with drive-thrus and car dealerships, are not permitted on State Road
28 44. This means that these types of businesses are restricted to U. S. 1 or they
29 must relocate to a different municipality.
30

31 COLONY PARK ROAD EXTENSION

32 H. The subject properties are located northeast of the intersection of State Road 44
33 and Colony Park Road. This intersection is controlled by a traffic signal. Both
34 the traffic signal and the existing portion of Colony Park Road were installed
35 when the Home Depot was constructed. While no additional improvements are
36 required or proposed as part of the PUD, language is included in the agreement
37 that would require the developer to contribute \$50,000 towards the design of the
38 Colony Park Road extension. The Volusia County long-range transportation plan
39 currently shows Colony Park Road being extended to Pioneer Trail sometime
40 between 2025-2030. Extending this road sooner than 2025 would potentially
41 reduce traffic impacts on State Road 44. The extension would allow residents
42 on the north side of the City to be able to use Pioneer Trail as an alternate route
43 to State Road 44 in order to shop at the Home Depot or any new businesses on
44 the proposed PUD. At this time, it has not yet been determined whether the City
45 or the developer would be responsible for construction of the roadway extension
46 and when construction of the extension would occur.
47
48
49

1 **LANDSCAPING AND TREE PRESERVATION**
2

- 3 I. The subject property originally consisted of approximately 69 acres. In June
4 2009, the applicant applied for and received approval from the Volusia County
5 Council to remove two historic live oak trees on the property. The approval was
6 conditioned was issued with six conditions. A copy of the approval letter from
7 Volusia County has been incorporated in the MDA as Agreement Exhibit D.
8
- 9 J. Subsequent to obtaining approval to remove the historic trees, the property
10 owner donated an approximately 12.5-acre piece of land (between the subject
11 properties and Jungle Road) to Volusia Forever for use as a park site. An
12 additional 15.5 acres was sold to Volusia Forever, with the City contributing
13 approximately \$100,000 towards that purchase. The total acreage now under
14 County/Volusia Forever control is approximately 28 acres. The County has
15 applied to annex this park site into the City and this annexation will be completed
16 pending approval of an Interlocal Service Boundary Agreement between the City
17 and the County.
18
- 19 K. Of the total 28-acre park site, approximately 24.5 acres will be used as park land
20 or conservation/preservation area. The remaining 3.5-acres will be used for
21 compensating storage for the development on the PUD property, as well as for
22 the park site.
23
- 24 L. Per the LDR, the developer must preserve a minimum of 50% of the site as open
25 space. This will be accomplished through the preservation of an approximately
26 10.5-acre area in the northwest corner of the PUD. A conservation easement
27 will be placed on this area and all trees in this area will be preserved. The
28 applicant is requesting that the 12.5-acre tract that was donated to Volusia
29 Forever also be counted towards the required 50% open space. Staff is
30 recommending approval of this request.
31
- 32 M. The COZ regulations require a minimum of 20% interior parking lot landscaping.
33 The areas of the PUD that are outside of the Corridor Overlay Zone are only
34 required to provide 10% interior parking lot landscaping. The developer is
35 proposing an overall parking lot landscaping requirement of 15%. Staff is
36 recommending approval of this request.
37
- 38 N. The PUD and COZ zoning regulations in Article V of the LDR requires the
39 following landscape buffers:
40
- 41 • 20-foot perimeter landscape buffer on the north and east property lines
 - 42 • 25-foot landscape buffer along Colony Park Road
 - 43 • 35-foot landscape buffer along State Road 44
- 44
- 45 O. The applicant has proposed a 10-foot perimeter buffer on the north and east
46 property lines and a 15-foot buffer along Colony Park Road. The applicant is
47 requesting a buffer reduction along Colony Park Road due to the 15-foot utility
48 easement being requested by the Utilities Commission. A reduction in the buffer

1 along the north property line is being requested in order to ensure that adequate
2 space will exist for the future stormwater retention pond.

3
4 P. Because of the location of the park to the east, a 10-foot perimeter buffer along
5 the east property line may be acceptable. The property to the north is currently
6 vacant. Future development on this is likely to be residential in nature. The
7 north part of the subject property will be developed with a stormwater retention
8 pond. Additionally, a large portion of the north property line includes the 10.5-
9 acre tree preservation area. Therefore, a 10-foot buffer along the north property
10 line may also be acceptable.

11
12 Q. The Corridor Overlay Zone buffer requirements were established in the late
13 1980s and are intended to preserve existing native vegetation and provide an
14 aesthetic enhancement along one of the City's major gateway corridors. In
15 2008, after discussions with developers and City and Utilities Commission staff,
16 the City Commission adopted amendments to allow the required landscape
17 buffers along arterial and collector roads to overlap with required utility
18 easements. The buffer along Colony Park Road is allowed to overlap the utility
19 easement by 10 feet, meaning that a total of 30 feet would be required to
20 accommodate both the easement and the buffer.

21
22 R. Staff has significant concerns about lowering the City's standards along a major
23 corridor. Staff has discussed these concerns with the landscape architect and a
24 legal representative for the project. Staff supports the request to reduce the
25 landscape buffers on the north and east property lines from 20 feet to 10 feet.
26 However, staff recommends that the 25-foot landscape buffer be provided along
27 Colony Park Road.

28
29 S. The on-site and off-site conservation/preservation areas noted above would also
30 be used towards required tree mitigation. While mitigation trees will be planted
31 throughout the PUD site, this would allow greater flexibility for building design
32 and placement within the areas permitted to be developed. No waiver or
33 reduction of the tree mitigation requirements is being requested. The request
34 would only allow the developer to utilize alternative locations for mitigation trees,
35 instead of requiring those trees to be located within the buffers areas. Staff is
36 recommending approval of the request.

37
38 T. Adequate services are available to serve the subject property. As part of the
39 rezoning application, the applicant has submitted a traffic impact analysis. This
40 analysis shows that at project build-out in 2016, all roadway segments and
41 intersections will operate within the required level-of-service. The one exception
42 is the intersection of State Road 44 and Glencoe Road. However, FDOT will be
43 installing a full mast arm signal at this location later this year. Bids on this signal
44 improvement project are expected in September 2011.

45
46 U. The proposed Master Development Agreement and Conceptual Development
47 Plan was reviewed by staff at the February 4, 2011 Plan Review Committee
48 (PRC) meeting. Based upon comments provided by staff, the applicant revised
49 the agreement and plan and resubmitted these documents on March 16, 2011.

1 As of the date this report was prepared, only the Police Department has signed
2 off on the MDA and CDP. A list of outstanding comments has been received
3 from Planning, Utilities Commission and Fire staff. These comments are
4 attached to this report as **Exhibit E**. No other PRC members have signed off on
5 the MDA or CDP or have provided a list of outstanding comments. A condition of
6 approval should be that all outstanding comments are addressed prior to
7 scheduling this item for first reading before City Commission.
8

9 V. The subject properties are located within the City's State Road 44 Neighborhood.
10 The City's *Comprehensive Plan* also provides guidelines as to what type of
11 development should occur in this area of the City. Pertinent goals, objectives
12 and policies are listed below (staff's comments are in **bold**).
13

- 14 • **Future Land Use Element, Objective 1:** To ensure that future
15 development will be consistent with adjacent uses, natural limitations such
16 as topography and soil conditions, the needs of the citizens of New
17 Smyrna Beach, the Future Land Use Map, the availability of facilities and
18 services, and the goals, objectives and policies contained within this
19 Comprehensive Plan.

20 **The proposed development would consist of non-residential uses on**
21 **five lots. The property to the north is currently vacant. The**
22 **properties to the west have been developed with a big-box home**
23 **improvement store and a convenience store with gas pumps. The**
24 **property to the east will be developed as a regional park in the**
25 **future. The property to the south, across State Road 44 is**
26 **designated for commercial development. Therefore, the proposed**
27 **PUD is consistent with adjacent uses.**
28

29 **The proposed development is consistent with this Objective of the**
30 ***Comprehensive Plan*.**
31

- 32 • **Future Land Use Element, Objective 7, Policy e:** The city will, through
33 the land development regulations, implement a program of compact
34 commercial growth (activity centers) along arterial roads. These
35 commercial nodes will provide for the concentration of high-intensity-
36 generating commercial development in clearly defined geographic areas
37 at major transportation corridors, which will reduce the occurrence and
38 frequency of access points and curb cuts, and which will provide for
39 limited and controlled ingress and egress points to and from arterials.

40 **The proposed PUD is located at the intersection of a major arterial**
41 **roadway and Colony Park Road, which is controlled by a traffic**
42 **signal. Colony Park Road is currently shown on Volusia County's**
43 **long-range plan as being extended to connect to Pioneer Trail**
44 **between 2025-2030. However, as discussed above, the City and the**
45 **applicant are discussing the possibility of extending the roadway**
46 **through to Pioneer Trail sooner than 2025. This connection will**
47 **allow residents on the north side of the City to access the**

1 development without adding additional trips to the State Road 44
2 corridor.

3
4 Limited driveway cuts are proposed on both State Road 44 and
5 Colony Park Road. An internal driveway will provide access to all
6 lots within the PUD.

7
8 The commercial development at this area will result in a
9 concentration of high-intensity commercial, consistent with the
10 *Comprehensive Plan*.

- 11
- 12 • **Future Land Use Element Objective 2:** To provide adequate services
13 and facilities for future development, at the adopted level-of-service
14 standard. In order to maintain the adopted level-of-service standard,
15 development orders and permits will be conditioned on the availability of
16 the public facilities and services necessary to serve the proposed
17 development.

18
19 Adequate services are available to serve the subject property.

20
21 The proposed development is consistent with this Objective of the
22 *Comprehensive Plan*.

- 23
- 24 • **Future Land Use Element Objective 7:** To implement land use patterns,
25 utility service extensions, impact fees, and an annexation methodology,
26 which provide for orderly development and discourage urban sprawl.

27
28 Annexation of the subject property would be consistent with this
29 objective of the *Comprehensive Plan* as it would fill in a portion of
30 the area in the middle of the City which still is under County
31 jurisdiction. On March 17, 2011, the County Council approved a
32 resolution which would authorize County staff to begin working with
33 City staff to draft an Interlocal Service Boundary Agreement. The
34 Interlocal Service Boundary Agreement would enable the City to
35 begin annexing the properties in this central area of the City, with the
36 ultimate goal to provide services more efficiently and to eliminate
37 duplication.

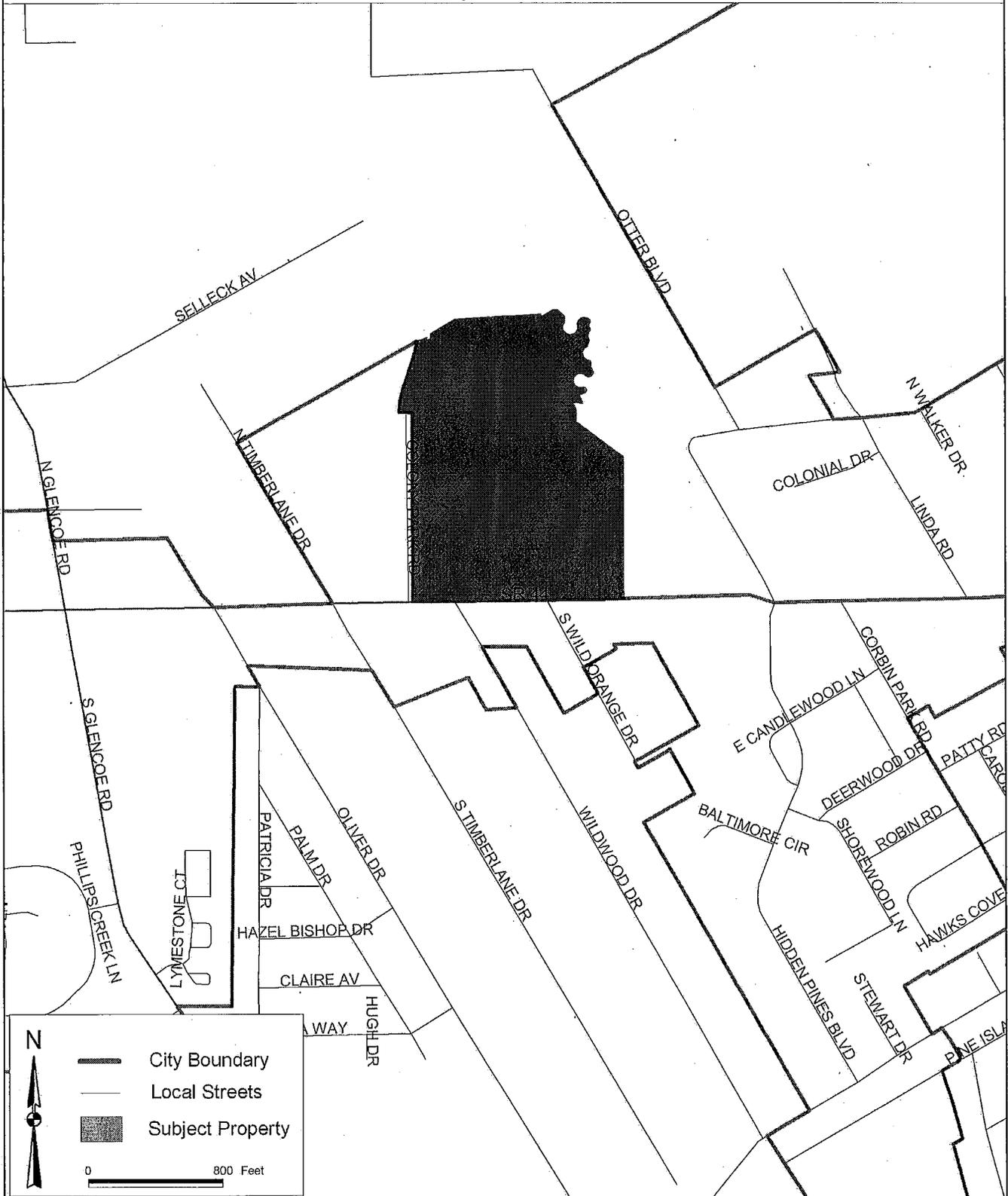
38
39 The proposed development is consistent with this Objective of the
40 *Comprehensive Plan*.

41
42 **Recommendation**

43 Staff recommends that the Planning and Zoning Board recommend the City
44 Commission **approve** the requested rezoning and **approve** of the Colony Park Center
45 Planned Unit Development Master Development Agreement and Conceptual
46 Development Plan with the following conditions:

- 1 1. Language be added to the MDA that requires all automobile repair, rebuilding
2 and reconditioning work be done within an enclosed building or screened by an
3 opaque wall or fence.
- 4 2. All outstanding comments, as shown on Exhibit E, are addressed prior to
5 scheduling this item for first reading before City Commission.
- 6 3. The minimum required buffers on the north property line and along Colony Park
7 Road are provided.
- 8

Location Map



Document Prepared By:
Glenn D. Storch, Esquire
GLENN D. STORCH, P.A.
420 South Nova Road
Daytona Beach, FL 32114

Return recorded document to:
City of New Smyrna Beach Records Clerk
210 Sams Avenue
New Smyrna Beach, FL 32168

**MASTER DEVELOPMENT AGREEMENT FOR
COLONY PARK CENTER**

The **CITY OF NEW SMYRNA BEACH, FLORIDA**, a chartered municipal corporation located in Volusia County, Florida (the "City"), and **NEW SMYRNA BEACH ACQUISITIONS, LLC**, a Florida limited liability corporation and **COLONY PARK, LLC**, a Florida limited liability company, ("Developer" and "Owner"), hereby agree and covenant, and bind their heirs, successors and assigns, as follows:

1. OWNERSHIP OF THE PROPERTY:

A. The property that is subject to this Agreement consists of approximately 41.45 +/- acres of real property (hereinafter "the Property") and is described in Exhibit "A" attached hereto and by reference made a part hereof. The Developer intends to subject the Property to the conditions and restrictions of this Agreement and the City intends to permit development of the Property in accordance with the terms of this Agreement. The Property is under the sole ownership of **NEW SMYRNA BEACH ACQUISITIONS, LLC, and COLONY PARK, LLC.**

2. DEVELOPMENT PLAN:

A. Development of the Property shall be controlled by the terms of this Agreement and, to the extent not in conflict with this Agreement, the New Smyrna Beach Land Development Regulations (LDR), including the regulations contained therein. The Developer has designated the Property as "**COLONY PARK CENTER**".

EXHIBIT B (CONT'D)

B. The Property shall be developed as a commercial shopping area with outparcel(s) as shown on the Conceptual Development Plan which is attached hereto and incorporated herein as Exhibit "B". The City and Developer acknowledge the importance of developing the property as part of a significant commercial corridor. To that end, the City and Developer agree that alternative conceptual site plans affords the City a higher level of certainty regarding development of the commercial corridor. Alternative conceptual site plans reduce the risk and uncertainty in the planning and project design phase. Accordingly, either conceptual site plan can be utilized to develop the Property subject to the terms of the Development Agreement, provided the parking area and design standards are maintained. All conservation areas shall be maintained in either site plan. The Property shall generally be developed as depicted on the Conceptual Development Plan. In case of conflict between any textual provision of this Agreement and the Conceptual Development Plan, the textual provision shall govern. If this development agreement or the Conceptual Development Plan fails to address a particular subject or requirement, the requirements of the applicable City ordinance(s) in effect at the time of development plan approval shall control. Failure of either to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction. The Conceptual Development Plan is conceptual only and the plan may be adjusted by the developer, in cooperation with Staff, as the parties proceed through the final Site Plan, provided same complies with the maximum area and other terms provided herein. Accordingly, the following site data is provided:

Open Space Required:	22.4 acres (50%)
Common Open Space Required:	Common open space is met by donation of park land and access spaces depicted on Lot 2
Minimum Lot Width:	Lot 5 – 100 feet All other lots with frontage on a public Road, 200 feet.
Maximum Impervious Lot Coverage:	Combined project area will not exceed 75%
Maximum Building Coverage:	35%
Maximum Building Height Proposed:	35 feet / three stories

EXHIBIT B (CONT'D)

Build-to-line

Front:	Build-to-line, 45 – 65 feet for the first building, second building may be setback further. Lot 1 is exempt from front yard standards.
Rear:	25 feet
Side:	10 feet

Landscape Buffers:

Front:	45 feet
--------	---------

Perimeter Exterior

Side:	10 feet
-------	---------

C. The Developer will split the property using the minor subdivision regulations in accordance with the City of New Smyrna Beach Land Development Regulations and as shown on the Conceptual Development Plan. As part of the development process, the development will be serviced with public utilities, and if necessary, provide shared access to the right-of-way known as State Road 44 and to service road easements. The parties agree that traffic impact fees generated by this property shall be dedicated to improve the Colony Park Road extension consistent with the Traffic Input Study and the parties agree that although there is no obligation for either party to complete the extension, both parties agree that said extension is a priority.

D. The parties acknowledge that compliance with the New Smyrna Beach Land Development Regulations may necessitate modification of the Conceptual Development Plan. Any minor modifications to the Conceptual Development Plan which are not in conflict with the textual provisions of this Agreement do not increase the size, density or intensity of the use by more than 10% of the building's coverage provided herein, and does not conflict with any City ordinances not superseded by this Agreement, shall be deemed "minor" and may be approved without formal amendment of this Agreement. Minor amendments may include revisions to the Conceptual Development Plan that may reconfigure the lot, phase and/or building layout so long as the modified Conceptual Development Plan does not exceed by more than 10% of the building coverage depicted on the Conceptual Development Plan. Such modifications shall require the City Administrative Official's written approval. If the Developer is not satisfied with resolution of any problem or decision by the City Administrative Official regarding such modification, the Developer may appeal the decision to the City Commission.

3. PHASING:

A. Development of the property can be accomplished in multiple phases, with all required easements for development consistent with the Concept Plan recorded, and all infrastructures servicing the phases being constructed as required by each phase. Tree mitigation as set-forth in the development agreement shall be provided for the entire project in the first phase. Individual stormwater systems shall be permitted, but joint stormwater may be required. Shared facilities, including utility service and the like, shall be constructed as part of the overall infrastructure constructed as required for each phase of development. These improvements must be constructed prior to any certificate of occupancy for each phase. Required cross access and utility easements shall be recorded in the Public Records of Volusia County.

B. Development of the individual lots can occur in any sequence provided that a final site plan development order has been granted. Parking areas and individual or joint stormwater shall be constructed with the development of each individual parcel. Where landscaped areas are bisected by the proposed lot lines, the first lot to develop shall construct the entire frontage landscaped area shared by both lots including curbing, planting and irrigation. Note that this responsibility does not extend more than 15 ft. from the bisecting lot line onto any undeveloped lot.

4. CONFORMANCE WITH COMPREHENSIVE PLAN:

A. The City has determined that the Property is suitable in size, location and character for the uses proposed, that the uses proposed meet the needs of the City and that the uses proposed are consistent with Volusia County's Comprehensive Plan which shall control until such time as the City updates its Comprehensive Plan. Within one year of approval, Developer shall initiate amendment to a consistent City comprehensive plan designation.

5. PERMITTED USES:

Attached dwellings

Auto Sales, new and used, with accessory uses and outdoor display area permitted on Lot 2.

Financial Services and Banking

Government buildings
Liquor stores
Movie theatres
Medical Offices or Dental Clinics or veterinarian clinics
Offices
Printing shops
Real estate brokers
Restaurants, types "A", "B" and "C"
Service stations, types "A" and "B"
Taverns
Retail Sales and Services
Automobile Service Centers (Volusia County type B)

Drive-thru lanes are specifically permitted for banking, pharmacies and restaurants within the subject property pursuant to 7.(c)(1)(i) (opposite from State Road 44) with drive-thru exits permitted on the side of buildings

6. PUD INFRASTRUCTURE/TRANSPORTATION:

A. Access easements and utility easements for utilities to lots within the Development shall be owned by the Developer and/or the property owners association, their successors and assigns, subject to dedications of easement and rights of ingress and egress in favor of the City and/or Utilities Commission for the purpose of owning and maintaining utilities located within the Property. See Utility Easement Plan attached as Exhibit "C". The access easements shall be constructed to City and/or Utilities Commission standards. The Developer acknowledges for itself, its successors and assigns, that the access easements are private and shall be a private responsibility without recourse to the City and/or Utilities Commission. The exception to this limitation shall be when the City and/or Utilities Commission, through its agents, designees or assigns, shall damage facilities including pavement within the Property in the course of repairing, replacing or enlarging City and/or Utilities Commission owned or dedicated utility lines. In that event, the City and/or Utilities Commission shall

EXHIBIT B (CONT'D)

repair the area in a workmanlike fashion. Parking areas within the PUD may be subject to cross access easements to permit all parking within a single shopping center. Developer, at its discretion, may request a 20% parking reduction to compensate for tree preservation and/or shared parking. The public shall also be provided access to the adjoining County Park and parking limited to ten (10) non-exclusive parking spaces. Further parking will be addressed pursuant to LDR Standards.

(1) Offsite parking for the adjoining County Park with walking access easement provided is permitted on the parcel.

B. The Developer will build or provide for the construction of stormwater, water, sewer and reuse waterlines to City and/or Utilities Commission specifications and, upon acceptance by the City and/or Utilities Commission, the lines shall be dedicated to the City and/or Utilities Commission together with all easements and licenses necessary for the City and/or Utilities Commission to maintain and operate the utility systems located on the lots. The water, sewer and reuse waterlines (if reuse service is available) shall be located and built in the drive easement area or designated for common area use as provided on the attached Concept Plan. The utility system shall be extended to a point intersecting the East property boundary and State Road 44 Right-of-Way.

C. Stormwater drainage will be constructed for the development within the Property. Developer is entitled to provide off-site stormwater drainage retention. The stormwater retention facility will be maintained by the Property Owners' Association at a level consistent with the standards and permit conditions of the St. Johns River Water Management District (SJRWMD). Such conditions may include maintenance of the stormwater system by a Property Owners' Association. Collection and transmission facilities on a lot shall be located pursuant to site development plan approval for the individual lot and structures located thereon. The stormwater from each lot shall be directed to the approved individual stormwater facilities. Additional stormwater retention may be provided in areas designated as out parcels on the Conceptual Development Plan.

D. The developer agrees to participate in any proportionate fair share program and the development will be subject to transportation impact fees and/or stormwater improvement impact fees.

E. Developer agrees to donate \$50,000 to the design of Colony Park Road upon either payment by City impact fees remainder or design fees (\$25,000) or prior to issuance of Development Order.

7. **ARCHITECTURAL/DESIGN STANDARDS:**

The purpose of the gateway corridor architectural guidelines contained herein, is to promote design treatments that enhance the visual appearance of development, ensure compatibility of buildings and create a strong community image and identity and to protect community aesthetics. These guidelines shall apply to the development of the property except where they are superseded or conflict with the Conceptual Development Plan or other sections of the Master Development Agreement:

A. Applicability.

(1) *Uses.* These design standards shall apply to all uses provided herein.

B. Site Plan Design Standards.

(1) *Site Layout.* Site layouts shall be designed with special attention to the creation of an attractive, safe and functional urban environment based upon the following standards:

a. *Building orientation.* The building layout selected should contribute to the creation of a healthier pedestrian environment and a more cohesive urban context.

1. Buildings shall be oriented to face the public right-of-way.
2. Building location and mass should relate to nearby buildings.
3. When parking areas are located behind the businesses, a secondary entrance shall be provided in the back of the business. A rear entrance can provide direct service and customer access to the store from parking areas as well as improve circulation between the parking lots and the street. Architectural embellishments, awnings, landscaping and signs shall be used to mark the secondary entrance and the design of the rear of the building shall be consistent with the front facade.
4. Where the parking is located in front of the building, the parking area shall be designed to avoid the appearance of large masses of pavement, and shall be conducive to pedestrian access and circulation as set forth in subsection (e) of this section.

(2) *Outparcels.* Developments within the PUD outparcels fronting the primary building and/or anchor tenant must conform to the following guidelines:

EXHIBIT B (CONT'D)

- a. In order to provide a unified design with the main structure and enhance the visual impact of outparcels, all exterior facades of the outparcel buildings shall be considered primary facades and shall employ architectural and landscape design treatments similar to the primary building and/or anchor tenant.
- b. Interconnection of pedestrian walkways with the main structure and adjacent outparcels is required.
- c. The main structure and adjacent outparcels shall share driveway access and consolidated parking areas by cross parking easements.
- d. Vehicular connection between the outparcel, the main structure and adjacent outparcels is required to provide for safe and convenient vehicular movement within the site.

C. Architectural Design Standards.

(1) *Building Design.* Buildings shall have architectural features and patterns that provide visual interest from the perspective of the pedestrians and motorists. Buildings shall include substantial variation in mass such as changes in height and horizontal plane.

- a. Primary building facades shall be enhanced by the use of vertical and horizontal elements. Landscaping may be used to enhance the architectural features and to break the visual monotony but shall not be used in lieu of the following requirements:

1. Facades shall not exceed 50 horizontal feet and 12 vertical feet without two of the following elements:
 - i. A change in plane, such as an offset, reveal or projecting rib. Such plane projections or recesses shall have a width of no less than two inches and may include but are not limited to columns, planters, arches and voids, etc.
 - ii. Architectural details such as raised bands and cornices.
 - iii. Awnings.
 - iv. Change in color.
 - v. Change in material.

EXHIBIT B (CONT'D)

- vi. Change in texture.
 - vii. Doors.
 - viii. Windows.
2. Facades that extend for more than 100 feet in length shall incorporate, in addition to two of the above requirements, at least one of the following elements:
- i. A change in plane, such as an offset, reveal or projecting rib. Such plane projections or recesses shall have a width of no less than three feet and a depth of at least six inches; or
 - ii. Architecturally prominent public entrance; or
 - iii. A tower.
- b. The ground floor of the primary facade shall have at least two of the following elements for at least 60 percent of the width of the facade:
- 1. Public entrances.
 - 2. Arcades, or other roof treatment, such as awnings or secondary roofs, to provide shade and facade interest.
 - 3. Windows/display windows.
 - 4. Awnings, associated with windows or doors.
 - 5. Landscaping, adjacent to the building.
- c. Secondary facades, which are not readily visible from the street right-of-way, shall provide at least two of the elements required for primary facades.
- d. All additions, alterations and accessory buildings shall be compatible with the principal structure in design and materials.
- e. The first floor of all buildings, including structured parking, shall be designed to encourage pedestrian scale activity.
- f. Overhangs/awnings shall be no less than three feet deep to protect pedestrians from inclement weather.
- g. The highest point of a first floor awning on a multistory building shall not be higher than the midpoint between the top of the first story window and the second story windowsill.

EXHIBIT B (CONT'D)

- h. Accessory structures shall have the same architectural detail, design elements and roof design as the primary structure.
- i. Drive-thru areas are not permitted in the front of the lot. Order areas must be in the rear of the building. Pickup may be on the side of the building.

(2) Fenestration.

- a. At least 20 percent of front facades shall be comprised of windows and doors. However, nearly continuous expanses of glass for walls shall be avoided. Patterns are encouraged by alternating solid elements and windows.
- b. Windows and display cases should be provided along pedestrian corridors.
- c. Where nonresidential buildings contain multiple separate-tenant stores with separate exterior customer entrances, the street level facade of such stores shall be transparent between the height of three feet and eight feet above the walkway grade for no less than 50 percent of the horizontal length of the building facade.
- d. Views into the interior of retail storefronts and restaurants are encouraged for pedestrian activity, safety and to create a community window-shopping environment. The use of darkly tinted or reflective glass on these structures is discouraged. Reflective glass will be defined as having a visible light reflectance rating of 15 percent or greater and darkly tinted glass windows include glass with a visible light transmittance rating of 35 percent or less. All plans submitted to the City shall include the glass manufacturer's visible light reflectance and visible light transmittance ratings for review and approval.
- e. Windows shall be recessed a minimum of two inches, and shall include visually prominent sills, shutters, stucco relief or other such forms of framing.

(3) Entrances.

- a. Multiple entryways or architectural features shall be incorporated into the design in order to break up the apparent mass and scale of large structures. All entrances shall be architecturally prominent and clearly visible from the abutting public street. Entrances may lead to tenant spaces other than the primary retail tenant.

EXHIBIT B (CONT'D)

b. Primary customer entrances should face the street. Buildings larger than 30,000 square feet located on corner lots should provide customer entrances on both streets (movie theaters are exempt) or a corner entrance. Additional entrances are encouraged facing local streets, parking lots, plazas, lakefronts and adjacent buildings.

c. Primary customer entrances shall be clearly defined and highly visible through the use of architectural detail for all structures. Primary entrances to anchor stores shall be highlighted with tower elements, higher volumes, tall voids, special building materials and/or architectural details. Entrances to smaller stores shall be recessed or framed by a sheltering element such as awning, arcade, porch or portico.

d. Multitenant structures larger than 75,000 gross square feet shall provide either a significant pedestrian amenity or a public entrance at a minimum of one per 75 linear feet of publicly visible facade. The public entrance may be to either the principal retail use or to any other tenant. Examples of significant pedestrian amenities include, but are not limited to, outdoor seating areas, play areas for children and public courtyards. The size of said pedestrian amenity shall be consistent with the picnic area provided by the adjoining Home Depot project. This provision shall not apply to more than three sides of any structure.

e. Protection from the sun and adverse weather conditions for patrons should be considered for incorporation into the entranceways. Awnings, canopies and arcades are allowed to project up to three feet into the required building setback.

f. Each large retail establishment (75,000 square feet or more) on a site shall have one or more clearly defined, highly visible customer entrances featuring no fewer than three of the following:

1. Canopies or porticos;
2. Overhangs;
3. Recesses/projections;
4. Arcades;
5. Raised corniced parapets over the door;

EXHIBIT B (CONT'D)

6. Peaked roof forms;
 7. Arches;
 8. Outdoor patios;
 9. Display windows;
 10. Architectural details such as tile work and moldings
which are integrated into the building structure and design; or
 11. Integral planters or wing walls that incorporate landscaped
areas and/or places for sitting.
- g. If multiple tenants are located in a nonresidential center, each individual establishment shall have at least one exterior customer entrance which shall conform to the above requirements set forth in subsection (c)(3)g., of this section.

(4) Roofs.

- a. Buildings shall have a recognizable top consisting of, but not limited to, cornice treatments, roof overhangs with brackets, steeped parapets, richly textured materials and/or differently colored materials. Color bands are not acceptable as the only treatment. Bands of color, typically used for advertising, are not allowed.
- b. Mechanical equipment located on roofs shall be integrated into the overall design of a building by screening it behind parapets or by recessing equipment into hips, gables, parapets or similar features. Plain boxes are not acceptable.
- c. Backlit awnings used as mansard or canopy roofs are prohibited.
- d. Roofs shall have no fewer than two of the following features:
 1. Parapets concealing flat roofs and rooftop equipment such as HVAC units from public view. The average height of such parapets shall not exceed 15 percent of the height of the supporting wall. The highest point of the parapet shall not at any point exceed 30 percent of the height of the supporting wall.
 2. A three-dimensional cornice treatment, a minimum of 12 inches in height, having a minimum of three vertical (not diagonal) changes in

EXHIBIT B (CONT'D)

plane, and a variety of thickness in relief ranging from the greatest at the top to the least at the bottom.

3. Overhanging eaves, extending no less than three feet past the supporting walls.

4. Sloping roofs that do not exceed the average height of the supporting walls, with an average slope greater than or equal to one foot of vertical rise for every three feet of horizontal run and less than or equal to one foot of vertical rise for every one foot of horizontal run.

5. Three or more roof planes per primary facade.

6. Any other treatment that, in the opinion of the zoning enforcement official, meets the intent of this section.

(5) *Corner Lots.* Buildings located at the intersections of roads shall be designed with architectural embellishments to emphasize their location as follows:

a. Buildings on corner lots are considered to have double front/primary facades for architectural design purposes.

b. Buildings on corner lots shall include at least one of the following architectural features in addition to other features provided herein: Cornice detail, arches, peaked roof forms, corner towers, clocks, bells or similar design features.

c. Hardscape design, such as pedestrian plazas with artwork or fountains, may substitute for building embellishments on corner lots.

(6) *Exterior Materials.*

a. Materials selected for buildings should have quality and stability in terms of durability, finish and appearance.

b. Exterior building materials that are encouraged include wood siding, stucco, brick, stone and concrete masonry units. Masonry unit exteriors shall be textured and tinted to avoid the appearance of a smooth monotonous wall.

c. Predominant materials that are not permitted include flat, corrugated or reflective metal panels, smooth or rib faced concrete block, cedar shakes, textured plywood, and plastic siding.

(7) **Colors.** Color has one of the strongest visual effects of all elements of building design. Therefore, colors shall be selected to ensure harmony of the building with adjacent structures:

- a. A wide selection of low reflectance exterior colors should be utilized to promote variety and diversity. The generally approved paint colors for nonresidential uses include light pastel and earth tone colors. Color schemes must be submitted to the City Planning and Engineering Department for review and approval.
- b. The following colors are prohibited: Use of intense, fluorescent or day glow colors, black as the predominant exterior building color and monochromatic color schemes (all one paint color).
- c. Building, trim and detail colors must be complementary. Clashing trim colors will not be permitted.
- d. A solid line band of color shall not be used for architectural detail.

(8) **Corporate Design.** National corporate chains that typically design their buildings to read as signage shall modify their designs to comply with the requirements of this article.

D. Minimum Tenant Mix Requirements. Developments with single retail tenants that have structures of more than 75,000 gross square feet shall provide additional tenant spaces occupying the equivalent of 25 percent or more of the primary tenant. In lieu of providing separate tenant space, a developer may construct a design that creates the appearance of individual tenant spaces.

E. Site Circulation and Access. Safe, comfortable and consistent pedestrian connections are required as set forth herein:

(1) The use of joint access easements is required between sites to reduce the number of access points and driveway area, to increase the amount of landscaping and to increase traffic safety.

(2) A safe and landscaped pedestrian circulation system connecting to public streets external sidewalks and outparcels, shall be provided on-site.

EXHIBIT B (CONT'D)

(3) Pedestrian walkways within the development shall be differentiated from driving surfaces utilizing a change in materials.

(4) To increase pedestrian safety, sidewalks and walkways shall be at a different grade than the vehicular parking lot, and shall be landscaped.

(5) Large scale retail development with one or more retail tenants of 75,000 gross square feet or more and adjacent to an arterial street, which is or may be used as a transit route, shall provide on-site accommodations for public transit access, including a bus pullout and shelter. All other such developments shall anticipate the need for public transit access and shall provide bus pullouts as warranted.

(6) Mixed-use and large-scale developments shall incorporate bicycle parking/storage.

(7) Crosswalks are required wherever a pedestrian walkway intersects a vehicular area. All crosswalks shall be a minimum of five feet wide and shall be paved with concrete modular paving, integrally colored poured concrete or striped asphalt.

(8) At least one significant pedestrian amenity, such as an outdoor seating area, play area for children or courtyard, shall be provided for every 75,000 square feet of gross floor area of structure. Required pedestrian amenities may be combined into one or more locations in order to create a larger amenity.

F. Off-Street Parking Standards. While off-street parking is necessary to accommodate automobile demands, it displaces a large percentage of the City's open space and separates structures from the main pedestrian concourses. The purpose of the following guidelines is to avoid large expanses of asphalt and conflicts between vehicles and pedestrians:

(1) Where a mix of uses creates staggered peak periods of parking demand, shared parking may be utilized to reduce the total amount of required parking.

(2) Where practical, large parking lots shall be visually and functionally segmented into smaller lots with landscaped islands and canopy trees. No single parking area shall exceed 180 spaces.

(3) Where a nonresidential use abuts an agricultural, residential or mobile home zoning classification, the parking area shall not be located within the building setback abutting the residential area.

EXHIBIT B (CONT'D)

(4) Wherever feasible, landscaping should be used to screen the parking area.

(5) As an incentive to reduce asphalt and encourage landscaping, parking space depth in nonresidential developments may be reduced by two feet if abutting a landscape area as long as vehicle parking will not interfere with required plantings or encroach on sidewalks.

(6) Vehicle use areas shall be sufficiently screened from public rights-of-way by utilizing landscape berms, themed streetscape trees with landscape materials, trellis designs and/or low urban walls that incorporate architectural detail. Perimeter design shall be determined with the assistance of County Building and Zoning Division to promote the community image for the area in which the development is located.

(7) The design of parking areas, excluding any automobile display or storage areas, shall avoid the appearance of large masses of parked cars. Landscaped areas within parking areas are encouraged to be larger than minimum standards within a minimum of 200 square feet. Proposed larger landscaped areas shall be spaced in an appropriate manner to provide an aesthetically pleasing parking area consistent with City standards. The maximum number of parking spaces, excluding any automobile display areas, for nonresidential uses may not exceed 120 percent of the minimum spaces required by section 72-286, "Off-street parking and loading", unless an additional 20% interior landscaping within the parking lot is provided, then said parking may extend to 180% of minimum spaces required.

(8) Shade trees shall be provided for parked cars, excluding any automobile display/storage areas, so that an average ratio of one tree per ten automobiles is achieved.

(9) Preserved tree areas may require additional pervious surface parking area around tree wells.

G. Service, Utility, Display and Storage Areas Standards.

(1) Areas for outdoor storage (if provided by approved site plan), trash collection and loading shall not be located adjacent to residential lots.

(2) Loading areas or docks, outdoor storage excluding vehicle display areas, waste disposal, mechanical equipment, satellite dishes, truck parking and other service

support equipment shall be located behind the building line and shall be fully screened from the view of adjacent properties both at ground and roof top levels with masonry, brick or durable manmade material wall.

(3) Areas for outdoor storage, trash collection and loading shall be incorporated into the primary building design and construction for these areas shall be of materials of comparable quality and appearance as that of the primary building.

(4) Shopping cart storage shall be located inside the building or shall be screened by a solid landscaping hedge or a four-foot wall consistent with the building architecture and materials.

(5) Fenced areas, such as garden centers or vehicle storage areas, visible from the public right-of-way shall be screened with decorative fencing material. The area shall be landscaped and designed to be compatible with the design of the building facade.

(6) Utilities for all nonresidential developments shall be located underground. Utility boxes must be totally screened from view of principal streets, as well as pedestrian walkways and areas. Utilities shall not be located within landscape buffers, tree protection and environmentally sensitive areas.

H. Landscaping and Buffer Requirements.

(1) Landscaping shall provide a suitable setting for the development architecture and also shall serve to create a unified urban look, to define outdoor spaces, to buffer from sound and weather, to screen from view and to accentuate building elements and vistas.

(2) Existing trees which are not located within the "development area to be cleared" as shown on Exhibit "B" shall be maintained and protected in perpetuity as required by the Land Development Regulations, as amended.

(3) Landscaping and grading shall be designed to enhance the presence of each building.

(4) Except for public right-of-way, shaded areas must be provided for internal sidewalks at a minimum of 100 square feet of shaded area per 150 lineal feet of walkway.

EXHIBIT B (CONT'D)

(5) Whenever possible, utility easements shall be located away from historic trees which must be saved as required by the Land Development Regulations, as amended, or tree preservation areas.

(6) Wet retention areas shall be designed as amenities and shall appear natural by having offsets in the edge alignment to avoid perfect geometric figures. Landscaping is required to soften the visual appearance of the pond edges. Features such as fountains are encouraged to accent the ponds and provide adequate aeration to prevent stagnation.

I. Architectural Consistency.

(1) All structures within the Property shall complement one another and shall convey a sense of quality and permanence;

(2) No vending machines shall be permitted on the outside walkways or other outdoor pedestrian areas of the Property;

(3) No newspaper stands shall be permitted except in areas designated by the Developer and approved by the City;

(4) Any exterior phone booths shall not be visible from public rights-of-way;

(5) Lot function, layout and architectural design and size of the buildings thereon shall be coordinated, once established by the function and layout of the first of these lots, to receive site development plan approval. For purposes herein, lot function and layout includes, but is not limited to, building placement, landscaping layout/design, parking lot layout/design and access drive layout/design. Architectural design refers to building style and appearance;

(6) All parking lot lighting fixtures shall be consistent with respect to their physical attributes, design and appearance. The specific design shall be established by the type of parking lot lighting fixture constructed or installed in or on the first of these lots to receive site development plan approval. Light to be deflected from residential areas and contained within project;

(7) Elevations shall be provided consistent with these standards during site plan review process.

8. NATURAL VEGETATION PRESERVATION:

A. Twenty-five (25%) percent of the square footage area of the overall PUD Property will be maintained for conservation of the native vegetation. Said amount shall comply with the intent of the Corridor Overlay Zone regulations. All natural areas and vegetation shall be cleaned by hand or brush cutter including the removal of dead trees, limbs and any vines. No removal of small trees, palmetto bushes or other under brushing, except for removal of invasive species, will be done. The natural areas will stay as natural as possible to provide for a thick vegetative buffer between any commercial and residential areas. Any existing trees credited towards required buffers or landscape requirements removed for any reason shall be replaced with trees meeting City approval with regard to species and size. Perimeter buffers shall comply with the City's Land Development Regulations and shall be used to meet the required natural vegetation preservation requirements. Prior to beginning of land clearing, all areas to be preserved shall be marked and inspected by City. No underbrushing will be done in areas within a conservation easement.

B. The Development shall comply with the tree preservation requirements of the City's Land Development Regulations except as modified by this Master Development Agreement. The parcel is heavily forested and the parties desire that the commercial area is developed in an attractive, environmentally sensitive manner. Further, that the City encourages preservation of large forested areas. The Developer has endeavored to design this parcel consistent with an overall vision that includes the large adjoining areas. The areas have been evaluated and the parties agree to the following:

(1) Developer has identified in Exhibit "B" those areas where trees shall be cleared for development and the areas dedicated to conservation where trees will be preserved, as well as the number and location of each of the historic trees within the commercial area. Based upon existing calculations, no additional trees shall be deemed historic during the initial five years of this Master Development Agreement. These amounts include (2) two historic trees that were previously approved by the Volusia County Council for removal to allow construction, as well as two (2) diseased historic trees. Therefore, the Developer shall also be permitted to remove the four historic trees

EXHIBIT B (CONT'D)

as approved by the Volusia County Council. A copy of said resolution has been provided as Exhibit "D" attached hereto.

(2) Developer has provided a 10.5 acre area designated as "conservation" on which a perpetual conservation easement shall be placed. All trees within said easement are preserved as a result of said Conservation Easement and shall be considered tree mitigation credit to be applied against said tree inches removed.

(3) (a) The tree mitigation credits from the conservation easements containing 10.5 acres (and other tree preservation areas, including Compensating Storage/Conservation Area as depicted on Exhibit "B", together with recognition of the donation of 12± acres of forested area to allow for the creation of Turnbull Colony Park), meets or exceeds the required mitigation for the removal of trees within the developed area as shown in Exhibit "B". Developer shall be permitted to remove trees not dedicated for conservation referenced in Section 8 B.(1) above.

(b) Developer has created a 3.5 acre compensating storage area as depicted on Exhibit "B". The area depicted on Exhibit "B" may be utilized for tree mitigation calculations. Any undeveloped parcel that is reviewed for site plan approval more than 5 years after approval of this Agreement will be required to update the analysis regarding existing trees on development parcel site, and as to actual tree dimensions for mitigation within the 3.5 acre site.

C. The interior landscaping in the overall parking area will be 15%. Said landscaping may include the preservation of natural areas, however, said calculation shall not include the 10.5 acre conservation area. The majority of the parking lot landscape islands shall be a minimum of 200 square feet in area.

D. The City recognizes that its open space requirements are met through the conservation easements referenced above and the Developer donation of 12± acres of forest area to Turnbull Colony Park.

E. Common open space requirements are met by the donation of parkland and the provision for parking spaces to access the parkland as depicted on Lot 2 of the Concept Plan.

9. ENVIRONMENTAL CONSIDERATION:

EXHIBIT B (CONT'D)

A. Both during and after construction, the Developer will use reasonable efforts to preserve trees and natural vegetation within the Property consistent with the Conceptual Development Plan and maximize protection of natural drainage pathways. The Developer shall comply with all rules, statutes, laws and regulations pertaining to protected wildlife species, including, but not limited to, the rules and permitting requirements of the Florida Game and Freshwater Fish Commission concerning gopher tortoises. An endangered species survey has been done for the site with a copy of same to be submitted to staff with the first site plan. Any phase started subsequent to five (5) years of approval shall require a revised endangered species survey.

10. UTILITY MASTER PLAN:

A. Public utilities consisting of electric, water, wastewater and reuse water for the Property or portion thereof and any applicable off-site infrastructure shall be obtained from the Utilities Commission of New Smyrna Beach ("UC"), and shall be applied for, built and conveyed in accordance with UC rules and regulations, requirements, tariffs, policies and agreements prevailing at the time of Developer's requested approval of a utilities agreement(s) from the UC. Other utilities not provided by the UC shall be built in accordance with and consistent with the City of New Smyrna Beach Land Development Regulations standards. Stormwater, lift stations and utilities are permitted in the Colony Park Road right-of-way area.

11. SIGNAGE:

A. The PUD Development shall have a uniform sign program. A monument sign for the two entrances on State Road 44, a monument sign for the entrance nearest State Road 44 on Colony Park Road and one monument sign for each out parcel are permitted, consistent with the regulations for the State Road 44 overlay designation requirements. Lot 1, if developed as an automobile dealership, shall be entitled to a separate monument sign on State Road 44. Directional signage is permitted within the parcel. Each lot shall be permitted one (1) monument sign, wall signage and supplementary signage complying with the provisions and requirements of the New Smyrna Beach Land Development Regulations. The pedestal of each monument shall be constructed of the same materials as the walls of the buildings on the respective lot. The colors of the sign face shall complement and coordinate with the appearance of the buildings on the respective lot. However, corporate logos and colors are

permitted. If an automobile dealership is permitted, outdoor display areas such as rocks or other raised platforms shall be considered outdoor display areas and not signs for purposes of this Agreement.

12. LOT DEVELOPMENT CRITERIA:

A. The terms of this Agreement shall be superior to the terms of the New Smyrna Beach Land Development Regulations, and conflicting zoning or overlay regulations, unless otherwise specifically provided herein. In the event a subject is not addressed in this Agreement, the Land Development Regulations shall control.

B. If not already constructed, the Developer shall construct a four-foot-wide sidewalk along its frontage on State Road 44.

C. Developer shall construct a sidewalk along Colony Park Road frontage to the Northern most driveway entrance connected to Colony Park Road.

D. All internal lighting shall be contained within the site.

13. PROPERTY OWNERS ASSOCIATION:

A. The Developer may form and incorporate a non-profit property owners association (the "POA") which will operate, maintain and control, subject to other documents of record, the common areas and common facilities, including but not limited to, the common private access ways, bike paths, sidewalks, parking and lighting within the Property, any common storm water retention and drainage systems within the Property and the entrance areas to the Property. Each property owner will be required to become a member of the association by virtue of purchasing a building site subject to the rules, covenants and restrictions of the POA, with responsibilities and voting privileges pro-rated based upon gross building square footage constructed. The general scope and format of the POA documents and covenants and restrictions will be similar in concept to the documents of similar property owners associations in New Smyrna Beach. The covenants and restrictions governing the Property and POA responsibilities shall be executed and recorded in the Public Records of Volusia County, Florida. The POA will have a board of directors to legislate and govern the rules and orders of the POA. The POA board will have the means and authority to carry out and regulate the by-laws and restrictions governing the perpetual maintenance, operation and repairs of all common areas and facilities. Not only will the board of directors be able to regulate and govern the common area, the board will also

EXHIBIT B (CONT'D)

regulate each and every member requiring the maintenance and service of his own individual building site. The POA rules may be enforced by fines and liens upon a members own property in order to maintain, operate and service all common facilities on the Property. The POA will have authority to place a lien against individually owned building sites in order to collect unpaid POA dues. The POA will have the power and means to hire, supervise and regulate persons employed by them for the maintenance, repair and operation of common areas and facilities.

B. If the POA fails to perform the maintenance, repair or replacement, as necessary, on the stormwater retention and drainage facility, the City shall have the right, but not the obligation, after notice, to enter upon the common area of the Property and to provide the maintenance, repair or replacement of the stormwater retention and drainage facility and shall have the right to lien all owners of record in the Property for the cost of such maintenance, repair and replacement as the City may deem necessary.

C. Developer reserves for itself, its successors and assigns, the right to maintain and operate separate facilities within the Property which shall not be construed to be common facilities owned by the property owners association. If requested by the City and as otherwise needed for plat improvements, the Developer will provide easements and grants for the installation, maintenance and upkeep of the public utilities including water, sewer and electricity. The Developer may from time to time add additional covenants and restrictions or make changes in the Association by-laws as may be required to guarantee that the project will be developed in accordance with the policies outlined in this Agreement.

14. COSTS:

A. No costs of development of the Property, hereunder, shall be borne by the City unless the City specifically agrees in writing to assume such cost.

15. EFFECTIVE DATE AND EXPIRATION:

A. This Agreement shall be effective upon approval by the City Commission. The Developer will be required to record the Agreement with the Volusia County Clerk of the Court and provide a copy to the City Clerk and Development Services Director. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the

EXHIBIT B (CONT'D)

Property, unless and until the City alters or eliminates such restrictions in the course of the City's actions as zoning authority or until this Agreement Expires.

B. The duration of this Agreement shall not exceed ten (10) years from the date of its execution. This Agreement may be extended for an additional 5-year term by mutual consent of the Developer and the City, subject to a public hearing.

C. The term "development" shall mean that the Developer, his successors or assigns, shall actively be in pursuit of installation of improvements, permits for installation of improvements, or installation of improvements over a portion or all of the Property.

D. If the City does not approve this Agreement it shall be null, void and without further effect. In addition, if the Developer is a contract purchaser of the PUD Property and fails to acquire title to the PUD Property within 60 days-approval, then the City or the Developer shall each have the option to terminate this Agreement, exercised by providing written notice to the other parties hereto, after which this Agreement shall be null, void and without further effect. Neither the City nor the Developer shall acquire any enforceable rights or claims against each other with respect hereto in the event this Agreement becomes null and void under this paragraph.

16. AMENDMENTS:

A. Amendments to this Agreement, other than minor modifications to the CDP as referred to in Section 2.D. of this Agreement, shall not be effective unless in writing and signed by all record title property owners of the land for which the amendment is to be applied and the City.

B. Before amending this Agreement, the City shall conduct two or more public hearings. At the City's option, one of these public hearings may be held by the Planning and Zoning Board.

(1) Notice of intent to consider an amendment to this Agreement shall be published by the City, at the Owner's cost, in a newspaper of general circulation and readership in Volusia County, Florida.

(2) If applicable, notice of intent to consider an amendment shall comply with the requirements of Section 166.041(3) (c), Florida Statutes (2010), as amended from time to time.

EXHIBIT B (CONT'D)

(3) The day, time and place at which the second public hearing, if any, will be held shall be announced at the first public hearing.

(4) The notices required above shall specify the location of the Property, the location of that portion of the Property subject to the proposed amendment, the nature of the proposed amendment, and the following information to the extent applicable:

- (a) Changes in permitted and/or conditional uses;
- (b) Changes in building intensities and/or height proposed.

(5) All notices shall specify a place where a copy of the proposed amendment can be obtained prior to the public hearing.

17. PUBLIC RECORD:

A. The parties agree this Agreement shall be recorded in the Public Records of Volusia County, Florida, at the Developer's expense. The provision of this Agreement shall constitute covenants running with the land applicable to the entire subject Property described herein or any portion thereof. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the Property, unless and until the City alters or eliminates such restrictions in the course of the City's actions as zoning authority.

18. SEVERABILITY:

A. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding shall not affect the validity or enforceability of any other provision of this Agreement unless the holding so states.

19. POLICE POWER AND SOVEREIGN IMMUNITY NOT WAIVED:

A. Nothing contained in this Agreement shall be construed as a waiver of or contract with respect to the regulatory and permitting authority of the City as it now or hereafter exists under applicable laws, rules and regulations. Further, nothing contained in this Agreement shall be construed as a waiver of or attempted waiver by the City of its sovereign immunity under the constitution and laws of the State of Florida.

20. COMPLETE AGREEMENT:

A. This Agreement represents the complete understanding by and between the parties with respect to the development and continued use of the subject Property. Any and all prior agreements between the parties with respect to any subject comprehended by this Agreement is hereby voided and superseded by this Agreement. Any amendment to this Agreement shall be in writing and signed by the City and the Owner.

IN WITNESS WHEREOF, the parties hereto attached their hands and seals on the dates set forth below.

Signed, sealed and delivered
In the presence of:

**CITY OF NEW SMYRNA BEACH,
a Florida Municipal Corporation**

Witness 1

Print Name of Witness 1

Witness 2

Print Name of Witness 2

By:
Adam Barringer, Mayor

Attest:

By:
Johnny Bledsoe, City Clerk

Dated: _____

APPROVED AS TO FORM AND CORRECTNESS
As Attested to

By: _____
City Attorney, Frank B. Gummey, III

Dated: _____

EXHIBIT B (CONT'D)

Signed, Sealed and Delivered in the Presence of:

Witness 1

Print Name of Witness 1

Witness 2

Print Name of Witness 2

DEVELOPER - PROPERTY OWNER
NEW SMYRNA BEACH ACQUISITIONS, LLC
A Florida Limited Liability Company
and
COLONY PARK, LLC, a Florida Limited Liability Company

By:

James H. Bingham

Its: Managing Member

Dated: _____

Signed, Sealed and Delivered in the Presence of:

Witness 1

Print Name of Witness 1

Witness 2

Print Name of Witness 2

DEVELOPER - PROPERTY OWNER
NEW SMYRNA BEACH ACQUISITIONS, LLC
A Florida Limited Liability Company

By:

Robert Kurlander

Its: Managing Member

Dated: _____

EXHIBIT B (CONT'D)

Signed, Sealed and Delivered in the Presence of:

**DEVELOPER - PROPERTY OWNER
COLONY PARK, LLC**
A Florida Limited Liability Company

Witness 1

Print Name of Witness 1

Witness 2

Print Name of Witness 2

By: Jerry C. Evans, Trustee, James H. Bingham Revocable Trust of 1994
Its: Managing Member

Dated: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by **ADAM BARRINGER and JOHNNY BLEDSOE, Mayor and City Clerk**, respectively, of The City of New Smyrna Beach, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

(Seal)

Notary Public

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by **JAMES H. BINGHAM and ROBERT KURLANDER**, as Managing Members of **NEW SMYRNA BEACH ACQUISITIONS, LLC**, a Florida limited liability company. They are personally known to me and did not take an oath.

(Seal)

Notary Public

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by **JERRY C. EVANS**, the trustee for James H. Bingham Revocable Trust of 1994, Managing Member of **COLONY PARK, LLC**, and a Florida limited liability company, who is personally known to me and did not take an oath.

(Seal)

Notary Public

EXHIBIT "A"
Legal Description

A portion of the Southerly 328.5 feet of Lot 14, Block "8", a portion of Lots 23 and 24, Block "8", AND a portion of Lot 31, Block "13", DOUGHERTY'S SUBDIVISION of the Thomas Napier Grant and the North 1/3 of the Ambrose Hull Grant, according to the plat thereof, recorded in Deed Book "M", Page 688 of the Public Records of Volusia County, Florida, all being described as follows: Commence at the intersection of the westerly line of said Dougherty Subdivision and the original centerline of State Road No. 44, said point being marked by a 3" x 5" aluminum plate stamped "STA. POT. 94+99.61 THOMAS NAPIER GT. SEC 43"; thence North 30° 51' 09" West, along said westerly line of the Dougherty Subdivision, a distance of 155.05 feet to the existing north right of way of State Road No. 44; thence North 88° 36' 25" East, along said north right of way, a distance of 2181.29 feet; thence North 00° 10' 05" West, a distance of 295.07 feet for the Point of Beginning; thence continue North 00° 10' 05" West, a distance of 1090.14 feet to the southwesterly corner of said Lot 14; thence North 30° 43' 32" West, along the westerly line of said Lot 14, a distance of 328.50 feet to the northerly line of said Southerly 328.5 feet of Lot 14; thence North 59° 58' 16" East, along said northerly line of the Southerly 328.5 feet of Lot 14, a distance of 28.45 feet; thence South 10° 53' 00" East, a distance of 6.35 feet; thence 26.07 feet along the arc of a curve to the right, said curve being non-tangent to the last described line and having a radius of 12.04 feet, a central angle of 124° 03' 20" and a chord of 21.27 feet which bears South 58° 00' 04" East to a point of reverse curvature; thence 69.60 feet along the arc of a curve to the left, said curve having a radius of 38.00 feet, a central angle of 104° 56' 08" and a chord of 60.27 feet which bears South 48° 26' 28" East to a point of curvature; thence 20.62 feet along the arc of a curve to the right, said curve having a radius of 18.04 feet, a central angle of 65° 28' 32" and a chord of 19.51 feet which bears South 68° 10' 16" East to a point of reverse curvature; thence 17.81 feet along the arc of a curve to the left, said curve having a radius of 42.00 feet, a central angle of 24° 17' 31" and a chord of 17.67 feet which bears South 47° 34' 46" East; thence 71.08 feet along the arc of a curve to the right, said curve being non-tangent to the last described curve and having a radius of 45.00 feet, a central angle of 90° 30' 02" and a chord of 63.92 feet which bears South 14° 24' 05" East; thence 155.18 feet along the arc of a curve to the left, said curve being non-tangent to the last described curve and having a radius of 42.00 feet, a central angle of 211° 41' 39" and a chord of 80.81 feet which bears South 74° 09' 10" East; thence 10.19 feet along the arc of a curve to the left, said curve being non-tangent to the last described curve and having a radius of 42.65 feet, a central angle of 13° 41' 00" and a chord of 10.16 feet which bears North 06° 53' 37" West; thence 86.59 feet along the arc of a curve to the right, said curve being non-tangent to the last described curve and having a radius of 40.75 feet, a central angle of 121° 44' 03" and a chord of 71.20 feet which bears North 50° 01' 46" East; thence 9.77 feet along the arc of a curve to the left, said curve being non-tangent to the last described curve and having a radius of 49.00 feet, a central angle of 11° 25' 29" and a chord of 9.75 feet which bears South 71° 53' 05" East to a point of reverse curvature; thence 32.43 feet along the arc of a curve to the right, said curve having a radius of 18.04 feet, a central angle of 102° 59' 40" and chord of 28.24 feet which bears South 26° 06' 00" East to a point of reverse curvature; thence 35.35 feet

EXHIBIT B (CONT'D)

along the arc of a curve to the right, said curve having a radius of 40.00 feet, a central angle of $50^{\circ} 37' 49''$ and a chord of 34.21 feet which bears South $00^{\circ} 04' 56''$ West to a point of reverse curvature; thence 20.25 feet along the arc of a curve to the right, said curve having a radius of 18.04 feet, a central angle of $64^{\circ} 18' 05''$ and a chord of 19.20 feet which bears South $06^{\circ} 55' 04''$ West to a point of reverse curvature; thence 47.62 feet along the arc of a curve to the left, said curve having a radius of 40.00 feet, a central angle of $68^{\circ} 12' 25''$ and a chord of 44.86 feet which bears South $04^{\circ} 57' 54''$ West to a point of reverse curvature; thence 19.08 feet along the arc of a curve to the right, said curve having a radius of 18.04 feet, a central angle of $60^{\circ} 35' 36''$ and a chord of 18.20 feet which bears South $01^{\circ} 09' 30''$ West to a point of reverse curvature; thence 16.68 feet along the arc of a curve to the left, said curve having a radius of 43.00 feet, a central angle of $22^{\circ} 13' 50''$ and a chord of 16.58 feet which bears South $20^{\circ} 20' 24''$ West to a point of reverse curvature; thence 16.39 feet along the arc of a curve to the right, said curve having a radius of 18.04 feet, a central angle of $52^{\circ} 02' 29''$ and a chord of 15.83 feet which bears South $35^{\circ} 14' 43''$ West to a point of reverse curvature; thence 100.23 feet along the arc of a curve to the left, said curve having a radius of 41.00 feet, a central angle of $140^{\circ} 03' 40''$ and a chord of 77.07 feet which bears South $08^{\circ} 45' 53''$ East to a point of reverse curvature; thence 23.78 feet along the arc of a curve to the right, said curve having a radius of 18.04 feet, a central angle of $75^{\circ} 31' 47''$ and a chord of 22.10 feet which bears South $41^{\circ} 01' 49''$ East to a point of tangency; thence South $03^{\circ} 15' 55''$ East, a distance of 23.78 feet; thence South $24^{\circ} 44' 28''$ East, a distance of 25.84 feet; thence 72.89 feet along the arc of curve to the right being non-tangent to the last described line, said curve having a radius of 27.85 feet, a central angle of $149^{\circ} 57' 38''$ and a chord of 53.80 feet which bears South $57^{\circ} 23' 17''$ West; thence 168.15 feet along the arc of a curve to the left, said curve being non-tangent to the last described curve and having a radius of 40.00 feet, a central angle of $240^{\circ} 51' 16''$ and a chord of 68.98 feet which bears South $14^{\circ} 40' 30''$ West; thence 58.47 feet along the arc of a curve to the right, said curve being non-tangent to the last described curve and having a radius of 19.18 feet, a central angle of $174^{\circ} 41' 47''$ and a chord of 38.31 feet which bears South $19^{\circ} 21' 15''$ East; thence South $68^{\circ} 15' 33''$ West, along a line non-tangent to the last described curve, a distance of 29.85 feet; thence South $22^{\circ} 39' 50''$ East, a distance of 52.63 feet; thence North $81^{\circ} 53' 23''$ West, a distance of 18.33 feet; thence North $82^{\circ} 18' 29''$ West, a distance of 26.23 feet; thence South $48^{\circ} 34' 56''$ West, a distance of 15.98 feet; thence 49.81 feet along the arc of a curve to the right, said curve having a radius of 80.00 feet, a central angle of $35^{\circ} 40' 27''$ and a chord of 49.01 feet which bears South $17^{\circ} 50' 14''$ East to a point of tangency; thence South $00^{\circ} 00' 00''$ East, a distance of 20.56 feet; thence South $00^{\circ} 50' 06''$ East, a distance of 34.31 feet; thence South $53^{\circ} 13' 25''$ East, a distance of 344.52 feet; thence South $00^{\circ} 01' 57''$ East, a distance of 457.54 feet; thence South $88^{\circ} 36' 25''$ West, a distance of 312.81 feet to the Point of Beginning. Containing 5.55 acres more or less.

AND

A portion of Lots 31 and 42, Block "13", and a portion of Lot 30, Block "14", DOUGHERTY'S SUBDIVISION of the Thomas Napier Grant and the North 1/3 of the

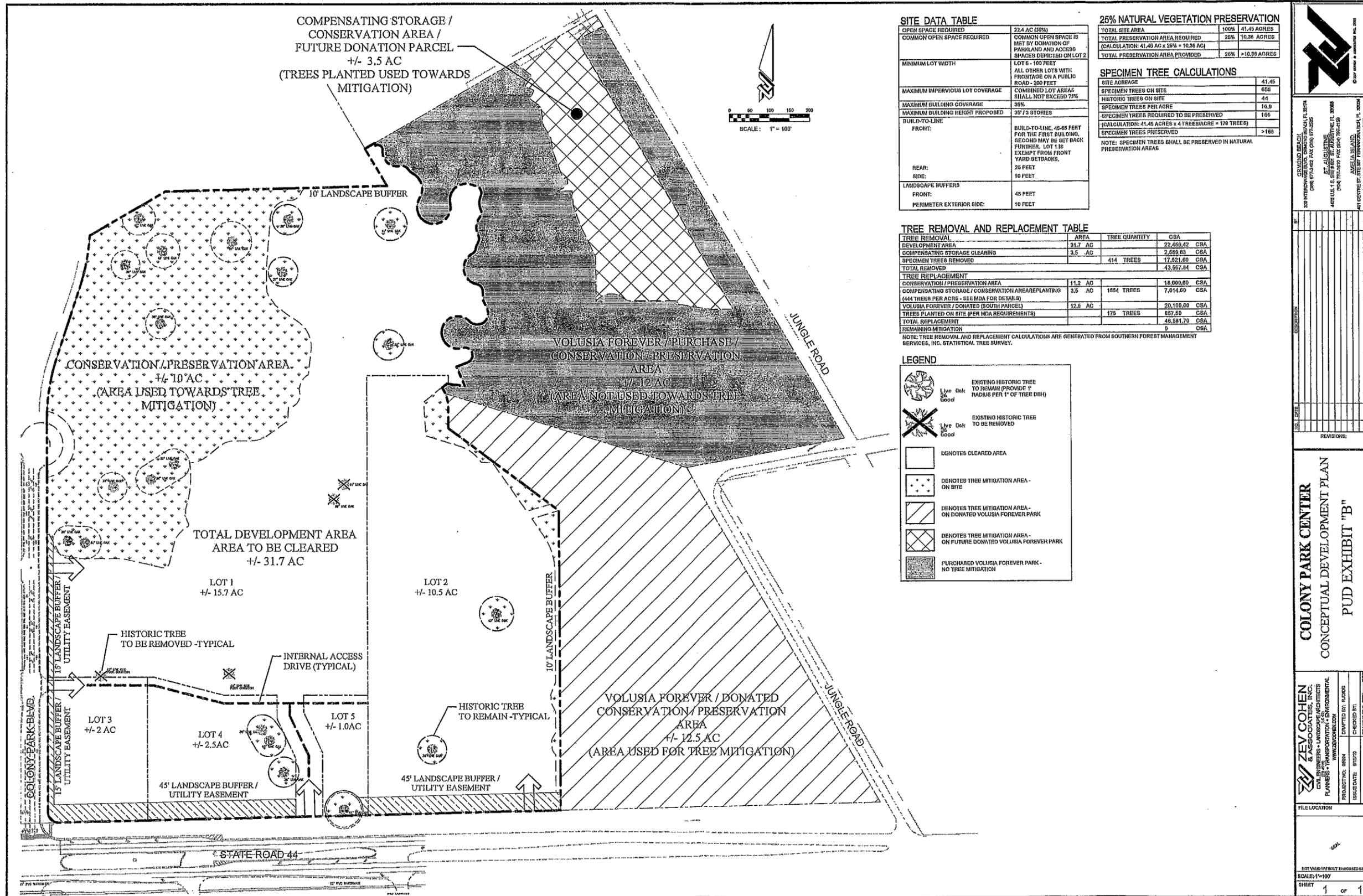
Ambrose Hull Grant, according to the plat thereof, recorded in Deed Book "M", Page 688 of the Public Records of Volusia County, Florida, all being described as follows: Commence at the intersection of the westerly line of said Dougherty Subdivision and the original centerline of State Road No. 44, said point being marked by a 3" x 5" aluminum plate stamped "STA. POT. 94+99.61 THOMAS NAPIER GT. SEC 43"; thence North 30° 51' 09" West, along said westerly line of the Dougherty Subdivision, a distance of 155.05 feet to the existing north right of way of State Road No. 44; thence North 88° 36' 25" East, along said north right of way, a distance of 2181.29 feet for the Point of Beginning; thence North 00° 10' 05" West, a distance of 295.07 feet; thence North 88° 36' 25" East, a distance of 312.81 feet; thence South 00° 01' 57" East, a distance of 295.08 feet to said existing north right of way of State Road No. 44; thence South 88° 36' 25" West, along said existing north right of way of State Road No. 44, a distance of 312.11 feet to the Point of Beginning. Containing 2.12 acres more or less.

AND

A portion of Lots 12, 25 and 26, Block "7", a portion of Lots 13 and 24, Block "8", a portion of Lot 31, Block "13", AND a portion of Lots 29 and 30, Block "14", DOUGHERTY'S SUBDIVISION of the Thomas Napier Grant and the North 1/3 of the Ambrose Hull Grant, according to the plat thereof, recorded in Deed Book "M", Page 688 of the Public Records of Volusia County, Florida, all being described as follows: Commence at the intersection of the westerly line of said Dougherty Subdivision and the original centerline of State Road No. 44, said point being marked by a 3" x 5" aluminum plate stamped "STA. POT. 94+99.61 THOMAS NAPIER GT. SEC 43"; thence North 30° 51' 09" West, along said westerly line of the Dougherty Subdivision, a distance of 155.05 feet to the existing north right of way of State Road No. 44; thence North 88° 36' 25" East, along said north right of way, a distance of 1191.94 feet; thence North 00° 08' 31" West, a distance of 1014.19 feet to a point of curvature; thence 20.87 feet along the arc of a curve to the right, said curve having a radius of 503.00 feet, a central angle of 2° 22' 38" and a chord of 20.87 feet which bears North 01° 02' 48" East to the north line of lands described in Warranty Deed recorded in Official Records Book 6193, Page 2630 of the Public Records of Volusia County, Florida; thence South 87° 46' 11" East, along said north line of lands described in Official Records Book 6193, Page 2630, a distance of 20.02 feet for the Point of Beginning; thence 137.13 feet along the arc of a curve to the right, said curve being non-tangent to the last described line and having a radius of 482.58 feet, a central angle of 16° 16' 51" and a chord of 136.67 feet which bears North 10° 21' 43" East to a point of tangency; thence North 18° 30' 08" East, a distance of 171.69 feet to a point of curvature; thence 67.07 feet along the arc of a curve to the left, said curve having a radius of 583.00 feet, a central angle of 6° 35' 30" and a chord of 67.03 feet which bears North 15° 11' 57" East to a point of tangency; thence North 11° 54' 38" East, a distance of 63.37 feet to a point of curvature; thence 19.87 feet along the arc of a curve to the left, said curve having a radius of 515.00 feet, a central angle of 2° 12' 39" and a chord of 19.87 feet which bears North 10° 48' 19" East; thence North 59° 45' 43" East, along a line non-tangent and non-radial to the last described curve, a distance of 213.00 feet; thence North 88° 36' 25" East, a distance of 557.30 feet to the

EXHIBIT B (CONT'D)

easterly line of said Lot 13; thence South 30° 43' 32" East, along said easterly line of Lot 13, a distance of 220.22 feet to the southeasterly corner of said Lot 13; thence South 00° 10' 05" East, a distance of 1385.21 feet to said existing north right of way of State Road No. 44; thence South 88° 36' 25" West, along said existing north right of way of State Road No. 44, a distance of 943.79 feet to a point of curvature and to the east line of said lands described in Official Records Book 6193, Page 2630; thence 39.82 feet along the arc of a curve to the right and along said east line of lands described in Official Records Book 6193, Page 2630, said curve having a radius of 25.00 feet, a central angle of 91° 15' 04" and a chord of 35.74 feet which bears North 45° 46' 03" West to a point of tangency; thence North 00° 08' 31" West, along said east line of lands described in Official Records Book 6193, Page 2630, a distance of 988.21 feet; thence 20.04 feet along the arc of a curve to the right and along said east line of lands described in Official Records Book 6193, Page 2630, said curve being non-tangent to the last described line and having a radius of 482.58 feet, a central angle of 2° 22' 46" and a chord of 20.04 feet which bears North 01° 05' 34" East to the Point of Beginning. Containing 33.78 acres more or less.



SITE DATA TABLE

OPEN SPACE REQUIRED	22.4 AC (50%)
COMMON OPEN SPACE REQUIRED	COMMON OPEN SPACE IS MET BY DONATION OF PARKLAND AND ACCESS SPACES DEPICTED ON LOT 2
MINIMUM LOT WIDTH	LOT 6 - 160 FEET ALL OTHER LOTS WITH FRONTAGE ON A PUBLIC ROAD - 200 FEET
MAXIMUM IMPERVIOUS LOT COVERAGE	COMBINED LOT AREAS SHALL NOT EXCEED 75%
MAXIMUM BUILDING COVERAGE	35%
MAXIMUM BUILDING HEIGHT PROPOSED	35/73 STORIES
BUILD-TO-LINE FRONT:	BUILD-TO-LINE, 45-45 FEET FOR THE FIRST BUILDING, SECOND MAY BE SET BACK FURTHER. LOT 1 IS EXEMPT FROM FRONT YARD SETBACKS.
REAR:	25 FEET
SIDE:	10 FEET
LANDSCAPE BUFFERS FRONT:	45 FEET
PERIMETER EXTERIOR SIDE:	10 FEET

25% NATURAL VEGETATION PRESERVATION

TOTAL SITE AREA	100%	41.49 ACRES
TOTAL PRESERVATION AREA REQUIRED (CALCULATION: 41.49 AC x 25% = 10.38 AC)	25%	10.38 ACRES
TOTAL PRESERVATION AREA PROVIDED	26%	>10.38 ACRES

SPECIMEN TREE CALCULATIONS

SITE ACREAGE	41.49
SPECIMEN TREES ON SITE	655
HISTORIC TREES ON SITE	44
SPECIMEN TREES PER ACRE	16.0
SPECIMEN TREES REQUIRED TO BE PRESERVED (CALCULATION: 41.49 ACRES x 4 TREES/ACRE = 170 TREES)	169
SPECIMEN TREES PRESERVED	>169

NOTE: SPECIMEN TREES SHALL BE PRESERVED IN NATURAL PRESERVATION AREAS.

TREE REMOVAL AND REPLACEMENT TABLE

TREE REMOVAL	AREA	TREE QUANTITY	CSA
DEVELOPMENT AREA	31.7 AC		22,459.42 CSA
COMPENSATING STORAGE CLEARING	3.5 AC		2,589.83 CSA
SPECIMEN TREES REMOVED		414 TREES	17,821.60 CSA
TOTAL REMOVED			43,857.84 CSA
TREE REPLACEMENT			
CONSERVATION / PRESERVATION AREA	11.2 AC		18,000.00 CSA
COMPENSATING STORAGE / CONSERVATION AREA REPLANTING (444 TREES PER ACRE - SEE MDA FOR DETAILS)	3.5 AC	1554 TREES	7,814.60 CSA
VOLUSIA FOREVER / DONATED (SOUTH PARCEL)	12.5 AC		20,100.00 CSA
TREES PLANTED ON SITE (PER MDA REQUIREMENTS)		176 TREES	857.50 CSA
TOTAL REPLACEMENT			46,581.70 CSA
REMAINING MITIGATION			0 CSA

NOTE: TREE REMOVAL AND REPLACEMENT CALCULATIONS ARE GENERATED FROM SOUTHERN FOREST MANAGEMENT SERVICES, INC. STATISTICAL TREE SURVEY.

LEGEND

- EXISTING HISTORIC TREE TO REMAIN PROVIDE 1" RADIUS PER 1" OF TREE DBH
- EXISTING HISTORIC TREE TO BE REMOVED
- DENOTES CLEARED AREA
- DENOTES TREE MITIGATION AREA - ON SITE
- DENOTES TREE MITIGATION AREA - ON DONATED VOLUSIA FOREVER PARK
- DENOTES TREE MITIGATION AREA - ON FUTURE DONATED VOLUSIA FOREVER PARK
- PURCHASED VOLUSIA FOREVER PARK - NO TREE MITIGATION

COLONY PARK CENTER CONCEPTUAL DEVELOPMENT PLAN PUD EXHIBIT "B"

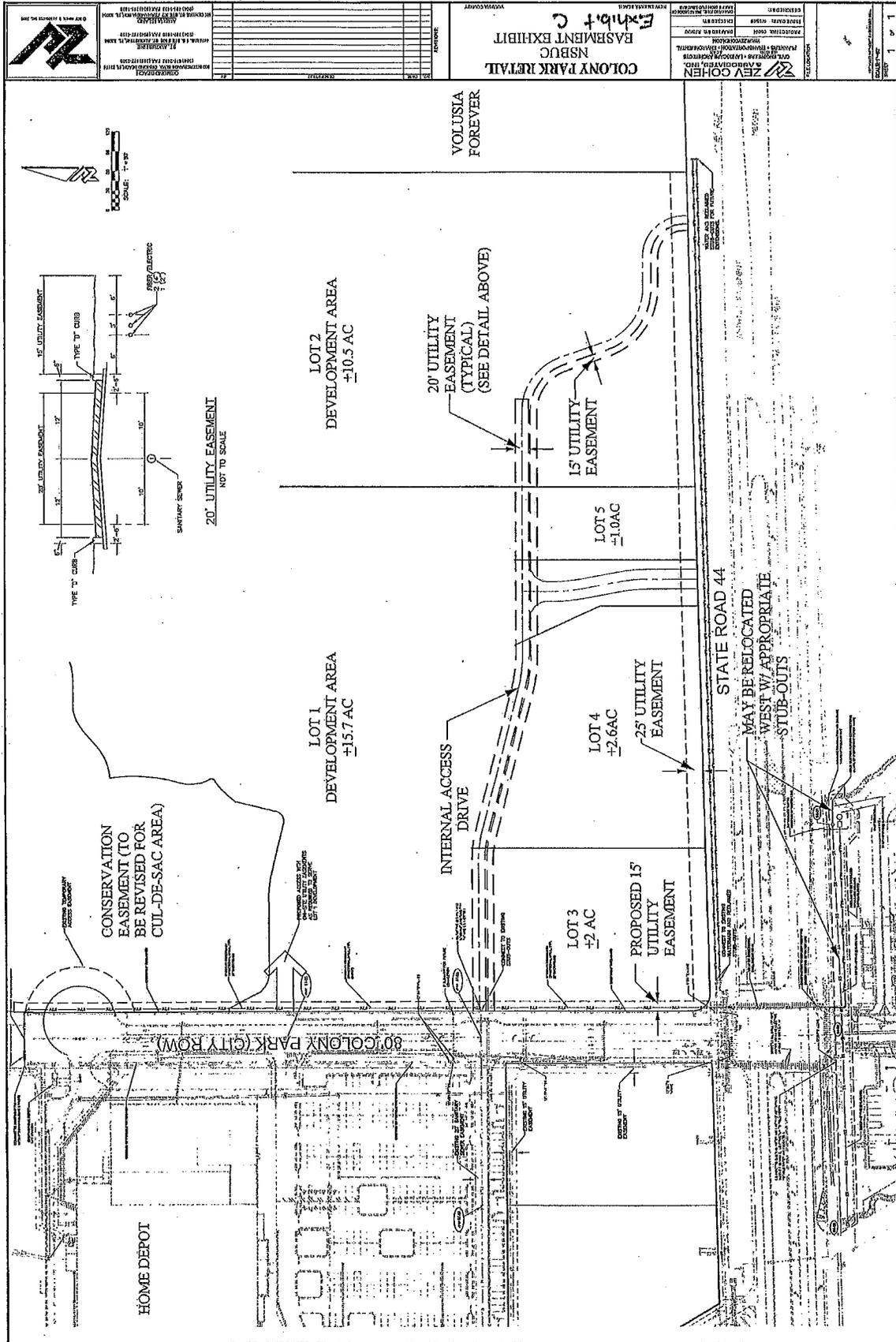
NEW MATTHEW BEACH, VOLUSIA COUNTY

ZEV COHEN & ASSOCIATES, INC.
 CIVIL ENGINEERS • LANDSCAPE ARCHITECTS
 PLANNERS • TRANSPORTATION • ENVIRONMENTAL

PROJECT: DRK
 PREPARED: 8/2019
 DESIGNED BY: DRK
 CHECKED BY: DRK
 DRAWING FILE: 000-000000-000

FILE LOCATION: []

JUST VOUCHERPRINTED ENGINEERED SEAL
 SCALE: 1"=100'
 SHEET 1 OF 1





June 22, 2009

Mr. Glenn D. Storch
420 S. Nova Road
Daytona Beach, Florida 32114

Re: Historic Tree Removal Application
2009-P-TRE-0131
RSN 539429
Colony Park Historic Tree Removal

Dear Glenn:

On June 18, 2009, the Volusia County Council considered the above-referenced Historic Tree Removal Application. The Council approved your request and authorized the removal of the 39-inch and 44-inch historic live oaks, as specified in the Agenda Item, with the following conditions:

- a. This approval shall expire on June 18, 2013, unless a Final Development Order has been issued for a Site Plan or Preliminary Plat.
- b. This approval does not authorize any clearing, grading or tree removal at this time. No tree shall be removed prior to the issuance of a Final Site Plan and/or Preliminary Plat Development Order.
- c. Tree replacement shall be required as determined by the Volusia County Forester.
- d. Cross-access is required from the subject property to the park site.
- e. A Conservation Easement must be recorded over the compensating storage areas.
- f. All other federal, state or local permits shall be obtained prior to the removal of these trees.

EXHIBIT "D"

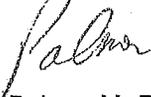
123 West Indiana Avenue • Room 202 • Deland, FL 32720-4620
DeLand 386-736-5942 • Daytona Beach 386-248-8157 • New Smyrna Beach 386-423-3872
Fax 386-626-6551 • Fax 386-740-5195 • Fax 386-740-5136
www.volusia.org

Mr. Glenn D. Storch
2009-P-TRE-0131
Colony Park Historic Tree Removal
June 22, 2009
Page 2 of 2

This letter is a Notice of Intent to issue the Tree Removal Permit upon the satisfactory resolution of the above conditions.

Please feel free to call me if you have any questions.

Sincerely,



Palmer M. Pantan
Land Development Manager

PMP

- c: Tara Boujoulian, Environmental Permitting Manager
Mr. James H. Bingham, Colony Park LLC & New Smyrna Beach Acquisitions, LLC
411 Commercial Court #E, Venice, FL 34292
Mr. Robert J. Ball, P.E., Zev Cohen & Associates, Inc,
300 Interchange Boulevard, Ormond Beach, FL 32174
Mr. Craig Murray, Southern Forest Management,
103 W Wisconsin Avenue, Suite 204, DeLand, FL 32720
Ms. Gail Henrikson, Chief Planner, City of New Smyrna Beach,
210 Sams Avenue, New Smyrna Beach, FL 32168
Mr. Randy Walter, City Engineer,
Utilities Commission of New Smyrna Beach,
P.O. Box 100, New Smyrna Beach, FL 32170
Ms. Pamela Winchester, Civic Association, 433 Wildwood Drive,
New Smyrna Beach, FL 32168
Ms. Barbara Herrin, Civic Association, 465 Wildwood Drive,
New Smyrna Beach, FL 32168
Mr. Jim Humphrey, Civic Association, 412 Timberlane Drive,
New Smyrna Beach, FL 32168

CORRIDOR OVERLAY ZONE

Purpose and Intent:

The purpose of this section is to provide regulations to ensure safe ingress to and egress from proposed development along arterial transportation corridors by reducing the number of indiscriminate driveways, maintaining the integrity of the corridor by assuring that traffic generation is consistent with the corridor's designed capacity; lessening the possibility of hazardous traffic conditions and traffic congestion; establishing development requirements, including additional sign regulations that will create an attractive corridor entrance into the City. Commercial development typically expands along arterial transportation corridors as population and traffic volumes increase in the vicinity of and along the corridor. Eventually, conflicts result between the corridor's function and its ability to move high volumes of traffic through an area. This congestion is intensified where commercial growth is permitted to increase adjacent to the corridor disproportionate to the corridor's designed limitations.

The increased commercial growth also changes the public's image of the transportation corridor. What was once considered an attractive tree-lined corridor gradually and often rapidly begins to exhibit characteristics of uncontrolled strip commercial development. Once this pattern has been established, it is difficult to establish alternative types of development (e.g. residential) along these corridors. Therefore, these regulations apply to arterial corridors which (1) move large volumes of through traffic in addition to significant volumes of everyday local traffic, and (2) do not contain significant amounts of strip commercial development. These arterial corridor regulations are intended to supplement all of the zoning classifications located within the arterial corridor overlay zone. The type of permitted uses or special exceptions allowed would be determined according to the existing zoning classification and the site design, signage, building location, and the dimensional requirements would be regulated by these arterial corridor regulations.

Dimensional Requirements

Minimum Lot Width:

No premise shall be divided for the purposes of development or sale such that the width of each, or any premise, is less than three-hundred (300) feet measured along the right-of-way line, except as follows:

If vehicle access to any premise is provided by means other than directly onto an arterial, then the minimum lot width requirement may be reduced

EXHIBIT C (CONT'D)

to one hundred fifty (150) feet, and direct vehicle access to a major arterial shall be prohibited.

Minimum Yard Size:

Front Yard	65 feet or as required per Section 504.01M. of this LDR
Read Yard	25 feet
Side Yard	25 feet

Corner Lots

- 1) Parcels which front on two streets shall provide a sixty-five (65) foot front yard on corridor frontage and a twenty-five (25) foot front yard on the other street or as required per Section 504.01M. of this LDR.
- 2) Parcels fronting on three streets shall provide a sixty-five (65) front yard on corridor frontage and a twenty-five (25) foot front yard on the remaining streets or as required per Section 504.01M. of this LDR.

Maximum Principal Building Height:

Three (3) stories, not to exceed thirty-five feet.

Maximum Lot Coverage:

The total area covered with buildings on any lot shall not exceed thirty-five (35) percent of the total lot area.

Arterial Corridor Depth:

The arterial corridor requirements shall be applied to all premises that front onto or have access to the arterial road to a distance equal to the depth of the rear property line but not to exceed a depth of six-hundred and sixty (660) feet as measured perpendicular from the centerline of the arterial road right-of-way.

Off-Street Parking and Loading Requirements

Off-street parking and loading space shall meet the requirements of this LDR and in addition, shall meet the following:

EXHIBIT C (CONT'D)

Off-street parking and loading areas shall not be permitted in any required landscaped buffer area. Buffer areas shall be landscaped in front and corner yards that are adjacent to the arterial. Dense vegetation with existing trees is preferred to be retained as a natural landscaped buffer. Other acceptable forms of landscaping are fences or walls as required in this LDR or earthen berms when landscaped as required herein for sparse vegetative growth in buffer areas.

Landscaping must be of sufficient height and opacity to generally obscure parked vehicles from view of the travelling public. Fences, walls, or certain berms (minimum top width for (4) feet, maximum slope 2:1), shall not exceed six (6) feet in height above finished grade. All parking areas shall contain a minimum of twenty (20) percent interior landscaping excluding any required landscaped buffer areas.

Landscaped Buffer Requirements

Requirements presented in Section 604.05 shall apply except that more stringent requirements described for landscape buffering herein shall supersede.

A minimum of thirty (30) percent of the area of the site shall be covered by existing dense vegetation with trees, or by additional shrubs and trees, as referenced herein (for buffers) to create dense vegetative growth.

Except for access driveways, it is intended that development along the Arterial Corridor shall be designed to prevent the need for fill material or such other treatment which would remove or harm existing trees within required front and corner yards.

Existing trees shall remain in low areas and may be included in stormwater retention areas because they are accustomed to an environment where their root system is periodically inundated.

Existing trees with a minimum height of nine (9) feet and diameter of two (2) inches, when measured four (4) feet above ground level, shall remain in landscaped buffer area. If a tree is dead, dying, or is diseased to the extent it cannot be saved, it may be removed if any one of these conditions is verified by a horticulturist with credentials approved by the City Manager.

A landscaped buffer shall be provided in all yards at the perimeter of any premise except that no buffer is required where contiguous side yards abut one another on commercially zoned premises. The minimum widths of required buffers are as follows: on the south side of State Road 44 west of Berma Road, and the north side of State Road 44 west of Eddie Road, the front buffer shall be thirty-five (35) feet, measured from the arterial corridor right-of-way; and, along all other

EXHIBIT C (CONT'D)

portions of State Road 44, the front buffer shall be twenty five (25) feet measured from the arterial corridor right-of way line. If the arterial right of-way is less than one hundred and forty (140) feet, then the buffer will start at a point seventy (70) feet from the centerline of the arterial road. Rear, interior side, and corner buffers - twenty-five (25) feet.

Required buffers that contain dense vegetation with existing trees shall be left natural and shall not be required to be irrigated if undisturbed.

If the buffer area has sparse vegetative growth, or is devoid of significant vegetation and trees, additional shrubs and trees shall be planted as noted hereafter.

Shrubs. Plants shall be placed no more than three (3) feet apart, measured from center to center, and a minimum of two (2) feet in height, immediately after planting.

Trees. One (1) tree shall be provided for each one-hundred (100) square feet thereof. Tree species shall be a minimum of nine (9) feet height and have a minimum diameter of two (2) inches when measured four (4) feet above ground level. Also, trees planted within twelve (12) feet of publicly maintained streets or other improvements shall be selected from a "List of Trees" that can be obtained from the City Horticulturist.

When natural vegetation is disturbed, the buffer shall be irrigated as required in Section 718.00. The landscape buffer area shall not be disturbed for the purposes of using the area for stormwater management.

Site Development Plan Requirements

In addition to meeting the site plan requirements in this LDR the following requirements shall be met:

All site plans, reports, and general information, shall be submitted to the Plan Review Committee to assure compliance and consistency for all develop(c)ment along the corridor.

Transportation Impact Analysis Report

Purpose. The Transportation Impact Analysis Report (TIAR) is designed to identify the transportation impacts and problems which are likely to be generated by a proposed use because of the size, density, traffic generation rates, or location. All required improvements necessary to provide safe ingress and egress from a proposed development to surrounding roadways and intersections shall be

EXHIBIT C (CONT'D)

addressed. Traffic generation from any proposed development must be consistent with the corridor's designed capacity.

This analysis shall be required in conjunction with site plan approval if the corridor is maintained by the Department of Transportation (DOT) and the analysis is required by the DOT. If a TIAR is required by DOT, the content of the report shall be consistent with DOT requirements.

However, the Planning and Zoning Board, at its discretion, may require a TIAR for any use that generates in excess one-thousand (1,000) trips per day based on the current edition of the Institute of Transportation Engineers Trip Generation Manual. The content of the TIAR shall be as required by the Planning and Zoning Board and the City Engineer shall determine if a use exceeds the one-thousand (1,000) trip per day threshold.

Temporary Access

No developer shall be denied a rezoning or building permit for the sole reason that the parcel for which it is sought cannot physically accommodate the requirements of this LDR because adjoining segments of public roadways are not yet constructed. In such an event, a temporary access permit will be issued which shall expire when the proposed access becomes available to the premises.

Arterial Corridor Overlay Zone

An arterial corridor overlay zone is hereby established, and the regulations of this Section, et seq, shall apply in said zone. Said zone shall apply to all zoning classifications established in Article VI of this LDR and the Official Zoning Map shall identify said overly zone by adding the letter "C" as a suffix to the existing zoning classification that currently exists on said map. These arterial corridor regulations apply to the following: State Road 44 from Myrtle Avenue west to the New Smyrna Beach corporate boundary, excluding properties in the Activity Center, as shown on the City's comprehensive plan future land use map, and on U.S. #1 from Art Center Avenue to the northern City boundary line. (Ord. # 122-06)

Visibility at Intersections

Visibility at intersections shall be provided as required in Section 804.01.



City of New Smyrna Beach

March 25, 2011

Glenn Storch, Esquire
Storch Law Firm
420 South Nova Road
Daytona Beach, FL 32114

**RE: PUD-1-11: COLONY PARK EAST PLANNED UNIT DEVELOPMENT
OUTSTANDING PLAN REVIEW COMMITTEE (PRC) COMMENTS**

Dear Mr. Storch:

The Plan Review Committee members have reviewed the revised submittal received March 16, 2011, and has the following outstanding comments:

PLANNING – Gail Henrikson (386-424-2134 / ghenrikson@cityofnsb.com)

1. **Second Request:** The transportation impact study has not yet been reviewed and approved by the City's transportation consultant. Approval of the transportation must be obtained before the rezoning request can be scheduled for first reading before the City Commission.
2. **Second Request:** This section states that the sidewalk will be constructed to the "Northern most driveway entrance connected to Colony Park Road". If the sidewalk will not be extended to the north property line, or even to the end of the Colony Park Road right-of-way, please add language stating when the sidewalk will be extended and who will be responsible for extending it.
3. **Section 2(B):**
 - a. Front yard setbacks have been included in Section 2(B) of the MDA. Please revise the MDA to clarify whether the 45-65 foot building-to line will apply to both the State Road 44 front yard and the Colony Park Road front yard. The City's LDR only requires a 25-foot setback from Colony Park Road.
 - b. Language has been added to this section that references an alternative conceptual development plan. However, only one conceptual plan is included as an exhibit to the MDA. Please either delete the language referencing the alternative conceptual plan or provide this as an additional exhibit to the agreement. Please be advised that because staff has not reviewed the alternative conceptual plan, this may delay scheduling of this item for first reading before the City Commission.

EXHIBIT E (CONT'D)

- c.
4. **Section 2(C):** Please change "Traffic Input Study" to "Traffic Impact Study".
 5. **Section 2(D):** This section was revised to specify that a 10% deviation from the building square footage shown on the Conceptual Development Plan (CDP) would be considered a minor amendment. However, the CDP no longer shows the building square footage. Please revise the CDP to show the building areas or revise the language in Section 2D.
 6. **Section 5:** Language has been added to Section 5 clarifying that "Volusia County Type B" Automobile Service Centers will be a permitted use on the property. Volusia County "Type B" centers allow repair, rebuilding and reconditioning of vehicles. The City's "Type B" centers do not allow mechanical or body repair. Service centers are not permitted at all within the Corridor Overlay Zone. Is the intent to allow services centers anywhere within the PUD or just on Lot 2, which will be associated with the proposed car dealership? If just on Lot 2, the language in Section 5 should be revised to reflect this. Additionally, language should be added that requires all vehicle repair, rebuilding and reconditioning occur inside an enclosed structure or be screened by an opaque wall or fence.
 7. **Section 6(E):** The revised language states payment will be made "upon either payment by City impact fees remainder or design fees (\$25,000)". This wording is unclear. Please revise for clarity.
 8. **Section 7(C)(1)(h):** The language requiring bay doors to face the rear or side of the lot has been removed. Please add this language back into the MDA.
 9. **Section 7(C)(3)(g):** Because the language regarding institutional buildings has been deleted, the reference in this section to "subsection (c)(3)(g)" needs to be revised to "subsection (c)(3)(f)".
 10. **Section 7(G)(2):** This section has been revised to allow loading areas or docks, waste disposal, mechanical equipment, satellite dishes, truck parking and other service support equipment to be located in front of the building (as staff interprets the new language), provided it is screened. The previous version of the MDA reviewed by staff states that these items "shall not be located in the front of buildings". Please revise this section to incorporate the "shall not be located in the front of buildings" language that was previously presented to staff.
 11. **Section 8(A):** This section states that perimeter buffers will comply with the City's Land Development Regulations. The PUD zoning regulations in Article V of the LDR requires a 20-foot perimeter buffer on the north and east property lines. The COZ regulations, also in Article V, require a 25-foot buffer along Colony Park Road and a 35-foot landscape buffer along State Road 44. However, the language in Section 2(B) and on the CDP only requires a 10-foot perimeter buffer and a 15-foot buffer along Colony Park Road. Because of the location of the park to the east, a 10-foot landscape buffer along the east property line would be acceptable to staff. As discussed with Paul Momberger on March 25, 2011, please revise

EXHIBIT E (CONT'D)

- Section 8(A) to incorporate the 10-foot buffer along the north and east property lines and to specify that all other buffers will be provided as required by the LDR. Please revise Section 2(B) and the CDP to show a 25-foot wide buffer along Colony Park Road. The buffer on Colony Park Road may overlap the required 15-foot utility easement by 10 feet.
12. **Section 11(A):** Language has been added to this section stating that "Lot 1, if developed as an automobile dealership, shall be entitled to a separate monument sign on State Road 44". However, the list of permitted uses in Section 5 specifically allows car dealerships on Lot 2 only. Please delete this sentence in Section 11 or revise Section 5.
 13. **Section 12(B):** The City's LDR requires a minimum five-foot wide sidewalk along collector roads. Please revise.

FIRE - Mike Bosse (386-424-2128 / mbosse@cityofnsb.com)

1. **Advisory (not response required):** In reviewing PUD-1-11 Colony Park MDA, it was noted that Section 8, A. Natural Vegetation Preservation requires the Developer to retain all of the existing vegetation within the required Buffers, Conservation and other areas, other than evasive species. And in fact prohibits the removal and or trimming of palmetto plants and requires the buffers to be as thick as possible.

Plant areas containing such species as palmetto, gall berry, etc. under weather conditions such as we are currently experiencing can pose a significant hazard to the owners, their customers and property by allowing a fire caused by something as simple as a carelessly discarded cigarette to spot throughout the development from one planting area to another. The agreement should be revised to allow some of these hazardous plant species to be removed and replaced with other native fire resistant type plantings or at the very least to allow for them to be pruned and cleaned up periodically in order to reduce the potential hazard.

UTILITIES COMMISSION – Randy Walter (386-424-3026/ rwalter@ucnsb.net)

The Utilities Commission staff has reviewed the Master Development Agreement for Colony Park Center that was submitted to Planning and Zoning March 16, 2011 and cannot be signed off by the Utilities Commission because the first two comments out of three in the letter dated February 04, 2011 (see attached) have not been addressed. In addition there has been text added which conflicts with the exhibits and needs clarifying.

1. In Section 6 - subsection B - second sentence: it states that "water, sewer and reuse waterlines shall be located and built in the drive easement area or designated for common area use as provided on the attached Concept Plan." Our most recent discussion with Bobby Ball at Zev Cohen's office is that the utilities will not be installed in the drive easement area but in the 25' utility easement along State Road 44 (primary easement).

EXHIBIT E (CONT'D)

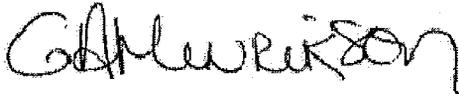
2. Exhibit "B" notes the water and reclaim lines installed in the State Road 44 right-of-way and these lines will be installed in the 25' utility easement. Both of these utilities can be directional bored under the Historic Tree in front of lot 5.
3. The 25' easement along the State road 44 right-of-way is not shown in exhibit "B" across lot 1 or all of lot 5.
4. In Section 7 – subsection G – item (6) – last sentence: It states that "Utilities shall not be located within landscape buffers, tree protection and environmentally sensitive areas. " This statement needs to be corrected/revised because the 25' utility easement along State Road 44 and the 45' landscape buffer overlap 15'. In addition the 15' utility easement along the west property line that will extend from the south property line all the way through to the north property line will be overlapping with the Conservation/Preservation Area.
5. In Section 7 – subsection H – item (5) This sentence needs to be revised to allow the 25' utility easement along State Road 44 and historic trees to overlap as well as the 15' utility easement along the west property line overlapping with the Conservation/Preservation Area.

These items must be addressed before this case can be scheduled for City Commission review. Your revised submittal must also include five (5) copies of the revised Master Development Agreement (strike-thru/underline format is not required), including all exhibits.

These items must be received no later than 5:00 p.m. on Friday, April 4, 2011, in order to be scheduled for the April 26, 2011 City Commission meeting.

Please feel free to contact me with any questions you may have. I may be reached at (386) 424-2134 or via email (ghenrikson@cityofnsb.com).

Sincerely,



Gail Henrikson, AICP
Planning Manager

Cc: Glenn Storch
Paul Momberger (via email)
Case File #PUD-1-11
Randy Walter, Utilities Commission (via email)
Michael Bosse, Fire Marshal (via email)

1 CITY OF NEW SMYRNA BEACH – CITY COMMISSION

2 **A-2-11: COLONY PARK EAST**

3 **APRIL 4, 2011**

4
5 **I. Background**

- 6
7 A. **Applicant:** Glenn D. Storch, Esquire, 420 South Nova Road, Daytona
8 Beach Florida, 32114
9
10 B. **Property Owners:** New Smyrna Beach Acquisitions, LLC and Colony
11 Park, LLC, 38068 Daughtery Road, Zephyrhills, Florida, 33540
12
13 C. **Request:** Voluntary annexation
14
15 D. **Site Information:** The subject property consists of approximately 41.45
16 acres and is generally located northeast of the intersection of State Road
17 44 and Colony Park Road (see location map attached as **Exhibit A**).
18
19 E. **Tax I.D. Numbers:** 7343-06-00-0233, 7343-06-00-0310, 7343-06-00-
20 0061, and 7343-06-00-0064
21

22 **II. Findings**

- 23
24 A. The subject property is an approximately 41.45-acre site consisting of two
25 parcels. A copy of the survey for the subject property is attached as
26 **Exhibit B**. The property currently has Volusia County Future Land Use
27 (FLU) designations of Urban Medium Intensity, which allows up to eight
28 units per acre, and Commercial. The property is currently zoned Volusia
29 County R-4, Urban Single-Family, Volusia County B-3, Shopping Center,
30 and Volusia County B-3(C), Shopping Center (Thoroughfare Overlay
31 Zone). To the west of the subject property are the Home Depot and the
32 Murphy Oil convenience store and gas station. The surrounding future
33 land use, existing uses, and zoning are as follows:

34 **North**

35 Future Land Use: County Urban Medium Intensity
36 Existing Land Use: Vacant
37 Zoning: County R-4. Urban Single-Family
38

39 **South (across State Road 44)**

40 Future Land Use: City State Road 44 Corridor PUD
41 Existing Land Use: Vacant
42 Zoning: City PUD, Planned Unit Development
43

44 **East**

45 Future Land Use: County Urban Medium Intensity and County
46 Commercial
47

48 Existing Land Use: Vacant
49 Zoning: County R-4, Single-Family Residential, County B-3,
50 Shopping Center and County B-3(C), Shopping
51 Center (Thoroughfare Overlay Zone)
52

53 **West**

54 Future Land Use: County Commercial
55 Existing Land Use: Home improvement store and convenience store with
56 gas pumps
57 Zoning: County B-3, Shopping Center, County B-3(C),
58 Shopping Center (Thoroughfare Overlay Zone) and
59 County B-4(C),
60

61 Maps showing the surrounding Existing Land Uses, Existing Zoning, and
62 Existing Future Land Use Designations are attached (**Exhibits C, D, and**
63 **E**). Descriptions of the existing zoning and existing Future Land Use
64 designations on the subject property are attached as **Exhibits F and G**.
65 The property owners are not requesting a future land use amendment at
66 this time. However, language has been included in the proposed Master
67 Development Agreement that would require the owners to apply for a land
68 use amendment within one year of the rezoning request being approved.
69

70 B. A map of the soils within the site is attached as **Exhibit H**. According the
71 Volusia County Soil Survey prepared by the Soil Conservation Service,
72 there are six soil types that are on the property and have characteristics of
73 very low to medium potential for community development. Descriptions of
74 the soil types are attached as **Exhibit I**. One must note that, in the
75 context of soil type descriptions, the developmental potential is not a legal
76 restraint on the amount of development, nor is the available soil
77 information definitive in the process of determining the existence of
78 wetlands. The soils map and description provides an indication of the
79 amount of soil treatment necessary to allow further development (i.e. low
80 development potential means more extreme treatment needs for
81 development).
82

83 C. The subject properties are currently vacant and are moderately to heavily
84 wooded. Concurrent with the annexation request, the property owners
85 have also submitted an application to rezone the property to PUD,
86 Planned Unit Development. The proposed Conceptual Development Plan
87 shows the property being subdivided into five lots ranging in size from 1
88 acre to 15.7 acres. The Master Development Agreement would allow a
89 mix of non-residential uses, including offices, automobile sales and retail.
90 Access will be provided to the properties from State Road 44 and Colony
91 Park Road. A copy of the Conceptual Development Plan is attached as
92 **Exhibit J**.
93

94 D. Previous City Commissions had established a policy that when property is
95 annexed into the City, the City would assign a future land use and zoning

96 designation that would closely match the existing County designations.
97 As discussed above, the existing County FLU designations are Urban
98 Medium Intensity and Commercial and the existing County zoning
99 classifications are R-4, Urban Single-Family Residential, B-3, Shopping
100 Center and B-3(C), Shopping Center (Thoroughfare Overlay District). The
101 proposed zoning would not include a residential component. Therefore,
102 the entire property would be used for non-residential uses. Other than the
103 Home Depot and Murphy Express to the west, there is no other
104 development surrounding the subject properties. Additionally, as shown
105 on the Conceptual Development Plan attached as Exhibit J, the northern
106 portion of the properties will be used for stormwater retention and tree
107 preservation. Therefore, the proposed rezoning would be not impair the
108 intent of the City Commission's policy. A map showing the proposed
109 zoning change is attached as **Exhibit K**. A description of the proposed
110 PUD zoning designation is attached as **Exhibit L**.

111
112 E. This annexation request is within the City's annexation area and within the
113 City's water and wastewater service area. Water and sewer are both
114 available to serve proposed development on the site.

115
116 F. The *Land Development Regulations* requires any proposed development
117 to conform to the Concurrency Management System. That system
118 includes traffic, parks and recreation, potable water, wastewater
119 treatment, solid waste collection, stormwater management, and public
120 school facilities. All future development will have to demonstrate
121 conformance with concurrency standards prior to vesting any specific
122 project.

123
124 G. There are numerous *Comprehensive Plan* maps that must be amended to
125 incorporate the subject properties into the *Comprehensive Plan* (see
126 **Exhibits M through W**). **Exhibit X** is an aerial photo of the property for
127 informational purposes.

128
129 H. The *Comprehensive Plan* provides some guidance on annexations, future
130 land use amendments, and rezonings. The following is a list of objectives
131 in the *Comprehensive Plan* that support this proposal. Following each
132 objective is a comment in ***bold italics***.

- 133
134 • **Future Land Use Element Objective 1:** To ensure that future
135 development will be consistent with adjacent uses, natural
136 limitations such as topography and soil conditions, the needs of the
137 citizens of New Smyrna Beach, the Future Land Use Map, the
138 availability of facilities and services, and the goals, objectives and
139 policies contained within this *Comprehensive Plan*.

140
141 ***The future development proposed on the subject property is***
142 ***consistent with proposed adjacent uses, natural limitations,***
143 ***and the availability of facilities and services. Therefore, it is***

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consistent with the Comprehensive Plan. The property is bordered by existing commercial development to the west and is located on a major arterial roadway that has been designated for more intense non-residential and residential development by both the County and the City.

- **Future Land Use Element Objective 2:** To provide adequate services and facilities for future development, at the adopted level-of-service standard. In order to maintain the adopted level-of-service standard, development orders and permits will be conditioned on the availability of the public facilities and services necessary to serve the proposed development.

Adequate services are available to serve the subject property. As part of the rezoning application, the applicant has submitted a traffic impact analysis. This analysis shows that at project build-out in 2016, all roadway segments and intersections will operate within the required level-of-service. The one exception is the intersection of State Road 44 and Glencoe Road. However, FDOT will be installing a full mast arm signal at this location later this year. Bids on this signal improvement project are expected in September 2011.

- **Future Land Use Element Objective 7:** To implement land use patterns, utility service extensions, impact fees, and an annexation methodology, which provide for orderly development and discourage urban sprawl.

Annexation of the subject property would be consistent with this objective of the Comprehensive Plan as it would fill in a portion of the area in the middle of the City which still is under County jurisdiction. On March 17, 2011, the County Council approved a resolution which would authorize County staff to begin working with City staff to draft an Interlocal Service Boundary Agreement. The Interlocal Service Boundary Agreement would enable the City to begin annexing the properties in this central area of the City, with the ultimate goal to provide services more efficiently and to eliminate duplication.

- **Future Land Use Element Objective 10:** To protect existing desirable neighborhoods from encroaching new development which is incompatible and inconsistent with established character of the neighborhood.

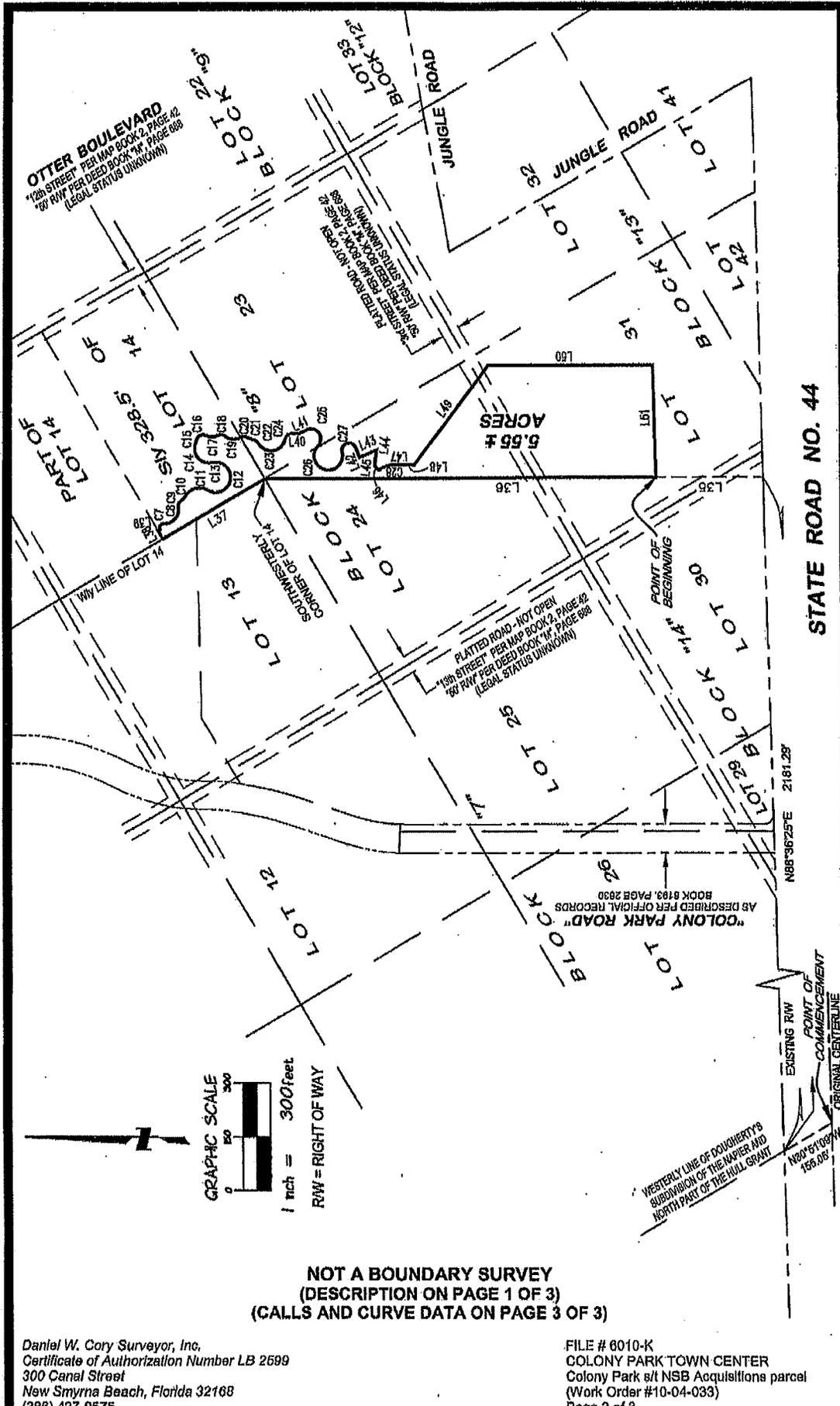
Unlike many of the commercial properties on the south side of State Road 44, the subject properties do not abut any

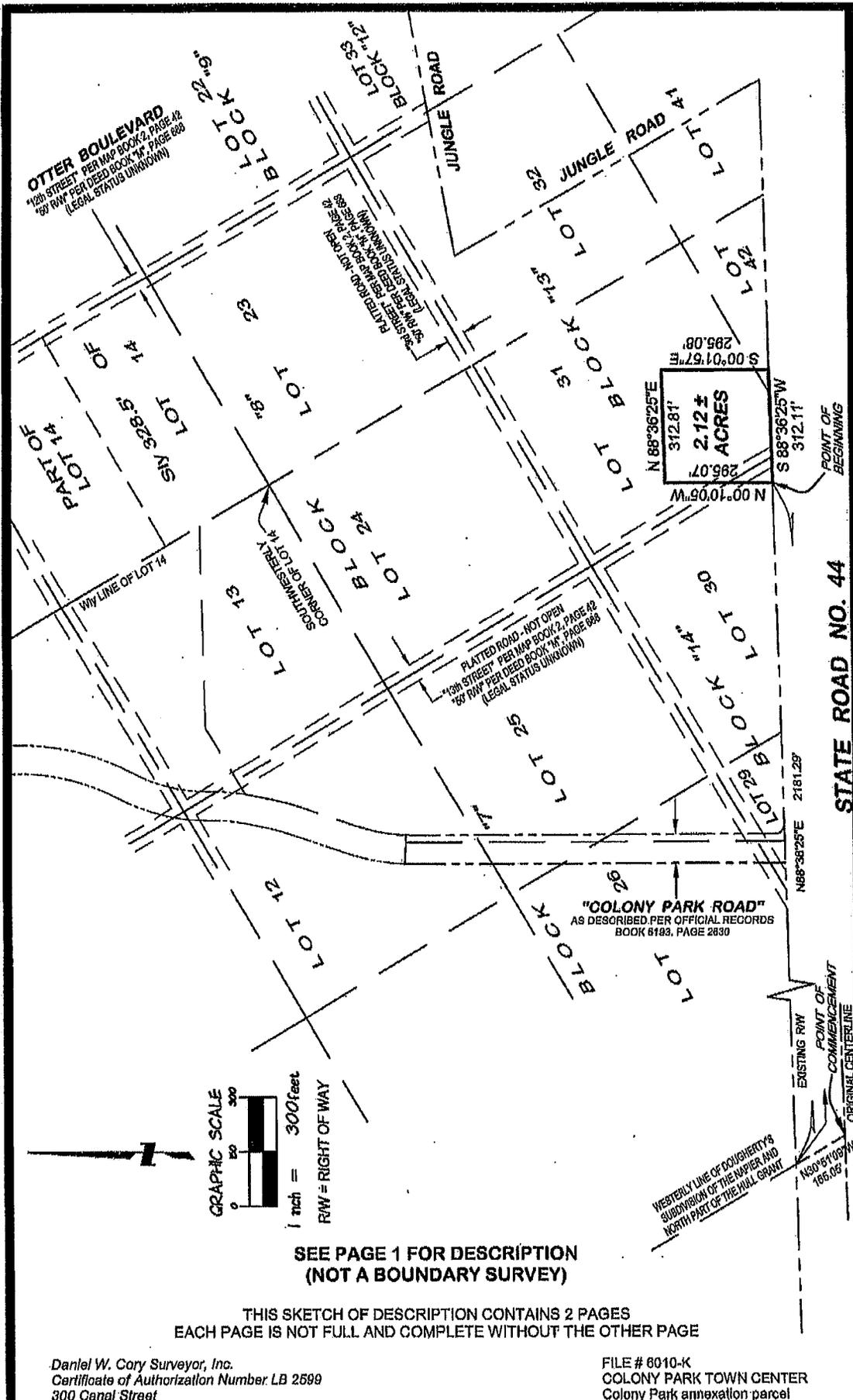
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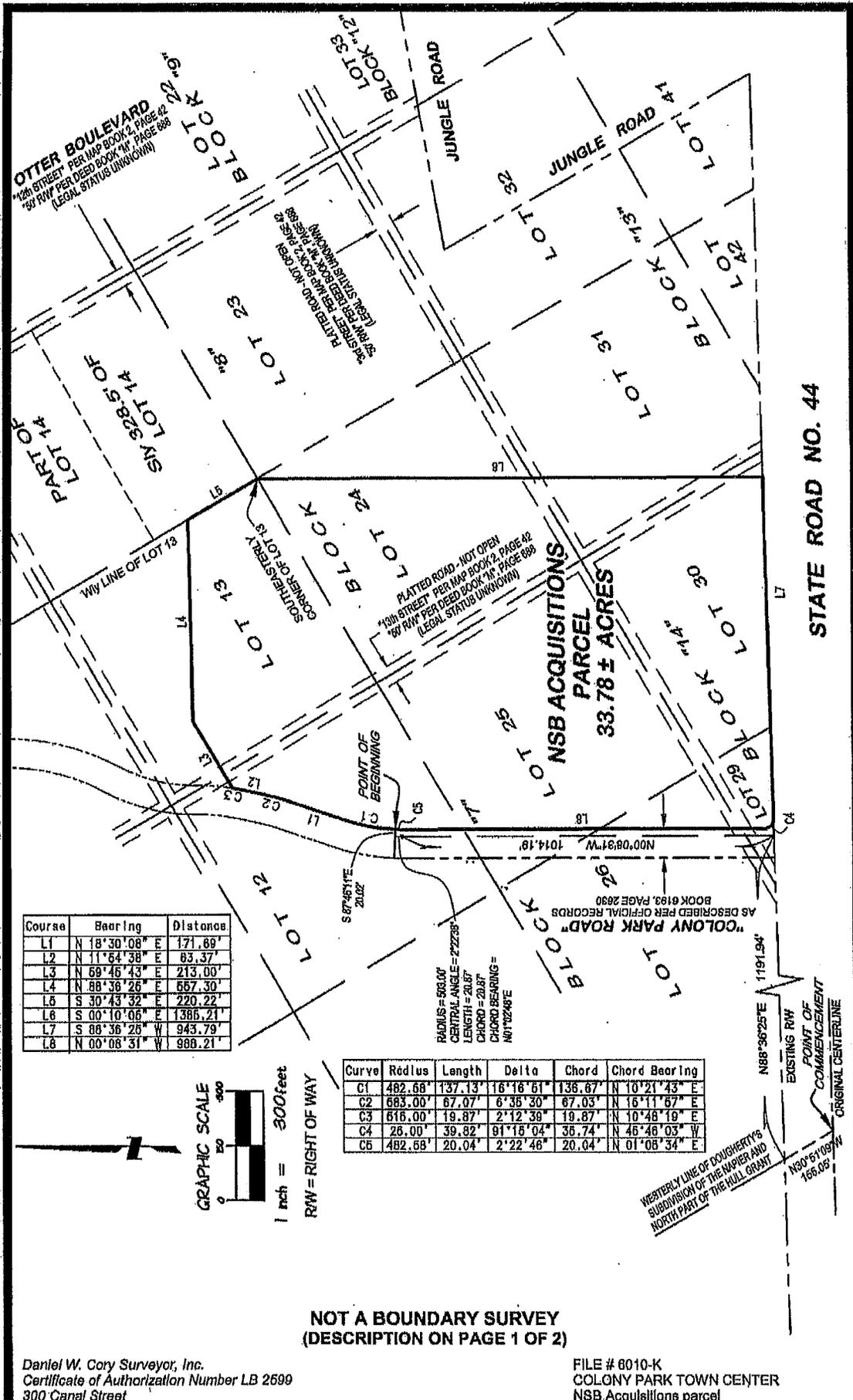
residential neighborhoods. Therefore, the requested annexation and future development of the properties are consistent with this policy of the Comprehensive Plan.

III. Recommendation

Staff recommends that the Planning and Zoning Board recommend the City Commission **approve** the annexation.







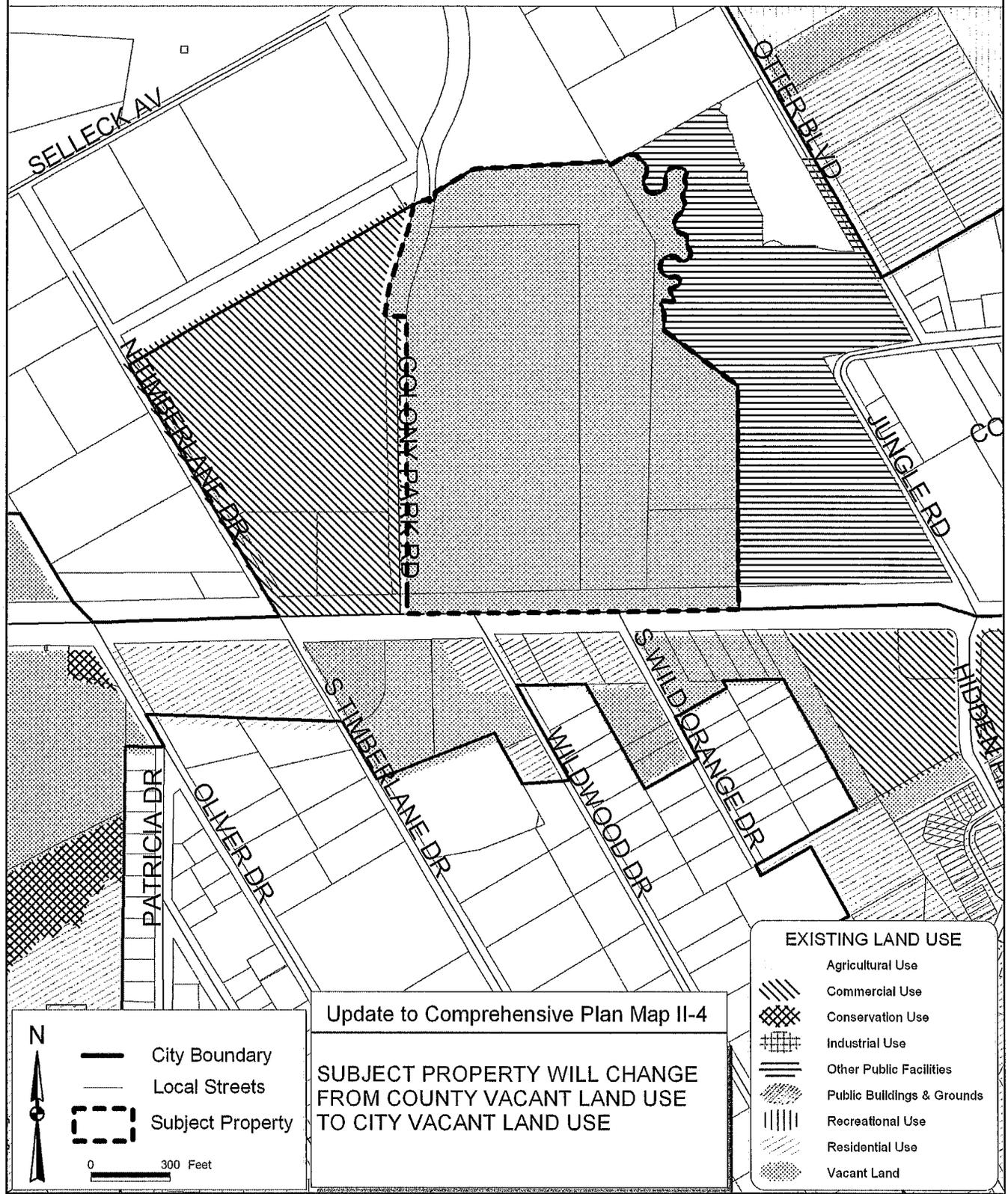
NOT A BOUNDARY SURVEY
 (DESCRIPTION ON PAGE 1 OF 2)

Daniel W. Cory Surveyor, Inc.
 Certificate of Authorization Number LB 2699
 300 Canal Street

FILE # 6010-K
 COLONY PARK TOWN CENTER
 NSB Acquisitions parcel

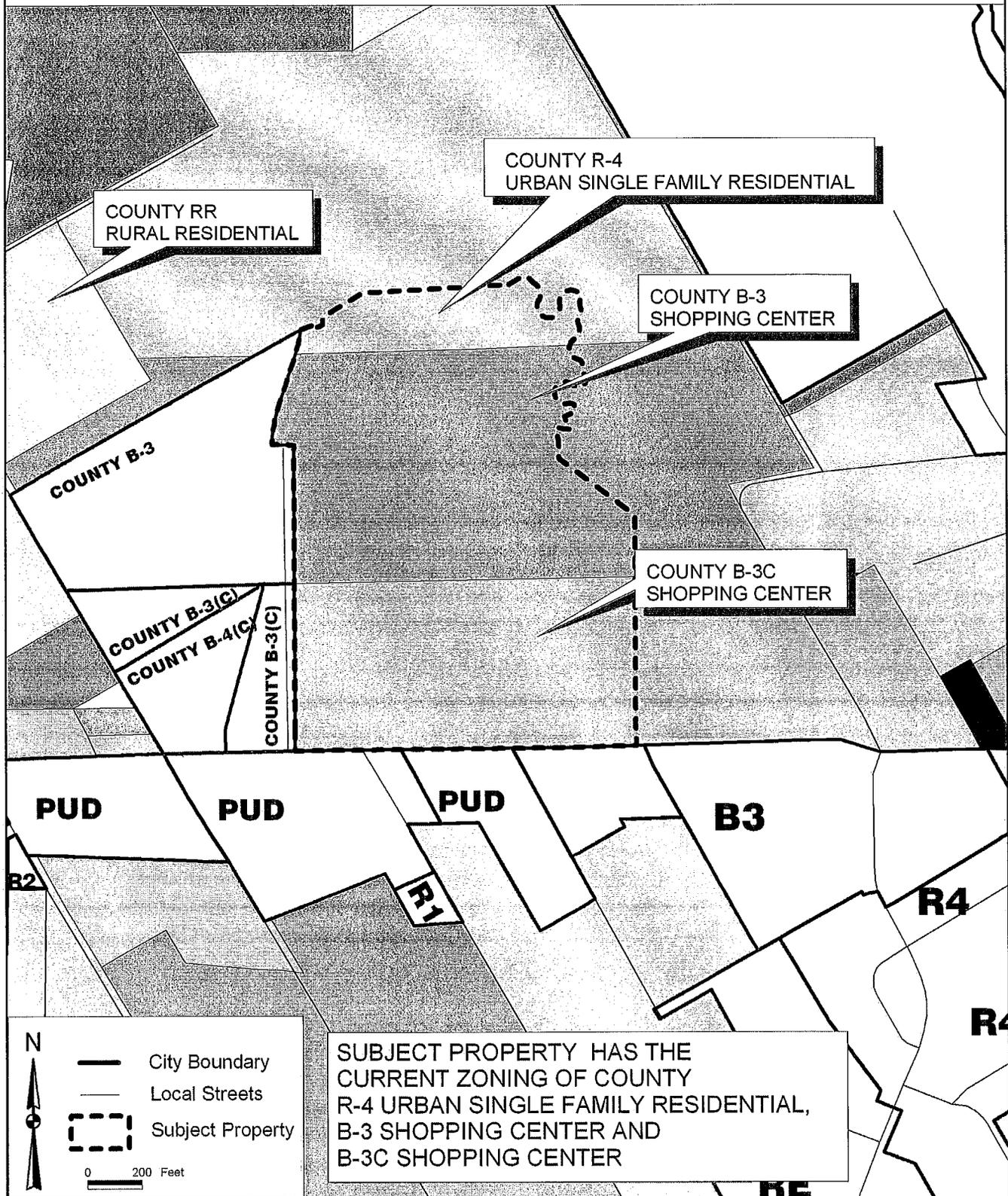
Existing Land Use Designations

A-02-11



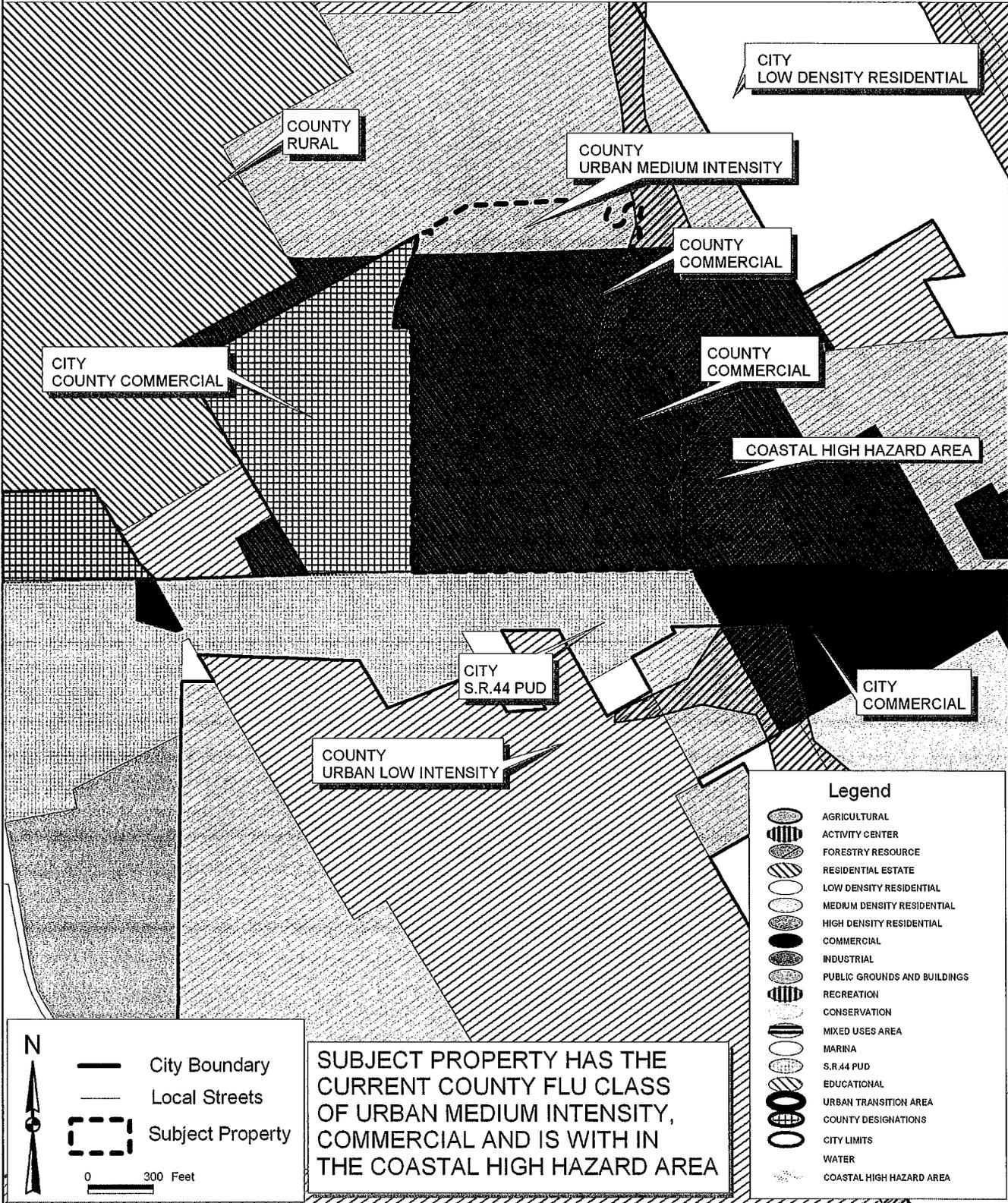
Existing Zoning

A-02-11



Existing Future Land Use Designations

A-02-11



SUBJECT PROPERTY HAS THE CURRENT COUNTY FLU CLASS OF URBAN MEDIUM INTENSITY, COMMERCIAL AND IS WITH IN THE COASTAL HIGH HAZARD AREA

R-4 URBAN SINGLE-FAMILY

RESIDENTIAL CLASSIFICATION

Purpose and intent: The purpose and intent of the R-4 Urban Single-Family Residential Classification is to provide medium-density residential developments, preserving the character of existing or proposed residential neighborhoods.

Permitted principal uses and structures: In the R-4 Urban Single-Family Residential Classification, no premises shall be used except for the following uses and their customary accessory uses or structures:

- Cluster and zero lot line subdivisions (refer to subsection 72-304).
- Communication towers not exceeding 70 feet in height above ground level.
- Essential utility services.
- Exempt excavations (refer to subsection 72-293(15)) and/or those which comply with division 8 of the Land Development Code of Volusia County [article III] and/or final site plan review procedures of this article.
- Exempt landfills (refer to subsection 72-293(16)).
- Fire stations.
- Home occupations, class A (refer to section 72-283).
- Houses of worship.
- Parks and recreational areas accessory to residential developments.
- Public schools.
- Publicly owned parks and recreational areas.
- Publicly owned or regulated water supply wells.
- Single-family standard or manufactured modular dwelling.

Permitted special exceptions: Additional regulations/requirements governing permitted special exceptions are located in sections 72-293 and 72-415 of this article.

- Bed and breakfast (refer to subsection 72-293(19)).
- Cemeteries (refer to subsection 72-293(4)).
- Communication towers exceeding 70 feet in height above ground level.
- Day care centers (refer to subsection 72-293(6)).
- Dogs and cats boarded as personal pets exceeding the number permitted in subsection 72-306(a).
- Excavations only for stormwater retention ponds for which a permit is required by this article.
- Garage apartments.
- Off-street parking areas (refer to subsection 72-293(14)).
- Public uses not listed as a permitted principal use.
- Public utility uses and structures (refer to subsection 72-293(1)).
- Recreational areas (refer to subsection 72-293(3)).
- Schools, parochial or private (refer to subsection 72-293(4)).

Dimensional requirements:

Minimum lot size:

- Area: 7,500 square feet.
- Width: 75 feet.

Minimum yard size:

- Front yard: 25 feet.

- Rear yard: 20 feet.
- Side yard: 20 feet combined, minimum of eight feet on any one side.
- Waterfront yard: 25 feet.

Maximum building height: 35 feet.

Maximum lot coverage: The total lot area covered with principal and accessory buildings shall not exceed 35 percent.

Minimum floor area: 850 square feet.

Off-street parking and loading requirements: Off-street parking and loading areas meeting the requirements of sections 72-286 and 72-287 shall be constructed.

B-3 SHOPPING CENTER CLASSIFICATION

Purpose and intent: The purpose and intent of the B-3 Shopping Center Classification is to provide shopping centers where compatible business establishments will be planned, organized and grouped in a unified arrangement. Such centers should be designed of sufficient dimension to satisfy all off-street parking needs, and be located along major arterial streets, where the traffic generated can be accommodated in a manner consistent with the public health, welfare and safety.

Permitted principal uses and structures: In the B-3 Shopping Center Classification, no premises shall be used except for the following uses and their customary accessory uses or structures:

Art, dance, modeling and music schools.

Auction parlors.

Automobile service stations, types A and C.

Bars and liquor stores.

Beauty shops, barbershops.

Bowling alleys.

Cafeterias.

Communication towers not exceeding 70 feet in height above ground level. (Ord. No. 97-19, § II, 8-7-97)

Cultural art centers. (Ord. No. 92-6, § XXXV, 6-4-92)

Employment agencies.

Essential utility services. (Ord. No. 84-1, § III, 3-8-84)

Exempt excavations (refer to subsection 72-293(15)) and/or those which comply with division 8 of the Land Development Code of Volusia County [article III] and/or final site plan review procedures of this article. (Ord. No. 84-1, § III, 3-8-84; Ord. No. 89-20, § VI, 6-20-89; Ord. No. 90-34, § 32, 9-27-90)

Exempt landfills (refer to subsection 72-293(16)). (Ord. No. 89-20, § VI, 6-20-89; Ord. No. 90-34, § 32, 9-27-90)

Financial institutions.

Fire stations. (Ord. No. 92-6, § XXXV, 6-4-92)

Game rooms or arcades for pool, billiards, pinball machines, jukeboxes or other coin-operated amusements.

General offices. (Ord. No. 82-20, § VIII, 12-9-82)

Government-sponsored civic centers. (Ord. No. 92-6, § XXXV, 6-4-92)

Hardware/home improvement retail center. (Ord. No. 2004-20, § V, 12-16-04)

Health clubs or spas. (Ord. No. 2004-20, § V, 12-16-04)

EXHIBIT F (CONT'D)

Home occupations, class A (refer to section 72-283). (Ord. No. 86-16, § X, 10-23-86)

Houses of worship. (Ord. No. 2004-20, § V, 12-16-04)

Laundry and dry-cleaning establishments.

Libraries. (Ord. No. 92-6, § XXXV, 6-4-92)

Medical and dental clinics. (Ord. No. 2004-20, § V, 12-16-04)

Museums. (Ord. No. 92-6, § XXXV, 6-4-92)

Nightclubs.

Outdoor entertainment event (refer to section 10-31 et seq., article II, Code of Ordinances of the County of Volusia). (Ord. No. 94-4, § XXXVII, 5-5-94; Ord. No. 2002-22, § VIII, 11-7-02)

Printing and publishing establishments.

Public schools. (Ord. No. 92-6, § XXXV, 6-4-92)

Publicly owned parks and recreational areas. (Ord. No. 92-6, § XXXV, 6-4-92)

Publicly owned or regulated water supply wells. (Ord. No. 92-6, § XXXV, 6-4-92)

Recycling collection center. (Ord. No. 90-34, § 32, 9-27-90)

Restaurants, types A and B. (Ord. No. 84-1, § XXIX, 3-8-84)

Retail sales and services, excluding sales or rental of automobile, motorcycle, truck, motor home, or travel trailers, automobile driving schools, boat or mobile home sales and services. (Ord. No. 84-1, § XXIX, 3-8-84)

Retail specialty shops.

Stamp redemption centers.

Tailor shops.

Taxicab stands.

Theaters.

Travel agencies.

(Ord. No. 2004-20, § V, 12-16-04)

Permitted special exceptions: Additional regulations/requirements governing permitted special exceptions are located in sections 72-293 and 72-415 of this article. (Ord. No. 90-34, § 32, 9-27-90)

Communication towers exceeding 70 feet in height above ground level. (Ord. No. 97-19, § II, 8-7-97)

Cemeteries (refer to subsection 72-293(4)). (Ord. No. 2004-20, § V, 12-16-04)

Day care centers (refer to subsection 72-293(6)). (Ord. No. 90-34, § 32, 9-27-90)

Excavations only for stormwater retention ponds for which a permit is required by this article. (Ord. No. 84-1, § VII, 3-8-84; Ord. No. 89-20, § VII, 6-20-89)

Professional or trade schools related to permitted uses (refer to subsection 72-293(2)).

Public uses not listed as a permitted principal use. (Ord. No. 92-6, § XXXV, 6-4-92)

Public utility uses and structures (refer to subsection 72-293(1)). (Ord. No. 84-1, § III, 3-8-84)

Schools, parochial or private (refer to subsection 72-293(4)).

(Ord. No. 2004-20, § V, 12-16-04)

Dimensional requirements:

Minimum project size:

Area: Ten acres. (Ord. No. 90-34, § 32, 9-27-90)

Width: 300 feet. (Ord. No. 90-34, § 32, 9-27-90)

Minimum lot size for out-parcels within a project:

Area: 15,000 square feet. (Ord. No. 92-6, § XXXV, 6-4-92)

Width: 75 feet. (Ord. No. 92-6, § XXXV, 6-4-92)

Minimum yard size for project, excluding out-parcels: (Ord. No. 92-6, § XXXV, 6-4-92)

Front yard: 100 feet.

Rear yard: 50 feet.

Side yard: 50 feet. (Ord. No. 81-39, § XXIV, 11-19-81; Ord. No. 98-25, § VII, 12-17-98)

Waterfront yard: 50 feet. (Ord. No. 82-20, § XIII, 12-9-82; Ord. No. 90-34, § 32, 9-27-90; Ord. No. 94-4, § XXXVII, 5-5-94)

(The minimum required side or rear yards shall be 100 feet where they abut an agricultural, residential or mobile home zoned property.) (Ord. No. 98-25, § VII, 12-17-98; Ord. No. 2004-20, § V, 12-16-04)

Minimum yard size for out-parcels within a project:

Front yard: 35 feet.

Side and rear yard:

Ten feet, if abutting the B-3 classified project;

50 feet if abutting nonresidentially classified land outside the B-3 project; and

100 feet if abutting an agricultural, residential or mobile home zoned property. (Ord. No. 98-25, § VII, 12-17-98; Ord. No. 2004-20, § V, 12-16-04)

Waterfront yard: 50 feet. (Ord. No. 94-4, § XXXVII, 5-5-94)

Maximum building height: 45 feet.

(Ord. No. 92-6, § XXXV, 6-4-92)

Off-street parking and loading requirements: Off-street parking and loading areas meeting the requirements of section 72-286 shall be constructed. (Ord. No. 90-34, § 32, 9-27-90)

Landscape buffer requirements: Landscaped buffer areas meeting the requirements of section 72-284 shall be constructed.

Final site plan requirements: Final site plan approval meeting the requirements of division 3 of the Land Development Code [article III] is required. (Ord. No. 88-2, § IV, 1-19-88)

(Ord. No. 2004-20, § V, 12-16-04)

Sec. 72-297. Thoroughfare overlay zone regulations.

(a) *Purpose and intent:*

(1) The purpose of this section is to provide regulations to ensure safe ingress to and egress from proposed development along thoroughfares, to maintain adequate highway capacity, eliminate hazardous traffic conditions, lessen or prevent traffic congestion, establish a high standard for development, including additional sign regulations and create a more attractive streetscape. Commercial development typically expands along thoroughfares as population and traffic volumes increase in the vicinity of and along the thoroughfare. Eventually, conflicts result between the thoroughfare's function and its ability to move high volumes of traffic through an area.

(2) This congestion is intensified when commercial growth increases along the entire length of the thoroughfare.

EXHIBIT F (CONT'D)

(3) The increased commercial growth also changes the public's image of the thoroughfare. What was once considered an attractive tree-lined thoroughfare gradually and often rapidly begins to exhibit characteristics of uncontrolled strip commercial development. Once this pattern has been established, it is difficult to establish alternative types of development (e.g. residential) along these thoroughfares. Therefore, these regulations apply to thoroughfares which; (1) move large volumes of through traffic in addition to significant volumes of everyday local traffic; and (2) do not contain significant amounts of strip commercial development. These thoroughfare overlay zone regulations are intended to supplement all of the regulations of the existing zoning classifications except for permitted uses and special exceptions. The type of permitted uses or special exceptions allowed would be determined according to the existing zoning classification and the site design, signage, building location and the dimensional requirements would be regulated by these overlay zone regulations.

(b) *[Thoroughfare overlay zone:]* A thoroughfare overlay zone is hereby established, and the regulations of this section shall apply in said zone. Said zone shall apply to all zoning classifications established in division 7 of this article, and the official zoning map shall identify said overlay zone by adding the letter "C" as a suffix to the existing zoning classification that currently exists on said maps. The thoroughfares, or portions thereof, to which these regulations apply are as follows:

(1) *North coastal area:*

State Road #40: Western boundary lines of Section 26, Township 14 South, Range 31 East to Ormond Beach west city limits.

U.S. #92: Indian Lake Road east to Daytona Beach west city limit.

(2) *South coastal area:*

State Road #44: New Smyrna Beach city limit west to Tomoka Farms Road (CR 415).

(3) *West Volusia area:*

U.S. #92: Eastern boundary line of Section 25, Township 16 South, Range 30 East, to State Road 15-A.

State Road 15-A: U.S. #17 South to U.S. #17-92.

U.S. #17: Eastern boundary of Section 39, Township 16 South, Range 30 East, to South boundary line of Section 4, Township 17 South, Range 30 East.

U.S. #17-92: North Line of Section 21, Township 17 South, Range 30 East, to South line of Section 33, Township 17 South, Range 30 East.

State Road #44: Western boundary line of Section 14, Township 17 South, Range 29 East, to East boundary line of Section 17, Township 17 South, Range 31 East.

West Volusia Beltline: State Road #44, to North boundary line of Section 13, Township 18 South, Range 30 East. (Ord. No. 85-24, § XVII, 10-10-85; Ord. No. 86-16, § XXXII, 10-23-86; Ord. No. 88-2, § XXI, 1-19-88)

(Ord. No. 84-25, § XXV, 10-10-84; Ord. No. 88-2, § XXII, 1-19-88; Ord. No. 02-07, § I, 3-7-02)

(c) *Dimensional requirements:*

(1) *Minimum lot width:* No premises shall be divided for the purpose of development of sale such that the width of each or any premises is less than 300 feet measured along the right-of-way line, except as follows:

EXHIBIT F (CONT'D)

If vehicle access to any premises is provided by means other than directly onto an arterial, then the minimum lot width requirement may be reduced to 150 feet, and direct vehicle access to a major arterial shall be prohibited.

(2) *Minimum yard size:* Front yard: 75 feet.

(3) *Maximum building height:* Three stories, not to exceed 35 feet.

(4) *Maximum lot coverage:* Total coverage of principal and accessory buildings shall not exceed 30 percent.

(5) *Thoroughfare overlay zone depth:* The thoroughfare overlay zone requirements shall be applied to all premises that front onto or have access to the thoroughfare to a distance equal to the depth of the rear property line, but not to exceed a depth of 660 feet as measured perpendicular from the centerline of the thoroughfare right-of-way.

(d) *Off-street parking and loading requirements:* Off-street parking and loading space shall meet the requirements of section 72-286 and in addition shall meet the following: Off-street parking and loading areas shall be permitted in the front yard or the side yard that is adjacent to a thoroughfare as long as the off-street parking and loading areas are designed outside the 35-foot wide landscaped buffer area along the project perimeter adjacent to thoroughfares. Said area shall contain landscaped fences, walls or berms of sufficient heights and opacity to generally obscure parked vehicles from view of the traveling public. All parking areas shall contain a minimum of 20 percent interior landscaping, excluding any required landscaped buffer area as provided in subsection

(e), below.

(e) *Landscaping buffer requirements:* In addition to meeting the landscape buffer requirements in section 72-284, the following requirements shall also be met:

(1) A landscape plan shall be provided identifying the quantity, botanical and common name, size and location of plant material, including those existing plant materials to be retained. Plans and specifications for an underground irrigation system are required for any landscaped area.

(2) A minimum of 30 percent of the area of the site shall be covered by landscape materials as specified in subsection 72-284(1) of this article.

(3) Except for access driveways, it is intended that development along the thoroughfare corridor shall be designed to prevent the need for fill material or such other treatment which would remove or harm existing trees within the required front yard.

(4) A landscaped buffer area shall be provided along the perimeter of the property. The width of the buffer shall be determined by the requirements in subsection 72-284(2) unless the site is located on a thoroughfare, then the front buffer shall be a minimum of 35 feet. If the thoroughfare right-of-way is less than 140 feet, then the buffer area will start at a point 70 feet from the centerline of the thoroughfare.

EXHIBIT F (CONT'D)

(f) *Final site plan requirements:* In addition to meeting the final site plan requirements in division 3 of the Land Development Code [article III], the following requirements shall be met:

All site plans, reports and general information will be submitted to the development review committee to ensure compliance and consistency for all developments along the thoroughfare.

(g) *Service road requirement:* All premises fronting thoroughfares upon which the thoroughfare overlay zone regulations have been applied shall be provided access via a service road, unless as otherwise specified herein. The service road may either be in the front or rear of the project site depending on the location of any existing service road.

(h) *Transportation impact analysis report; purpose:* The transportation impact analysis report is designed to identify the transportation impacts and problems which are likely to be generated by a proposed use because of the size, density, traffic generation rates or location. The report will also identify all improvements required to ensure safe ingress and egress from a proposed development, maintenance of adequate street capacity, and elimination of hazardous conditions and improvements necessary for immediately surrounding roadways and intersections as a result of the proposed development.

(1) *Threshold for traffic impact analysis report:* A transportation impact analysis report shall be required, unless waived by the county traffic engineer, for all uses which meet or exceed any one or more of the following thresholds:

- a. Any development which proposes to have direct access to any roadway designated in subsection (b) of this section.
- b. Any use which, according to the Institute of Transportation Engineers Trip Generation Manual, latest edition, rates published by the Florida Department of Transportation, or rates documented by study as agreed prior to use by the Volusia County Traffic Engineer will generate in excess of 1,000 trips per day.

(2) *Contents of transportation impact analysis report:* The transportation impact analysis report shall include the following:

- a. *General site description:* A detailed description of the highway network within a radius as determined by the county traffic engineer of the site, a description of the proposed project, the anticipated stages of construction, and the anticipated completion date of the proposed land development. This description, which may be in the form of a map, shall include the following items:
 1. All major intersections;
 2. All proposed and existing ingress and egress locations;
 3. All existing roadway widths and rights-of-way;
 4. All existing traffic signals and regulatory signage;
 5. All existing and proposed public transportation services and facilities within the above-determined radius of the site.
- b. *Description of existing traffic conditions:* A 24-hour traffic count shall be conducted for a typical weekday on all roadways which have direct access to a proposed development site. The existing average daily traffic volume, and the highest average peak hour volume for any weekday hour between 3:00 p.m. and 6:00 p.m. shall be recorded. These traffic volumes shall be averaged to determine the average hourly peak traffic volume for a weekday. The

EXHIBIT F (CONT'D)

methodology used to calculate existing traffic conditions and use of traffic counts and data other than those described above to represent existing traffic conditions shall be subject to the approval of the county traffic engineer.

- c. *Transportation impact of the development.* A report shall be made detailing the nature and extent of the trip generation expected to result from the proposed development. Trip generation analysis shall include an estimate of internal/external split, if applicable, and a determination of what characteristics of the development will yield such a split. The source of all trip generation rates shall be according to the Institute of Transportation Engineers Trip Generation Manual, latest edition, rates published by the Florida Department of Transportation, or rates documented by study and agreed to prior to use by the Volusia County Traffic Engineer.
- d. *Determination of roadway service level--Calculate service volumes:* Roadway service volumes shall be calculated at the level of service for the thoroughfare which is specified in the comprehensive plan. Data and procedures contained in the Highway Capacity Manual, Special Report, 209, 1985, published by the transportation research board shall be utilized in deriving the information required by the transportation impact analysis report.
- e. *Determination of intersection service level:*
 1. Data and procedures in the Highway Capacity Manual, Special Report, 209, 1985, published by the transportation research board shall be utilized in determining intersection service levels.
 2. The post-developing level of service for all intersections shall be in accordance with the comprehensive plan.
 3. Determine the existing level of service of all intersections within one-half mile of the proposed development using the critical movement analysis techniques provided in subsection e.1., above.
- f. *Analysis of transportation impact:* An analysis shall be undertaken to determine if roadways and intersections will operate at the level of service specified by the comprehensive plan following completion of the development given the future peak hour traffic that will be generated by the proposed development. This analysis shall consist of a comparison of the total future peak hour roadway traffic demand with the plan's mandated level of service standard and a critical movement analysis for intersections to determine the impact of total future peak hour traffic on intersection level of service. All roadways and intersections that would operate below the required level of service following completion of the development shall be considered deficient.

Maintenance of levels of service. Whenever level of service is determined to be below the level specified by the comprehensive plan, development is not permitted unless the developer makes the roadway or other improvements necessary to maintain the specified level of service.

(3) *Traffic-control devices:* Whenever, as a result of additional traffic generated by a proposed development, the manual on uniform traffic control devices determines the need for a traffic signal or regulatory sign, the developer shall be responsible for installing all said devices and signs.

(4) *Large developments:* [Large developments] (over 250 vehicle trips generated per one hour during 3:00 p.m. and 6:00 p.m.) shall also include the following:

EXHIBIT F (CONT'D)

- a. The impact report for developments which will generate between 250 and 1,000 trips during the peak hour shall involve an analysis of all arterials and all intersections within one mile of the proposed project.
- b. Except for developments of regional impact as defined by F.S. § 380.06, the impact report for developments which will generate over 100 trips during the peak hour shall involve an analysis of all arterial and collector roadways and all intersections within three miles of the proposed project.

(i) *Temporary access:* No developer shall be denied a rezoning or building permit for the sole reason that the parcel for which it is sought cannot physically accommodate the requirements of this classification because adjoining segments of service roads or public roadways are not yet constructed. In such an event, a temporary access permit will be issued which shall expire when the proposed access becomes available to the parcel.

(j) *Sign regulations:* The sign regulations established in section 72-298 et seq. shall also apply in any thoroughfare overlay zone; provided, however, the maximum permissible height for any ground sign is eight feet, and the maximum permissible copy area for any ground sign is 40 square feet.

Volusia County Urban Medium Intensity (UMI)

Areas that contain residential development at a range of greater than four (4) to eight (8) dwelling units per acre. The types of housing typically found in areas designated urban medium intensity include single family homes, townhouses and low-rise apartments. The UMI designation is primarily a residential designation but may allow neighborhood business areas (see Shopping Center definition in Chapter 20) and office development that meets the Comprehensive Plan's location criteria. The commercial intensity shall be no more than a fifty percent Floor Area Ratio (0.50 FAR) and shall be limited in a manner to be compatible with the allowable residential density. In order to be considered compatible, the commercial development should reflect similar traffic patterns, traffic generation, building scale, landscaping and open space, and buffers. More intensive commercial use, other than neighborhood business areas, shall be reserved to areas designated for Commercial. All requests for nonresidential uses within one-quarter (1/4) mile of another jurisdiction shall require notification to that jurisdiction.

Commercial (C)

This designation accommodates the full range of sales and service activities. These uses may occur in self-contained centers, multi-story structures, campus parks, municipal central business districts, or along arterial highways. In reviewing zoning requests or site plans, the specific intensity and range of uses, and design will depend on locational factors, particularly compatibility with adjacent uses, availability of highway capacity, ease of access and availability of other public services and facilities. Uses should be located to protect adjacent residential use from such impacts as noise or traffic. In wellfield protection areas uses are prohibited that involve the use, handling, storage, generation or disposal of hazardous or toxic material or waste or petroleum products. Intensity shall be no more than a fifty-five percent Floor Area Ratio (0.55 FAR) consistent with the applicable underlying zoning classification standards and land development regulations.

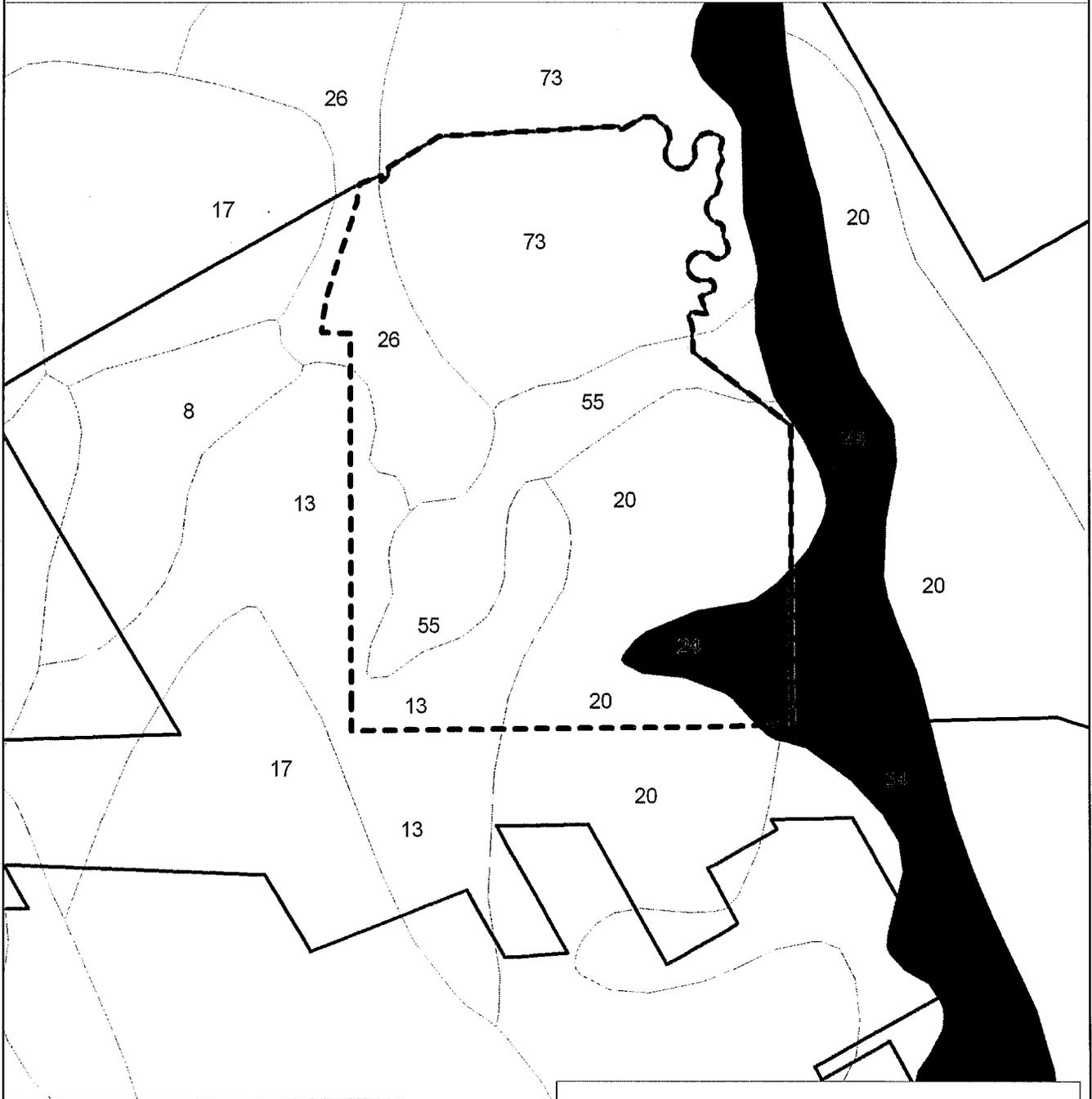
Commercial development in newly developing areas is designated in nodes at major thoroughfare intersections. Primarily new development should be designed to utilize the shopping center concept and not designed to encourage strip style commercial development. The various types of shopping centers are described in Chapter 20, Definitions under Shopping Centers.

However, the Plan recognizes existing strip commercial development along many arterial roadways may remain. These areas are identified on the Future Land Use Map and if the designation is shown on only one side of a roadway, this specifically provides that particular side is intended for commercial use and is not to suggest that the opposite side is also included. Future extension of the strip commercial beyond that shown on the Plan Map shall require a Plan amendment.

Existing commercial uses not indicated on the Future Land Use Map may be consistent with the Plan if they comply with Number 16 of the Interpretation Section.

Soils

A-02-11



N

— City Boundary
— Local Streets
- - - Subject Property

0 600 Feet

- 8 - BASINGER FINE SAND, DEPRESSIONAL
- 13 - CASSIA FINE SAND
- 17 - DAYTONA SAND, 0 TO 5 PERCENT SLOPES
- 20 - EAU GALLIE FINE SAND
- 24 - FLUVAQUENTES
- 26 - HOLOPAW SAND
- 55 - RIVIERA FINE SAND
- 73 - WABASSO FINE SAND

Soils Group No. 13—Cassia Fine Sand

This is a nearly level to gently sloping, somewhat poorly drained sandy soil in slightly elevated positions in the flatwoods or in lower positions on the sandhills. It is of small extent and generally occurs as irregularly shaped areas of less than 100 acres. Slopes are smooth to gently undulating. The gradient is 0 to 2 percent.

Typically, the surface layer is gray fine sand about 3 inches thick. The subsurface layer is white fine sand about 25 inches thick. The subsoil is 4 inches of black fine sand over 4 inches of brown fine sand mottled with dark reddish brown. The sand grains are coated with organic matter. The substratum is fine sand to a depth of 80 inches or more. The upper 11 inches is brown, the next 7 inches is pale brown, and the lower 27 inches is light gray.

Included with this soil in mapping are small areas of Daytona, Immokalee, Myakka, Orsino, Satellite, and Smyrna soils. The included areas make up as much as 30 percent of some mapped areas.

The water table is between depth of 15 and 40 inches in dry seasons. The available water capacity is low. Permeability is moderately rapid in the subsoil but very rapid in the other horizons. Natural fertility and the organic matter content are very low.

The natural vegetation is scattered slash pine, longleaf pine, or sand pine, dense scrubby oaks, a few sawpalmetto, and pineland threeawn. Most areas are still in natural vegetation.

The potential is **medium** for community development. Drainage or water control to lower the water table is needed. Onsite septic systems can be mounded to maintain adequate depth above the seasonal high water table.

Soils Group No. 20—Eau Gallie Fine Sand

This nearly level, poorly drained soil has a sandy surface layer over a loamy subsoil. It is in broad flatwoods. Slopes are 0 to 2 percent.

Typically, the surface layer is 9 inches thick. The upper 4 inches is black fine sand, and the lower 5 inches is very dark gray fine sand. The subsurface layer is gray fine sand about 12 inches thick. The subsoil begins at a depth of about 21 inches. The upper 6 inches is black fine sand, the next 8 inches is dark reddish brown fine sand, and the next 4 inches is dark brown fine sand. To a depth of 52 inches is brown fine sand, and to 61 inches is a layer of gray sandy loam. Below this to 65 inches is pale brown fine sand.

The water table fluctuates within 10 inches of the surface for periods of 1 to 4 months in most years and is within 40 inches for more than 6 months. The available water capacity is low. Runoff is slow. Permeability is rapid in the surface layer and moderately rapid in the subsoil. Natural fertility and the organic matter content are low, but response to fertilizer is moderate.

Most areas of this soil are forest of longleaf and slash pine and an understory of sawpalmetto, gallberry, and pineland threawn. A few areas are improved pasture.

The potential is **low** for community development. A water control system is needed to remove excess water during the wet season. In most areas in the central part of the county, drainage systems are expensive and difficult to install because drainage outlets are unavailable. Areas along the rivers and the coast and areas where there are natural drainage outlets can be developed after artificial drainage is provided.

Soils Group No. 24—Fluvaquents

These are nearly level, poorly drained and frequently flooded soils that formed in stratified sandy, loamy, and clayey sediments on flood plains of rivers, creeks, and lakes. They vary widely in texture within short distances. They consist of stratified layers of sandy, loamy, and clayey material. In some places, there is a thin mucky surface layer. In some, there are layers of organic material in the soil. Most areas are narrow stream borders. Tracts range from a few acres to about 40 acres.

Natural vegetation is predominantly swamp hardwoods—red maple, sweetgum and cypress—and cabbage palm. In places, there are openings that support water-tolerant shrubs, grasses, and sedges.

The potential is **very low** for community development. The major limitations are flooding and wetness. The hazard of flooding is so difficult and costly to overcome that development is impractical.

The potential is high for some wetland wildlife and for nature areas.

Soils Group 26 - Holopaw Sand

This nearly level, poorly drained soil has a seasonal high water table at or near the surface. It occurs in broad low flatwoods, especially in the slightly lower areas that are associated with lakes, and in areas bordering the flood plain of the St. Johns River. Individual areas vary in size; many range up to several hundred acres.

Typically, thick sandy surface layers overlie a subsoil of sandy clay loam. The surface layer is 11 inches thick. The top 5 inches is black, and the next 6 inches is dark gray. The subsurface layer is 44 inches thick. The upper part is grayish brown mottled in shades of yellow and brown, and it grades to gray in the lower part. The subsoil is gray sandy clay loam to a depth of 63 inches. Below this to 70 inches is layered gray sand, loamy sand, and sandy loam.

Included with this in mapping are small areas of the poorly drained Malabar, Pineda, Pomona, Riviera, and Farnton soils. These soils have many similar properties. They occur in small areas of less than 2 acres. Also included are a few small depressional areas. The included soils make up about 20 percent of any one mapped area.

Runoff is slow to very slow in nearly level areas. Ponding occurs in the included depressional areas. The water table is within 10 inches of the soil surface for 2 to 6 months in most years. Permeability is rapid in the surface layer and moderate in the subsoil, but under natural conditions the movement of air and water is impeded by the high water table. The available water capacity is low. Root development is restricted by the high water table.

Most areas of this soil are in water-tolerant native vegetation, a sparse forest of slash pine and cabbage palm and shrubby vegetation dominated by gallberry and waxmyrtle. Pineland threeawn is the major grass. Some areas associated with the flood plains are in a swamp hardwood forest dominated by sweetgum and red maple. A few areas are used for range.

Wetness is a limitation for most uses. Water control is difficult because the soil is low on the landscape and natural drainage outlets are unavailable. Wetness is a severe limitation for vegetable crops. If water control is feasible, a number of vegetable crops can be grown. The soil is not suited to citrus. Limitations are wetness and the hazard of frost because of the soil's low position on the landscape. Under good management, this soil is moderately well suited to improved pasture. Good management includes controlling water, maintaining fertility, and controlling grazing. The potential productivity is moderately high for woodland. Bedding prevents excess surface water from damaging pine seedlings. A good drainage system to remove excess surface water is needed if the potential productivity is to be realized.

The potential is **low** for community development. Excessive wetness is the principal limitation. The low position on the landscape and the resulting lack of natural drainage outlets make artificial drainage and water control difficult.

Soils Group No. 55—Riviera Fine Sand

This poorly drained, nearly level soil occurs in broad, low flats. Slopes are smooth and are 0 to 2 percent.

Typically, the surface layer is fine sand about 16 inches thick. The upper 4 inches is very dark gray, and the lower 12 inches is dark gray. The subsurface layer is light brownish gray fine sand about 9 inches thick. The subsoil is about 18 inches of gray sandy clay loam that has many medium and coarse distinct yellowish brown mottles. The upper 13 inches has vertical tonguing or intrusions from the subsurface layer. The underlying material to a depth of about 64 inches is light brownish gray loamy sand.

EXHIBIT I (CONT'D)

Included with this soil in mapping are small areas of Tuscawill, Holopaw Paisley, Pineda, Basinger, and Winder soils and some areas where the surface layer is sandy loam or loamy sand. Also included are some small areas where the surface layer is black and is 6 inches or more thick, others where the loamy layer is above a depth of 20 inches or below a depth of 40 inches, and a few areas of similar soils in depressions that are covered with standing water late in summer and in fall. The included areas make up about 25 percent of any one mapped area.

The water table is within a depth of 10 inches for about 2 to 6 months and is within 40 inches for about 6 months during most years. The available water capacity is low. Permeability is rapid to a depth of about 36 inches, moderately rapid to 42 inches, and rapid below. Internal drainage is slow. The seasonal high water table impedes the downward movement of water. Natural fertility and the organic matter content are low.

A moderate part of the acreage is in natural vegetation of mixed hardwoods and cabbage palm, water oak, laurel oak, southern magnolia, slash pine, and southern red cedar. The understory is waxmistle, gallberry, and fetterbush. The common native grasses are maidencane, smooth cordgrass, chalky bluestem, pineland threeawn, toothachegrass, and broomsedge bluestem.

Under natural conditions, this soil is poorly suited to vegetable crops because of periodic wetness, low fertility, rapid permeability, and low available water capacity. If water is controlled and soil-improving measures are applied, certain vegetable crops can be grown.

This soil is not suited to citrus because of wetness and the frost hazard

This soil is well suited to pasture. If excess water is removed during wet seasons, productive pastures of pangolagrass, improved bahiagrasses, and clovers can be maintained. Regular applications of fertilizer and occasional liming are needed. Overgrazing should be prevented.

If well managed, this soil has moderately high potential productivity for slash pine. Bedding of rows is needed to improve the surface drainage. A drainage system is needed to remove excess water in summer and fall if the potential productivity is to be achieved.

The potential is **low** for community development. The major soil limitations are the excessive wetness, the slowly permeable subsoil, the high risk of corrosion to uncoated steel, and the high risk of corrosion to concrete within a depth of 28 inches. The seasonal high water table is at or near the soil surface. The slowly permeable subsoil and the seasonal high water table retard downward movement of water. Runoff is very slow after heavy or prolonged rain because the soil is nearly level. A water control system would be needed to remove excess surface water and maintain the ground water table at the depth necessary for the selected use. Artificial drainage systems are expensive and difficult to develop because natural drainage after heavy or prolonged rain because the soil is nearly level, a water control system would be needed to remove excess surface water

and maintain the ground water table at the depth necessary for the selected use. Artificial drainage systems are expensive and difficult to develop because natural drainage outlets are limited

The capability subclass is Illw.

Soils Group 73—Wabasso Fine Sand.

This poorly drained, nearly level soil occurs in broad, low areas within the flatwoods. Slopes are smooth. The range is 0 to 2 percent.

Typically, the surface layer is black fine sand about 7 inches thick. The subsurface layer is fine sand about 17 inches thick. The upper part is gray, and the lower part is light gray. The subsoil is about 56 inches thick. In sequence downward, it is 6 inches of black loamy fine sand, 5 inches of dark reddish brown fine sand, 4 inches of dark brown fine sand, 12 inches of mottled gray, firm sandy clay loam, 21 inches of mottled greenish gray, friable sandy clay loam, and 8 inches of mottled greenish gray sandy clay loam with pockets of gray sandy loam.

Included with this soil in mapping are small areas of Basinger, Eaugallie, Holopaw, Myakka, Pineda, Riviera, and Wachula soils. Also included are places where the texture is sand instead of the fine sand. The included soils make up about 20 percent of any one mapped area.

The water table is within a depth of 10 inches for 1 to 4 months and within 40 inches for about 6 months in most years. It may recede to below 40 inches during extended dry periods. The available water capacity is low. Permeability is rapid to a depth of about 24 inches, moderate from about 24 to 35 inches, rapid from about 35 to 39 inches, and moderate from about 39 to 80 inches. Internal drainage is slow; it is impeded by the high water table. Natural fertility and the organic matter content are low.

A large part of the acreage is in natural vegetation—an open forest of slash pine and cabbage palmetto and an understory of sawpalmetto, gallberry, runner oak, dwarf huckleberry, and fetterbush. The most common native grasses are pineland threeawn, maidencane, lopsided indiagrass, broomsedge bluestem, hairy panicum, chalky bluestem, and creeping bluestem.

Under natural conditions this soil is poorly suited to vegetable crops because of periodic wetness, low fertility, and low available water capacity. If water is controlled and soil-improving measures are applied, the soil is moderately well suited to certain vegetable crops. The water control system should remove excess water in wet seasons and provide water through subsurface irrigation in dry seasons. Response to fertilizer is good.

This soil is not suited to citrus because of excessive wetness and the frost hazard.

EXHIBIT I (CONT'D)

This soil is well suited to improved pasture. If excess water is removed in wet seasons, pangolagrass, bahia-grasses, and clovers grow well. Regular application of fertilizer is needed.

The potential productivity is moderately high for slash pine. Equipment limitations and seedling mortality are moderate. Bedding of rows helps seedlings to survive by providing additional aeration for the roots. A system is needed to remove excess water in wet seasons if the potential is to be realized.

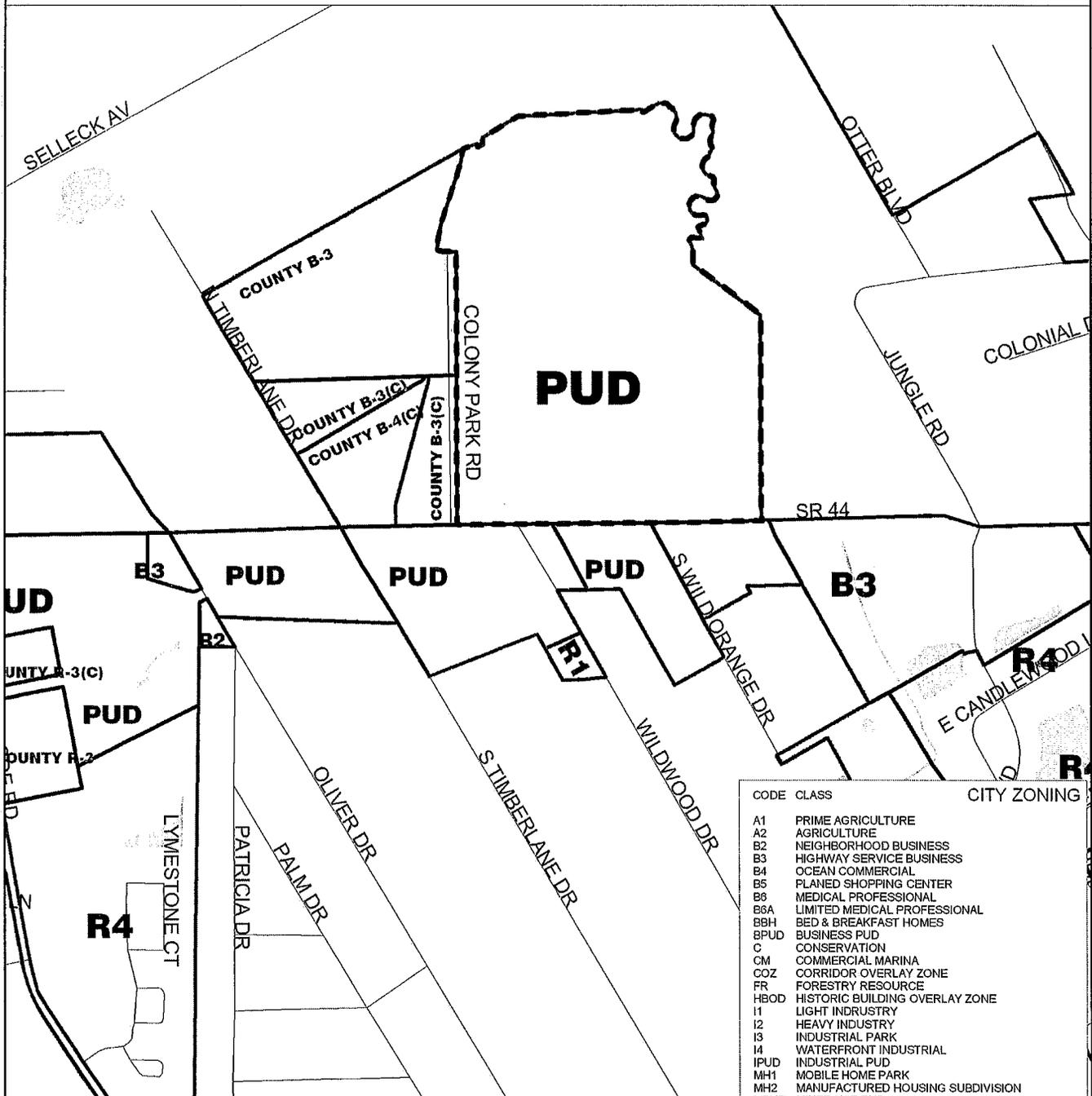
The potential is **low** for community development. The major soil limitations are excessive wetness and the high risk of corrosion to uncoated steel. The seasonal high water table is at or near the soil surface. Runoff is very slow after heavy or prolonged rain because the soil is nearly level. An adequate water control system would be needed to remove excess surface water and maintain the ground water table at the depth necessary for the selected use. Artificial drainage systems are expensive and difficult to develop and existing drainage outlets are poor. In addition, altering natural vegetation and existing drainage patterns could adversely affect the surrounding ecological community.

The capability subclass is IIIw.

SOURCE: *Soil Survey of Volusia County, Florida*, United States Department of Agriculture, Soil Conservation Service in Cooperation with the University of Florida, Institute of Food and Agricultural Sciences Agricultural Experiment Stations, Soil Science Department.

Proposed Zoning

A-02-11



SUBJECT PROPERTY IS CHANGING FROM COUNTY R-4 URBAN SINGLE FAMILY RESIDENTIAL, B-3 SHOPPING CENTER AND B-3C SHOPPING CENTER TO CITY PLANNED UNIT DEVELOPMENT

CODE	CLASS	CITY ZONING
A1	PRIME AGRICULTURE	
A2	AGRICULTURE	
B2	NEIGHBORHOOD BUSINESS	
B3	HIGHWAY SERVICE BUSINESS	
B4	OCEAN COMMERCIAL	
B5	PLANNED SHOPPING CENTER	
B6	MEDICAL PROFESSIONAL	
B6A	LIMITED MEDICAL PROFESSIONAL	
BBH	BED & BREAKFAST HOMES	
BPUD	BUSINESS PUD	
C	CONSERVATION	
CM	COMMERCIAL MARINA	
COZ	CORRIDOR OVERLAY ZONE	
FR	FORESTRY RESOURCE	
HBOD	HISTORIC BUILDING OVERLAY ZONE	
I1	LIGHT INDUSTRY	
I2	HEAVY INDUSTRY	
I3	INDUSTRIAL PARK	
I4	WATERFRONT INDUSTRIAL	
IPUD	INDUSTRIAL PUD	
MH1	MOBILE HOME PARK	
MH2	MANUFACTURED HOUSING SUBDIVISION	
MRUD	MIXED USE PUD	
MU	MIXED USE (CENTRAL BUSINESS DISTRICT)	
PUD	PLANNED UNIT DEVELOPMENT	
R	RECREATION	
R1	SINGLE FAMILY	
R2	SINGLE FAMILY	
R2A	SINGLE FAMILY DETACHED AND ATTACHED	
R3	SINGLE FAMILY	
R3A	SINGLE FAMILY & TWO FAMILY (ZERO LOT LINE)	
R4	MULTI-FAMILY	
R5	MULTI-FAMILY	
R6	MULTI-FAMILY	
RE	RESIDENTIAL ESTATE	
RPUD	RESIDENTIAL PUD	
RR-PUD	RESORT RESIDENTIAL PUD	

N

— City Boundary
 - - - Local Streets
 - - - Subject Property

0 300 600 Feet

R-4 MULTI-FAMILY RESIDENTIAL DISTRICTIntent:

The R-4 district is a high density multiple-family residential district that permits mixed housing and encourages new development concepts. It is appropriate for developing large and small land parcels and as a buffer between single family and business districts. Building height limitations are imposed to preserve lower building profiles in outlying residential areas.

Permitted Uses:

Playfields
 Playgrounds
 Public Parks
 Recreation Buildings and Complexes for residents and guests in a residential development
 Single Family Dwellings detached and attached
 Duplex and Multi-Family Dwellings including townhouses, apartments and condominiums

Permitted Accessory Uses:

Attached Dwelling
 Garages
 Gazebos
 Incidental Uses
 On-Site Rental or Manager's Office for Community Association Members' Properties. "Community Association" means a residential homeowners association in which membership is a condition of ownership of a unit in a Planned Unit Development, or of a lot for a home or mobile home, or of a townhouse, villa, condominium, cooperative, or other residential unit which is part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel. The following limitations shall be placed on the aforesaid rental or manager's office: (1) said rental or manager's office may not be used in any way to promote the rental of or conduct transactions for the rental of Non-Community Association Members' Properties; (2) the aforesaid rental or manager's office may only be used to rent or manage Community Association Members' Properties that are located on the same site that the rental or manager's office is located; (3) said rental or manager's office staffing be limited to two (2) persons either working full or part time to handle rental of Association Members' Properties and one (1) person working full or part time to act as clerical assistant; (4) said rental or manager's office shall be allowed to erect a sign to comply with Section 475.22, Fla. Stat. (1989). (Ord. 8-91)

EXHIBIT L (CONT'D)

On-Site Temporary Sales and Brokerage Offices and Display Models for residential dwelling units that are newly constructed, that have never been occupied for residential purposes, and have never been sold.

On-Site Temporary Sales and Brokerage Structures to be used as a sales office for dwelling units planned to be constructed or under construction.

The following limitations and regulations shall be placed on the aforescribed On-Site Sales and Brokerage Offices and Temporary Sales and Brokerage Structures:

(1) Said Sales and Brokerage Offices shall only be used to promote the sales of newly constructed dwelling units (to wit: units that have never previously been occupied for residential purposes or never sold by the developer) and part of an approved site plan located on the same site as the office; and

(2) said Sales and Brokerage Offices shall only be used to sell residential dwelling units located on the same site as the sales office; and

(3) said Sales and Brokerage Offices shall only have ONE sign not to exceed TEN (10) square feet in area in addition to the allowable signs indicated in Section 604.14 of this LDR; and

(4) said Sales and Brokerage Offices shall be allowed within a development upon issuance of a Certificate of Occupancy for the offices by the Development Division Director or his/her designee and said sales office must be removed from the site upon the issuance of a Certificate of Occupancy for the last building to be constructed within a development; and

(5) the following additional limitations and regulations shall be placed on the aforescribed On-site Temporary Sales and Brokerage Structures:

(a) said Sales and Brokerage Structures shall have a minimum floor area of THREE HUNDRED (300) square feet and shall not have been formerly a travel trailer, camper, recreational vehicle or tractor trailer-trailer; and

(b) the perimeter of the area between the ground and floor level of the Sales and Brokerage Structures shall be enclosed with ornamental skirting; and

(c) said Sales and Brokerage Structures must be located on the site such that it meets the minimum setback requirements; and

(d) a minimum of THREE (3) parking spaces must be provided for the Sales and Brokerage Structures or the minimum number of parking spaces required for an office, whichever is greater. Said parking spaces and access aisle must meet the requirements of Section 604.10 within this LDR except an alternate surfacing agent, such as shell or mulch, may be used; and

EXHIBIT L (CONT'D)

- (e) a minimum TEN foot (10') wide and SIX foot (6') high natural vegetative buffer shall be maintained along the front, side and rear of the Sales and Brokerage Structure, parking area and any accessory structures. Should no buffer exist, a TEN foot (10') wide buffer, meeting the requirements of Section 604.05 E. (1) must be planted along the front, sides and rear of the Sales and Brokerage Structure, parking area and accessory structures. Buffer areas are not required to be irrigated with an underground automatic system but must be regularly irrigated to maintain the vegetation; and
- (f) no Sales and Brokerage Structure shall be allowed on a site until all permits as required by all Federal, State, and County agencies have been secured; and the site plan for the proposed permanent use has been approved; and a Class I Site Plan has been approved for the use of a temporary sales and brokerage structure; (Ord. 74-91) and
- (g) said Sales and Brokerage Structures shall not remain on a site longer than ONE (1) year from the date a Certificate of Occupancy is issued for said sales office or until a Certificate of Occupancy is issued for the first building within the development, whichever comes first. Upon removal of the Sales and Brokerage Structure, the developer may maintain an On-Site Temporary Sales and Brokerage Office within the dwelling unit(s). (Ord. 58-91)

Permitted Home Occupations

Storage Sheds

Swimming pools, private, provided a principal structure exists and the pool is located behind the front plane of the principal structure. Corner lots will be considered to have two front planes, one on each street. If a structure is not constructed squarely on a parcel, the swimming pool must be located at or behind the most restrictive front plane of the principal structure. **Ord. # 30-10**

Uses customarily associated with the permitted principal uses

[Revised 4/9/02]

Special Exceptions:

Special exception uses shall be located at least twenty-five (25) feet from all property lines, and off-street parking areas abutting residential property, shall be screened by a buffer meeting the requirements of this LDR.

Adult Congregate Living Facilities

Child day care on church property, subject to the following additional conditions:

1. The church property shall be located on and be accessible by an arterial or collector roadway.
2. Play areas shall be fenced and landscaped. The landscaping shall have a vegetative hedge that will reach six feet in height within two years that is planted a minimum of three feet on center.

3. Play areas shall be located within all applicable setback dimensions.
4. The church property shall have a vehicular drop off and pickup area with a minimum 100 feet of drive lane outside of the public right-of-way, or sufficient parking area to provide enough space to fit the required parking and provided space for drop off and pick up. [Ord. No. 4-00]

[Revised 3/27/00]

Churches

Day Care Centers subject to compliance with Florida Administrative Code Child Care Standards and any amendments adopted thereto

Facilities owned and/or operated by federal, state, county, or municipal government, except country clubs and golf courses

Nursing Homes

Public and Private Schools

Semi-Public and Public Clubs including halls and lodges

Dimensional Requirements:

Single-Family Dwellings Detached and Duplexes

Minimum Lot Size:

Single-Family Dwellings Detached

Area	5000 square feet
Depth	100 feet
Width	50 feet

Duplex

Area	7500 square feet
Depth	100 feet
Width	75 feet

Minimum Yard Size:

Front yard	20 feet or as required per Section 504.01(M) of this LDR
Rear yard	7.5 feet
Side yard	7.5 feet

Corner Lots:

- (1) Parcels which front on two streets shall provide a 20 foot front yard on the street frontage with driveway access and a 10 foot front yard on the other street, or as required per Section 504.01(M) of this LDR.

EXHIBIT L (CONT'D)

- (2) Parcels fronting on three streets shall provide a 20 foot front yard on the street frontage with driveway access and a 10 foot front yard on the remaining streets, or as required per Section 504.01(M) of this LDR.

Minimum Floor Area:

600 square feet of livable area for one and two-bedroom dwelling units; 1200 square feet of livable area for a three-bedroom dwelling unit; and 1300 square feet of livable area for a four-bedroom dwelling unit. [Revised 7/1/03]

Maximum Principal Building Height:

Three (3) stories.
Maximum height - 35 feet.

Maximum Building Coverage:

The total area covered with buildings on any lot shall not exceed 40% of the total lot area. (Ord. 78-98)

Screen Enclosures:

As an exception to the maximum building coverage provision any parcel may be allowed an additional ten percent (10%) building coverage for only a screen pool enclosure if the following conditions are met:

1. A screen pool enclosure shall only cover the swimming pool and surrounding pool deck and shall have a roof and walls consisting entirely of screening; and
2. There shall be no variances granted to exceed the maximum building coverage or additional coverage allowed for screen enclosures.

Ord. #05-09

Maximum Impervious Lot Coverage:

The total area of the lot that may be covered with impervious material is sixty percent (60%).

Multi-Family Dwellings:

Minimum Project Site Dimensions

Width	100 feet
Depth	100 feet

Maximum Dwelling Unit Density for All Dwelling Units:

EXHIBIT L (CONT'D)

Twelve (12) dwelling units per acre beachside and eighteen (18) units per acre mainland. No less than 3,630 square feet of lot area for each Beach-side dwelling unit and 2,420 square feet of lot area for each mainland dwelling unit.

Minimum Building Separation:

Where two or more multi-family dwellings, single-family dwellings attached or detached, duplexes, apartments, condominiums, townhouses, are built on one parcel, there shall be a separation of at least 20 feet between the buildings plus 1.5 additional feet for each 5 feet of building height over 20 feet, when buildings vary in height, said distance to be based on the highest building. (For example: if there is a 20 foot tall building and a 25 foot tall building, the separation must be 21.5 feet).

Streets

Public and private streets shall be constructed in accordance with City Subdivision Regulations and design standards.

[Revised 1/28/99]

Minimum Yard Requirements:

Front	20 feet, plus 1.5 feet for each 5 feet over 30 feet in building height, or as required per Section 504.01(M) of this LDR
Rear	20 feet, plus 1.5 feet for each 5 feet for over 30 feet in building height
Side	(1) For projects with 6 or fewer units, the minimum side setback shall be 10 feet on each side, plus 1.5 feet for each 5 feet over 30 feet in building height; (2) For projects with more than 6 units but fewer than 12, the minimum side setback shall be 15 feet on each side, plus 1.5 feet for each 5 feet over 30 feet in building height; and (3) For projects with 12 or more units, the minimum side setback shall be 20 feet on each side, plus 1.5 feet for each 5 feet over 30 feet in building height. (Ord. 41-96)
Waterfront	20 feet on river or canal measured from bulkhead or mean high water line
Any Yard in or as Project Over 10 Acres	25 feet plus 1.5 feet for each 5 feet over 30 feet in building height required per Section 504.01(M) of this LDR.

Minimum Requirements for Townhouses and Townhouse Lots:

1. All lots shall be adjacent to a public right-of-way or common area.

2. Lots shall have a minimum width of 20 feet where a living unit is to be located.
3. Lot frontage along a right-of-way or common area shall be a minimum of 10 feet.
4. Front setback shall be 20 feet or as required per Section 504.01(M) of this LDR.
5. Side setbacks shall be 0 feet.
6. Rear setbacks shall be 20 feet except if there is a landscaped common area behind the townhome and there is a minimum distance of 20 feet from the project boundary line and the dwelling unit or accessory structures.

[Revised 2/28/97]

Minimum Floor Area for All Dwelling Units Subject to Multi- Family Development Requirements:

Single family dwellings detached

600 square feet of liveable area.

Duplexes (combined units)

1100 square feet of liveable area.

Townhouses, Apartments, and Condominiums

450 square feet of liveable area for a one (1) bedroom unit;
550 square feet of liveable area for a two (2) bedroom unit; and
700 square feet of liveable area for a three (3) bedroom unit.

Maximum Building Length and Width:

Building facades parallel to the street upon which the building fronts, or parallel to the oceanfront, shall not exceed 150 feet in length. No building constructed after the effective date of this LDR shall have a dimension that exceeds 200 feet.

Maximum Principal Building Height:

Single-Family Dwellings Detached and Attached and Duplexes:

Three (3) stories.
Maximum height - 35 feet.

Multi-Family Dwellings:

Four (4) stories.
Maximum height - 45 feet.

Maximum Lot Coverage by All Buildings:

The coverage of a lot or total project by all principal and accessory buildings shall not exceed thirty-five (35) percent.

Maximum Impervious Lot Coverage:

The total area of the property that may be covered with impervious material is 60 percent (60%).

Through Lots:

Through lots shall provide a 20 foot front yard on each street or as required per Section 504.01(M) of this LDR.

Atypical Lots:

Visibility triangles shall be established at the rear corners of an atypical lot. The visibility triangles shall be those areas formed by a line connecting the points 30 feet from the intersection of the side and rear lot line and 30 feet from the intersection of the side and rear lot line along the rear lot line; no principal or accessory structure having a height over 4 feet, except for incidental uses, shall protrude into the area of a visibility triangle.

Building Projections:

There shall be no building projections into any required yard except for eaves with a maximum projection of 42 inches, but no closer than 5 feet to a property line; and those structures allowed in Section 804.03.

Off-Street Parking:

Multi-family projects which include different zoning districts, and where the multi-family portion of the development constitutes the principal use of the over-all project, may utilize property in the non-multi-family zoning district for accessory major recreational equipment parking, as long as such property is located within the project boundaries.

The parking shall be developed in accordance with all applicable requirements of the Land Development Regulations.

Covered Off-Street Garage Parking:

Covered off-street garage parking may be provided either within or outside of the principal building(s). If the entire first story of the principal building(s) is used

EXHIBIT L (CONT'D)

only for covered off-street garage parking, the principal building(s) may be four (4) stories, but shall not exceed a maximum building height of forty-five (45) feet.

If covered off-street garage parking is provided outside the outer walls of the principal building(s), it may be considered open landscaped area if it has a landscaped periphery and the roof is used for recreation purposes. Covered off-street garage parking located outside the principal building(s) and considered open landscaped area, is not included in the maximum percentage lot coverage calculation for solid roofed areas. Landscaping shall be provided as required in this LDR.

Visibility at Intersections:

Visibility at intersections shall be provided as required in this LDR.

Buffers for Multi-Family Development:

Landscaped or natural vegetative buffers shall be provided as indicated in Section 604.05 and as follows:

- (1) along front, rear, and side lot lines where off-street parking areas are located, the buffer shall be a minimum of seven (7) feet wide; and
- (2) adjacent to or facing a single-family residential district or use, the buffer shall be a minimum of 20 feet wide from the property line.

Landscaping:

A landscape plan is required as described in this LDR.

Deed Covenants:

The developer shall supply in writing all covenants and restrictions that will govern the maintenance of the common open space and other aspects of the project that are necessary for welfare of the project and consistent with the best interest of New Smyrna Beach. Such legal instruments shall be submitted with the site plan and approved by the City Legal Department prior to the issuance of a building permit by the Chief Building Official.

Use of Recreational Amenities and/or Commonly-Owned Facilities Incidental to Commercial and Residential Living Accommodations:

Use of all recreational amenities and/or commonly-owned facilities by the owner, the owner's guests, leases, or invitees, shall be limited to that period of time concurrent with the owner's exclusive right of use, possession and occupancy of the residential unit.

It shall be unlawful for any person to represent by contract for purchase, promotional material, advertising or any other public statement, that amenities

EXHIBIT L (CONT'D)

and/or commonly-owned facilities may be used contrary to the requirements of the New Smyrna Beach Land Development Regulations.

This subsection does not prohibit the establishment of permitted accessory uses at commonly-owned facilities if such uses are in compliance with all the other requisites required by the New Smyrna Beach Land Development Regulations.

Neighborhoods

A-02-11



- 1 - NORTH BEACH
- 2 - CENTRAL BEACH
- 3 - SOUTH BEACH
- 4 - NORTH MAINLAND
- 5 - FAULKNER
- 6 - CENTRAL MAINLAND
- 7 - SOUTH MAINLAND
- 8 - WESTSIDE
- 9 - SOUTH WEST
- 10 - FAIRWAY
- 11 - S.R. 44 CORRIDOR
- 12 - PIONEER TRAIL
- 13 - ACTIVITY CENTER
- 14 - WEST NEW SMYRNA



- City Boundary
- Local Streets
- Subject Property

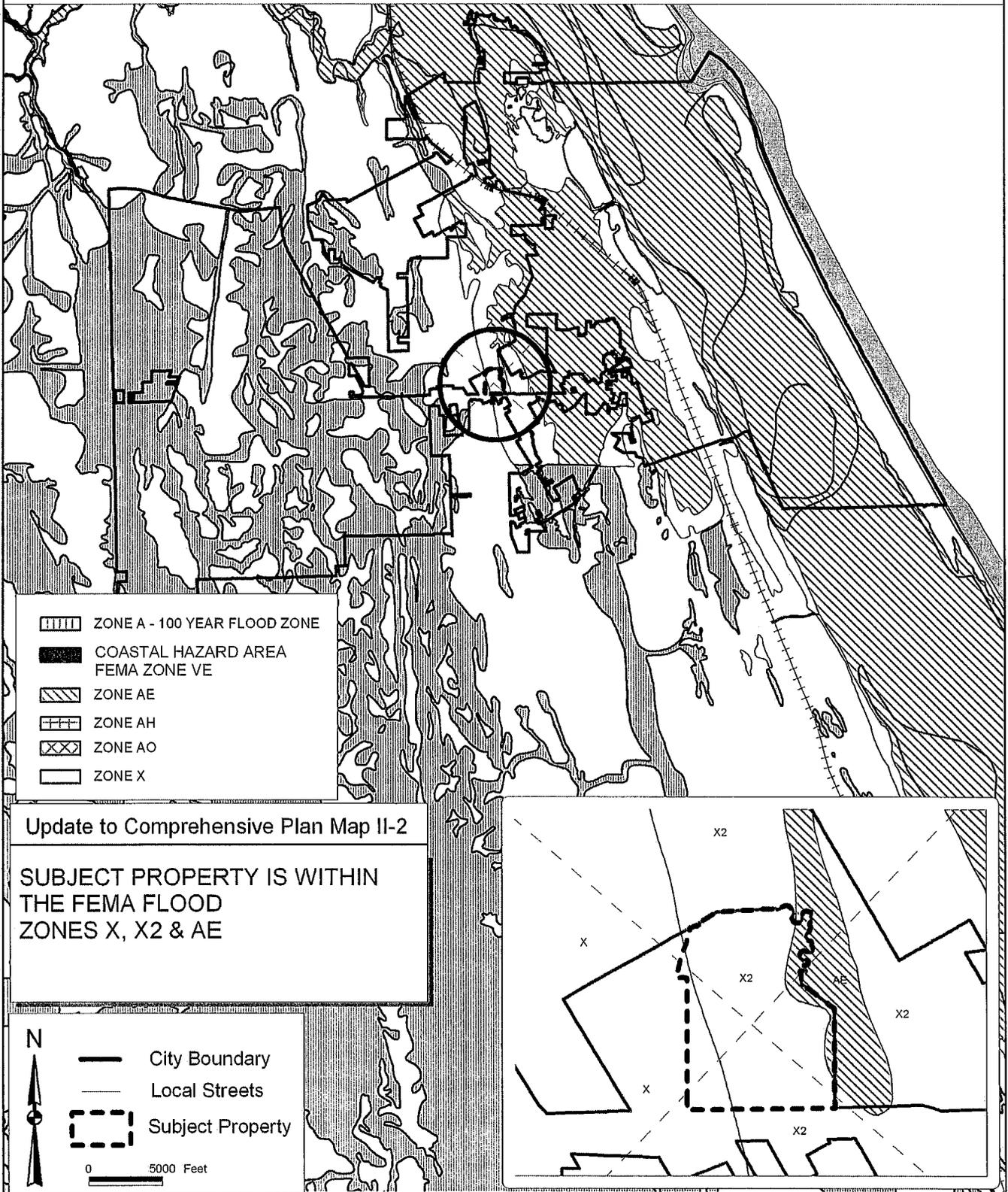
0 4000 Feet

Update to Comprehensive Plan Map II-1

**SUBJECT PROPERTY IS LOCATED
WITHIN THE S.R. 44 CORRIDOR
NEIGHBORHOOD**

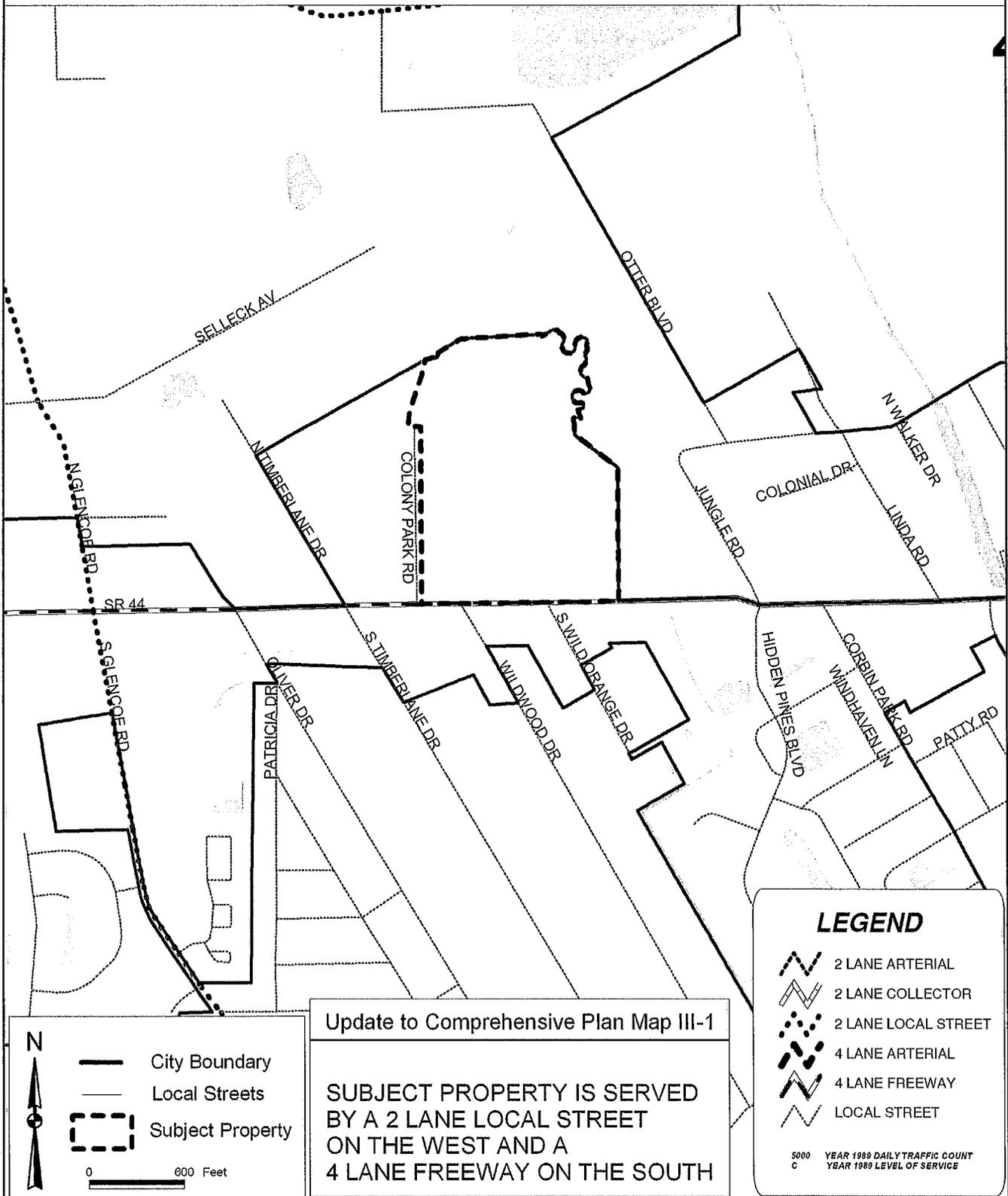
Flood Prone Areas

A-02-11



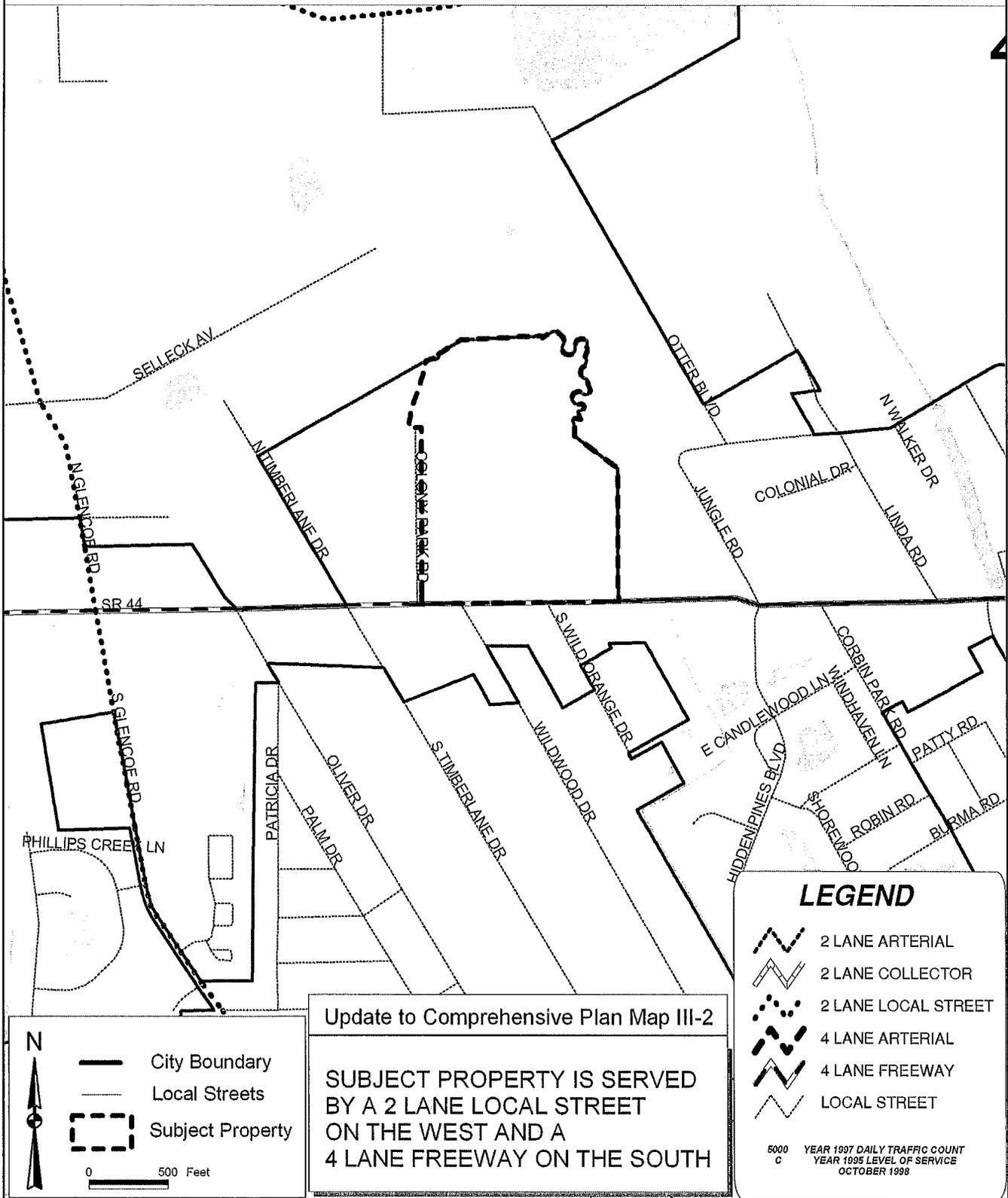
1989 Traffic Conditions

A-02-11



1995 Traffic Conditions

A-02-11



Update to Comprehensive Plan Map III-2

**SUBJECT PROPERTY IS SERVED
BY A 2 LANE LOCAL STREET
ON THE WEST AND A
4 LANE FREEWAY ON THE SOUTH**

LEGEND

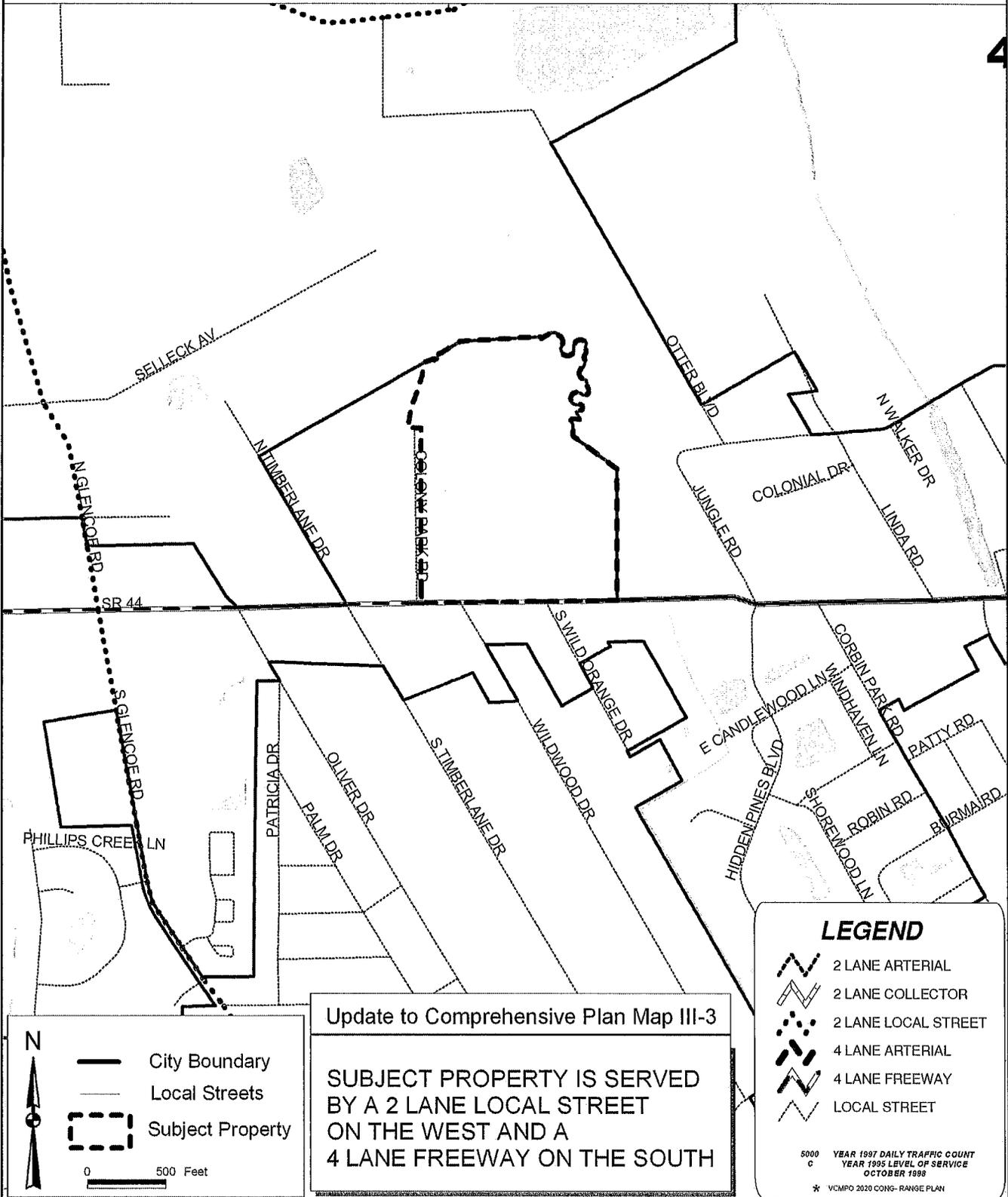
-  2 LANE ARTERIAL
-  2 LANE COLLECTOR
-  2 LANE LOCAL STREET
-  4 LANE ARTERIAL
-  4 LANE FREEWAY
-  LOCAL STREET

5000 C YEAR 1997 DAILY TRAFFIC COUNT
YEAR 1995 LEVEL OF SERVICE
OCTOBER 1998

2010 Traffic Conditions

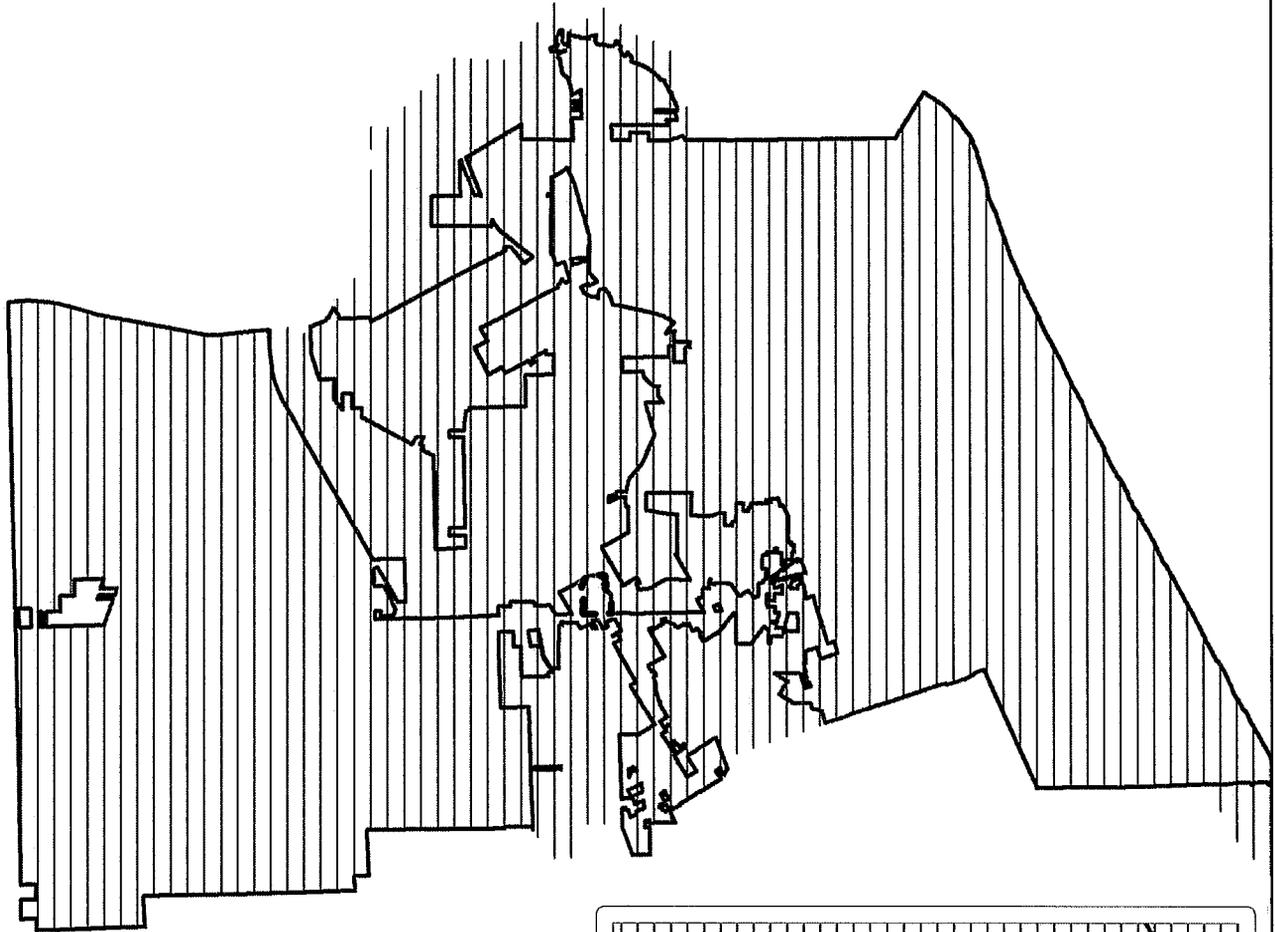
A-02-11

4



Water & Sewer Service Area

A-02-11



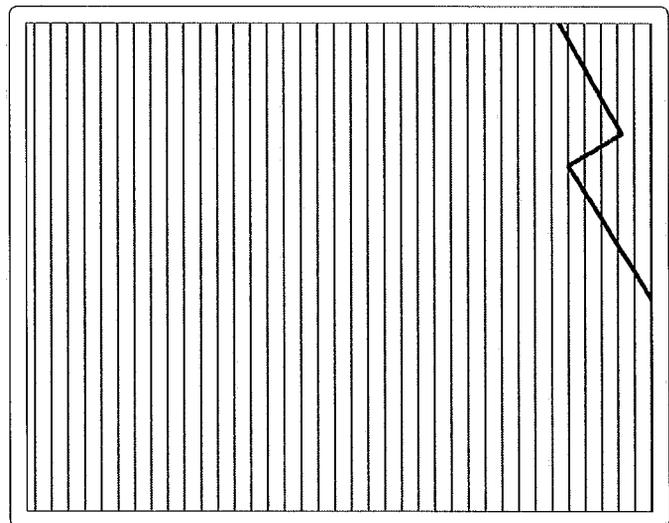
Update to Comprehensive Plan Map VII-1

SUBJECT PROPERTY
IS WITHIN THE CITY
AND INSIDE THE NSB WATER
AND SEWER SERVICE AREA



- City Boundary
- Local Streets
- - - Subject Property

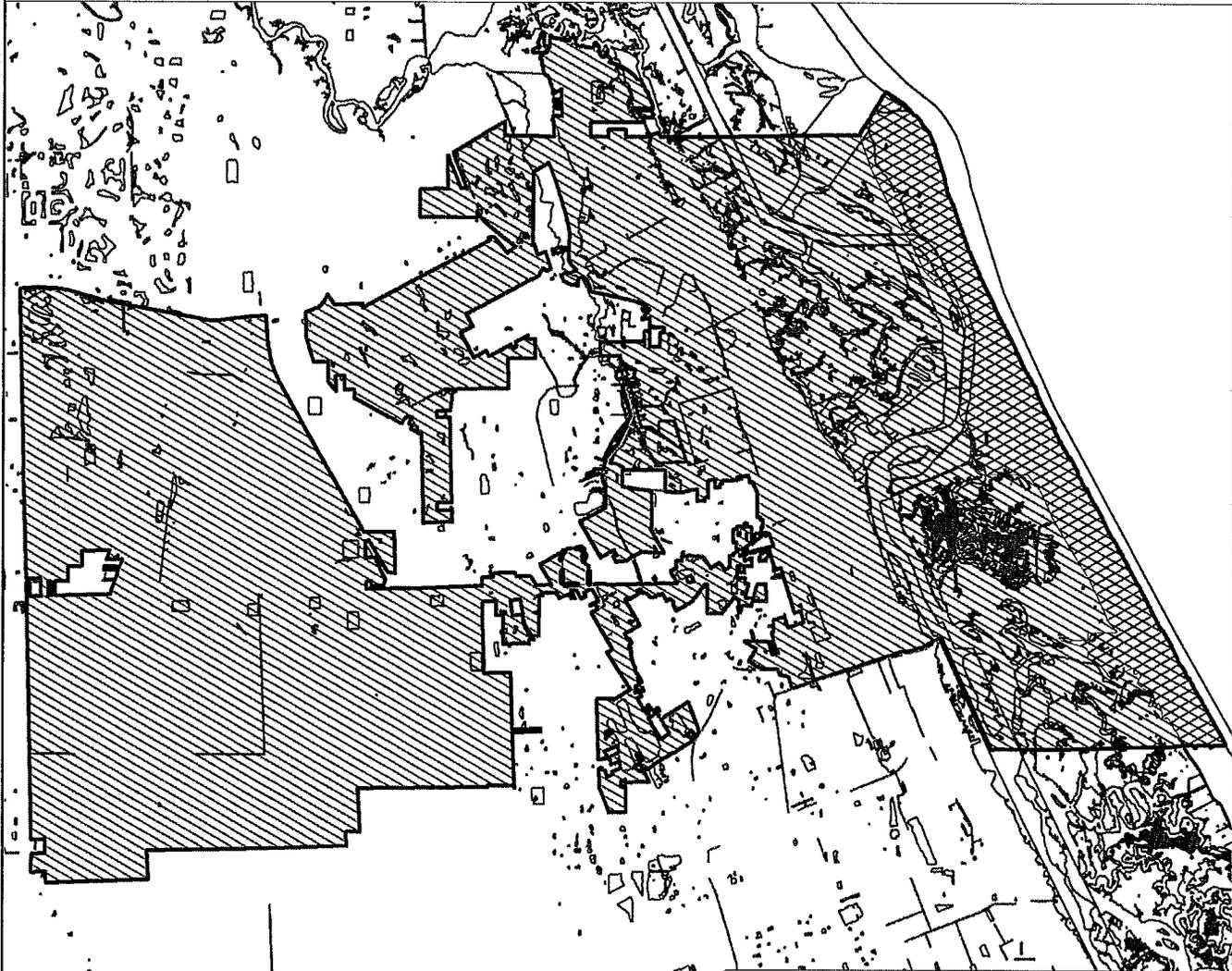
0 4000 Feet



WATER AND SEWER SERVICE AREA

Soil Limitation for Septic Systems

A-02-11



Update to Comprehensive Plan Map VII-2

SUBJECT PROPERTY IS WITHIN THE SOILS WITH SEVERE LIMITATIONS FOR SEPTIC TANK FILTER FIELDS

N

— City Boundary

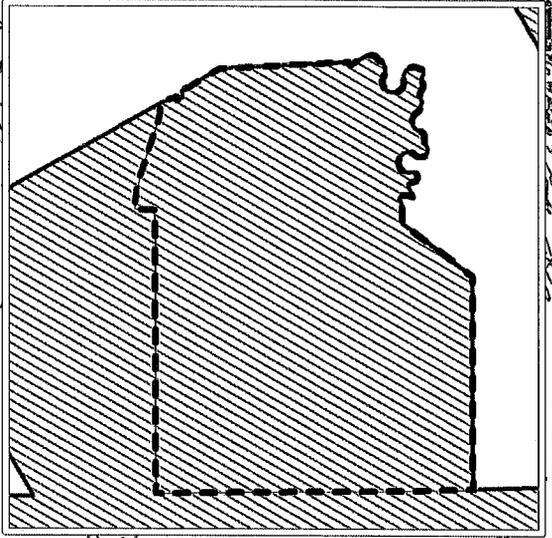
— Local Streets

- - - Subject Property

0 4000 Feet

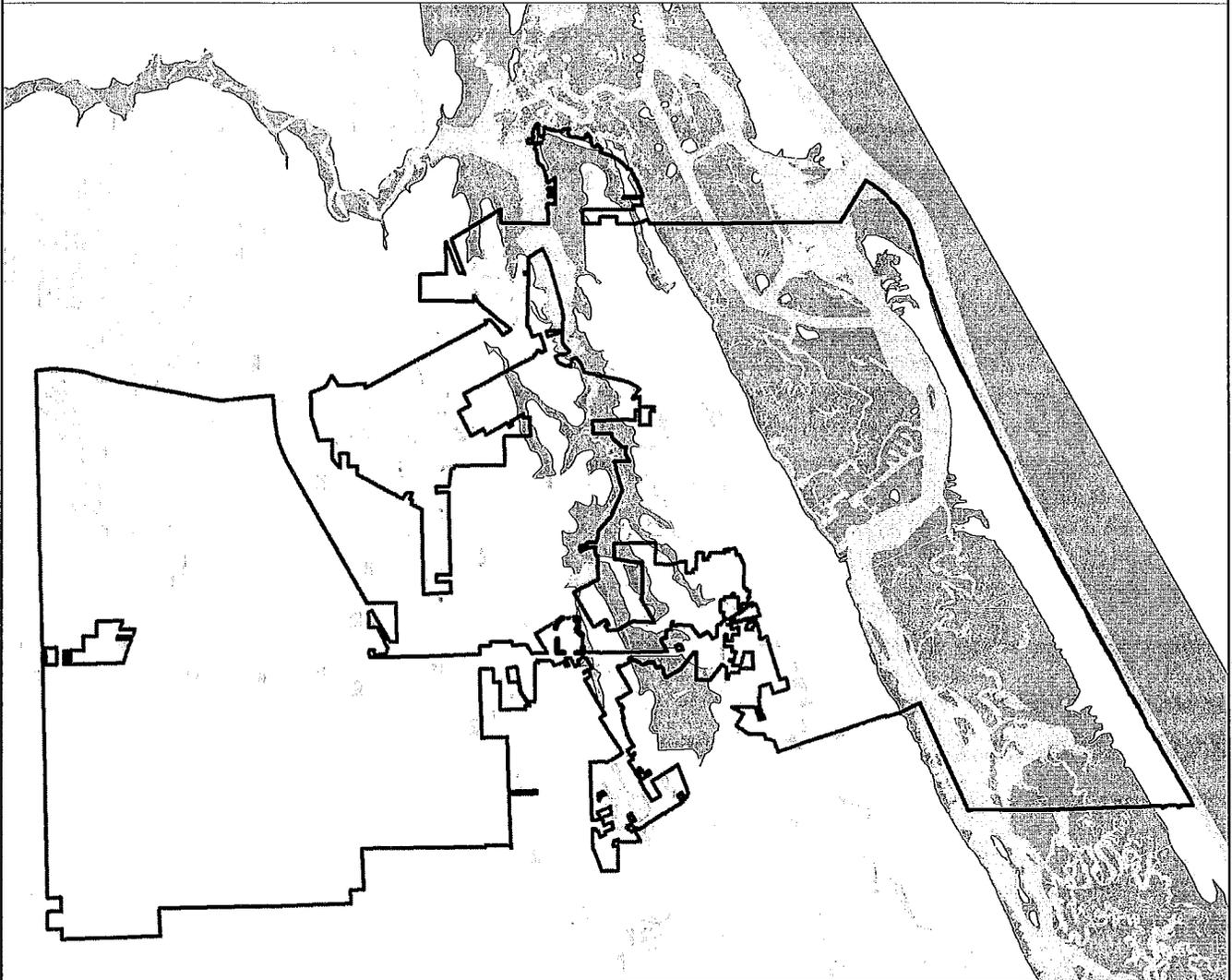
 SEVERE LIMITATIONS

 SLIGHT LIMITATIONS



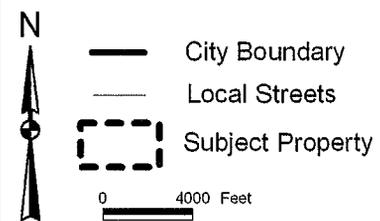
Coastal High Hazard Areas

A-02-11

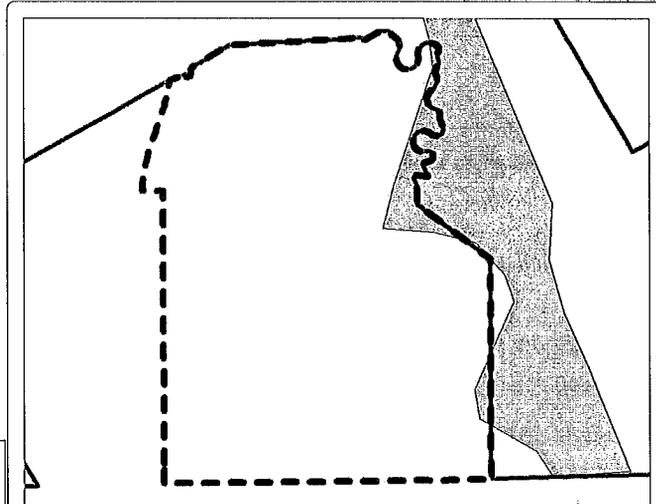


Update to Comprehensive Plan Map VII-4

SUBJECT PROPERTY
IS PARTIALLY WITHIN THE
COASTAL HIGH HAZARD AREA

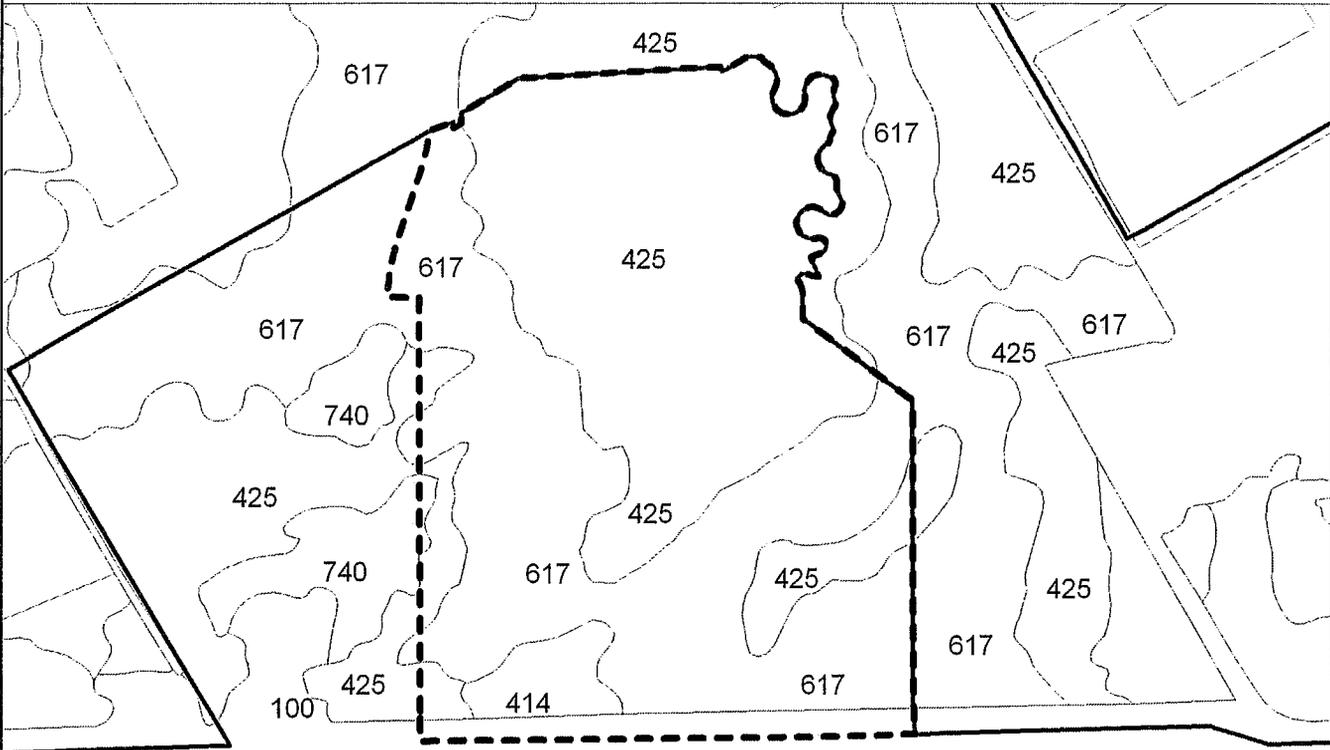


COASTAL HIGH
HAZARD AREA



Natural Resources

A-02-11



- Conservation
- Environmental Systems Corridor
- Water

Update to Comprehensive Plan Map IX-1

SUBJECT PROPERTY CONTAINS TWO LARGE AREAS, ONE OF TEMPERATE HAMMOCKS AND THE OTHER OF MIXED WETLAND HARDWOODS WITH POCKET AREAS OF PINE / MESIC OAK AND DISTURBED LAND VEGETATION

Number	Vegetation Description	Number	Vegetation Description
0	Incorporated or Other	434	Hardwood/Conifer Mix
100	Generalized Urban	440	Tree Plantation
181	Beaches	441	Tree Plantation
200	Generalized Agriculture	446	Unknown
21	Unknown	451	Red Cedar
240	Unknown	452	Unknown
270	Abandoned Fields	474	Unknown
300	Unknown	500	Open Water
311	Coastal Dune Series	529	Unknown
321	Unknown	600	Unknown
322	Coastal Scrub	611	Bay Swamp
324	Unknown	612	Mangrove
326	Unknown	613	No Description
329	Shrub/Disturbed Wetlands	615	Bottomland Swamp
330	Mixed Rangeland	616	Inland Pond
332	Unknown	617	Mixed Wetland Hardwoods
339	Unknown	620	No Description
411	Pine Flatwood	621	Cypress Swamp
412	Pine/Xeric Oak	623	Atlantic White Cedar
413	Sand Pine	624	Cypress/Pine/Cabbage Palm
414	Pine/Mesic Oak	640	No Description
415	Unknown	641	Freshwater Marsh
419	Other Pine/Special	642	Estarine Marsh
42	Unknown	643	Wet Prairie
421	Xeric Oak	645	Unknown
424	Melaleuca	646	Unknown
425	Temperate Hammocks	647	Unknown
427	Live Oak Hammock	650	Non-Vegetated Wetlands
428	Cabbage Palm Hammock	729	Unknown
429	Wax Myrtle/Willow	740	Disturbed Land
431	Beech-Magnolia	746	Unknown
432	Scrub Oak	999	Unknown

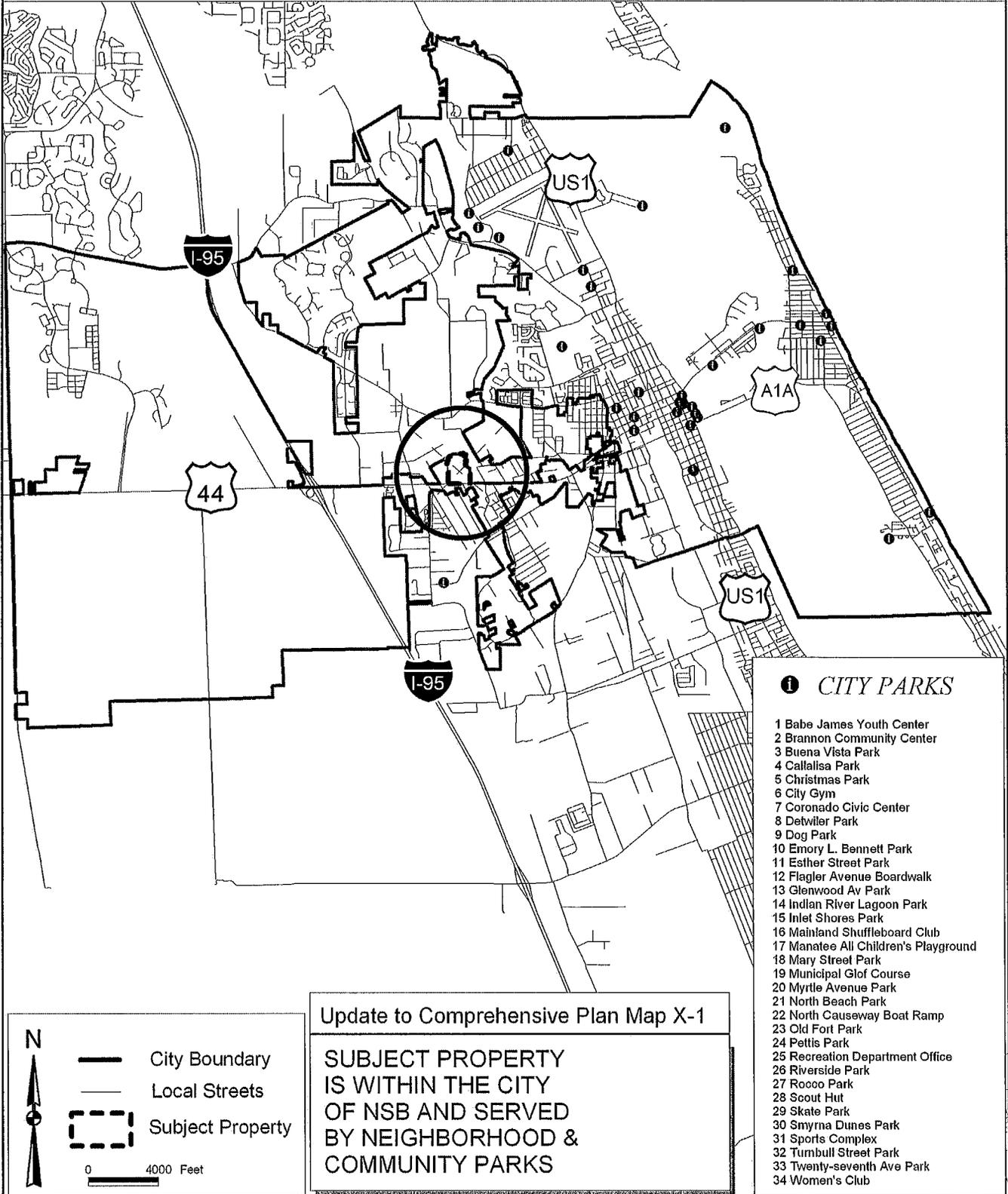
N

- City Boundary
- Local Streets
- Subject Property

0 100 Feet

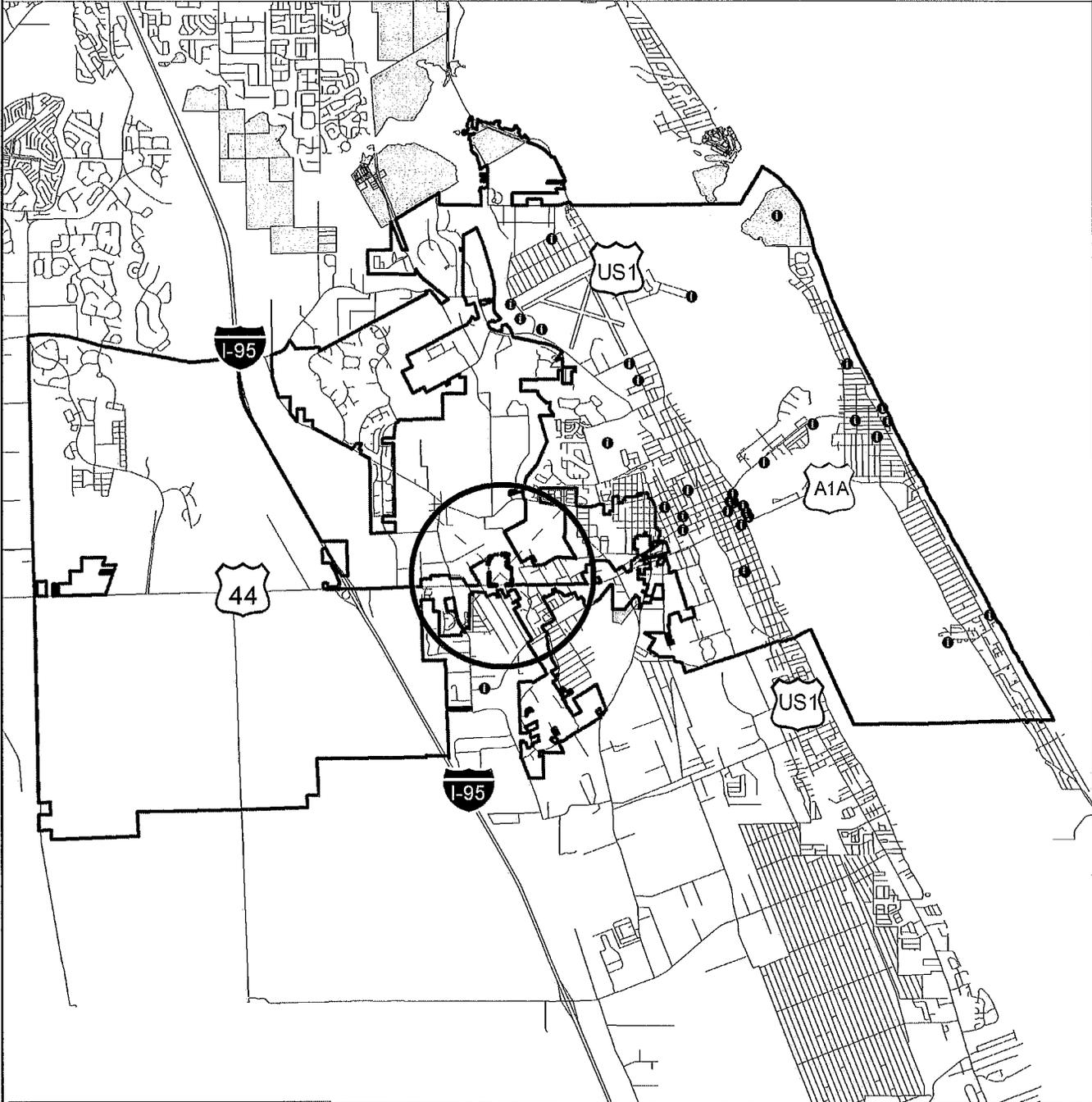
Neighborhood & Community Parks

A-02-11



Regional Parks & Special Use Facilities

A-02-11



N

— City Boundary
 — Local Streets
 - - - Subject Property

0 4000 Feet

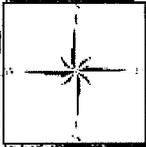
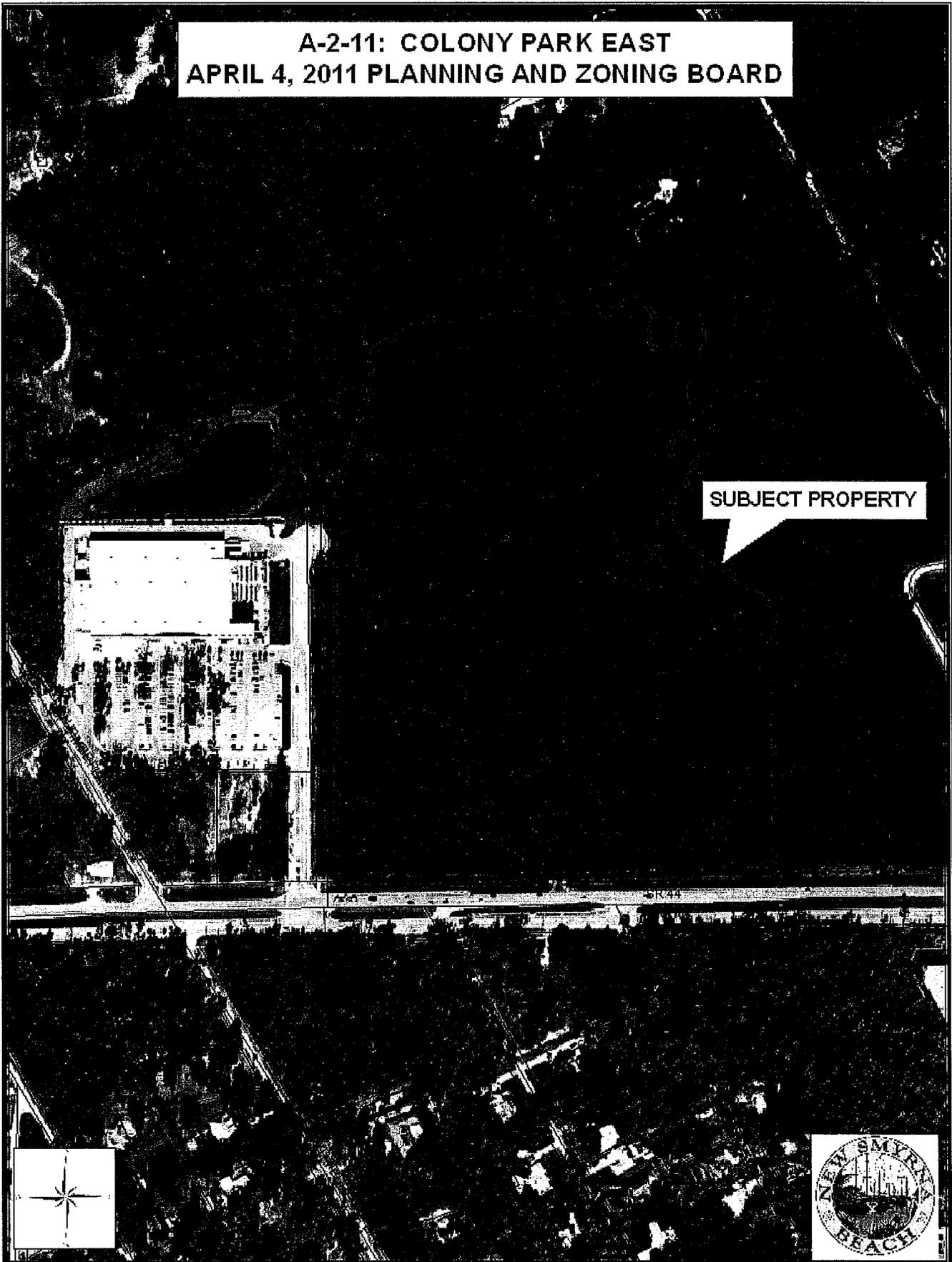
Update to Comprehensive Plan Map X-2

SUBJECT PROPERTY IS WITHIN THE CITY OF NSB AND SERVED BY REGIONAL PARKS & SPECIAL USE FACILITIES

- REGIONAL:**
- 1 CANAVERAL SEASHORE PARK
 - 2 SMYRNA DUNES STATE PARK
- SPECIAL USE FACILITIES:**
- 3 AIRPORT WAYSIDE PARK
 - 4 CANAL STREET PARK
 - 5 CANAL STREET RECREATION CENTER
 - 6 COLORADO CIVIC CENTER
 - 7 HIDDEN LAKES GOLF COURSE
 - 8 FLAGLER AVENUE BOARDWALK
 - 9 MUNICIPAL GOLF COURSE
 - 10 N CAUSEWAY MUNICIPAL BOAT RAMPS
 - 11 OLD FORT PARK

**A-2-11: COLONY PARK EAST
APRIL 4, 2011 PLANNING AND ZONING BOARD**

SUBJECT PROPERTY



1 CITY OF NEW SMYRNA BEACH – CITY COMMISSION

2 **A-3-11: 4428 DORIS DRIVE**

3 APRIL 4, 2011

4
5 **I. Background**

6
7 **A. Applicant and Property Owner:** Duane Meade, 4428 Doris Drive, New
8 Smyrna Beach, Florida, 32169

9
10 **B. Request:** Voluntary annexation , *Comprehensive Plan* amendment, and
11 rezoning

12
13 • **From:** County Future Land Use (FLU) designation of Urban Low
14 Intensity; and County zoning (W), Urban Single-Family Residential
15 (Indian River Lagoon Surface Water Improvements and
16 Management Overlay Zone)

17 • **To:** City FLU designation of Low Density Residential; and City
18 zoning R-1, Single-Family Residential

19
20 **C. Site Information:**

21 • **Size:** 0.236 acres

22 • **Location:** The property is located at 4428 Doris Drive,
23 immediately adjacent to the south municipal limit of the City (see
24 **Exhibit A** for a location map).

25 • **Tax I.D. Number:** 7435-01-07-0010

26
27 **II. Findings**

28
29 **A.** The subject property is an approximately 0.236-acre site that has been
30 improved with a single-family detached residence. No additional
31 improvements are proposed on the property at this time. A copy of the
32 survey for the subject property is attached as **Exhibit B**. The property
33 currently has a Volusia County Future Land Use (FLU) designation of
34 Urban Low Intensity, which allows 0.2 to 4.0 units per acre up to. The
35 property is currently zoned Volusia County R-4(W), Urban Single-Family
36 Residential (Indian River Lagoon Surface Water Improvements and
37 Management Overlay Zone). The surrounding future land use, existing
38 uses, and zoning are as follows:

39 **North**

40 Future Land Use: City Low Density Residential

41 Existing Land Use: Single-Family Residential

42 Zoning: City R-1, Single-Family Residential

43
44 **South**

45 Future Land Use: County Urban Low Intensity

46 Existing Land Use: Single-Family Residential

47 Zoning: County R-4(W), Urban Single-Family Residential

48 (Indian River Lagoon Surface Water Improvements
49 and Management Overlay Zone)
50

51 **East**

52 Future Land Use: County Urban Low Intensity
53 Existing Land Use: Single-Family Residential
54 Zoning: County R-4(W), Urban Single-Family Residential
55 (Indian River Lagoon Surface Water Improvements
56 and Management Overlay Zone)
57

58 **West**

59 Future Land Use: County Urban Low Intensity
60 Existing Land Use: Single-Family Residential
61 Zoning: County R-4(W), Urban Single-Family Residential
62 (Indian River Lagoon Surface Water Improvements
63 and Management Overlay Zone)
64

65 Maps showing the surrounding Existing Land Uses, Existing Zoning, and
66 Existing Future Land Use Designations are attached (**Exhibits C, D, and**
67 **E**). Descriptions of the existing zoning and existing Future Land Use
68 designations on the subject property are attached as **Exhibits F and G**.
69

70 B. A map of the soils within the site is attached as **Exhibit H**. According the
71 Volusia County Soil Survey prepared by the Soil Conservation Service,
72 there is one soil type - Palm Beach-Urban Land-Paola Complex - on the
73 property. The open areas of the Palm Beach and Paola soils are mostly
74 lawns, vacant lots, or playgrounds. They are generally small and
75 intermixed with Urban land. The Urban land is covered with houses,
76 streets, driveways, buildings, parking lots, and other structures. A full
77 description of the soil type is attached as **Exhibit I**. Because no new
78 development is proposed on the property, the soil description is provided
79 for informational purposes only.
80

81 C. Previous City Commissions had established a policy that when property is
82 annexed into the City, the City would assign a future land use and zoning
83 designation that would closely match the existing County designations.
84 As discussed above, the existing County FLU and zoning designations are
85 Urban Low Intensity and R-4(W), Urban Single-Family Residential (Indian
86 River Lagoon Surface Water Improvements and Management Overlay
87 Zone), respectively. The City does not have an overlay district that is
88 comparable to the Indian River Lagoon Overlay. Therefore, staff is
89 proposing that the FLU be changed to City Low Density Residential and
90 the zoning be changed to R-1, Single-Family Residential, which would be
91 consistent with adjacent development in the City. Maps showing the
92 proposed FLU and zoning changes are attached as **Exhibits J and K**.
93 Descriptions of the proposed FLU and zoning designations are attached
94 as **Exhibits L and M**.
95

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D. This annexation request is within the City's annexation area and within the City's water and wastewater service area. The property is served by a 4-inch water line. Sewer service is not currently available to serve the property.

E. The *Land Development Regulations* requires any proposed development to conform to the Concurrency Management System. That system includes traffic, parks and recreation, potable water, wastewater treatment, solid waste collection, stormwater management, and public school facilities. Because the property is already developed with a single-family residence and the proposed future land use and zoning designations would only allow one single-family residence on this lot, no concurrency impact analysis was completed.

F. There are numerous *Comprehensive Plan* maps that must be amended to incorporate the subject properties into the *Comprehensive Plan* (see **Exhibits N through X**). **Exhibit Y** is an aerial photo of the property for informational purposes.

G. The *Comprehensive Plan* provides some guidance on annexations, future land use amendments, and rezonings. The following is a list of objectives in the *Comprehensive Plan* that support this proposal. Following each objective is a comment in ***bold italics***.

- **Future Land Use Element Objective 1:** To ensure that future development will be consistent with adjacent uses, natural limitations such as topography and soil conditions, the needs of the citizens of New Smyrna Beach, the Future Land Use Map, the availability of facilities and services, and the goals, objectives and policies contained within this *Comprehensive Plan*.

The requested FLU designation for the subject property is consistent with proposed adjacent uses, natural limitations, and the availability of facilities and services. Therefore, it is consistent with the Comprehensive Plan. The property is bordered by low density single-family residential on all sides. No new development is proposed on the property.

- **Future Land Use Element Objective 2:** To provide adequate services and facilities for future development, at the adopted level-of-service standard. In order to maintain the adopted level-of-service standard, development orders and permits will be conditioned on the availability of the public facilities and services necessary to serve the proposed development.

The proposed future land use amendment is for an already developed property. No new development is proposed and no

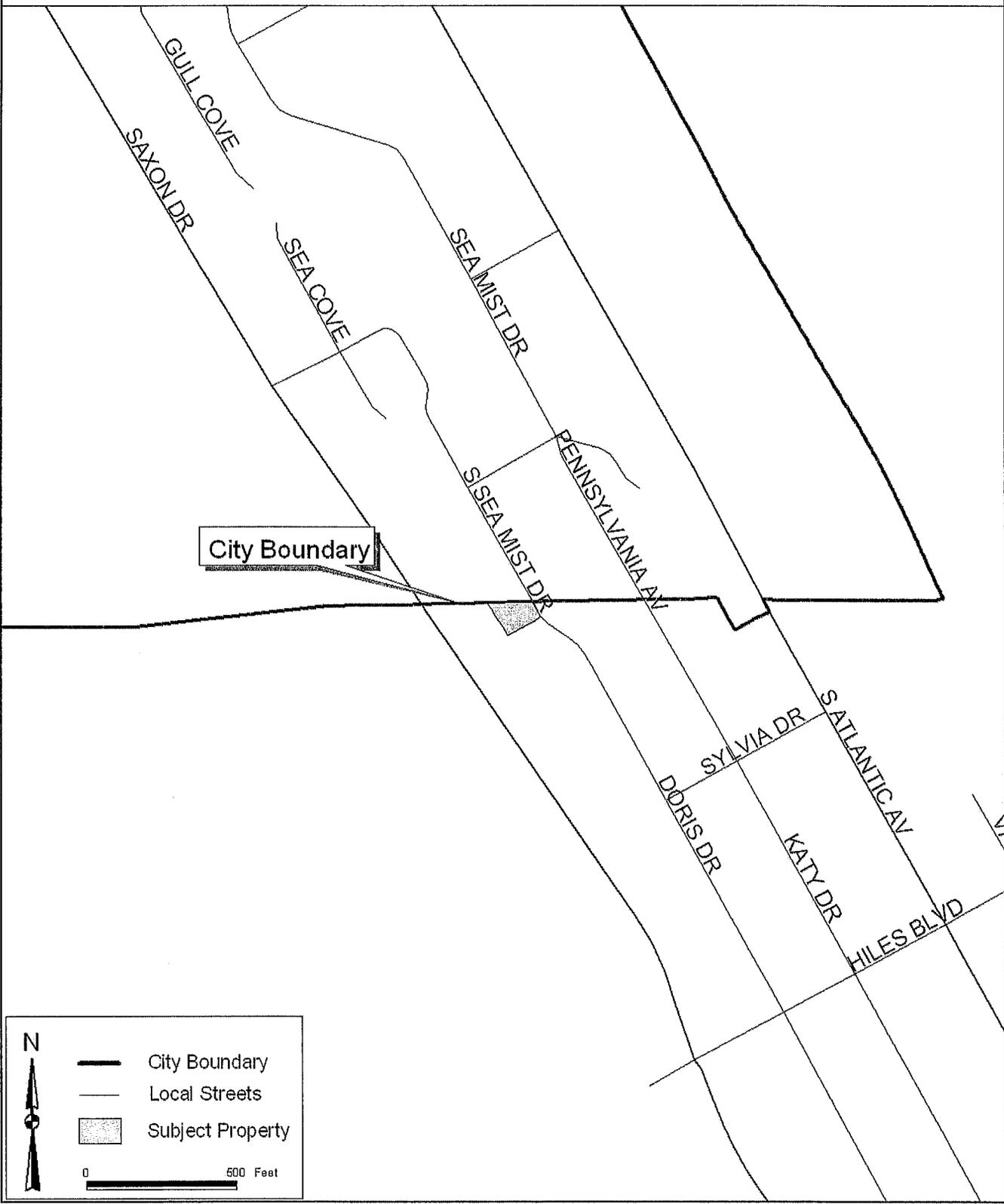
143 *increase in density is projected as a result of the future land*
144 *use amendment. Therefore, the request is consistent with the*
145 **Comprehensive Plan.**

146
147 **III. Recommendation**

148
149 Staff recommends that the Planning and Zoning Board recommend the City
150 Commission **approve** the annexation, *Comprehensive Plan* amendment to City
151 Low Density Residential, and the rezoning to City zoning district designation R-1,
152 Single-Family Residential.
153

Location Map

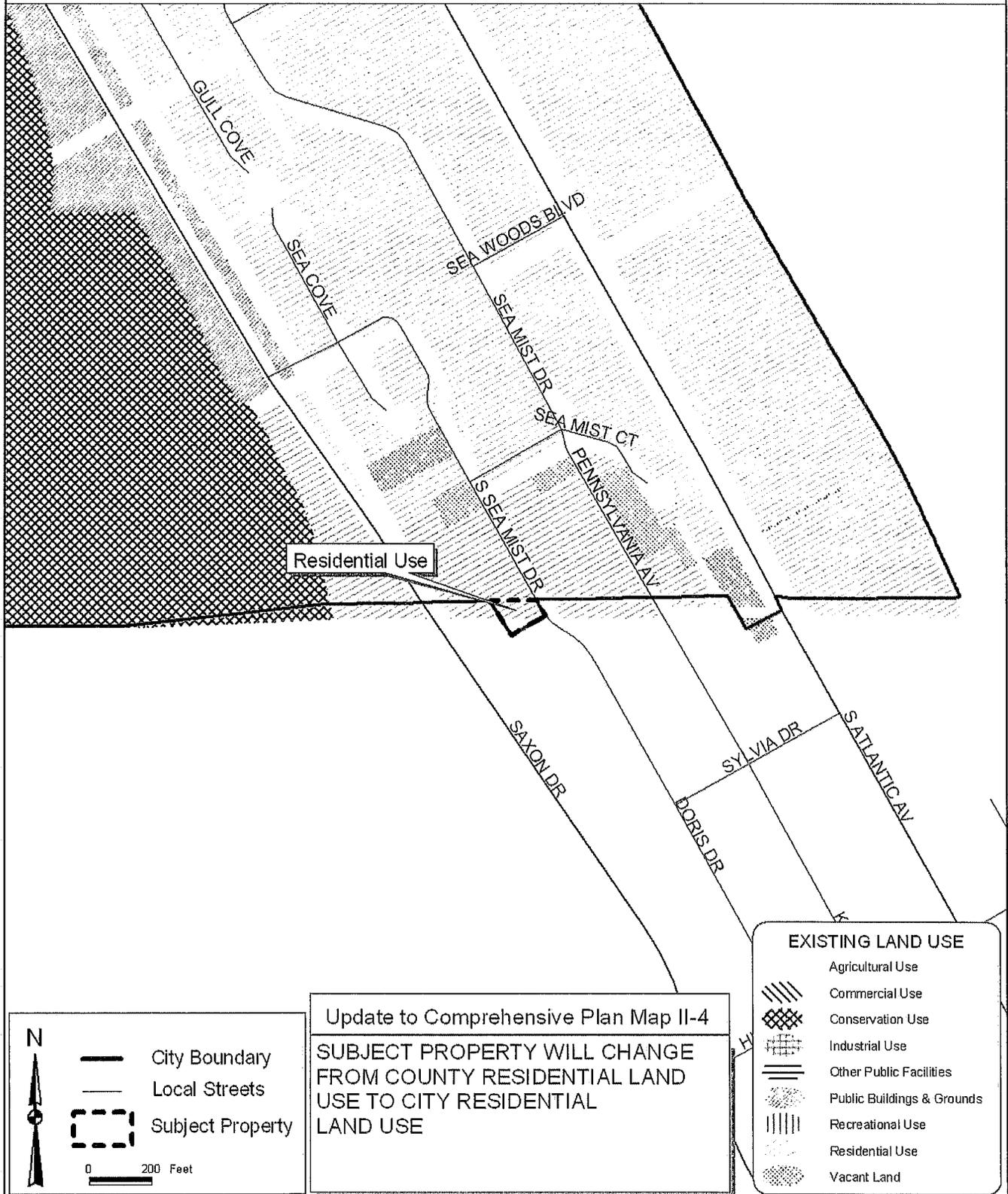
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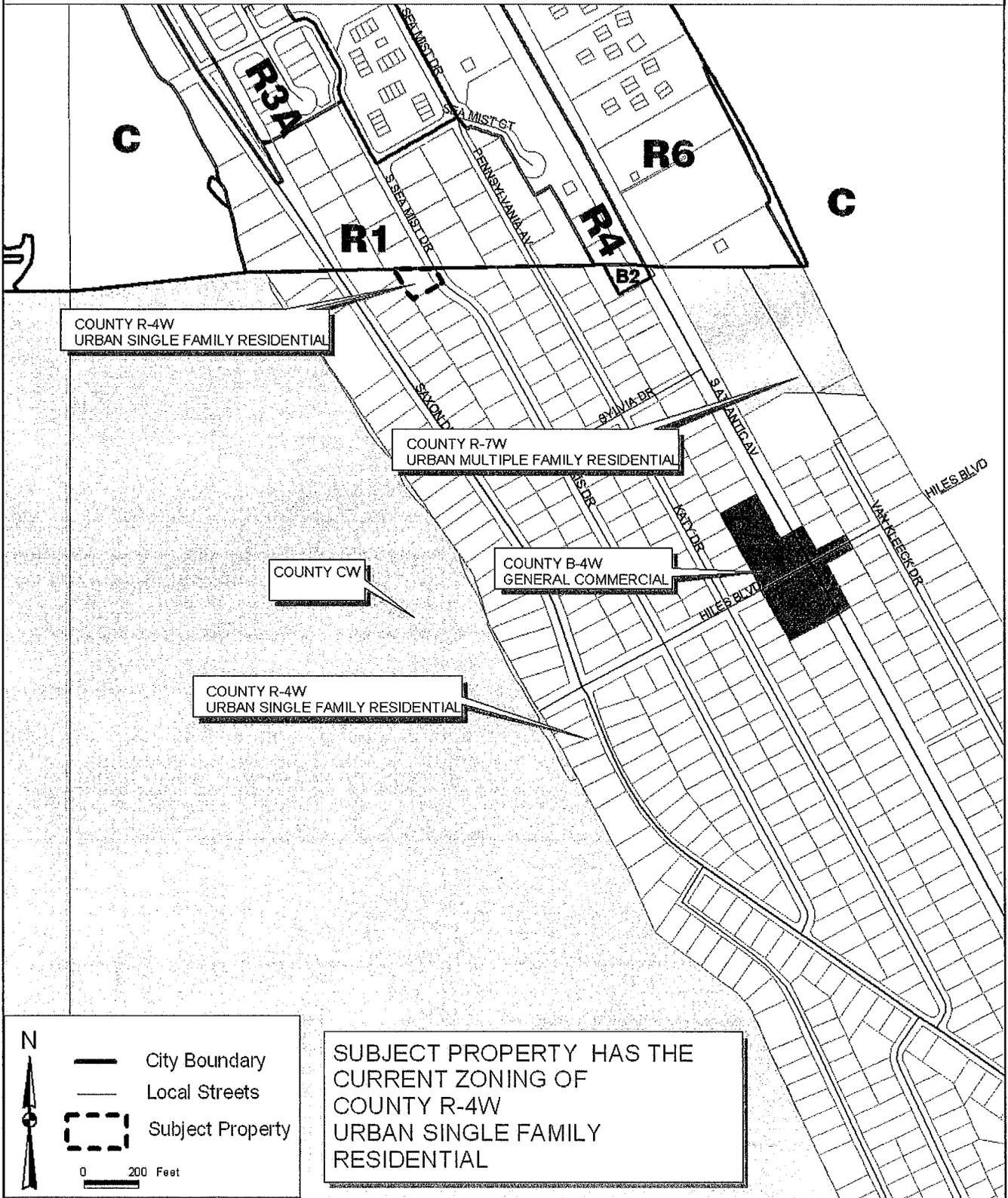
Existing Land Use Designations

A-03-11



Existing Zoning

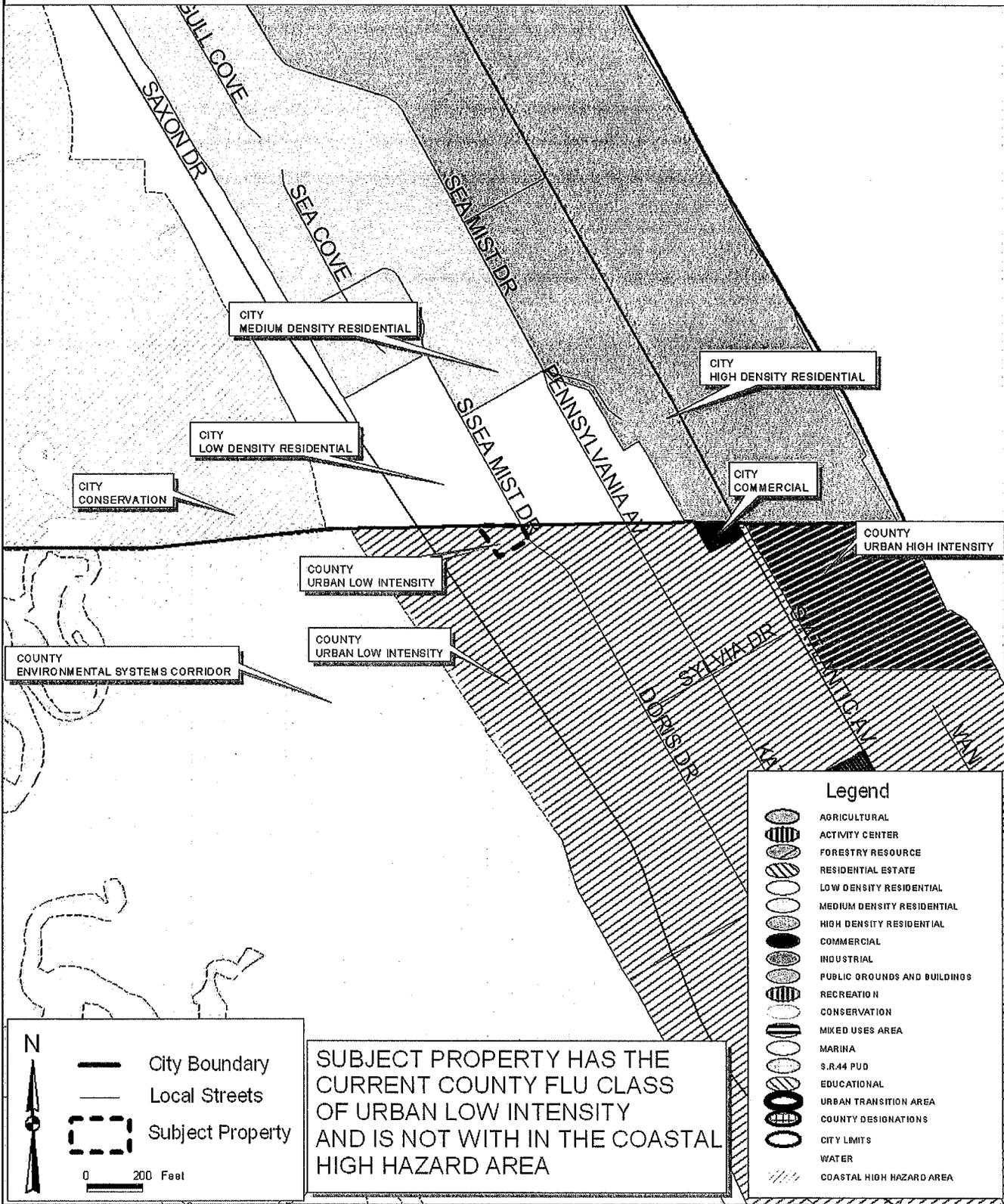
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SUBJECT PROPERTY HAS THE CURRENT ZONING OF COUNTY R-4W URBAN SINGLE FAMILY RESIDENTIAL

Existing Future Land Use Designations

A-03-11



SUBJECT PROPERTY HAS THE CURRENT COUNTY FLU CLASS OF URBAN LOW INTENSITY AND IS NOT WITH IN THE COASTAL HIGH HAZARD AREA

R-4 URBAN SINGLE-FAMILY

RESIDENTIAL CLASSIFICATION

Purpose and intent: The purpose and intent of the R-4 Urban Single-Family Residential Classification is to provide medium-density residential developments, preserving the character of existing or proposed residential neighborhoods.

Permitted principal uses and structures: In the R-4 Urban Single-Family Residential Classification, no premises shall be used except for the following uses and their customary accessory uses or structures:

- Cluster and zero lot line subdivisions (refer to subsection 72-304).
- Communication towers not exceeding 70 feet in height above ground level.
- Essential utility services.
- Exempt excavations (refer to subsection 72-293(15)) and/or those which comply with division 8 of the Land Development Code of Volusia County [article III] and/or final site plan review procedures of this article.
- Exempt landfills (refer to subsection 72-293(16)).
- Fire stations.
- Home occupations, class A (refer to section 72-283).
- Houses of worship.
- Parks and recreational areas accessory to residential developments.
- Public schools.
- Publicly owned parks and recreational areas.
- Publicly owned or regulated water supply wells.
- Single-family standard or manufactured modular dwelling.

Permitted special exceptions: Additional regulations/requirements governing permitted special exceptions are located in sections 72-293 and 72-415 of this article.

- Bed and breakfast (refer to subsection 72-293(19)).
- Cemeteries (refer to subsection 72-293(4)).
- Communication towers exceeding 70 feet in height above ground level.
- Day care centers (refer to subsection 72-293(6)).
- Dogs and cats boarded as personal pets exceeding the number permitted in subsection 72-306(a).
- Excavations only for stormwater retention ponds for which a permit is required by this article.
- Garage apartments.
- Off-street parking areas (refer to subsection 72-293(14)).
- Public uses not listed as a permitted principal use.
- Public utility uses and structures (refer to subsection 72-293(1)).
- Recreational areas (refer to subsection 72-293(3)).
- Schools, parochial or private (refer to subsection 72-293(4)).

Dimensional requirements:

Minimum lot size:

- Area: 7,500 square feet.
- Width: 75 feet.

Minimum yard size:

EXHIBIT F (CONT'D)

- Front yard: 25 feet.
- Rear yard: 20 feet.
- Side yard: 20 feet combined, minimum of eight feet on any one side.
- Waterfront yard: 25 feet.

Maximum building height: 35 feet.

Maximum lot coverage: The total lot area covered with principal and accessory buildings shall not exceed 35 percent.

Minimum floor area: 850 square feet.

Off-street parking and loading requirements: Off-street parking and loading areas meeting the requirements of sections 72-286 and 72-287 shall be constructed.

DIVISION 16. INDIAN RIVER LAGOON SURFACE WATER IMPROVEMENTS AND MANAGEMENT OVERLAY ZONE

Sec. 72-1096. Purpose and intent.

(a) The purpose of this division is to provide regulations to protect and improve the water quality of the Indian River Lagoon. This water body contains waters designated as class II by the Florida Department of Environmental Protection in accordance with Rule 62-302.400, Florida Administrative Code, and the only waters in Volusia County designated for special protection by Florida legislation pursuant to the Surface Water Improvement and Management Act (SWIM). Additionally, these waters have been designated as an "estuary of national significance" by the U.S. Environmental Protection Agency. Said class II designation authorizes shellfish propagation and harvesting. Said water quality criteria applicable to this class are designed to maintain the minimum conditions necessary to assure the suitability of water for the designated use of the classification. The regulations in this section are designed to reduce the negative impacts of development adjacent to the Indian River Lagoon and to protect this vital natural resource and the shellfish harvesting industry in that area.

(b) Notwithstanding any other provisions of the Land Development Code, Ordinance 88-3, and as amended, to the contrary, these regulations are supplementary thereto.

(c) An overlay zone is hereby established and the regulations hereinafter provided shall apply in said zone and all zoning classifications established in division 7 of the Zoning Ordinance, Ordinance No. 80-8, as amended. The official zoning map shall identify the overlay zone by adding the letter "W" as a suffix to the zoning classifications within the boundaries of said overlay zone.

(Ord. No. 2004-21, 11-4-04; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-1097. Boundaries.

Said boundaries of the zone are as follows: That portion of the unincorporated area of Volusia County, Florida, bounded on the north by the southern city limits of the City of New Smyrna Beach; on the east by the Atlantic Ocean; on the west by U.S. Highway #1; and on the south by the Brevard County line.

(Ord. No. 2004-21, 11-4-04; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-1098. Wetlands preservation.

All wetlands occurring within this overlay zone shall be regulated in accordance with division 11 of this article.

(Ord. No. 2004-21, 11-4-04; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-1099. Shoreline protection.

(a) The construction of vertical seawalls and bulkheads shall be allowed adjacent to artificial waterways in existence prior to June 18, 1987, provided that the design of said seawalls and bulkheads prevents the runoff of stormwater into the artificial waterway. A stormwater management plan is required.

(b) Vertical seawalls and bulkheads are prohibited adjacent to all other watercourses or water bodies except as may be waived by the county council. Hardening of the estuarine shoreline shall be allowed only when erosion is causing a serious threat to life or property.

(c) Other shoreline stabilization methods may be used in lieu of vertical seawalls and bulkheads when hardening of the shorelines is approved.

(Ord. No. 2004-21, 11-4-04; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-1100. Landscaping.

Notwithstanding any other provision of the Zoning Ordinance, Ordinance No. 80-8, as amended, to the contrary, all development shall contain a minimum of 35 percent open space within property boundaries, landscaped with existing native vegetation which is indigenous to this area or planted native species, in accordance to a list of acceptable species available in the zoning office.

(Ord. No. 2004-21, 11-4-04; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-1101. Stormwater controls.

Notwithstanding any other provisions of division 8 of this article, individual single-family and duplex residential dwellings or additions thereto and/or accessory structures containing a total of 250 square feet in size or more, not previously included in a stormwater management plan, shall provide a volume of retention equivalent to one-half-inch of depth over the entire site or lot. Prior to the issuance of a building permit, an application shall be submitted to the environmental management division (EDM) for review. The EDM may approve, modify, or deny the application.

(Ord. No. 2004-21, 11-4-04; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-1102. Wastewater treatment plants and on-site waste disposal systems.

(a) Package wastewater treatment plants may be permitted if the plant is designed to be transformed into a pump station when public central wastewater facilities become available in the area, provided that said availability is to be not more than ten years distant from issuance of a development order. Said package plants are to be dedicated to the entity to be responsible for providing central regional service and are to be constructed to the requirements specified by said entity.

(b) Septic tanks, if permitted for new single-family lots shall be located in compliance with chapters 64E-6 and 62-600 of the Florida Administrative Code. The septic tank system shall be designed to connect to central sewer line when central sewer services become available. The septic tank system and drainfield shall be as far removed as possible from the shoreline of a class II water body or its tributaries.

(c) For that portion of the barrier island falling within the overlay zone, aerobic wastewater treatment units or alternative systems approved by the health department shall be required, until such time as central sewer service becomes available, on lots

that are either within 200 feet of the shoreline of Mosquito Lagoon or consist of one of the following soils:

Canaveral sand

Cassia fine sand

Hydraquents

(d) For that portion of the mainland, east of U.S. Highway #1, which is within the overlay zone, aerobic wastewater treatment units or alternative systems approved by the health department shall be required on lots that are located within 200 feet of the shoreline of Mosquito Lagoon.

(1) These systems are also required for lots which are in excess of 200 feet from the shoreline of Mosquito Lagoon, provided that said lots have less than 10,000 square feet of area and consist of any one or more of the following soils:

Canaveral sand;

Cassia fine sand;

Hydraquents;

Myakka fine sand;

Quartzippamments;

Turnbull muck;

Pompano-Placid complex;

Myakka variant fine sand;

Placid fine sand, depressional;

Basinger fine sand, depressional;

Immokalee sand;

Myakka-St. Johns complex;

Immokalee sand, depressional;

Tuscawilla sand;

Pompano fine sand;

Riviera fine sand;

Wabasso fine sand;

Chobee fine sand.

(2) Any transitional soil with a seasonal high-water table within 12 inches of the soil surface.

(e) On-site waste disposal systems are not permitted where connection to a central system of wastewater collection and treatment is available.

(f) A municipal, county-owned, or investor-owned sewage system shall be deemed available for connection if all of the following criteria are met:

(1) The system is not under a Florida Department of Environmental Regulation moratorium; and

(2) The sewerage system has adequate hydraulic capacity (i.e., complies with the county's adopted level of service standard) to accept the quantity of sewage to be generated by the proposed development; and

(3) For estimated sewage flows of 600 gallons or less per day:

a. A sewer line exists in a public easement or right-of-way which abuts the property; and

b. Gravity flow can be maintained from the building drain to the sewer line.

(4) For estimated sewage flows exceeding 600 gallons per day:

a. A sewer line, force main, or lift station exists in a public easement or right-of-way which abuts the property or is within 100 feet of the property.

(Ord. No. 2004-21, 11-4-04; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-1103. Removal of vegetation.

The removal or stripping of native vegetative cover from a vacant lot is prohibited unless said action is performed in conjunction with the development of the building premises in a manner consistent with an approved development order or building permit; or upon authorization of the zoning enforcement official for minor landscaping projects.

Volusia County Urban Medium Intensity (UMI)

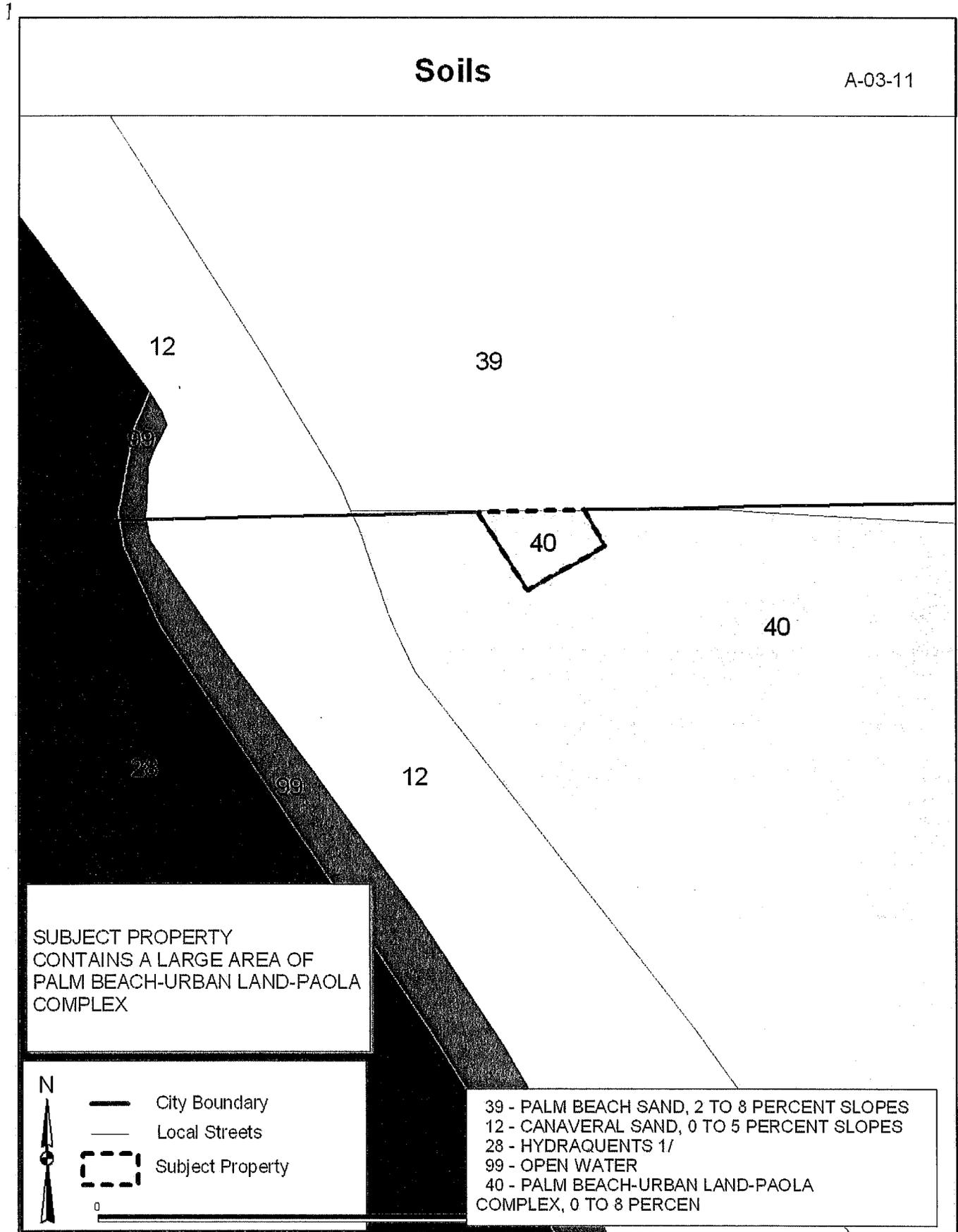
Urban Low Intensity (ULI)

Areas for low density residential dwelling units with a range of two-tenths (0.2) to four (4) dwelling units per acre. In reviewing rezoning requests, the specific density will depend on locational factors, particularly compatibility with adjacent uses and availability of public facilities.

This residential designation is generally characterized by single family type housing, e.g., single family detached and attached, cluster and zero lot line. This designation will allow existing agricultural zoning and uses to continue.

The ULI designation is primarily a residential designation but may also allow neighborhood convenience uses (see Shopping Center definition in Chapter 20) and individual office buildings as transitional uses that meet the Comprehensive Plan's location criteria. The commercial intensity shall be limited to no more than a fifty percent Floor Area Ratio (0.50 FAR) and in a manner to be compatible with the allowable residential density. In order to be considered compatible, the commercial development should be oriented to serve adjacent neighborhoods, reflect comparable traffic generation, similar traffic patterns, building scale, landscaping and open space and buffers. Due to the nature of some of the commercial uses, additional landscaping and visual screening shall be provided through the BPUD process when adjacent to low density residential in order to preserve the character of the neighborhood. More intensive neighborhood commercial use shall be reserved to areas designated for Commercial.

All requests for nonresidential uses within one-quarter ($\frac{1}{4}$) mile of another jurisdiction shall require notification to that jurisdiction.



Soils Group No. 40 — Palm Beach-Urban Land-Paola Complex, 0 to 8 percent Slopes

This map unit consists of Palm Beach and Paola soils and areas of these soils that have been altered for buildings or covered with streets and buildings. About 20 to 40 percent of the unit is Palm Beach sand, about 15 to 45 percent is Urban land, and about 15 to 25 percent is Paola fine sand. About 25 to 45 percent of the Palm Beach and Paola soils has been reworked or reshaped by earthmoving machines. The open areas of the Palm Beach and Paola soils are mostly lawns, vacant lots, or playgrounds. They are generally small and intermixed with Urban land. The Urban land is covered with houses, streets, driveways, buildings, parking lots, and other structures.

The water table is more than 72 inches below the soil surface and is usually below 120 inches.

Typically, the surface layer of the Palm Beach soil is about 6 inches thick. It is sand that is about 15 to 30 percent very fine shell fragments. The upper 3 inches is gray, and the lower 3 inches is grayish brown. Between depths of 6 to 34 inches is light brownish gray sand mixed with multicolored shell. Below this to 80 inches is white sand and multicolored shell.

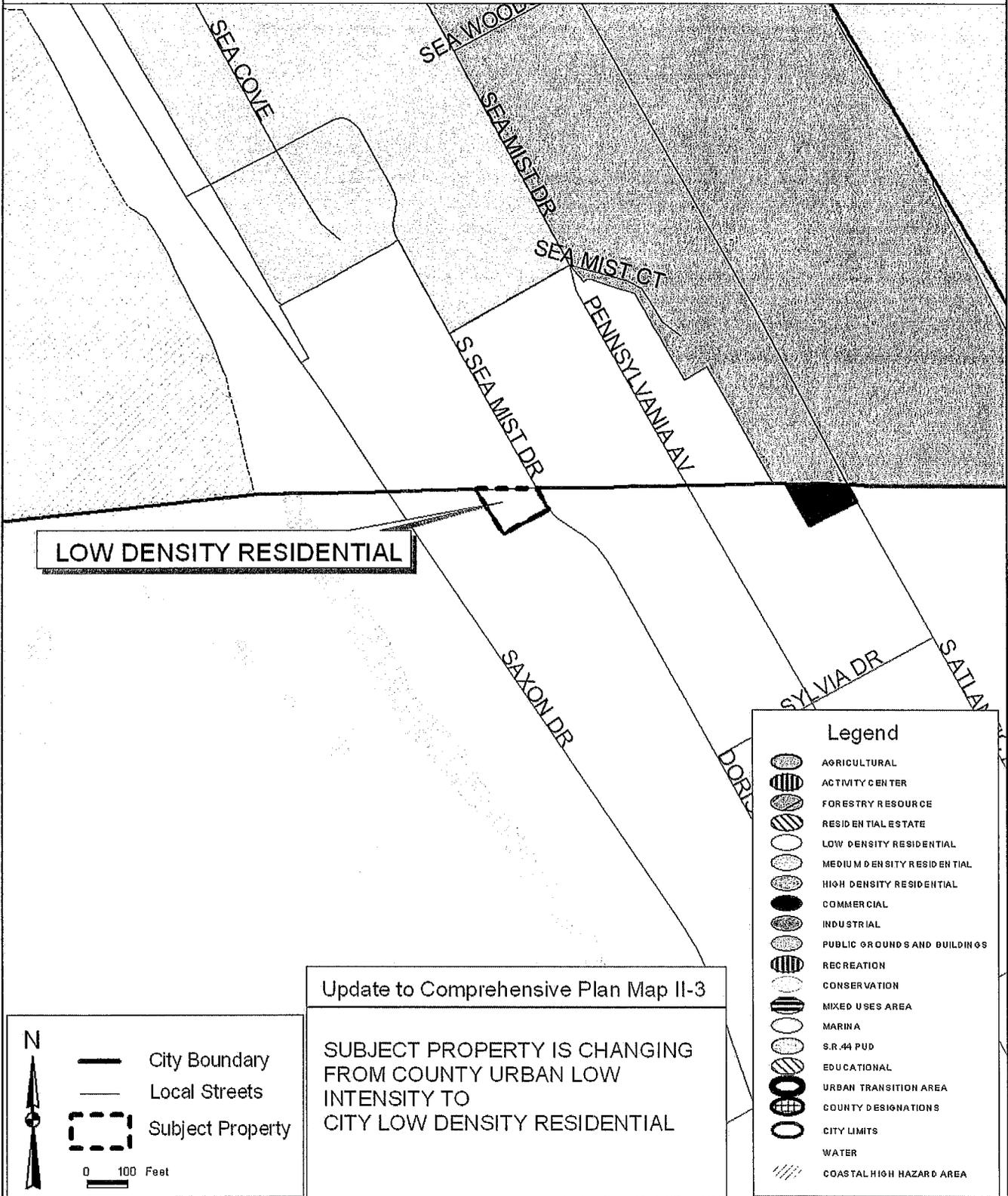
Typically, the surface layer of the Paola soil is a mixture of light gray fine sand and black organic matter about 6 inches thick. The subsurface layer is light gray and white fine sand about 20 inches thick. The subsoil is yellow fine sand about 38 inches thick. Tongues of sub-surface material extend into the subsoil. They are a dark brown or yellowish brown exterior and a light gray interior. Below the subsoil is very pale brown fine sand to a depth of 80 inches or more.

The areas of soil that have been modified by grading and shaping are not so large in older communities as in the newer ones. Excavating streets below the original land surface and spreading this material over adjacent land areas is common. Soil material is frequently hauled in to fill low places.

SOURCE: *Soil Survey of Volusia County, Florida*, United States Department of Agriculture, Soil Conservation Service in Cooperation with the University of Florida, Institute of Food and Agricultural Sciences Agricultural Experiment Stations, Soil Science Department.

Proposed Future Land Use Designations

A-03-11



LOW DENSITY RESIDENTIAL

- Legend**
- AGRICULTURAL
 - ACTIVITY CENTER
 - FORESTRY RESOURCE
 - RESIDENTIAL ESTATE
 - LOW DENSITY RESIDENTIAL
 - MEDIUM DENSITY RESIDENTIAL
 - HIGH DENSITY RESIDENTIAL
 - COMMERCIAL
 - INDUSTRIAL
 - PUBLIC GROUNDS AND BUILDINGS
 - RECREATION
 - CONSERVATION
 - MIXED USES AREA
 - MARINA
 - S.R.44 PUD
 - EDUCATIONAL
 - URBAN TRANSITION AREA
 - COUNTY DESIGNATIONS
 - CITY LIMITS
 - WATER
 - COASTAL HIGH HAZARD AREA

Update to Comprehensive Plan Map II-3

SUBJECT PROPERTY IS CHANGING FROM COUNTY URBAN LOW INTENSITY TO CITY LOW DENSITY RESIDENTIAL

N

— City Boundary

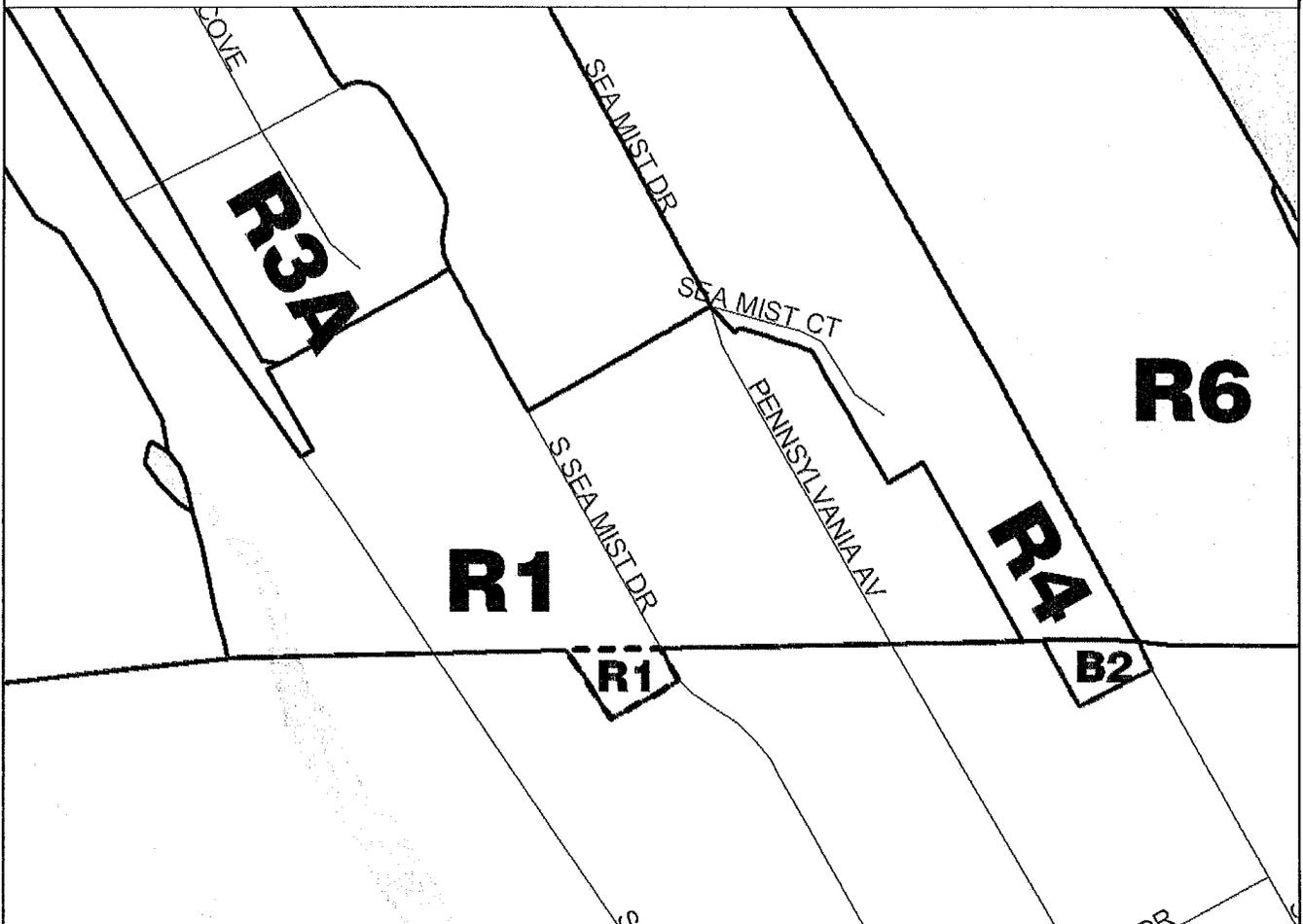
— Local Streets

- - - Subject Property

0 100 Feet

Proposed Zoning

A-03-11



N

— City Boundary

— Local Streets

- - - Subject Property

0 100 200 Feet

SUBJECT PROPERTY IS CHANGING FROM COUNTY R-4W URBAN SINGLE FAMILY RESIDENTIAL TO CITY R-1 SINGLE FAMILY RESIDENTIAL

CODE	CLASS	CITY ZONING
A1	PRIME AGRICULTURE	
A2	AGRICULTURE	
B2	NEIGHBORHOOD BUSINESS	
B3	HIGHWAY SERVICE BUSINESS	
B4	OCEAN COMMERCIAL	
B5	PLANNED SHOPPING CENTER	
B6	MEDICAL PROFESSIONAL	
BB6A	LIMITED MEDICAL PROFESSIONAL	
BBH	BED & BREAKFAST HOMES	
BPUD	BUSINESS PUD	
C	CONSERVATION	
CM	COMMERCIAL MARINA	
COZ	CORRIDOR OVERLAY ZONE	
FR	FORESTRY RESOURCE	
HBOD	HISTORIC BUILDING OVERLAY ZONE	
I1	LIGHT INDUSTRY	
I2	HEAVY INDUSTRY	
I3	INDUSTRIAL PARK	
I4	WATERFRONT INDUSTRIAL	
IPUD	INDUSTRIAL PUD	
MH1	MOBILE HOME PARK	
MH2	MANUFACTURED HOUSING SUBDIVISION	
MPUD	MIXED USE PUD	
MU	MIXED USE (CENTRAL BUSINESS DISTRICT)	
PUD	PLANNED UNIT DEVELOPMENT	
R	RECREATION	
R1	SINGLE FAMILY	
R2	SINGLE FAMILY	
R2A	SINGLE FAMILY DETACHED AND ATTACHED	
R3	SINGLE FAMILY	
R3A	SINGLE FAMILY & TWO FAMILY (ZERO LOT LINE)	
R4	MULTI-FAMILY	
R5	MULTI-FAMILY	
R6	MULTI-FAMILY	
RE	RESIDENTIAL ESTATE	
RPUD	RESIDENTIAL PUD	
RR-PUDRE	RESORT RESIDENTIAL PUD	

Low-Density Residential

Maximum allowed density: Up to five [5] dwelling units per acre

Intent: This use is appropriate where a more suburban development pattern exists or is desired and where urban services are to be kept to a minimum

R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT

Intent:

The R-1 district is intended to be a single-family residential district for low population densities. Existing development and usage has resulted which is being preserved in order to stabilize the neighborhood. The nature of the residential use of the property throughout the district will enhance the prospects for orderly future residential development.

Permitted Uses:

Playfields
Playgrounds
Public Parks
Recreation buildings and complexes intended for exclusive use by residents and guests of a residential development.
Single Family Dwelling Units

Permitted Accessory Uses:

Garages
Gazebos
Incidental Uses
Permitted Home Occupations
Storage Sheds
Swimming pools, private, provided a principal structure exists and the pool is located behind the front plane of the principal structure. Corner lots will be considered to have two front planes, one on each street. If a structure is not constructed squarely on a parcel, the swimming pool must be located at or behind the most restrictive front plane of the principal structure. **Ord. # 30-10**
Uses customarily associated with the permitted principal uses

Special Exceptions:

Child day care on church property, subject to the following additional conditions:

1. The church property shall be located on and be accessible by an arterial or collector roadway.
2. Play areas shall be fenced and landscaped. The landscaping shall have a vegetative hedge that will reach six feet in height within two years that is planted a minimum of three feet on center.
3. Play areas shall be located within all applicable setback dimensions.
4. The church property shall have a vehicular drop off and pickup area with a minimum 100 feet of drive lane outside of the public right-of-way, or sufficient

EXHIBIT M (CONT'D)

parking area to provide enough space to fit the required parking and provided space for drop off and pick up. [Ord. No. 4-00]

Facilities owned and/or operated by federal, state, county or municipal government except country clubs and golf courses

Schools and churches provided all structures are located at least thirty-five (35) feet from all side or rear property lines and off-street parking areas abutting residential property are screened by a buffer meeting the requirements of this LDR.

Dimensional Requirements:

Minimum Lot Size

Area	12,000 feet
Depth	120 feet
Width	100 feet

Minimum Yard Size

Front yard	35 feet, or as required per Section 504.01(M) of this LDR
Rear yard	10 feet
Side yard	20 feet total, no side less than 8 feet

Maximum Building Coverage

The total area covered with buildings on any lot shall not exceed 40% of the total lot area. (Ord. 78-98)

Screen Enclosures:

As an exception to the maximum building coverage provision any parcel may be allowed an additional ten percent (10%) building coverage for only a screen pool enclosure if the following conditions are met:

1. A screen pool enclosure shall only cover the swimming pool and surrounding pool deck and shall have a roof and walls consisting entirely of screening; and
2. There shall be no variances granted to exceed the maximum building coverage or additional coverage allowed for screen enclosures.

Ord. #05-09

Maximum Impervious Lot Coverage:

The total area of the lot that may be covered with impervious material is sixty percent (60%).

Maximum Principal Building Height

Thirty-five (35) feet.
Three (3) stories.

Minimum Floor Area Requirement

1,200 square feet per dwelling unit.

Off-Street Parking

Off-street parking shall be provided as required in this LDR.

Corner Lots

- (1) Parcels which front on two streets shall provide a thirty-five (35) foot front yard on one street frontage and a 17.5 foot front yard on the other street or as required per Section 504.01(M) of this LDR.
- (2) Parcels fronting on three streets shall provide two thirty-five (35) foot front yards and a 17.5 foot front yard on the remaining street or as required per Section 504.01(M) in this LDR. [Ord. No. 23-00]

Driveway Access

The minimum driveway length shall be 20 feet (excluding portion of driveway within the public right-of-way). [Ord. No. 23-00]

Through Lots:

Shall provide a thirty-five (35) foot front yard on each street or as required per Section 504.01(M) of this LDR.

Atypical Lot:

Visibility triangles shall be established at the rear corners of an atypical lot. The visibility triangles shall be those areas formed by a line connecting the points thirty (30) feet from the intersection of the side and rear lot line along the side lot line and thirty (30) feet from the intersection of the side and rear lot line along the rear lot line; no principal or accessory structure having a height over 4 feet, except for incidental uses, shall protrude into the area of a visibility triangle.

Building Projections:

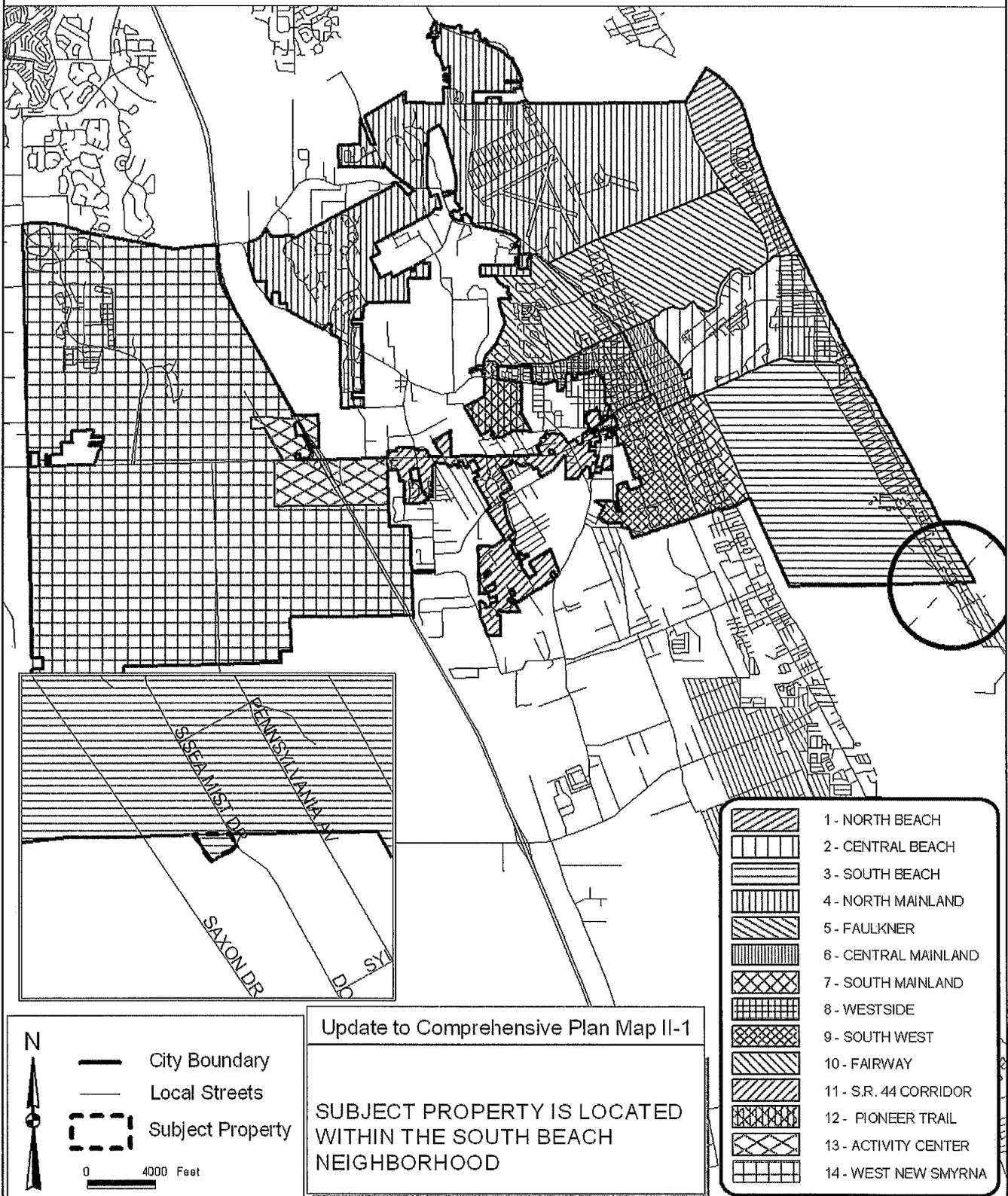
There shall be no building projections into any required yard except for eaves with a maximum projection of 42 inches, but no closer than 5 feet to a property line; and those structures allowed in Section 804.03.

Visibility at Intersections:

Visibility at intersections shall be provided as required in this LDR. Revised 7-3-00

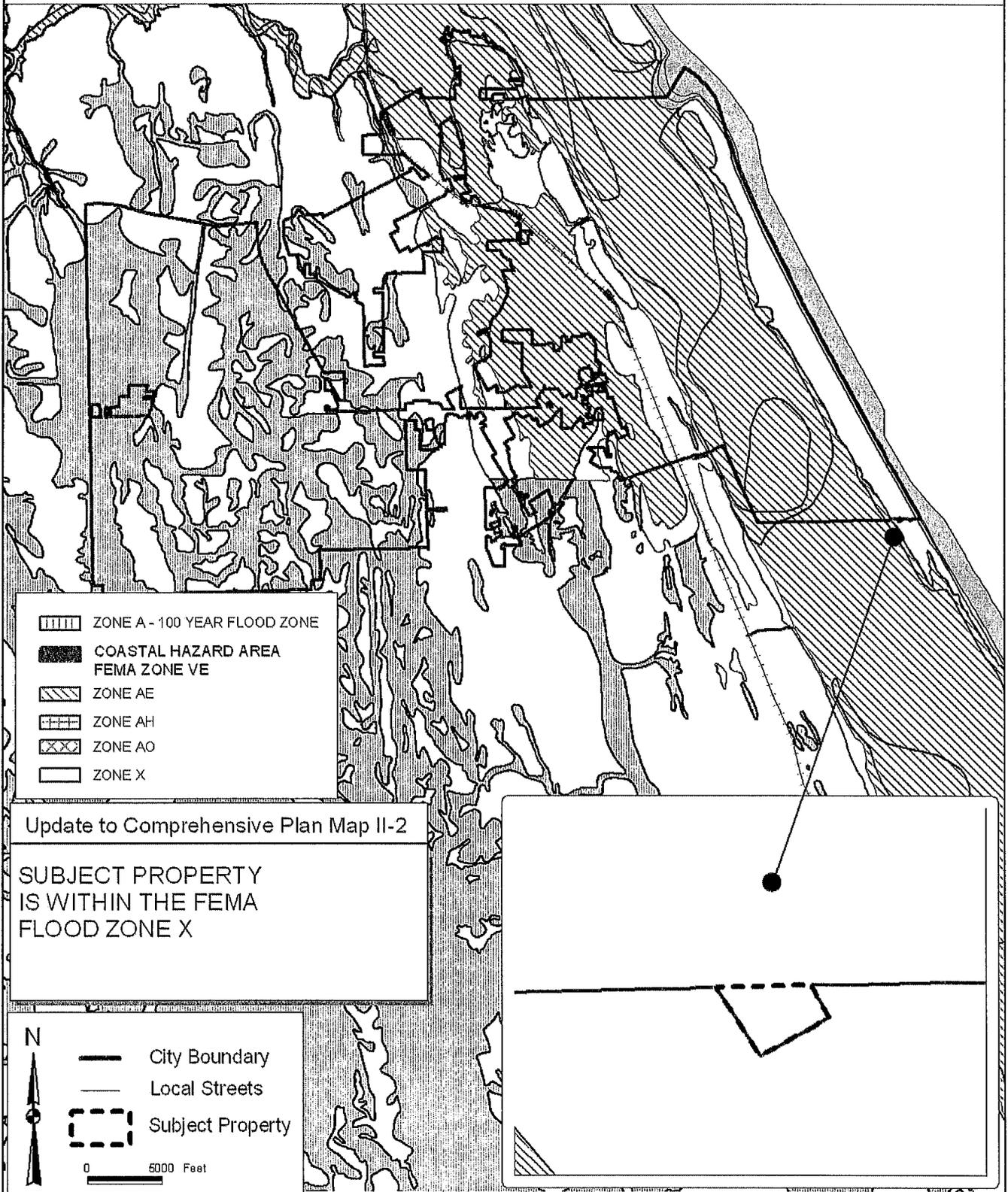
Neighborhoods

A-03-11



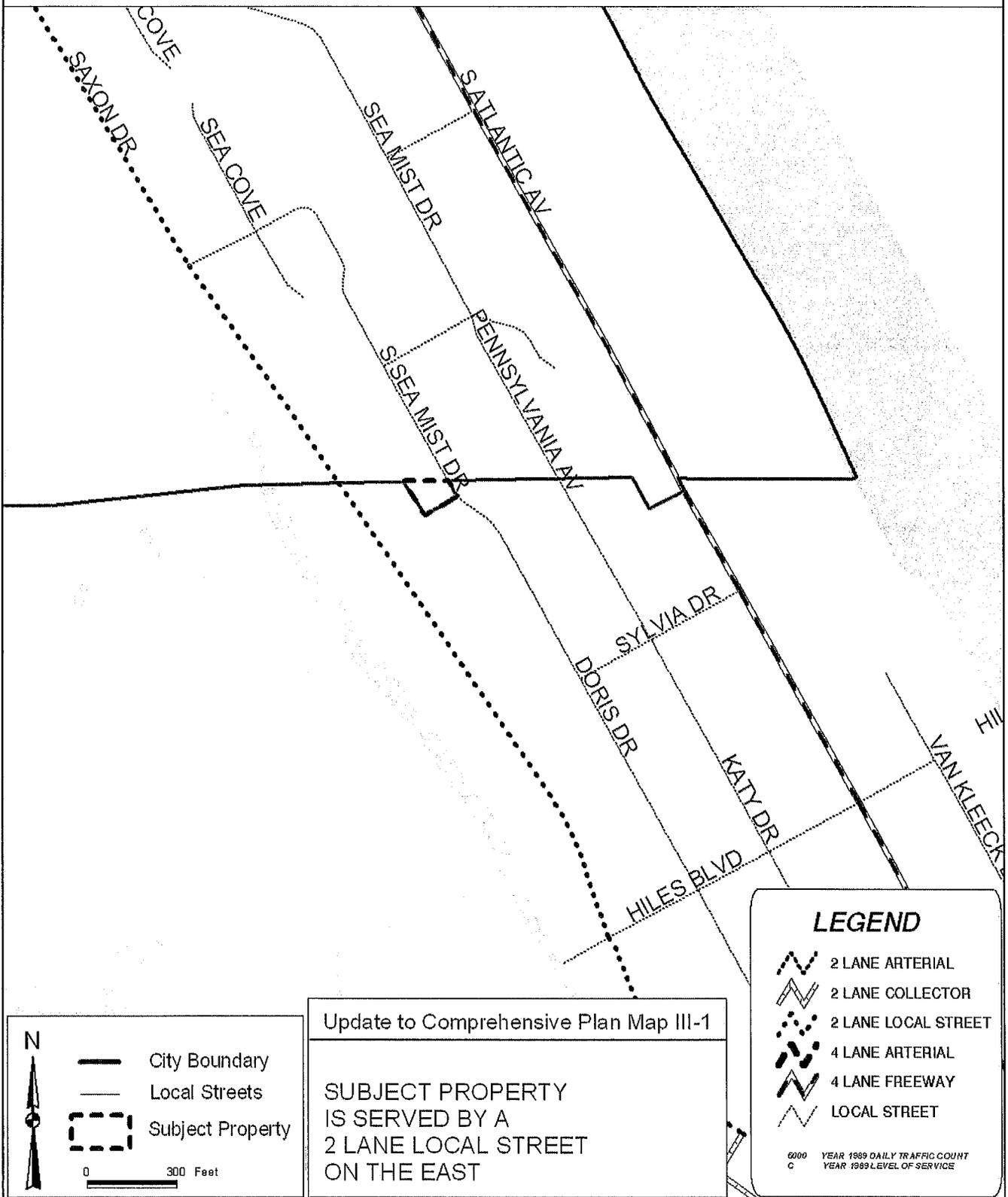
Flood Prone Areas

A-03-11



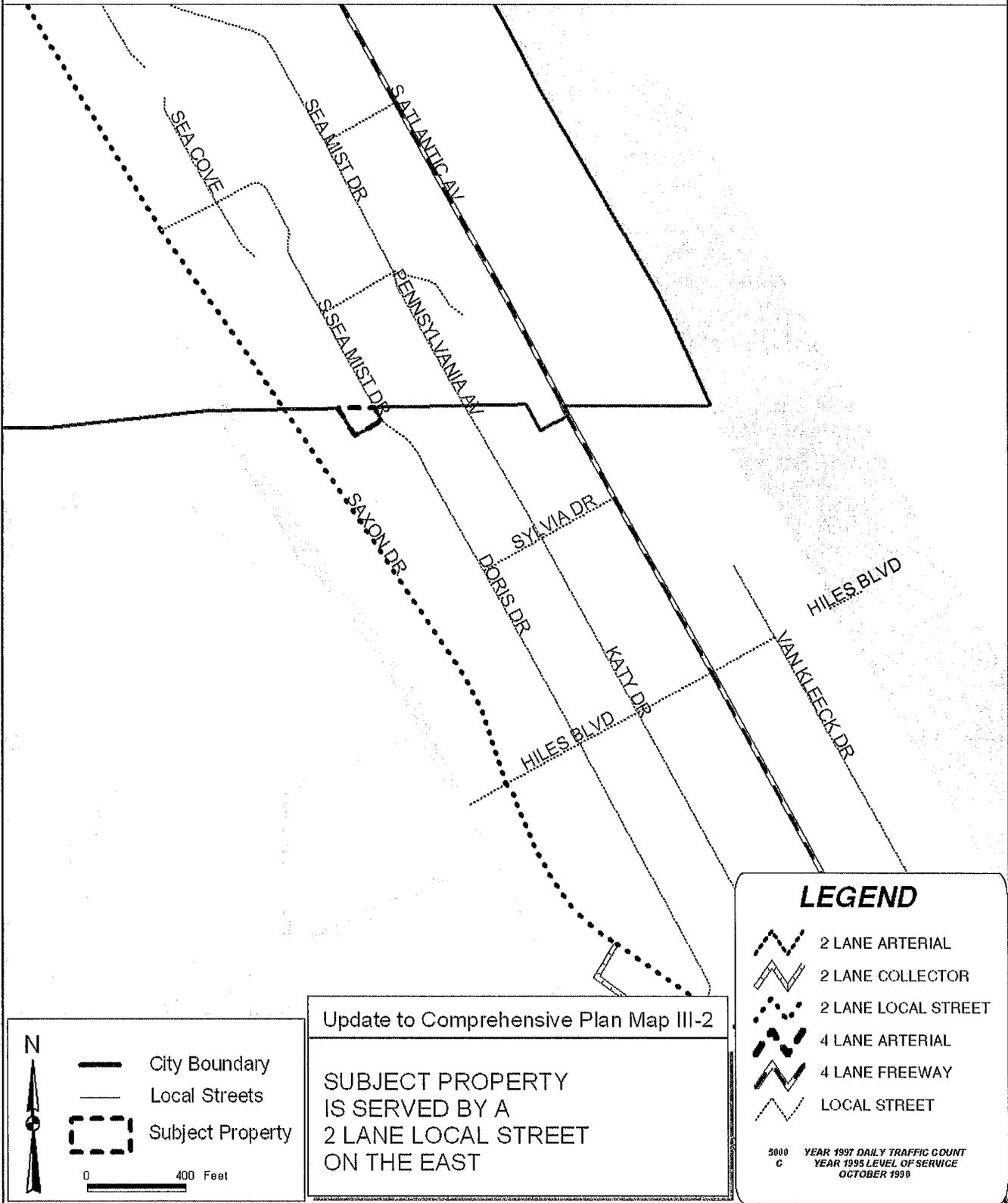
1989 Traffic Conditions

A-03-11



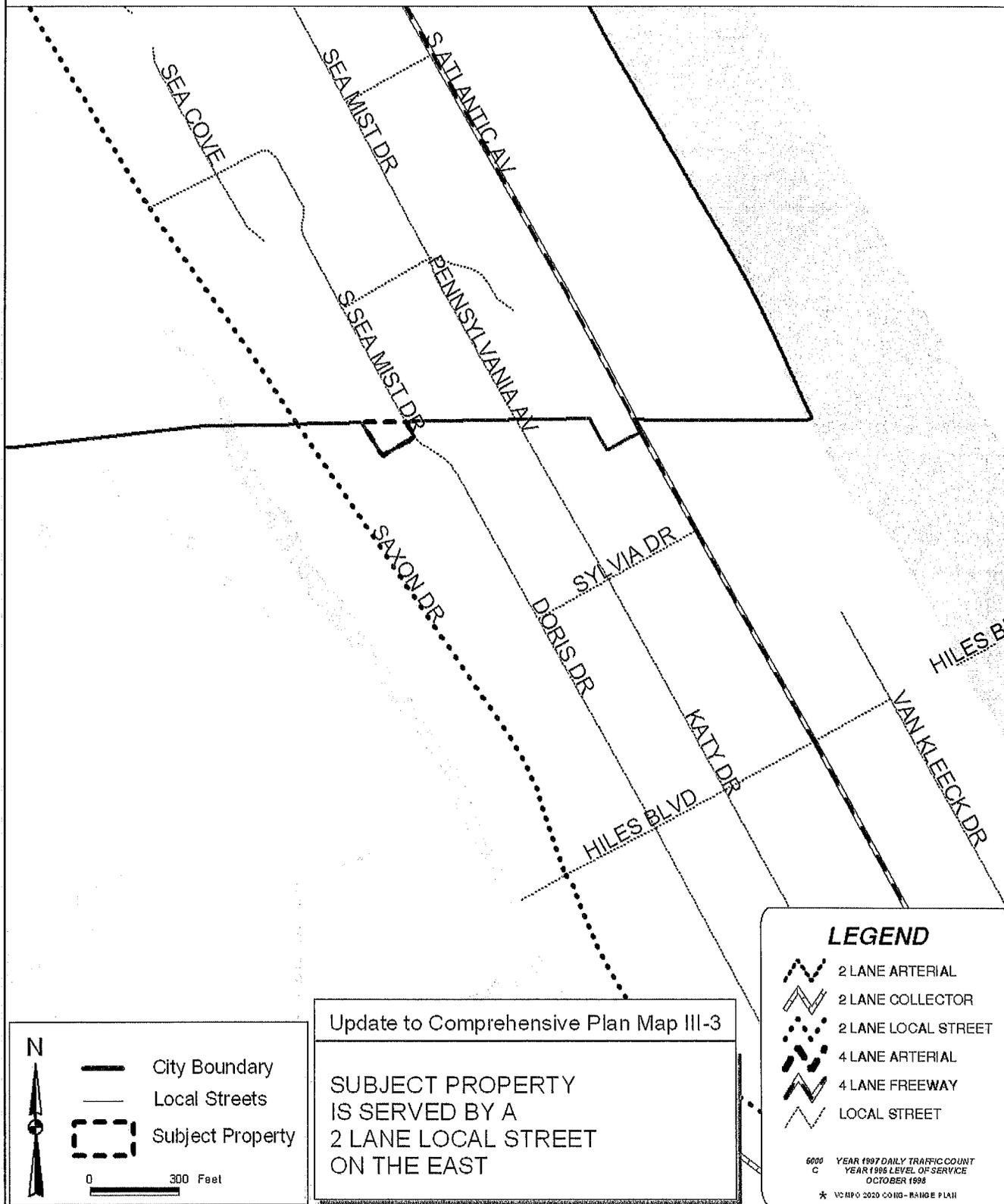
1995 Traffic Conditions

A-03-11



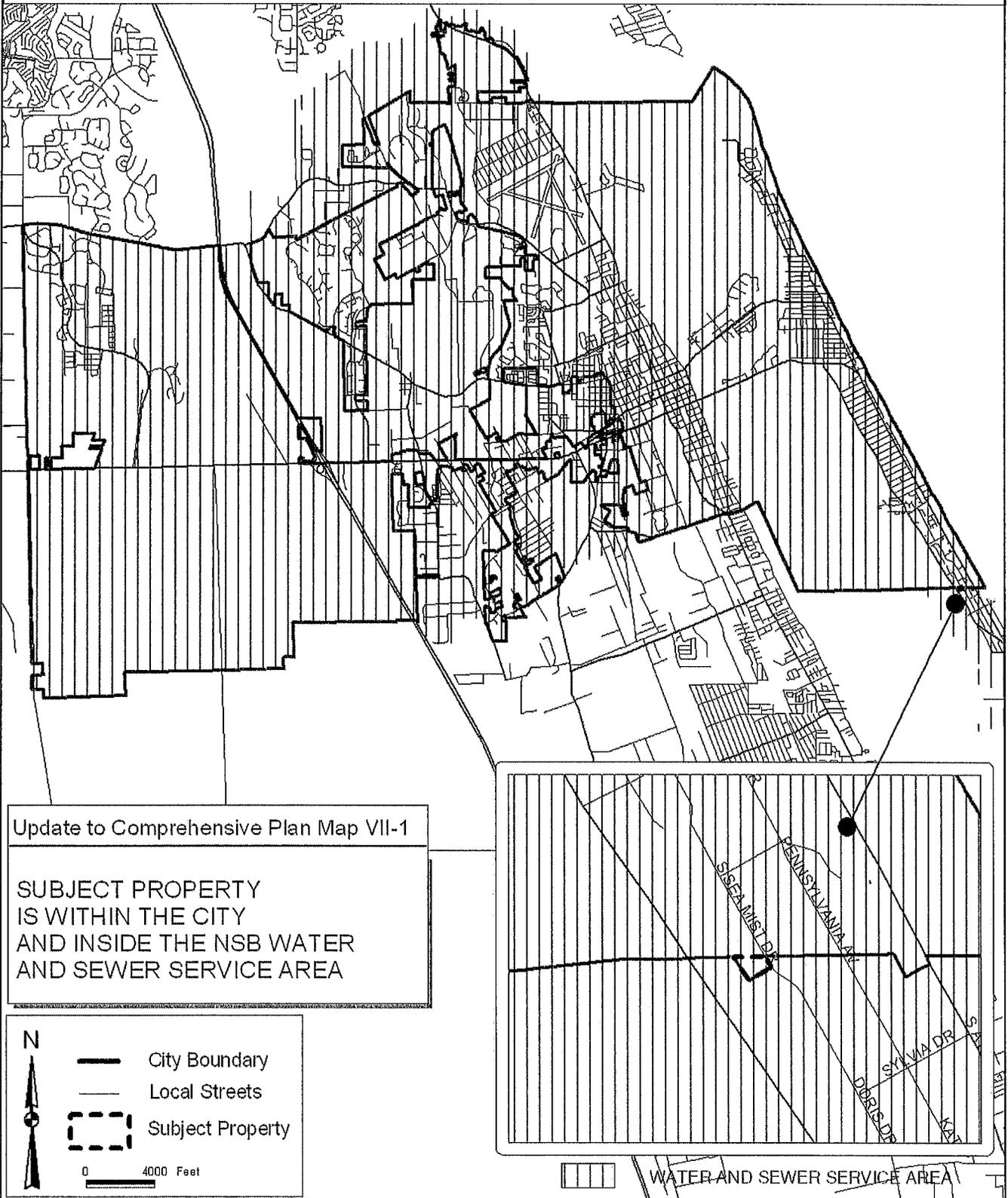
2010 Traffic Conditions

A-03-11



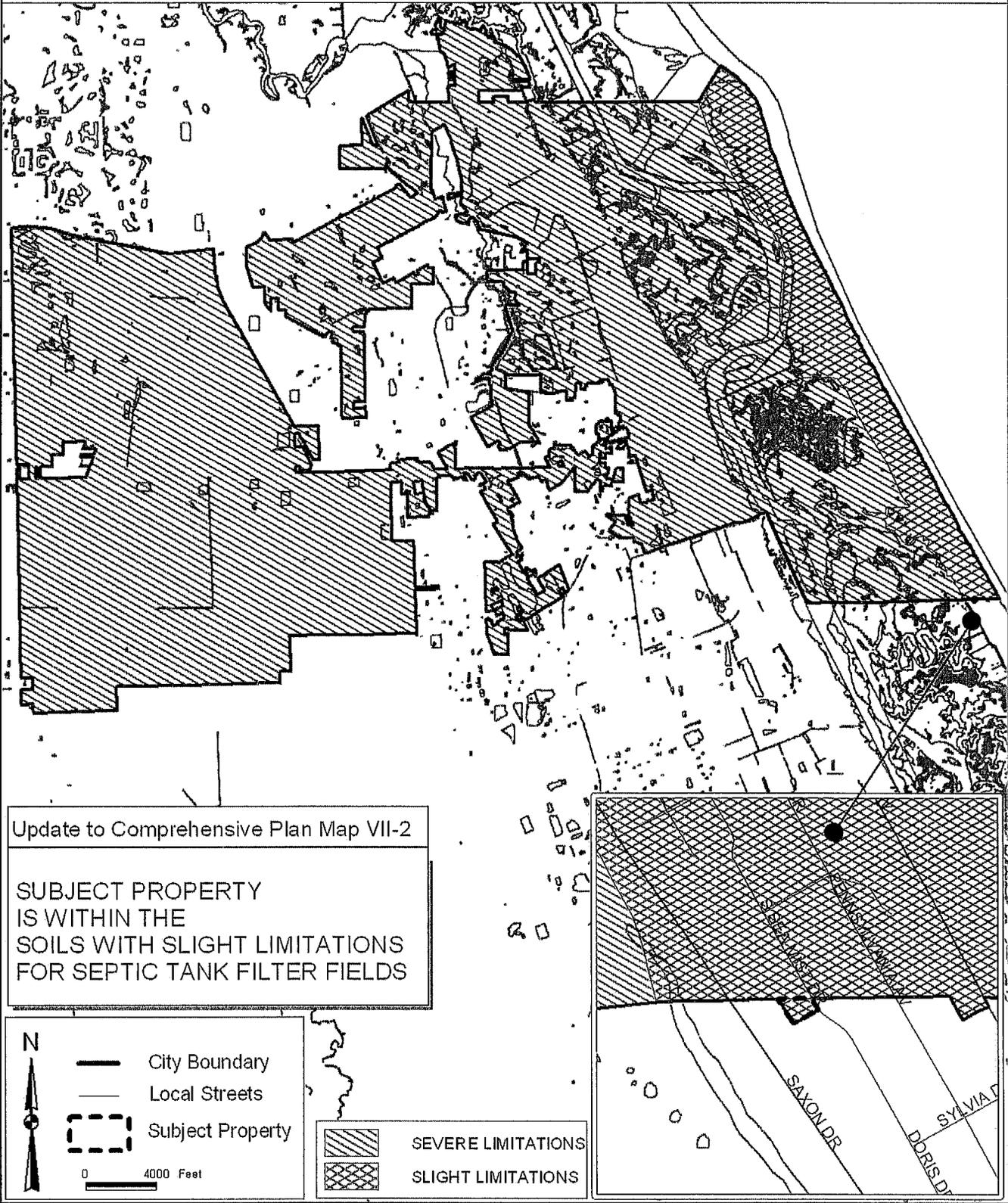
Water & Sewer Service Area

A-03-11



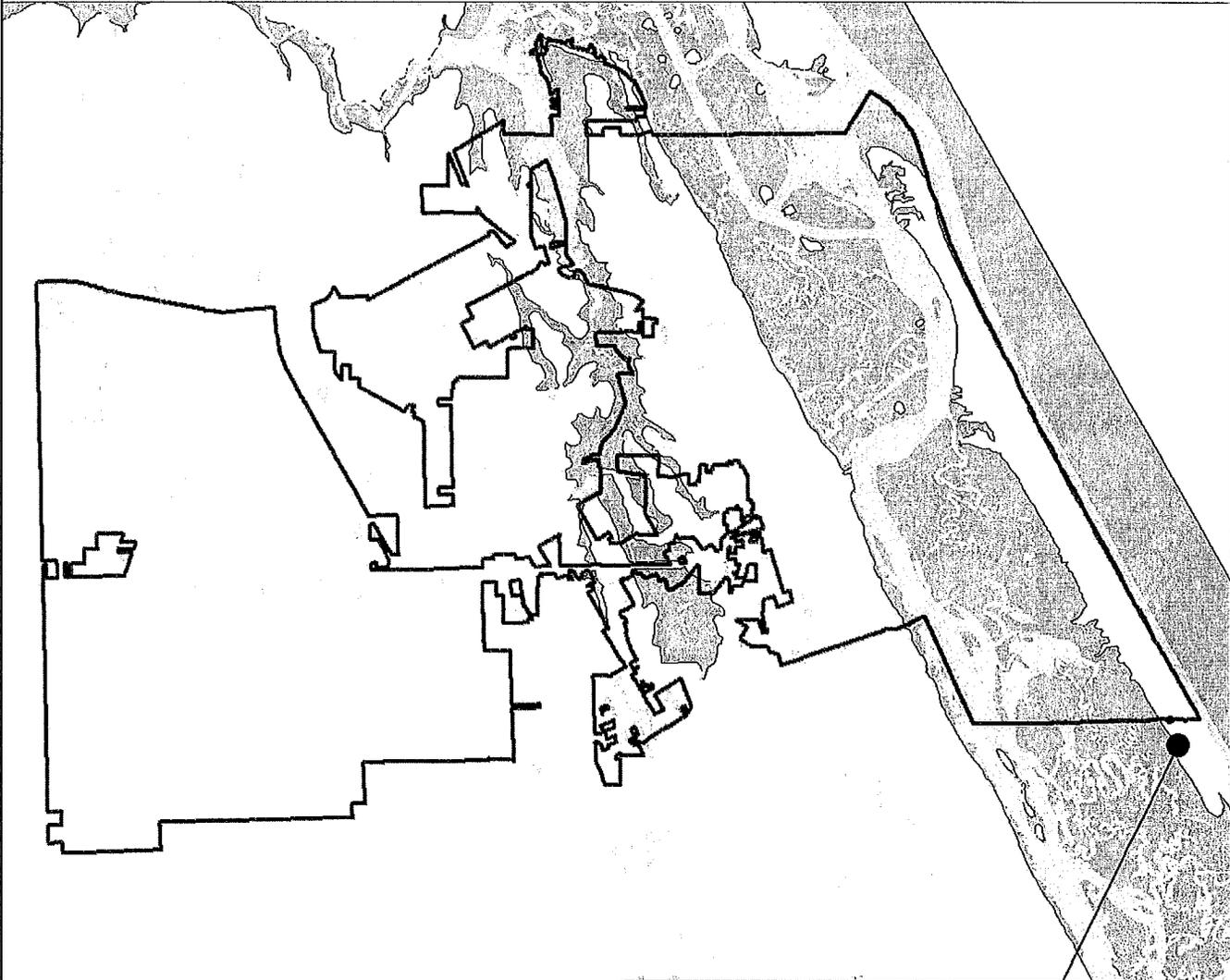
Soil Limitation for Septic Systems

A-03-11



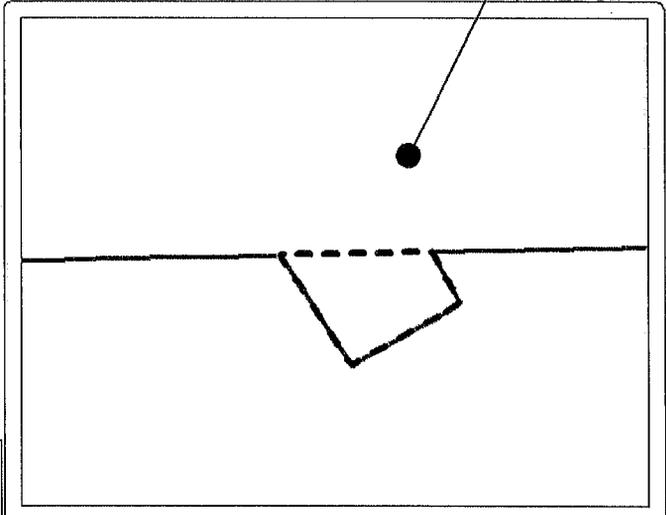
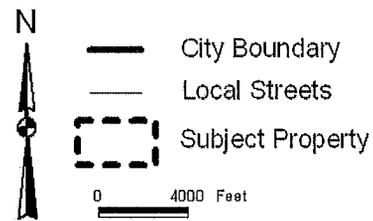
Coastal High Hazard Areas

A-03-11



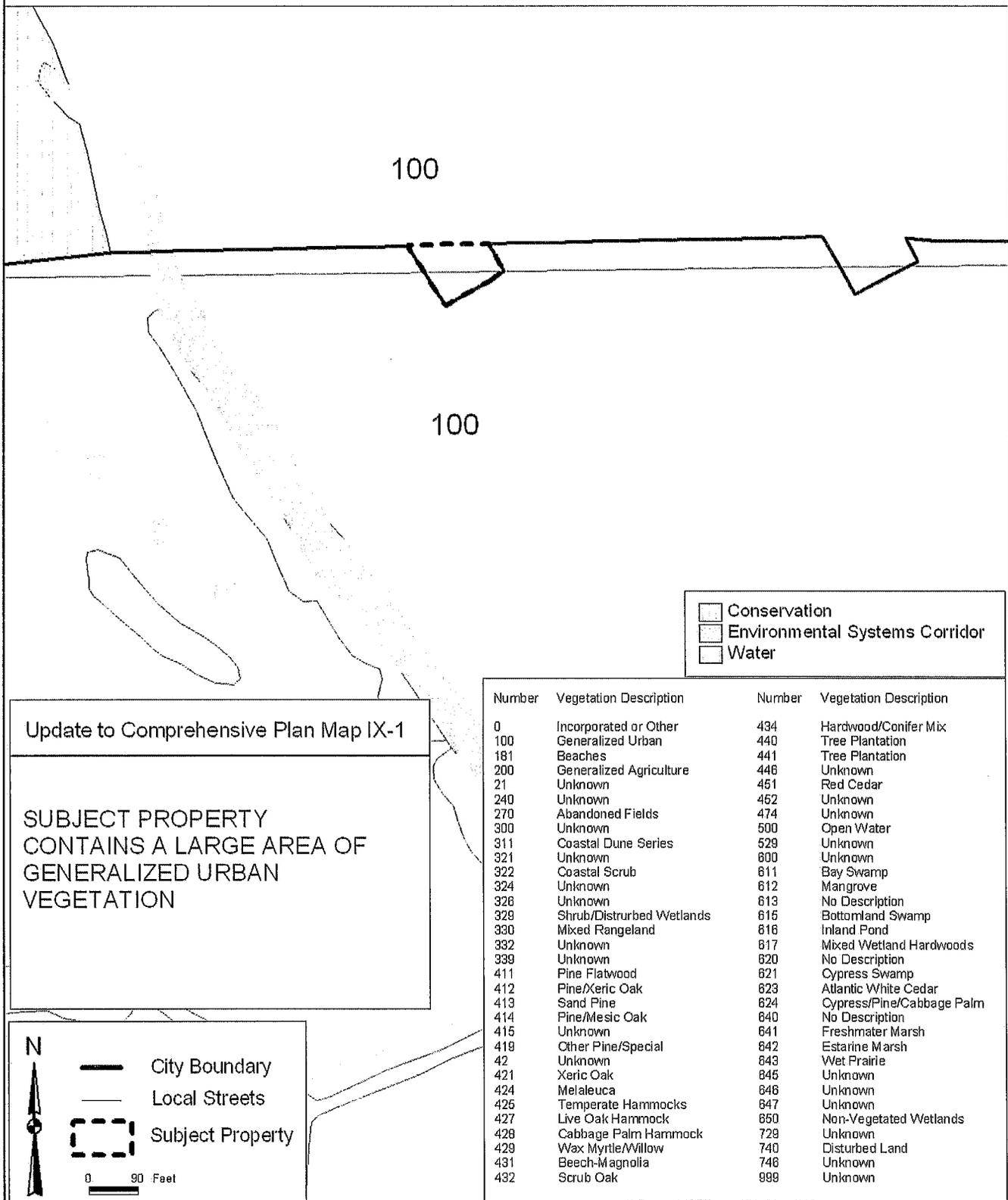
Update to Comprehensive Plan Map VII-4

SUBJECT PROPERTY
IS NOT WITHIN THE
COASTAL HIGH HAZARD AREA



Natural Resources

A-03-11



Update to Comprehensive Plan Map IX-1

SUBJECT PROPERTY CONTAINS A LARGE AREA OF GENERALIZED URBAN VEGETATION

- Conservation
- Environmental Systems Corridor
- Water

Number	Vegetation Description	Number	Vegetation Description
0	Incorporated or Other	434	Hardwood/Conifer Mix
100	Generalized Urban	440	Tree Plantation
181	Beaches	441	Tree Plantation
200	Generalized Agriculture	446	Unknown
21	Unknown	451	Red Cedar
240	Unknown	452	Unknown
270	Abandoned Fields	474	Unknown
300	Unknown	500	Open Water
311	Coastal Dune Series	529	Unknown
321	Unknown	600	Unknown
322	Coastal Scrub	611	Bay Swamp
324	Unknown	612	Mangrove
326	Unknown	613	No Description
329	Shrub/Disturbed Wetlands	615	Bottomland Swamp
330	Mixed Rangeland	616	Inland Pond
332	Unknown	617	Mixed Wetland Hardwoods
339	Unknown	620	No Description
411	Pine Flatwood	621	Cypress Swamp
412	Pine/Xeric Oak	623	Atlantic White Cedar
413	Sand Pine	624	Cypress/Pine/Cabbage Palm
414	Pine/Mesic Oak	640	No Description
415	Unknown	641	Freshwater Marsh
418	Other Pine/Special	642	Estuarine Marsh
42	Unknown	643	Wet Prairie
421	Xeric Oak	645	Unknown
424	Melaleuca	646	Unknown
425	Temperate Hammocks	647	Unknown
427	Live Oak Hammock	650	Non-Vegetated Wetlands
428	Cabbage Palm Hammock	729	Unknown
429	Wax Myrtle/Willow	740	Disturbed Land
431	Beech-Magnolia	746	Unknown
432	Scrub Oak	999	Unknown

N

City Boundary

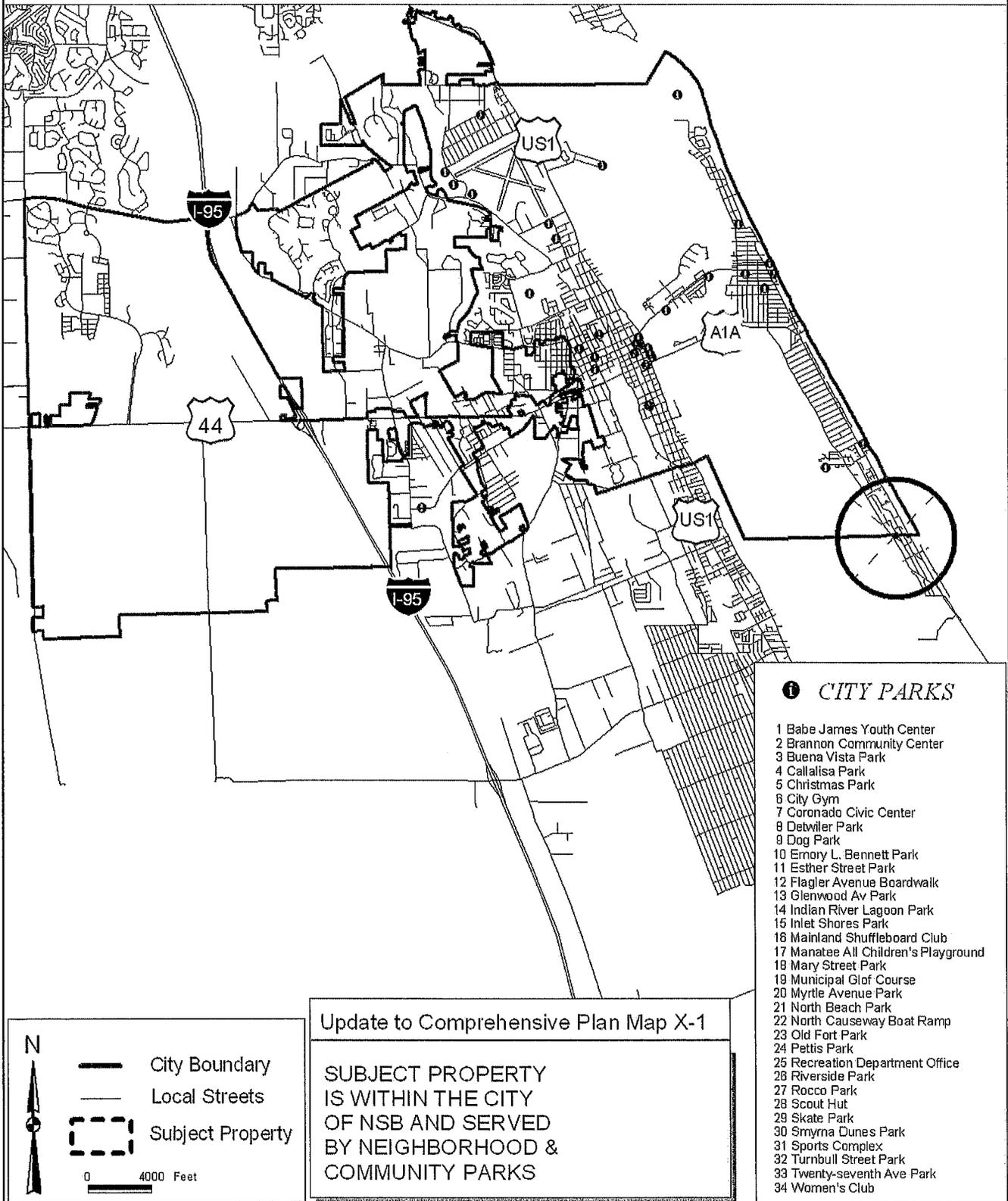
Local Streets

Subject Property

0 90 Feet

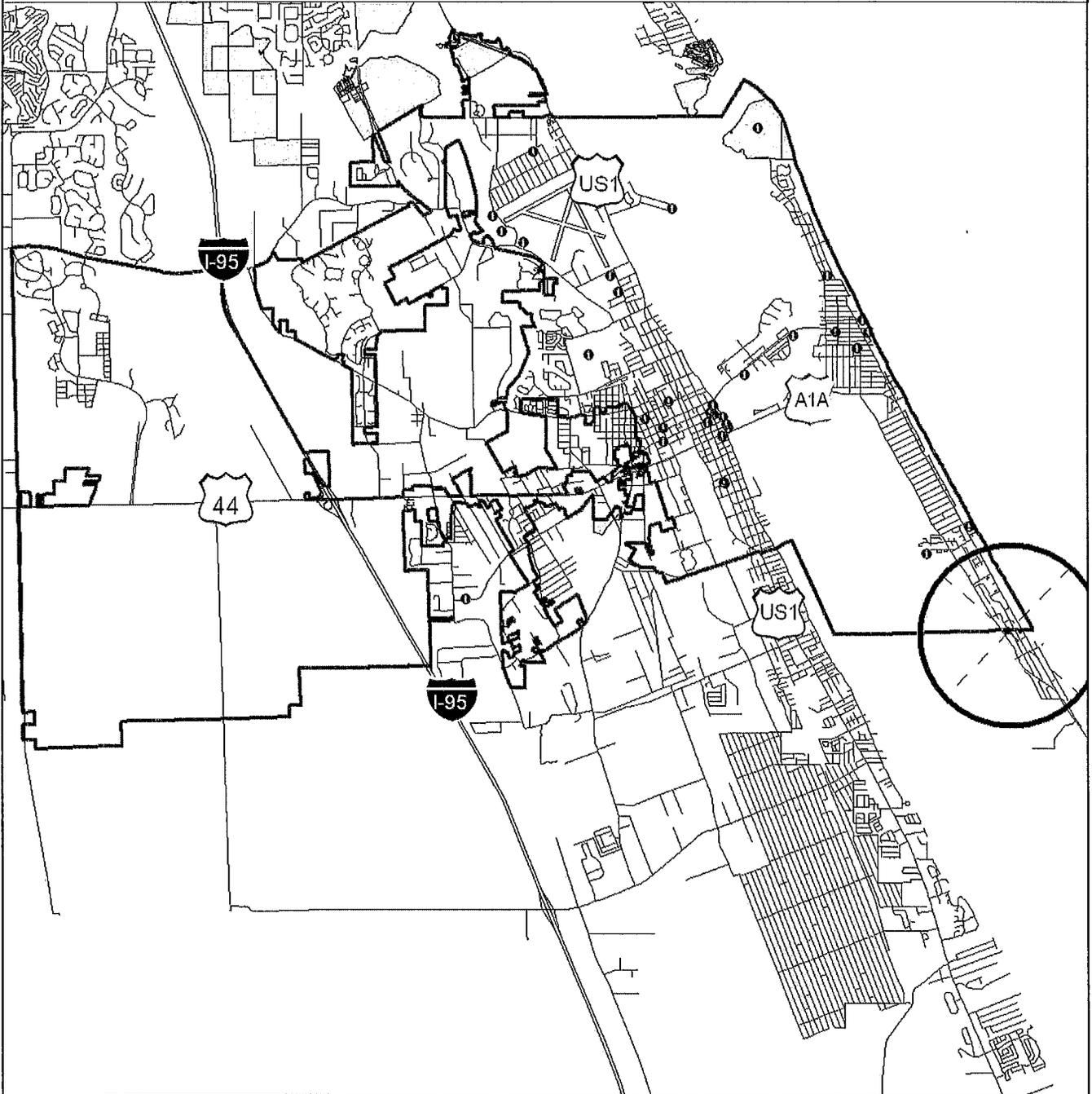
Neighborhood & Community Parks

A-03-11



Regional Parks & Special Use Facilities

A-03-11



N

City Boundary
Local Streets
Subject Property

0 4000 Feet

Update to Comprehensive Plan Map X-2

SUBJECT PROPERTY IS WITHIN THE CITY OF NSB AND SERVED BY REGIONAL PARKS & SPECIAL USE FACILITIES

- REGIONAL:
 - 1 CANAVERAL SEASHORE PARK
 - 2 SMYRNA DUNES STATE PARK
- SPECIAL USE FACILITIES:
 - 3 AIRPORT WAYSIDE PARK
 - 4 CANAL STREET PARK
 - 5 CANAL STREET RECREATION CENTER
 - 6 CORONADO CIVIC CENTER
 - 7 HIDDEN LAKES GOLF COURSE
 - 8 FLAGLER AVENUE BOARDWALK
 - 9 MUNICIPAL GOLF COURSE
 - 10 N CAUSEWAY MUNICIPAL BOAT RAMPS
 - 11 OLD FORT PARK

A-3-11: 4428 DORIS DRIVE
APRIL 4, 2011 PLANNING AND ZONING BOARD

CURRENT
CITY BOUNDARY

SUBJECT
PROPERTY



Interoffice Memorandum City of New Smyrna Beach

To: New Smyrna Beach Planning and Zoning Board Members
From: Gail Henrikson, AICP, Planning Manager 
Subject: ZT-5-11: SUBDIVISION REGULATIONS
Date: March 23, 2011

Staff is requesting that this item be continued until the May 2, 2011 Planning and Zoning Board meeting. Staff is requesting the continuance for two reasons:

1. The scope of the proposed revisions has increased. The original scope proposed to eliminate the sketch plat requirement, and to rework the preliminary and final plat procedures. However, in during the process of preparing the report, staff determined that additional streamlining could occur if all of the regulations in the LDR relating to subdivisions were located in one section. Therefore, staff is requesting additional time to consolidate and review the applicability of all regulations relating to the subdivision of land.
2. Because the proposed revisions will be significant, staff would also like to have the Volusia County Association for Responsible Development (VCARD) send the proposed changes out to its membership for comment. Continuing this item until the May 2nd meeting will allow this to occur.

1 CITY OF NEW SMYRNA BEACH – DEVELOPMENT SERVICES
2 **Z-1-11: FLAGLER AVENUE BOARDWALK**
3 APRIL 4, 2011
4

5 **I. Background**

- 6
- 7 A. **Applicant and Property Owner:** The City of New Smyrna Beach, 210 Sams
8 Avenue, New Smyrna Beach, Florida, 32168,
9
- 10 B. **Request:** Rezoning
11 a. **From:** B-4(4), Ocean Commercial
12 b. **To:** R, Recreation
13
- 14 C. **Tax ID #s:** 7409-07-00-0010 and 7409-06-09-0090
15
- 16 D. **Site Information:** The subject property consists of approximately 1.8 acres and
17 is generally located south of Flagler Avenue, west of the Atlantic Ocean, north of
18 Columbus Avenue and east of South Atlantic Avenue (see location map attached
19 as **Exhibit A**).
20

21 **II. Findings**

- 22 A. The subject property is currently zoned B-4(4), Ocean Commercial (**Exhibit B**).
23 The underlying Future Land Use designation is Public Grounds and Buildings.
24 The property is currently developed with a shell parking lot; covered boardwalk;
25 restroom facilities; a storage building; and a building housing Volusia County
26 lifeguards. The upland improvements are protected by a seawall.
27
- 28 B. The Community Redevelopment Agency (CRA) is in the process of designing
29 and permitting improvements to the projects. These improvements include
30 redesign of the parking lot; repair of the existing seawall; renovations to the
31 covered boardwalk and demolition of the existing restroom and storage buildings
32 and construction of new restroom facilities. Construction on these improvements
33 is scheduled to begin in November 2011.
34
- 35 C. The B-4 zoning district is a commercial zoning designation. It allows multi-family
36 residential, transient lodging (hotels/motels), restaurants and real estate offices.
37 Public improvements, or buildings owned and maintained by government entities
38 are not permitted in this zoning district. Staff is unsure why the property was
39 given a commercial zoning designation given that the existing on-site
40 improvements have been in place for several decades. However, in order to
41 ensure that the new improvements will be consistent with the zoning and future
42 land use designations, the City is requesting that the zoning be changed from B-
43 4(4) to R, Recreation. A map showing the proposed zoning change is attached
44 as **Exhibit C**. Descriptions of the existing and proposed zoning district
45 requirements are attached as **Exhibits D** and **E**.
46
- 47 D. Section 305.01 of the City's *Land Development Regulations* requires City
48 planning staff to review a rezoning request for consistency with the City
E-1

1 *Comprehensive Plan and Land Development Regulations* and to prepare a
2 written report recommending either approval or denial of the request. The
3 Planning and Zoning Board is required to make a recommendation to the City
4 Commission to either approve or deny the application.
5

- 6 E. The subject property has a Future Land Use (FLU) designation of Public
7 Grounds and Buildings. The surrounding future land use designations, existing
8 uses and zoning are as follows:
9

10 **North**

11 Future Land Use: Commercial
12 Existing Land Use: Restaurant and retail
13 Zoning: B-4(4), Ocean Commercial
14

15 **South**

16 Future Land Use: Commercial
17 Existing Land Use: Motel
18 Zoning: B-4(4), Ocean Commercial
19

20 **East**

21 Future Land Use: Conservation
22 Existing Land Use: Atlantic Ocean
23 Zoning: Conservation
24

25 **West**

26 Future Land Use: Commercial
27 Existing Land Use: Retail, restaurant, parking lot
28 Zoning: MU, Mixed Use
29

- 30 F. The subject property has an existing Future Land Use designation of Public
31 Grounds and Buildings. According to the *Comprehensive Plan*, this future land
32 use designation includes facilities such as City Hall, Riverside Park, and other
33 publicly owned buildings and parks. The proposed zoning of Recreation would
34 be consistent with the existing Future Land Use Designation.
35

- 36 G. If approved, the proposed rezoning would make the existing and uses consistent
37 with the underlying future land use designation. Because no changes are
38 proposed to the types of uses that exist on the property, staff did not prepare an
39 impact analysis to determine the impacts from the proposed rezoning as the
40 impacts would not change.
41

42 **Recommendation**

43 Staff recommends that the Planning and Zoning Board recommend the City Commission
44 **approve** the request to rezone the property from B-4(4), Ocean Commercial to R, Recreation.
45

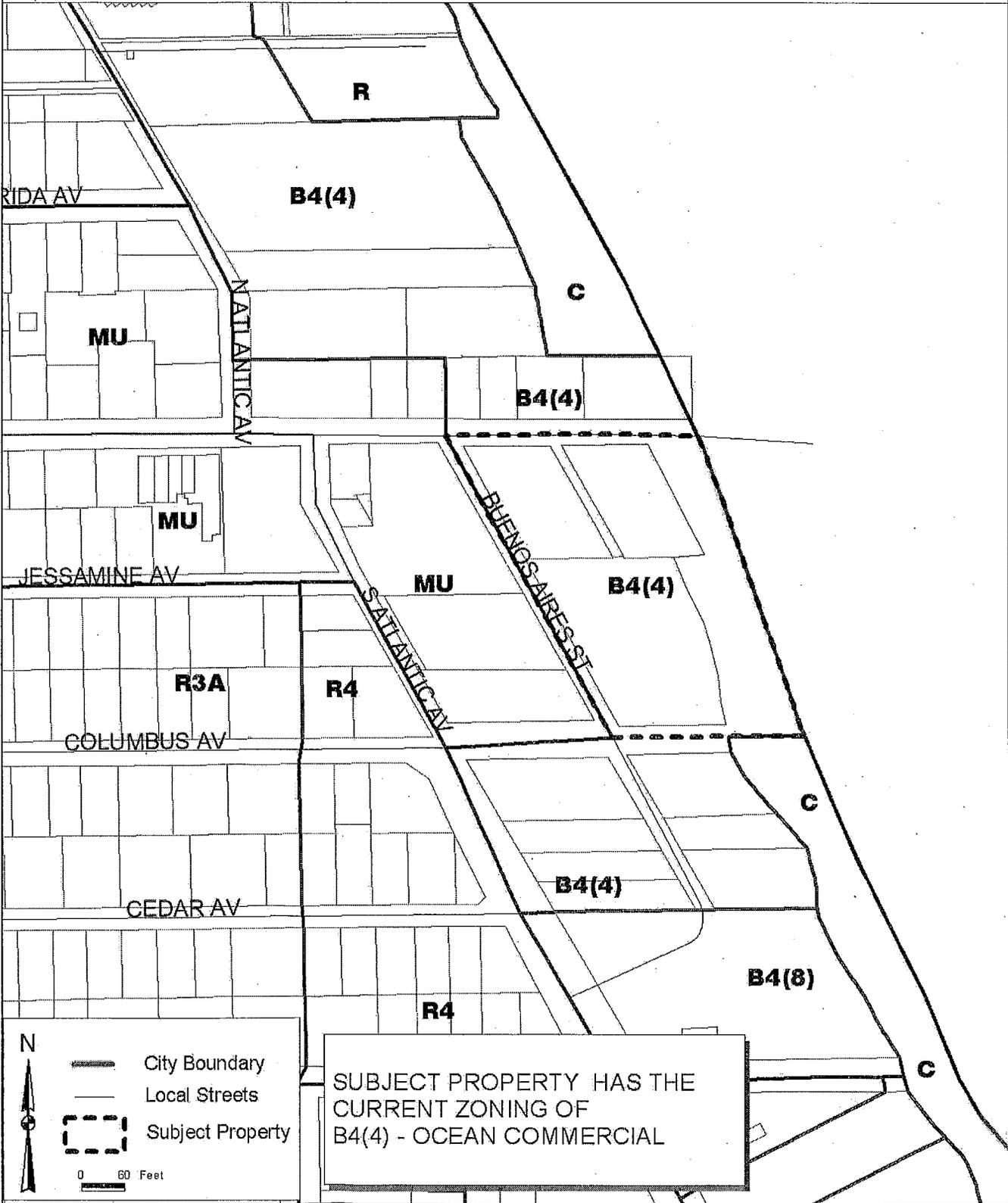
Location Map

Z-01-11



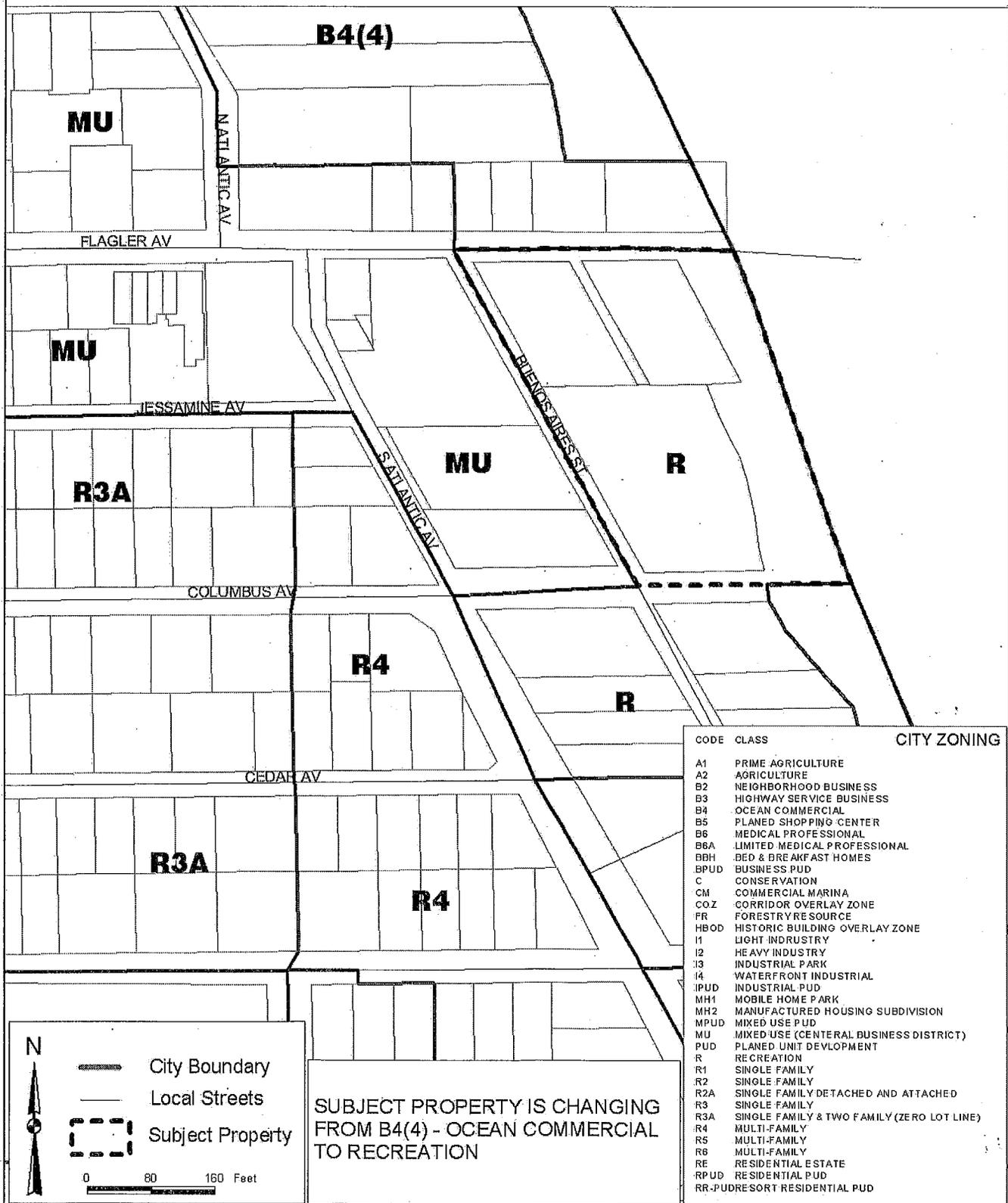
Existing Zoning

Z-01-11



Proposed Zoning

Z-01-11



B-4 OCEAN COMMERCIAL DISTRICT

Intent:

The Ocean Commercial District provides oceanfront living accommodations and related uses for visitors and permanent residents.

Permitted Uses:

Multifamily dwelling units
Parking Garages
Real Estate Offices
Restaurants, Type "A", "B", "C" & "D"
Transient lodging:
Maximum size 1200 s/f of interior living space. **Ord.#72-08**

Permitted Accessory Uses:

All those uses customarily associated with the permitted principal uses, including but not limited to central and sales offices, confectionery shops, gift shops, newsstands, nightclubs with bars, or bars separately, and snack bars designed to serve guests of the hotel or motel when accessible only from an interior court lobby, or corridor.

On-Site Temporary Sales and Brokerage Offices and Display Models for residential dwelling units that are newly constructed, that have never been occupied for residential purposes, and have never been sold.

On-Site Temporary Sales and Brokerage Structures to be used as a sales office for dwelling units planned to be constructed or under construction.

The following limitations and regulations shall be placed on the aforescribed On-Site Sales and Brokerage Offices and Temporary Sales and Brokerage Structures:

- (1) said Sales and Brokerage Offices shall only be used to promote the sales of newly constructed dwelling units (to wit: units that have never previously been occupied for residential purposes or never sold by the developer) and part of an approved site plan located on the same site as the office; and
- (2) said Sales and Brokerage Offices shall only be used to sell residential dwelling units located on the same site as the sales office; and

EXHIBIT D (CONT'D)

- (3) said Sales and Brokerage Offices may only have ONE sign not to exceed TEN (10) square feet in area in addition to the allowable signs indicated in Section 604.14 of this LDR; and
- (4) said Sales and Brokerage Offices shall be allowed within a development upon issuance of a Certificate of Occupancy for the offices by the Development Division Director or his/her designee and said sales office must be removed from the site upon the issuance of a Certificate of Occupancy for the last building to be constructed within a development; and
- (5) the following additional limitations and regulations shall be placed on the aforescribed On-site Temporary Sales and Brokerage Structures:
 - (a) said Sales and Brokerage Structures shall have a minimum floor area of THREE HUNDRED (300) square feet and shall not have been formerly a travel trailer, camper, recreational vehicle or tractor trailer-trailer; and
 - (b) the perimeter of the area between the ground and floor level of the Sales and Brokerage Structures shall be enclosed with ornamental skirting; and
 - (c) said Sales and Brokerage Structures must be located on the site such that it meets the minimum setback requirements; and
 - (d) a minimum of THREE (3) parking spaces must be provided for the Sales and Brokerage Structures or the minimum number of parking spaces required for an office, whichever is greater. Said parking spaces and access aisle must meet the requirements of Section 604.10 within this LDR except an alternate surfacing agent, such as shell or mulch, may be used; and
 - (e) a minimum TEN foot (10') wide and SIX foot (6') high natural vegetative buffer shall be maintained along the front, side and rear of the Sales and Brokerage Structure, parking area and any accessory structures. Should no buffer exist, a TEN foot (10') wide buffer, meeting the requirements of Section 604.05 E. (1) must be planted along the front, sides and rear of the Sales and Brokerage Structure, parking area and accessory structures. Buffer areas are not required to be irrigated with an underground automatic system but must be regularly irrigated to maintain the vegetation; and

EXHIBIT D (CONT'D)

- (f) no Sales and Brokerage Structure shall be allowed on a site until all permits as required by all Federal, State, and County agencies have been secured; and the site plan for the proposed permanent use has been approved; and a Class I Site Plan has been approved for the use of a temporary sales and brokerage structure; (Ord. 74-91) and
- (g) said Sales and Brokerage Structures shall not remain on a site longer than ONE (1) year from the date a Certificate of Occupancy is issued for said sales office or until a Certificate of Occupancy is issued for the first building within the development, whichever comes first. Upon removal of the Sales and Brokerage Structure, the developer may maintain an On-Site Temporary Sales and Brokerage Office within the dwelling unit(s). (Ord. 58-91)

Special Exceptions:

[Ord. No. 22-93]

Barber and Beauty Shops

Dimensional Requirements:

Minimum Lot Size:

Area	5000	feet
Depth	100	feet
Width	50	feet

Minimum Building Separation:

Where two or more buildings are built on one parcel, there shall be a separation of at least 20 feet between the buildings, plus 1.5 additional feet for each 5 feet of building height over 20 feet. When buildings vary in height, said distance to be based on the tallest building. (Example: if there is a 20 foot tall building and a 25 foot tall building, the separation must be 21.5 feet).

Minimum Yard Size:

Front yard: 30 feet, or as required per Section 504.01M. of this LDR.

Side yard: Lots with a street frontage of 100 feet or less, the side yard shall be 10 feet plus 3 additional feet for each story over 2 stories. Lots with a street frontage of over 100 feet, the side yard shall be 10 feet plus 5 additional feet for each story over 2 stories. In no event, shall a side yard be required to exceed 45 feet.

EXHIBIT D (CONT'D)

Rear yard: 25 feet, plus 3 additional feet for each story over 2 stories.

[Revised 07-20-93]

Minimum Floor Area:

Minimum floor area of an apartment or condominium dwelling unit shall be:

450 square feet of livable area for a one (1) bedroom unit;

550 square feet of livable area for a two (2) bedroom unit;

700 square feet of livable area for a three (3) bedroom unit

Minimum floor area of a rented sleeping room in a hotel, motel, or rooming house, shall be 150 square feet.

Maximum Unit Density for All Dwelling Units:

Twelve (12) units per acre. No less than three thousand six hundred thirty (3,630) square feet of lot area for each dwelling unit.

Maximum Unit Density for Transient Lodging:

Hospitality future land use designation: 75 units per acre.

Activity Center future land use designation: 40 units per acre.

Marina future land use designation: 24 units per acre. Density may be increased up to 48 units per acre if the following conditions are met:

- (1) A minimum of 20% of the total usable land area is preserved by deed or easement for public access and/or public recreation; and
- (2) The public use area shall comprise at least 40% of the total linear footage of shoreline available to the property.

All other future land use designations permitting transient lodging units: Twenty-four (24) units per acre. **Ord. #10-11**

Maximum Building Length and Width:

Building facades parallel to the street upon which the building fronts, or parallel to the oceanfront, shall not exceed 150 feet in length. Also, no building, constructed after the effective date of this LDR, shall have a dimension which exceeds 200 feet in length or width.

EXHIBIT D (CONT'D)

Maximum Principal Building Height:

Four (4) stories.
Maximum building height - 45 feet, or 52 feet if a pitched roof or other architectural features are used to articulate the roof line of the building. Habitable space cannot extend more than 45 feet in height.

Building heights on properties already developed with a building taller than four stories in height at the effective date of this ordinance shall be allowed to rebuild at the same number of stories and building height as the previously existing building. This shall be designated by affixing a number after the zoning classification, which will indicate the maximum number of stories allowed. These designations shall be as follows:

- B-4 (5) - Five (5) stories - 55 feet
- B-4 (6) - Six (6) stories - 66 feet
- B-4 (7) - Seven (7) stories - 77 feet
- B-4 (8) - Eight (8) stories - 88 feet
- B-4 (9) - Nine (9) stories, provided all of the first story of the building, or that portion of the first story of a building containing nine (9) stories, is used for off-street parking, excluding elevator shafts; maintenance, and utility equipment rooms; laundry rooms; and storage rooms restricted to owner or tenant usage. Maximum building height with garage parking - 95 feet.

Ord.#68-08

Maximum Lot Coverage by All Buildings:

<u>Height of Buildings</u> <u>Stories</u>	<u>Maximum Percentage of</u> <u>Coverage includes all</u> <u>Solid Roofed Areas</u>
1	40
2	40
3	35
4	30
5	30
6	21
7	18
8	15
9	15

Ord.# 68-08

Maximum Impervious Lot Coverage:

The total area of the property that may be covered with impervious material is 75 percent (75%).

EXHIBIT D (CONT'D)

Through Lots:

Shall provide a thirty (30) foot front yard on each street or as required per Section 504.01M. of this LDR.

Atypical Lots:

Visibility triangles shall be established at the rear corners of an atypical lot. The visibility triangles shall be those areas formed by a line connecting the points 30 feet from the intersection of the side and rear lot line, along the side lot line, and 30 feet from the intersection of the side and rear lot line, along the rear lot line; no principal or accessory structure having a height over 4 feet, except incidental uses, shall protrude into the area of a visibility triangle.

Off-Street Parking and Loading

Off-street parking and loading space shall be provided as required in this LDR. Off-street parking areas may be located within ten (10) feet of a side or front lot line where such lot lines are landscaped to screen the vehicles as required in this LDR and the parking lot is landscaped as required in this LDR.

Covered Off-Street Garage Parking:

Covered off-street garage parking may be provided either within or outside of the principal building(s). If the entire first story of the principal building(s) is used only for covered off-street garage parking, the principal building(s) may be five (5) stories but shall not exceed a maximum building height of 60 feet. **Ord.# 68-08**

If covered off-street garage parking is provided outside of the principal building(s), it may be considered open landscaped area if it has a landscaped periphery and the roof is used for recreation purposes. Covered off-street garage parking located outside the outer wall of the principal building(s) and considered open landscaped area is not included in the maximum percentage lot coverage calculation for solid roofed areas. Landscaping shall be provided as required in this LDR.

Building Projections:

There shall be no building projections into any required yard except for eaves with a maximum projection of 42 inches, but no closer than 5 feet to a property line; and those structures allowed in Section 804.03.

Visibility at Intersections:

Visibility at intersections shall be provided as required in this LDR.

EXHIBIT D (CONT'D)

Buffers:

Landscaped buffer area(s) as defined in this LDR, shall be required at property lines as follows:

- (1) all front property lines; and
- (2) along side or rear lot line abutting a residentially zoned lot.

Landscaping:

A landscaping plan is required as described in this LDR.

Deed Covenants:

The developer shall supply in writing all covenants and restrictions that will govern the maintenance of the open space and other aspects of the project that are necessary for welfare of the project and consistent with the best interest of New Smyrna Beach. Such legal instruments shall be submitted with the site plan and approved by the City Legal Department prior to issuance of a building permit by the Chief Building Official.

Use of Recreational Amenities and/or Commonly Owned Facilities Incidental to Commercial and Residential Living Accommodations:

Use of all recreational amenities and/or commonly-owned facilities by the owner, the owner's guests, leasees or invitees, shall be limited to that period of time concurrent with the owner's exclusive right of use, possession and occupancy of the residential unit.

It shall be unlawful for any person to represent by contract for purchase, promotional material, advertising or any other public statement that amenities and/or commonly-owned facilities may be used contrary to the requirements of the New Smyrna Beach Land Development Regulations.

This sub-section does not prohibit the establishment of permitted accessory uses at commonly-owned facilities if such uses are in compliance with all the other requisites required by the New Smyrna Beach Land Development Regulations.

RECREATION DISTRICT

Intent:

The Recreation District is intended to limit the use of specified properties to non-commercial (except for golf courses) and indoor and outdoor recreation for the general public.

Permitted Uses:

Active Recreations Areas
Boat Ramps/Launches
Bridle Paths
Golf Courses
Gymnasium
Parks
Passive Recreation Areas
Pavilion/Amphitheater
Playgrounds
Public Buildings
Public Stadium
Recreation Club Buildings and Activities
Recreational Complex
Skateboard ramps
Swimming Pools, Public
Tennis, Basketball and other courts for sports
Trails for jogging/walking
Utility Facilities

Permitted Accessory Uses:

Caretaker Home
Concession Building
Maintenance Buildings
Mobile Homes for Security, Caretaker, or Office purposes on lands owned or operated by
the City of New Smyrna Beach, Volusia County, State of Florida, U. S. Government, or other governmental body (Ord. 20-91)
Restroom/Locker Room Facility Buildings

Special Exceptions

Facilities owned and/or operated by federal, state, county or municipal government except country clubs and golf courses **Ord.#08-09**
Restaurants, Lounges and Pro Shops associated with a golf course

Prohibited Uses

Commercial Recreation Establishments not associated with a golf course

Dimensional Requirements:

Minimum Lot Size:

Area:	1,000 Square Feet*
Depth:	25 Feet
Width:	25 Feet

*Minimum lot depth multiplied by minimum lot width does not equal the minimum required lot area.

Minimum Yard Size:

Front Yard:	20 feet, or as required per Section 504.01M. of this LDR
Rear Yard:	10 feet
Side Yard:	10 feet

Minimum yard sizes may be reduced for structures constructed by a federal, state or local government on land owned by a federal, state or local government. Such projects must receive approval from the city commission and must demonstrate that the project will result in an overall public good and that the project will not be detrimental to the public. **Ord. #14-09**

Maximum Building Coverage:

The total area covered with buildings on any lot shall not exceed thirty percent (30%) of the total lot area.

Maximum Principal Building Height:

Thirty-five (35) feet above finished grade.

Landscaping

Landscaped buffer areas as defined in this LDR shall be required at all property lines.

No less than twenty-five percent (25%) of the lot area shall be left in natural landscaping or planted with landscaping if no natural landscaping exists.

EXHIBIT E (CONT'D)

Building Projections

There shall be no building projections into any required yard except for eaves with a maximum projection of 42 inches, but no closer than 5 feet to a property line; and those structures allowed in Section 804.03.